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FACT-FINDING REPORT

Michigan Employment Security Commission, Case No. L97 D-3010

In the matter of the fact-finding between

Roscommon County Road Commission

- and -

International Brotherhood of Teamsters, Local 214

| | |
|-------------------------------------|-------------------------|
| DATE OF FACT-FINDING PETITION: | January 30, 1998 |
| DATE OF PRE-HEARING CONFERENCE: | June 15, 1998 |
| LOCATION OF PRE-HEARING CONFERENCE: | Conference Call |
| DATE OF HEARING: | August 21, 1998 |
| LOCATION OF HEARING: | Roscommon, Michigan |
| DATE HEARING CLOSED: | August 21, 1998 |
| FACT-FINDER: | <u>Richard N. Block</u> |
| APPEARANCES: | |

For the Roscommon County Road Commission:

Mr. Michael R. Kluck, Attorney
Mr. James Vermeesch, Manager
Mr. George Pappas, Member

For International Brotherhood of Teamsters Local 214:

Mr. Joseph Valenti, President
Mr. Aubrey Carmine, Business Agent
Mr. Barry Brown, Steward
Mr. David Tuck, Steward

Roscommon County Road Commission

GENERAL BACKGROUND

Specified hourly employees of the Roscommon County Road Commission (hereinafter the Commission) are represented for collective bargaining purposes by International Brotherhood of Teamsters Local 214 (hereinafter the Union). The most recent collective bargaining between the Commission and the Union expired at midnight on June 30, 1997. The parties were unable to reach agreement on a new collective bargaining agreement. The Union filed a petition for fact-finding on January 30, 1998.

The petition listed six issues in dispute:

1. the employer's proposal for operational changes;
2. subcontracting;
3. time limits in the grievance procedure;
4. effective date of roll-up pension;
5. retiree's health insurance between the ages of 55 and 62;
6. bonuses in the years 1997 and 1998.

STIPULATIONS

1. Amend Issue 6 by adding the words "and wages" after "1998."
2. Add the following issue: "7. Duration of the Agreement."

TABLE OF RECOMMENDATIONS

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DISCUSSION OF ISSUES AND RECOMMENDATIONS

ISSUE 1: OPERATIONAL CHANGES

Employer Position:

The Employer proposes for inclusion in the collective agreement the following language regarding operational changes:

ARTICLE XIV OPERATIONAL CHANGES

The Employer shall have the right to determine the that general conditions of work need to be changed and implement such changes if it deems necessary for the efficient and economical operation of the Road Commission. The Employer agrees to meet and confer with the Union upon a request therefor, prior to implementing any change unless the change must be made immediately. In the event of a need to implement a change prior to a requested meeting, the Employer agrees to meet as soon as possible.

Union Position:

The Union proposes retaining Article XIV as in the most recent collective agreement.

MAINTENANCE OF STANDARDS

The Employer agrees, except as expressly modified by the parties, that all conditions of employment relating to wages, hours of work, overtime, differentials and general working conditions shall be maintained at not less than the highest minimum standards

in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

It is agreed that the provisions of this Section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement, if such error is corrected within ninety (90) days from the date of the error.

Fact-Finder Discussion

The Employer's rationale in putting forth its proposal is to obtain the right to make operational changes, such as the consolidation of garages and changing reporting locations, when it believes that such changes would further its mission. The Union puts forth its proposal to retain the old language on maintenance of standards in order to assure that the terms and conditions of employees are protected when such changes are made.

While the Employer should have the right to make necessary operational changes, the language it proposes does not provide the Employer with that right. The language proposed by the Employer does not use the term "operational changes." Rather, that language, if adopted, would give the Employer the right to change terms and conditions of employment, without providing it the right to make operational changes. Thus, the language proposed by the Employer damages the legitimate job interests of the Union without addressing the employer's legitimate needs.

A provision that would meet the needs of both parties would be to use the term "operational changes" in the provision, removing the reference to "working conditions." Moreover, the provision should include examples of the type of changes the parties consider operational so that it is clear that terms and conditions of employment are not changed. Such

language would permit the Employer to make the changes it needs, with no effect on the terms and conditions of employment of the employees in the bargaining unit.

Fact-Finder Recommendation: Issue 1

The Fact-Finder recommends that the parties adopt the following language in order to resolve Issue 1:

ARTICLE XIV
OPERATIONAL CHANGES

The Employer shall have the right to make operational changes, such as the consolidation of garages, reassignment of crews, designation of location(s) to report to work, etc., as it deems necessary. The Employer agrees to meet and confer with the Union upon a request therefor, prior to implementing any change unless the change must be made immediately. In the event of a need to implement a change prior to a requested meeting, the Employer agrees to meet as soon possible.

ISSUE 2: SUBCONTRACTING

Employer Position

The Employer's position with respect to Issue 2, "Subcontracting" is as follows:

ARTICLE V
SUBCONTRACTING AND TEMPORARY EMPLOYEES

Section 1.

The Employer has the right to contract and subcontract for matters relating to Road Commission operations, except that no

work or services presently performed or hereafter assigned to the bargaining unit shall be subcontracted if any employee in the bargaining unit is laid off due to such subcontracting. It is understood and agreed that making gravel and new construction may be contracted or subcontracted regardless of existing or resulting layoff of any employee.

Section 2.

The Employer reserves the right to hire temporary employees who will not be subject to the terms of this agreement other than this section, with the following limitations:

- A. Temporary employees are defined as workers used by the Employer for periods not to exceed six (6) consecutive months of full time (40 hours per week) employment in a calendar year.
- B. In situations involving the absence of a regular employee on workers' compensation, the Employer may utilize temporary employees until the workers' compensation injury situation is resolved and the provisions of subsection (A) above will not apply.
- C. Temporary employees may be hired to supplement or augment the regular work force, not to replace any existing regular employees or to displace regular employees from their normally assigned tasks.
- D. Temporary employees may not be used to avoid the payment of overtime to regular employees and may not be used outside the regular employees' work schedule, unless available overtime is refused by all regular employees.
- E. Temporary employees may not be used if any regular employee in the same or similar classification is on layoff or if the use of temporary employees causes the layoff of any regular employee.

Union Position

The Union proposes adding a subparagraph F, as follows:

F. Temporary employees may not be used to replace a full-time position.

Fact-Finder's Discussion

The Employer should have the right to subcontract work provided that such subcontracting is solely to supplement the existing workforce and does not displace any regular employees or cause the layoff of any employees. In addition, subcontracting should not be permitted when any regular employee is on layoff. This would permit the Employer to carry out its mission efficiently and effectively, while still protecting the job security interests of bargaining unit employees. The Union's proposed addition to the Employer's proposal for Article V, Section 2, a new Paragraph F, would prevent the Employer from using temporary employees to replace a full-time position. The Union's proposed paragraph F, however, accomplishes the same purpose as Section 2, Paragraph C in the Employer's proposal. Therefore, it is unnecessary.

Fact-Finder Recommendation: Issue 2

Based on the foregoing considerations, the fact-finder recommends that the parties adopt the Employer's proposal on Issue 2, "Subcontracting."

ISSUE 3: TIME LIMITS

The Employer proposes the following language regarding time limits in the grievance procedure:

Section 1.

It is mutually agreed that all grievances, disputes or complaints arising under and during the terms of this Agreement

shall settled in accordance with the procedure herein provided and that there shall at no time be any strikes, tie-up of equipment, slowdowns, walkouts or any other cessation of work through the use of any method of lockout or legal proceedings.

Every effort shall be made to adjust controversies and disagreements in an amicable manner between the Employer and the Union.

In order for a matter to be a proper subject for the grievance procedure, it must be submitted within five (5) working days of the occurrence giving rise to the alleged grievance.

Section 2.

Should any grievance, dispute or complaint arise over the interpretation or application of the contents of this agreement, there shall be an earnest effort on the part of the parties to settle the same promptly through the following steps:

Step 1. Verbal. By conference between the aggrieved employee and his foreman. The employee may at his request have the steward participate in the conference with a foreman. The foreman will provide his verbal response within three (3) working days of the submission of the grievance.

Step 2. Written. In the event the grievance is not resolved in Step 1, it shall be the responsibility of the aggrieved employee and the Union to reduce the grievance to writing on a regular grievance form provided by the Union and submit it to the foreman within five (5) working days of the foreman's verbal answer in Step 1, or if no answer is given, then within five (5) working days of when the time for the foreman's verbal response expired. The aggrieved employee and/or the steward shall meet with the foreman, or his alternate if the foreman is not available, in a further effort to resolve the grievance. The foreman or his alternate shall give his response in writing to said grievance within five (5) working days after such meeting.

Step 3. Written. If the answer in Step 2 does not resolve

the grievance, the Union may, within five (5) working days after receipt of said answer, or if no answer is given, then within five (5) working days of when the time for the Step 2 answer expired, whichever is applicable, request a meeting between Union representatives and the Employer representatives to be held within ten (10) working days after the date of written request, and the Employer will render its decision within seven (7) working days after such meeting.

Step 4. Arbitration. If the grievance is not settled at Step 3, either party to this agreement may submit such grievance to arbitration by filing for such arbitration in writing within thirty (30) working days after receipt of the Step 3 answer. If timely request for arbitration is filed by either party, the parties to this agreement shall promptly select, by mutual agreement, one (1) arbitrator who shall decide the matter. If the parties are unable to agree upon an arbitrator, the arbitrator shall be selected by each party alternately striking a name from a panel of seven (7) arbitrators submitted by the Federal mediation and Conciliation Service. The Union shall exercise the first strike from the list of arbitrators. The remaining name shall serve as the arbitrator.

The parties understand and agree that they have resolved for the term of this agreement all bargaining issues which were or could have been made the subject to negotiation. The arbitration forum herein established is intended to resolve disputes between the parties only over the interpretation or application of the matters which are specifically covered in this agreement and which are not excluded from arbitration. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this agreement or any supplementary agreement. The arbitrator shall have no power to establish wage scales or rates or to change any rate unless it is provided for in this agreement. The arbitrator shall have no power to provide agreement in those cases where the parties may have agreed that further negotiations should occur to cover any matter in dispute. The award of the arbitrator shall be based exclusively on evidence presented at the arbitration hearing. The expenses of the arbitrator shall be shared equally by the parties.

Each party shall make arrangements for and pay the expenses of witnesses who are called by them. The decision of the arbitrator shall be binding upon the grievant, the bargaining unit, the Union, and the Employer.

Section 3.

The Employer and the Union may by mutual written agreement extend the time limits provided in the above grievance procedure. "Working days" as used in this article shall not include Saturdays, Sundays, and Holidays. Grievances not timely filed or appealed from one step to the next within the time limits set forth at each step of the Grievance Procedure will be considered settled on the basis of the Employer's last decision or if not timely initiated the grievance will be deemed to have been permanently denied. In the event the Employer shall fail at any step in the grievance procedure to arrange a meeting or submit an answer within the time limits provided in the foregoing sections the steward may notify the Employer that the grievance involved is being taken to the next step when the time for the Employer's answer has expired.

Union Position

The Union proposes that the time limits in Step 2 be increased from five days to ten days, and that the word "permanently" be removed from Section 3.

Fact-Finder Discussion

Neither side has contended that time limits in Step 2 of the grievance procedure in the previous collective agreement caused problems. Moreover, the time limits can be waived if necessary, and such a waiver need not be explicit. It can be inferred from the actions of the parties. Accordingly, the Fact-Finder believes that the Employer's position in Section 2 is justifiable.

The Union has requested that the word "permanently" be removed from Section 3. I agree with this request. This appears to be redundant language. There is no indication that there is a difference between a grievance being "denied" and "permanently denied."

Fact-Finder Recommendation: Issue 3

The Fact-Finder recommends that the parties adopt the Employer's proposal with the following modification: delete the word "permanently" from Section 3.

ISSUE 4: EFFECTIVE DATE OF ROLL-UP PENSION

Employer Position

The Employer agrees to continue the present pension plan for regular full-time employees only with its contribution rate to such plan being eight percent (8%).

Effective June 30, 2000, the Employer's contribution to the pension plan will be based on all hours compensated.

Union Position

The Union is proposing the "Employer Position" above except the Employer's contribution to the pension plan based on all hours compensated will take effect on July 1, 1999.

Fact-Finder Discussion

The parties disagree solely on the effective date on which the Employer's pension contribution will be based on all hours compensated. The Union proposes that the effective date

by July 1, 1999 and the Employer proposes that the effective date be June 30, 2000. The Union argues that the employees should start receiving this benefit sooner rather than later. The Employer argues that its increased liability should begin later rather than sooner. As both sides present equally strong arguments, the Fact-Finder recommends that the parties compromise and implement January 1, 2000 as the effective date for the employer's pension contribution to be based on all hours compensated.

Fact-Finder Recommendation: Issue 4

The fact-finder recommends as follows regarding Issue 4: effective January 1, 2000, the Employer's contribution to the pension plan will be based on all hours compensated

ISSUE 5: RETIREE'S HEALTH INSURANCE

Employer Position:

The Employer agrees to pay the full premium for a \$5,000 life insurance policy after ninety (90) days of employment only for regular full-time employees and will cooperate in increasing such life insurance on a payroll deduction plan for any employee requesting such increase.

The Employer makes available health insurance coverage under the Blue Cross-Blue shield CMM-100 Plan, with 90/10 co-pay, \$500 Stop Loss Rider, \$5.00 prescription co-pay and SAB-300 Rider, with premiums paid by the Employer only for regular full-time employees and dependents. After the employee has paid the first \$250 of any deductible and/or co-pay in a given year, the next \$450 of any deductible or co-pay will be paid by the Employer.

Participation in this plan requires properly signed authorization forms for each employee. Effective date of coverage

for new employees will be in accord with Blue Cross-Blue Shield provisions or the equivalent.

Blue Cross-Blue Shield for Retirees: The Employer agrees to provide for the continuation of health insurance coverage then in effect with active employees for retirees between the ages of 62 and 65, including spouse, for the period of time between the retiree's 62nd and 65th birthday, as well as the continuation of such coverage for the surviving spouse of a retiree who dies between the ages of 62 and 65 until the surviving spouse remarries or the retiree would have reached age 65, whichever event occurs first.

Dental and Vision Insurance: The Employer agrees to provide the existing Delta Dental Plan and to add the Blue Cross-Blue Shield Family Vision coverage fully for regular full-time employees and dependents.

In the event the Employer determines to change insurance carriers for any of the coverages contained in this Article, or the equivalent or better coverage, the Employer will provide the Union with forty-five (45) days prior written notice of such intended change.

Union Position

The Union accepts the Employer position but would add the following language:

An employee who retires at age 55 or older with 30 years of completed service at the time of retirement will receive a monthly contribution from the Employer toward the cost of health insurance for himself or herself only as follows:

| | |
|--------------|-----------------|
| July 1, 1998 | \$150 per month |
| July 1, 1999 | \$160 per month |

Fact-Finder Discussion

The Union has proposed a monthly contribution for employees with thirty years of service who retire at age 55 or older. Such a proposal can be viewed as an incentive for employees to retire early. There is nothing that indicates that the Employer has a surplus of labor such that it is

in its interest to encourage employees to retire early. Accordingly, the Fact-Finder does not accept the Union proposal on this issue.

After discussion with the parties, and given that Medicare often does not always provide full coverage, I find it reasonable that the employer also provide a medicare supplement based on years of service. Such a supplement will be incorporated into a recommendation

Finally, it is only fair that all employees who became eligible for retirement between the expiration date of the previous agreement and the effective date of the new agreement enjoy the benefits of the new agreement. As employee Sylvester J. Hose became eligible for retirement after the expiration of the old agreement, the Fact-Finder's recommendation shall accommodate Mr. Hose's situation.

Fact-Finder's Recommendation: Issue 5

Taking into account the foregoing considerations, the Fact-Finder recommends as follows regarding Issue 5:

ARTICLE XXVI

LIFE AND HEALTH INSURANCE

The Employer agrees to pay the full premium for a \$5,000 life insurance policy after ninety (90) days of employment only for regular full-time employees and will cooperate in increasing such life insurance on a payroll deduction plan for any employee requesting such increase.

Dental and Vision Insurance: The Employer agrees to provide the existing Delta Dental Plan and to add the Blue Cross - Blue Shield Family Vision coverage fully for regular full-time employees and dependents.

The Employer makes available health insurance coverage under the Blue Cross - Blue Shield CMM-100 Plan, with 90/10 co-pay, \$500 Stop Loss Rider, \$5.00 prescription co-pay and SAB-300 Rider, with premiums paid by the Employer only for regular full-time employees and dependents. After the employee has paid the first \$250 of any deductible and/or co-pay in a given year, the next \$450 of any deductible or co-pay will be paid by the Employer.

Participation in this plan requires properly signed authorization forms for each employee. Effective date of coverage for new employees will be in accord with Blue Cross - Blue Shield provisions or the equivalent.

Blue Cross - Blue Shield for Retirees: The Employer agrees to provide for the continuation of health insurance coverage then in effect with active employees for retirees between the ages of 62 and 65, including spouse, for the period of time between the retiree's 62nd and 65th birthday, as well as the continuation of such coverage for the surviving spouse of a retiree who dies between the ages of 62 and 65 until the surviving spouse remarries or the retiree would have reached age 65, whichever event occurs first. The Employer will provide Medicare supplemental insurance as follows to the defined retirees provided the retiree (or surviving spouse) can otherwise qualify for the benefits under the requirements of the health insurance provider:

- a. After retirement with thirty (30) years of employment with the Road Commission, and age 55 or greater, the Employer will provide at its cost supplemental health insurance after age 65 years for the retiree only until age 80, or the retiree's death, whichever occurs first;
- b. After retirement with twenty (20) years of employment with the Road Commission, and age 62 or greater, the Employer will provide supplemental health insurance at its cost after age 65 for the retiree only until the retiree reaches age 80, or dies, whichever event occurs first;
- c. After retirement with at least fifteen (15) years of service with the Road Commission, and age 62 years or greater, the Employer will provide a prorata share

of the cost of supplemental health insurance after age 65 for the retiree only until the retiree reaches age 80 or dies, whichever event occurs first.

Proration will be as follows:

| | | |
|---------------------------------|---|------|
| Fifteen (15) years of service | - | 75% |
| Sixteen (16) years of service | - | 80% |
| Seventeen (17) years of service | - | 85% |
| Eighteen (18) years of service | - | 90% |
| Nineteen (19) years of service | - | 95% |
| Twenty (20) years of service | - | 100% |

- d. The spouse of a deceased retiree will be eligible to receive supplemental health insurance for that period of time from the retiree's death and the time said retiree would, have reached age 80 had the retiree survived.

The provisions provided for in subsections a-d above will apply only to those employees who retire after the signing of this Agreement by the Board of County Road Commissioners. Sylvester B. Hose will be eligible for these benefit.

ISSUE 6: BONUS IN THE YEAR 1997, BONUS IN THE YEAR 1998, AND WAGES

Employer Position

\$11.50 per hour for probationary employees during the life of the new contract.

Incorporate a three (3) year step schedule with a \$.50 per hour differential between each step. This schedule would reflect rates to take effect after the one (1) year probationary period, i.e.:

after 1 year
after 2 years
after 3 years.

Across the board increases would be implemented as follows:

First full payroll period after:

| | | |
|---------------------|---------------------|---------------------|
| <u>July 1, 1997</u> | <u>July 1, 1998</u> | <u>July 1, 1999</u> |
| 30 cents | 30 cents | 30 cents |

Mechanics would maintain a 30 cent per hour higher rate than Heavy Equipment operator.

Union Position

The Union accepts the Employer's position with the following changes:

Full retroactivity to the first full payroll period after July 1, 1997.

Across the board increases as follows:

| | | |
|---------------------|---------------------|---------------------|
| <u>July 1, 1997</u> | <u>July 1, 1998</u> | <u>July 1, 1999</u> |
| 30 cents/hour | 40 cents/hour | 40 cents/hour |

The union has also proposed a signing bonus.

Fact-Finder Discussion

There are three wage issues in dispute - retroactivity, amount, and a signing bonus. First, with respect to retroactivity, the only dispute is over whether employees should receive full retroactive pay, including overtime, for all hours worked between July 1, 1997 and the effective date of the new contract. The employer is legitimately concerned about the size of its retroactivity liability and the effect on its next budget if overtime hours are included in retroactive pay. I find that this is a reasonable concern on the part of the employer insofar as it applies to the first year of the agreement (1997-98), e.g., the past snow season.

On the other hand, I find the Union's proposal on the amount of the increase more justifiable than the Employer's proposal. The extra 10 cents per hour will raise the employees' base pay into the future, partially compensating them for the loss of full retroactivity for the 1997-98 snow season. In addition, the Employer will be aware of the obligation, and will budget appropriately.

I do not find that the Union has justified its request for a signing bonus. The Union has presented no reason why a bonus should be established in lieu of the parties' established practice of providing regular wage increases.

Fact Finder Recommendation: Issue 6

On this issue of wages, the Fact-Finder recommends as follows:

\$11.50 per hour for probationary employees during the life of the new contract.

Incorporate a three (3) year step schedule with a \$.50 per hour differential between each step. This schedule would reflect rates to take effect after the one (1) year probationary period, i.e.:

after 1 year
after 2 years
after 3 years.

Across the board increases would be implemented as follows:

First full payroll period after:

| <u>July 1, 1997</u> | <u>July 1, 1998</u> | <u>July 1, 1999</u> | <u>July 1, 2000¹</u> |
|---------------------|---------------------|---------------------|---------------------------------|
| 30 cents/hour | 40 cents/hour | 40 cents/hour | 40 cents/hour |

¹See Issue 7, below.

Retroactivity for the period July 1, 1997 through June 30, 1998 shall be for straight-time hours only.

Mechanics would maintain a 30 cent per hour higher rate than Heavy Equipment operator.

ISSUE 7: DURATION

Fact-Finder Discussion

The parties have gone over a year without a contract. This created uncertainty for the employees as regards their benefits and job security, and made it more difficult than otherwise for the Employer to operate during the 1997-98 snow season and to budget for the future. The parties would be well served by an additional year of repose from the pressures of collective bargaining. Accordingly, the Fact-Finder will recommend that the contract be extended for an additional year beyond June 30, 2000.

Fact-Finder Recommendation: Issue 7

The contract shall expire at 11:59 PM, local time, on June 30, 2001.

September 17, 1998

Date



Richard N. Block
Fact-Finder
East Lansing, Michigan