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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICE
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between:

ROAD COMMISSION FOR
OAKLAND COUNTY,

Public Employer,

And

MERC Case No: D05 D-0450

MICHIGAN AFSCME COUNCIL
25, AFL-CIO,

Labor Organization.

APPEARANCES

FOR ROAD COMMISSION

FOR AFSCME COUNCIL 25

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**FACT FINDER'S REPORT
FINDINGS OF FACT AND RECOMMENDATIONS**

Background

Brent O. Blair, the Managing Director of the Oakland County Road Commission, testified that the largest single source of funding for the Oakland County Road Commission is from the Michigan Transportation Fund. The source of that fund is "the state collected gas tax and registration fees or license plate fees and diesel tax and a few miscellaneous sources." All the routine operating expenses are paid from that fund.

Federal funds are received for specific projects. The Road Commission does not have any independent taxing authority and there is no county wide road millage in Oakland County. Since FY 98 (the last year there was an increase in fuel tax) revenues from the MTF increased 11%. The cost of equipment, material and supplies increased substantially. (see attached employer's exhibit)

Local 92 is one of four AFSCME bargaining units representing the employees of the Oakland County Road Commission. Local 529 is a salaried unit. One of the other two units represents foreman and the other represents skilled foremen. All of the contracts expired in 2005. The other three bargaining units have ratified new multi-year contracts that will expire in 2008.

Local 93 consists of 293 members which includes mechanics, truck drivers, maintenance, janitors, stock clerks, watchmen, store keepers and sign fabricators.

The parties met several times with a mediator even after the Petition for Fact Finding was filed. A tentative agreement was reached on September 8, 2006. This agreement embraced the same economic and fringe benefit settlement previously negotiated with the second largest AFSCME unit, Local 529, salaried employees. In late October the Union rejected the proposed agreement. As of the date of this hearing, nine sections of the agreement are still in dispute.

ARTICLE 18 **DISCHARGE AND DISCIPLINE**

The expired contract had a provision that in the event of a discharge case, the Employer can look back at the Employee's disciplinary history for a period of 24 months. The Employer desires to have this increased to 36 months. The Union desires to retain the 24 month look back period. The Union argues that the present 24 month look back

period is sufficient. Felicia Hicks, who is the Staff Representative of AFSCME Counsel 25, testified that when the contract was turned down by the Employees one of the core concerns was that “they didn’t like the idea of moving from 24 to 36 months.”

The Employer argues that this provision applies only to discharge cases and that the 36 month look back gives an arbitrator sufficient look back time to enable him/her to have a better picture of the Employee’s past work performance.

The contract entered into with Local 529, which represents another group of employees of the Road Commission, and the tentative agreement Local 92 entered into with the Road Commission on September 8, 2006, both contained a 36 month look back provision.

I believe that the Employer’s argument that the 36 month look back gives an arbitrator a better view of an Employee’s past work performance. Also, the further fact that the contract with Local 529 has included a 36 month look back and the two contracts should be consistent and the further fact that the tentative agreement included a 36 month look back, **I recommend that the Look Back Provision be extended from 24 months to 36 months.**

ARTICLE 20 SENIORITY

The issue here relates to the length of time that a new employee shall be considered a probationary employee. The expired contract provides for a six month probationary period. The Employer seeks to extend the probationary period to nine months. It’s rationale is that a new employee starting in April may conclude his/her probationary period before it is known whether or not the employee is capable of operating certain Road Commission equipment that might be required during the course

of the year. The Employer, in addition to wanting to increase the probationary period to nine months, also wishes to include the following: “Excluding paid benefit days, cumulative absences of three (3) days or more from work during the probationary period will result in the probationary period being extended by a time equivalent to the Employee’s absence or the remaining length of the probationary period whichever is less.”

The Union would like to retain the six (6) month probationary period.

The argument presented by the Employer makes sense. Also, the tentative agreement signed September 8, 2006, provided for a nine month probationary period and included the language requested by the Employer, therefore, **I recommend that the probationary period be extended to nine (9) months and that the agreement include the language requested by the Road Commission.**

ARTICLE 22 COMMERCIAL DRIVERS LICENSE

The expired contract provides that Employees whose CDL has been suspended for a non-medical reason would have six (6) months to be successful in bidding for one of the jobs that did not require a CDL, have their CDL reinstated or be terminated. The Union would like to increase this period from six (6) months to one (1) year. The Employer objects to this increase.

The addition of six (6) months would mean that replacement of an employee whose job required a CDL would be delayed by six (6) months. The Employer has purchased additional attenuator trucks and those can only be operated by persons holding a CDL license. This alone indicates the need for additional CDL drivers. I believe that

the extension of six (6) additional months could create some unreasonable problems for the Employer.

The tentative agreement entered into between the parties on September 8, 2006, provided for a six (6) months reinstatement period.

Inasmuch as the tentative agreement left the reinstatement period of six (6) months, **I recommend that the language in the tentative contract limiting the reinstatement time to six (6) months be included in a new contract.**

ARTICLE 35 WORKING HOUR SHIFT PREMIUM AND HOURS

The parties have resolved this issue and the following language is to be included in the new contract.

All employees are expected to be at their regularly assigned garage at their scheduled starting time. Employees must give one half hour advance notice to the district superintendent, if the district superintendent is not available, an employee shall call the foreman in charge of the district or voice mail system if available when an employee is unable to report for work. Exceptions may be granted for reasons deemed valid by the Employer.

ARTICLE 46 HOSPITALIZATION MEDICAL COVERAGE

This article is one of the most critical issues in the negotiation and is coupled to the wage increases in Article 54, RATES OF PAY.

The Employer's position is stated as follows:

Effective as soon as possible, the former health insurance plans will be replaced. The Employer will then make available, through an administrative service contract with Blue Cross/Blue Shield, a base health insurance plan described as follows:

Community Blue PPO1, \$20 office/chiropractic co-payment, \$10/\$20 preferred drug co-payment, contraceptives coverage, \$50 ER, MOPD 1X, VA 80 vision coverage and hearing rider.

Health insurance benefits will be available to employees and their eligible dependents the first month after an employee has completed thirty (30) days of continuous service. Employees eligible for health insurance will make biweekly payroll deductions toward the cost of health insurance coverage in accordance with the following schedule:

	At implementation	July 1, 2007
Single	\$8	\$9
2-Person	\$17	\$19
Family	\$22	\$26
Family	Full Cost	Full Cost
Continuation		

There will be no dual coverage for employees married to one another. They must elect only one plan.

The Union has accepted this plan except for the starting date for deductions. The parties further agree that in the event two parties are employed by the Road Commission, only one party will have deductions for health insurance. Since the parties agreed to these terms in the tentative agreement, **I recommend that the health insurance provision in the tentative agreement be adopted in a new contract and become effective upon execution of the new contract.**

ARTICLE 54 RATES OF PAY

I am taking this Article out of order because it relates to the prior Article.

The Employer's position is to give the Employees a 2.5% increase across the board effective the first full payroll period after the contract is signed. A 2.5% increase across the board effective the first payroll period beginning one (1) year after the signing.

The Union is seeking an increase of 2.5% retroactive to 7/1/06, 2.5% effective 7/1/07 and 3% effective 7/1/08.

The tentative agreement provided for a wage increase of 2.5% effective July 1, 2006, and a 2.5% increase effective July 1, 2007. These increases were based upon the acceptance of the Hospitalization Medical Coverage set forth in the tentative agreement. Since both parties bargained in good faith, the subsequent rejection of the entire contract by the Employees should not act to punish the Employer. Therefore, **I recommend that the first wage increase of 2.5% take effect the first full payroll period after the new contract is signed by both parties and the second increase take effect on July 1, 2007. There is no recommendation for an increase in July 1, 2008.**

**ARTICLE 51
PENSION (RETIREE HEALTH BENEFITS)**

It appears that the controversial issues in this section are that persons retiring after 1/1/07 would be required to contribute toward the cost of health insurance at the same bi-weekly rate in effect on the date of their retirement. The other issue is the increasing of the minimum number of years of employment required to retire at age sixty from eight years to fifteen years for future hires. The Union argues that these terms were not bargained for, but were included in a mediation package. All other terms in Article 51 are approved by the Union. Inasmuch as these terms are included in the tentative agreement and are included in the contract with the other bargaining units, I do not find them unreasonable. **Therefore, it is my recommendation that the provisions in Article 51 included in the tentative agreement be included in any new agreement.**

**ARTICLE 52
EQUALIZATION OF OVERTIME HOURS**

The issue here is whether or not an employee could be called to work overtime at a job outside of his/her classification. The provision in the expired contract provides as follows:

A. The parties recognize that in the interest of the community and the job security of the employees depend upon the Employer's success in furnishing an essential public service on a seven (7) days per week and twenty-four (24) hours per day basis. As such, all employees shall work a reasonable and fair share of the overtime as is necessary in their classification and their district and report to work in a reasonable time after being called.

The Employer would like to delete the reference to "their classification." The Union is concerned that an employee might be called to work in a classification that he/she is either not qualified for or may not have worked in for a considerable time and may be subjected to unfair discipline if the work is not adequately performed.

I find that the Union's concerns have merit. In addition, I find that the tentative agreement did not delete the reference to "their classification." **Therefore, I recommend that the new agreement include the reference to "their classification."**

**ARTICLE 65
TERMINATION AND MODIFICATION**

The issue in this Article is when the contract will terminate. The Union seeks a Contract termination date of June 30, 2009, so that the employees of this bargaining unit can negotiate in a separate year than the other bargaining units.

The Employer's position is that with respect to wages and fringe benefits it has pattern bargained with Local 529 and Local 92 for at least 30 years and has "been able to maintain uniformity in approach to employees not pitting one group against the other--"

The tentative agreement in this case terminated the Contract at 11:20 PM on June 30, 2008. **Therefore, I recommend that the termination date of a new contract be June 30, 2008.**

Dated: May 1, 2007

James M. Collins
Fact Finder