STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
FACT FINDING BETWEEN:

Washtenaw County Road Commission

-and-

No. D72 C-746

Teamsters Local #214
(September 12, 1972)
George T. Bunnell Jr. 10-10-72

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

For the Road Commission	For Local #214
G. Franklin Killeen, Esq. Attorney at Law	Joseph Valenti President

The most recent collective bargaining agreement between Teamsters State, County, Municipal Workers, Local #214 ("Union") and the Washtenaw County Road Commission ("Commission") expired on June 4, 1972. Prior to the expiration date of said contract, and subsequently, the parties have negotiated and have made offers and counter-offers and have exhausted mediation but have been unable to reach agreement. As a result, the Union petitioned for Fact Finding, and this Fact Finder was appointed.

The petition for Fact Finding set forth the following issues as yet unresolved by the parties:

Washtenaw County Road Commission

"1. Wages

2. Cost of living

3. Retroactive pay

4. Safety Committee: All Stewards on Safety Committee meet once every month, at least; red tags for unsafe equipment.

5. Assistant Superintendent of equipment working afternoon shift will be in the bargaining unit or stop doing mechanical work.

6. The purpose and intent of seniority by classification is to have the people of a classification do the work of that classification and not have the men in a higher classification do the lower classification and vice versa because this is, in fact, a violation of the agreement between the parties.

7. Grade 8 to Bid

8. Working out of class."

Issues 1 thru 3, wages, cost of living, and retroactive pay are obviously economic issues. The remaining five issues are what can best be termed as "non-economic" issues. We further suggest that issue six and eight are actually a combined issue, namely, the problem of working out of classification.

As to the economic issues, we note several criteria used by Fact Finders, which may serve as guidelines in this situation. These are the ability to pay, comparisons with what other public employers are paying similar types of employees, and the present and past bargaining history of the parties. The most persuasive of these guidelines relative to the situation between these parties is their collective bargaining history, both current and past. This history provides a focal point for a telescoping and dovetailing of the traditional points of contention between the parties

and serves as a useful tool to effectuate an analysis of the problem.

The two economic issues unresolved here, wages and retention of a cost-of-living clause in the collective bargaining contract, cannot be separated as they are historically intertwined. Since 1966 when the parties entered into their first collective bargaining contract under Act 379 of Public Acts of 1965, their two collective bargaining agreements, covering the 1966-69 period and the 1969-72 period, respectively, have contained a cost-of-living clause. In fact, this Fact Finder served as a Fact Finder in the dispute between the parties leading to the 1969-72 contract. The offer of the Commission at that time was 10¢, 10¢ and 5¢ an hour for three years on the assumption that the cost-of-living clause would be retained. The Commission argument at that time was that because the cost-of-living provided a hidden wage increase it could not afford a larger offer. This Fact Finder, at the time, accepted said argument and recommended a 15¢ increase for the first year, a 10¢ increase for the second year and a 10¢ increase for the third year on the assumption that the cost of living clause was being retained in the contract. Basically, the Fact Finder's Report and Recommendation was accepted by the parties and was incorporated in their collective bargaining agreement covering said 1969-72 period.

The parties are again faced with the nagging problem of the cost-of-living index. Obviously, the cost of living has risen quite rapidly in the United States and particularly in the

Michigan area. This rise has resulted in employees receiving unpredicted wage increases with resulting additional costs to the Road Commission. From the employees standpoint, the cost-of-living clause has permitted the employees to maintain the wage increases that they won in the 1969 negotiations without losing economic ground due to inflationary forces. On the other hand, the Commission desires to remove the cost-of-living clause from the forthcoming collective bargaining agreement because it results in unanticipated additional expenses, which the Commission finds difficult to budget for.

The desire of the employees to use the cost-of-living index as a hedge against inflationary trends and the desire of the Commission to vitiate unanticipated costs is the hallmark of the current collective bargaining history between the parties.

The position of the Commission became evident with the offers that it made at the collective bargaining table. On May 22, 1972, the Commission made the following economic offer:

"Wage Proposal 5/22/72

	General Increase	In Lieu of C/L	Total
6/4/72	.15		.15
1/4/73		.10	.10
6/4/73	.15		.15
1/4/74		.10	.10
6/4/74	.15		.15
1/4/75		.10	.10
			.75

The above is on the basis that:

1. Our prior offer as to Blue Cross is withdrawn.

2. Cost of living would be suspended for life of Contract. If included in subsequent contract, start at the then level of Index."

It is quite evident that the above offer is a radical departure from the Commission's 1969 bargaining stance. Indeed, the May 22, 1972 offer provided for a liberal 75 cent-an-hour package over three years in contrast to the 1969 offer of a 25 cent-an-hour increase for a similar three-year period. This May 22, 1972 offer was rejected by the Union. By telegram on June 8, 1972, the Commission, through its attorney, made the following offer:

> "RE URTEL CONTRACT EXTENSION WASTENEAU COUNTY ROAD COMMISSION, WE AGREE TO DAY TO DAY EXTENSION WITH 72 HOUR NOTICE OF TERMINATION BY EITHER PARTY. ALSO, IF YOU PROPOSE SETTLEMENT ON BASIS OUR LAST OFFER EXCEPT 25 CENTS INCREASE EACH YEAR INSTEAD OF DIVIDING AS WE PROPOSED, WE WILL GET ROAD COMMISSION APPROVAL AND IN ADDITION WILL REMOVE SUSPENSION OF COST OF LIVING CLAUSE INDEX WOULD BE COMPARISON POINT AND ANY PAYMENTS CALLED FOR WOULD BE FOR FIRST FULL PAY PERIOD BEGINNING IN MARCH 1975, SUBJECT TO PAY BOARD REGULATIONS. THIS ALSO ASSUMES REDUCING FLOAT TO 7 CENTS PER HOUR ON SEPTEMBER 1974 BASE POINT."

The June 8th offer differed in several aspects from the May 22, 1972 offer. It is true it still provided for a 75 cent-an-hour increase over three years; however, the increases were now evenly split on a yearly basis rather than on a semi-annual basis. Thus, it meant that the employees would actually receive more money in their pockets during the three years as they would be getting a full 25 cents each year at the beginning of the year rather than part at the beginning and part in the middle of each year. Furthermore, the Commission maintained the concept of the cost-of-living clause, provided it would not apply until the "first full pay period beginning in March, 1975 subject to pay board regulations."

In other words, the Commission was attempting to compromise with the Union by retaining the cost-of-living clause, but the quid pro quo for such a retention was that during the first two and a half years of the contract, the Commission would not have to be faced with the clause's inherently unanticipated expense.

The Union took the matter back to the membership for ratification. The membership rejected this offer on June 11, 1972. It should be noted that there is a real possibility that if there was not a State prohibition against public employee strikes, and if there was not the availability of Fact Finding, the Commission may have been faced with a strike at this point. We point this out in recognition that another possible criterion in arriving at Fact Finding Reports and Recommendations is a recognition that Fact Finding is a substitute for strikes in the public employment sector.

Focusing on ability to pay, we note the Commission has presented its income and expense analysis for 1971. This analysis shows that the cost of labor, including fringe benefits, is 63.23% of the total income. The Union points out, however, that this does not represent just the labor attributable to its bargaining unit members. Nevertheless, it is recognized that in Road Commission work in Michigan, Commissions short change themselves when they start exceeding more than 50% of their total expenditures for labor. Such a policy may take away the necessary income for material and equipment. Though this may be true, we observe that the Commission by its telegram of June 8, 1972 was offering 25 cents an hour and keeping a "delayed"

cost-of-living provision in its contract. Apparently the Commission believed that it could afford this offer despite its excess of 50% for labor over its income. We have thus not heard any convincing argument from the Commission suggesting that it did not have an ability to pay somewhat more than the June 8, 1972 offer, which was rejected by the employees and which rejection could have resulted in a strike if that economic weapon was used or was available.

Comparisons are indeed important. The Union points out that in 1969 the Washtenaw County Road Commission ranked tenth in income among Michigan County Road Commissions, and its pay scale was either third or fourth in rank. The Union argues that now the Washtenaw County Road Commission ranks fourth in income among Michigan County Road Commissions, and it therefore could objectively afford to pay additional wages requested.

By way of another comparison, the Union has prepared an Exhibit I referring to key classifications and rates of pay per hour between the Washtenaw County Road Commission, City of Ann Arbor, and the Monroe County, Macomb County, Oakland County and Wayne County Road Commissions. This comparison, in part, is as follows:

"Exhibit I	Light Truck	Heavy Truck	Heavy Equip.	Mechanic	C/L
Wayne County Road Com. 1972-73	$5.125	$5.30	$5.67	$5.64	Yes

"Exhibit I	Light Truck	Heavy Truck	Heavy Equip.	Mechanic	C/L
Oakland County Road Com. 1972-73	$4.71	$4.78	$4.95	$5.04	Yes
Macomb County Road Com. 1971-72	$4.31	$4.39	$4.58	$4.61	Yes
Monroe County Road Com. 1971-72	$4.31	$4.39	$4.58	$4.61	Yes
City of Ann Arbor 1972-73	$4.65	$4.81	$5.19	$5.19	No
Washtenaw County Road Com. Expired 6-30-72	$4.22	$4.32	$4.43	$4.54	Yes"

In addition, the Union has pointed out that in neighboring Livingston County, as of September 1, 1971, the Road Commission there agreed to a three-year contract which provided a 35 cent-wage increase the first year, a 25 cent increase the second year and another 25 cent increase in the third year, plus a cost-of-living clause. The pay rates under the new schedule provided for rates ranging from $4.19 to $4.95 an hour.

Recognizing that the Wayne County Road Commission receives the highest income of any Road Commission in the State of Michigan and has traditionally been the highest paying Michigan road commission, we do not believe that this is a fair comparison, particularly since the wages paid by that Commission are influenced by the generally higher economic wages paid in all areas of employment in Wayne County as compared to "outstate" Michigan.

The Macomb and Monroe County Road Commission rates cannot be compared because the new rates have not been negotiated, or at least have not been brought to the attention of the Fact Finder. However, it is understood that even under the old rates both Macomb and Monroe Counties were at least 7 to 15 cents higher. We note that Oakland County was paying on an average of 45 cents higher in each classification while paying on an average of 40 cents lower than Wayne County. We also note that the City of Ann Arbor is paying on an average of 40 cents or more higher in each classification than the Washtenaw County Road Commission.

Upon a review of these illustrative comparisons, eliminating Wayne County, it is manifest that the 25¢ increase proposed by the Commission on June 8, 1972, does not render Washtenaw County out of balance with the comparable rates of surrounding counties. Put simply, the Washtenaw County Road Commission would be compensating its employees at a ratio similar to that of the Road Commission and City employees in the immediate geographical vicinity, i.e., the Livingston, Macomb,Monroe and Oakland Counties. The previously mentioned 35 and 25 cent three year wage increases for the Livingston County Road Commission employees which results in a rate variance ranging from $4.19 to $4.95 per hour, would seem to indicate that in some classifications the Livingston County Road Commission employees are substantially higher paid than those in Washtenaw. In some cases,thisremains so even if there is a 25¢ an hour wage increase in Washtenaw.

Additionally, there is one other element of importance in all these comparisons and contrasts. Wayne, Oakland, Macomb, Monroe and Livingston counties all have cost-of-living clauses. We admit that we do not know whether the cost-of-living clauses will continue in Macomb County or Monroe County. We also suspect that the reason why the City of Ann Arbor, which is the county seat of Washtenaw County, pays a substantially higher rate is because of the non-existance of the cost-of-living clause.

Nevertheless, when one considers the past bargaining history of the parties,and thus,recognizes the factor the cost of living played in their 1969 negotiations, when one considers the current collective bargaining history where, in their last effort to obtain the contract, even the Road Commission gave "delayed" recognition to the cost-of-living clause, and combine

this with the comparisons to other surrounding counties that are paying a cost-of-living factor, then we cannot help but conclude that a cost-of-living provision should be in the new collective bargaining agreement of the parties. We are not impressed with any potential ability-to-pay argument because even though the Commission is using more than 50% of their income for labor, the Commission was willing to make the 25¢ an hour offer. We appreciate that a cost-of-living clause would add more to this offer, but it is consistent with the parties' bargaining history and the geographic comparables.

We, therefore, would recommend a 25¢ wage increase per hour for each of the three years of the contract with 25¢ the first year, 25¢ the second year, and 25¢ the third year, effective on the anniversary dates of the contract. Futhermore, we recommend that the cost-of-living clause now contained in the contract be continued and integrated with the new contract, only limited by the Federal Pay Board guidelines.

This brings us to the issue of retroactivity. In the 1969 Fact Finding Report, we wrote as follows:

> " The final issue between the parties is retroactivity. Apparently, public Act 336 of 1947 as amended by public Act 372 of 1965 (MSA 17.455(2)) prohibits strikes by public employees. This Fact Finder does not rule on whether this in fact is the law but only states that apparently this is what the statute says.
>
> Local 214 in Washtenaw County chose to abide by the language of the statute rather than strike and test its validity in the courts. The local could not agree with the Commission on a contract. It then proceeded to file a petition, as provided by section 25 of Public Act 379 of 1965, for Fact Finding. It, along with the Commission, attended the Fact Finding hearing and presented relevant information both at the Fact Finding hearing and subsequently. The Fact Finder, within the thirty (30) day limit provided the rules and regulations of the Michigan Employment Relations Commission has issued a Fact Finding Report and Recommendations.

To refuse to make this recommendation, retroactive to June 5, 1969, the day following the expiration of the contract would be contrary to the intentions of the no strike provisions of public Act 379. It would encourage strikes. A public employer not wishing to have a strike and not being able to agree with his employees on a contract and finding himself in Fact Finding must take the consequences of a recommendation of retroactivity. If he does not wish to take this consequence, then he must be willing to take the consequence of a strike. Apparently, there are those that believe that although strikes might be tolerated in a private sector, they should not be tolerated in the public sector. This apparently is the reason for the legislation. This being the apparent public feeling then why not retroactivity as the price for avoiding a strike? If the Commission choses not to make the wage increase retroactive, then the Commission is inviting a strike at this time or at the time of the contract expires in the future if at the time of expiration there is no new contract. Furthermore, there is no guarantee that the Circuit Courts in Washtenaw would necessarily grant an injunction in the event of a strike. Finally, even the Commission was willing to pay ten (10¢) cents an hour on June 5, 1969. Therefore, in fairness, the recommendations contained herein are to be retroactive to June 5, 1969."

We find that pursuant to said Fact Finding Report, the Commission did make pay raises therein retroactive, apparently recognizing the validity of our argument at that time. We find nothing in the current argument of the Commission that would change our position as to the retroactivity voiced in our previous Fact Finding Report as quoted above. The Commission has been spared the trials and tribulations of a strike as a result of the impasse reached shortly after June 4, 1972. In return for this there is no reason why the Commission should not follow its previous policy of retroactivity. Therefore, the economic portions of this Report are recommended to be effective June 5, 1972, through June 4, 1975.

NON-ECONOMIC ISSUES

Safety Committee: After reviewing the arguments concerning

the Union's position as to the Safety Committee, we are not convinced that the Union demand is reasonable. We call the parties' attention to Article XIX entitled, Safety Committee, and Article XVI entitled, Equipment, Accident & Reports, in the 1969-72 agreement. It is our understanding that the Commission is willing to continue this language into a contract covering the 1972-75 period. We believe that this language is sufficient to cover any complaints as to safety urged upon the Fact Finder by the Union. For this reason, we are recommending that Article XVI and Article XIX of the 1969-72 contract be carried over into a contract covering the 1972-75 period.

Assistant Superintendent: The Union has taken the position that the Assistant Superintendent of Equipment working the afternoon shift should be in the bargaining unit if that Superintendent is to continue doing unit work. The Commission by the current bargaining history has indicated that it had no basic objection to this position. Because of this, we are recommending that within 30 days of the signing of the parties' new contract, said Assistant Superintendent become a part of the bargaining unit unless he refrains from doing bargaining unit work.

Grade 8 bidding: Under the recently expired collective bargaining agreement, unit employees are not eligible to bid into the Grade 8 classifications, to-wit: welder/mechanics, group leaders and building and ground custodians.

The Union's position is that its membership in the unit should have the same opportunity to bid into Class 8 classifications as said employees have to bid into other classifications. The Commission points out that the exclusion

of Grade 8 in Section 20 of Article XV of the recently expired contract from the bidding process has been a concession which the Commission has previously won at the collective bargaining table. The Commission's Grade 8 exclusion theory is that the positions in Grade 8, particularly those of welders, mechanics and group leaders,are indeed skilled and that it is essential that the Commission be given the opportunity when there is a vacancy in this grade to obtain the most skilled employees who are available from whatever source. The Commission points out that in the past it has made many concessions to the Union in the collective bargaining agreement to obtain this non-bid provision as to Grade 8.

As we have pointed out above, collective bargaining history is an important guideline. In reviewing the collective bargaining history of the parties and the rationale for the Grade 8 exclusion, we believe that the Commission is correct in this position and that in the event of a strike, this would be one item which the Commission would not relinquish. For this reason, we are recommending that the language of Article XV and in particular, Section 20, which excludes Grade 8 classification from the bidding process be continued into the new collective bargaining agreement.

Class Seniority - Working on a class: The issue of class seniority and working on a class was described by the Union as follows:

> " Issue No. 6 pertaining to seniority by classification and Issue No. 8 pertaining to working out of classification are similar in nature.
>
> In the assigning of employees out of the Zeeb Road Yard only, into crews, leads the employees not being able to perform work assignments in their present classifications.

During the last year of this Collective Bargaining Agreement, the Employer radically changed the assignment of employees by formation of specific work crews. Some of these crews are to perform job assignments on State roads; others to perform job assignments on construction; and still others on County Roads.

We have no quarrel with the Employer on the formation of crews to perform specific work assignments. However, in forming these crews, if Heavy Equipment Operators are not in Crew A, for example, and heavy equipment operations assignments are needed, lower classified employees are brought up to run the heavy equipment while on Crew B, where there are Heavy Equipment Operators assigned, and if no heavy equipment operation job assignment is needed for that day, they are placed on brush burning or truck driving or lower classified work.

There is no dispute in terms of economics involved in this issue. The very nature and specific argument of dispute are Heavy Equipment Operators being reduced to perform laboring work, while laborers or truck drivers or heavy truck drivers are elevated to perform heavy equipment operator work on the same day, but on other crews.

We see no reason why management cannot form crews that adequately reflect the classification in job assignments needed for the day. The formation of crews is directly the responsibility of the Employer. However, the formation of crews of classifications that are not needed, in our opinion shows mismanagement and poor judgment factor on the foreman forming such crews.

The remedy that this Local Union seeks and a recommendation by the Fact Finder is that in the formation of crews by the Employer, an adequate number of classifications, in order to perform the work, are present on each crew. (Work assignments are normally planned days in advance by the foreman.)"

We have reviewed both the position of the Union as set forth above and the arguments raised by the Commission at the hearing. We are convinced that the past practice of the Commission is consistent with the collective bargaining agreement and should continue undisturbed. Therefore, we are denying the request of the Union as to these two issues.

RECOMMENDATIONS

Based upon the Report set forth above, we make the following recommendations:

1. The contract should contain a 25¢ an hour increase in wages in all classifications for each of three (3) years beginning June 5, 1972, and a corresponding increase on June 5, 1973, and June 5, 1974.

2. The contract should contain a cost-of-living provision, but limited by the Federal Pay Board Guidelines, identical to the cost-of-living provision in the just expired contract and that all monies due under the previous cost-of-living provision should be paid. The cost-of-living provision should be effective June 5, as of 1972.

3. There shall be no change in the provision for the Safety Committee and therefore, the language contained in the just expired contract in Articles XVI and XIX shall be continued in the new contract.

4. The Assistant Superintendent of Equipment working afternoon shiftsshall, if he continues to do bargaining unit work, become a member of the unit within 30 days of the signing of the new contract between the parties.

5. In regard to bidding procedures on Grade 8, it is recommended that the Grade 8 classification exception to the bidding procedures contained in the just expired contract be continued in the new contract.

6. As to class seniority and working out of classification, it is recommended that there be no change in the policy of the Commission or the language of the contract as to this issue.

George T. Roumell, Jr.
Fact Finder

Date: October 10, 1972.