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State of Michigan

Department of Labor & Economic Growth

Employment Relations Commission

FACT FINDING REPORT AND RECOMMENDATIONS

In the matter of fact finding between

Cass County Road Commission

and

Teamsters Local 214

Michigan Employment Relations Commission Case No. L07 A-9005

DATE OF FACT-FINDING PETITION:	December 6, 2007
DATE OF PRE-HEARING CONFERENCE:	April 24, 2008
LOCATION OF PRE-HEARING CONFERENCE:	Battle Creek, MI
DATE OF HEARING:	August 21, 2008
LOCATION OF HEARING:	Cassopolis, MI
DATE HEARING CLOSED:	August 21, 2008
FACT FINDER:	Gregory M. Saltzman

APPEARANCES:

For Cass County Road Commission:
Mr. Joseph Bellina, Engineer-Manager
Mr. Eugene Smith, Attorney
Mr. Mark Nottley, Rehmann Robson Certified Public Accountants
Mr. Leroy Krempec, Member, Cass County Road Commission

For Teamsters Local 214:
Mr. Joseph Valenti, President
Mr. Robert Vasquez, Business Representative
Mr. Bob Couchman, Bargaining Unit Member
Mr. Daryl Polmateer, Bargaining Unit Member

I. General Background

The collective bargaining agreement between the Cass County Board of Road Commissioners (hereinafter the Employer) and Teamsters Local 214 (hereinafter the Union) covered a bargaining unit of 38 garage and road employees, whose job duties include driving trucks, operating heavy equipment, and working as mechanics. This contract expired on June 30, 2007. Negotiations for a new contract did not result in an agreement. Mediation was attempted on October 15 and November 13, 2007.

The parties reached tentative agreements on several issues. The issues remaining in dispute as of the date of the fact-finding hearing were wages, health insurance, and the duration of the contract.

II. Unilateral Changes by the Employer

After mediation was unsuccessful, the Employer decided to implement unilateral changes in wages and health insurance effective January 1, 2008. The Employer made further unilateral changes in wages effective July 1, 2008. These changes were as follows:

- ***Wages raised 1.25% January 1, 2008, and another 1.25% July 1, 2008*** - The expired collective bargaining agreement provided a wage increase effective July 1, 2006. The Employer unilaterally increased hourly wage rates for bargaining unit employees by approximately 1.25% (compared to the July 1, 2006, rate) effective January 1, 2008. The Employer unilaterally increased hourly wages again by

approximately 1.25% (compared to the January 1, 2008 rate) effective July 1, 2008. For example, the Employer raised wages for Labor Grade E, which had been $16.69 per hour effective July 1, 2006, under the expired collective bargaining agreement, to $16.90 per hour effective January 1, 2008, and to $17.11 per hour effective July 1, 2008.

- ***Health Insurance: Switched from PPO 1 to PPO 3*** – Both before and after January 1, 2008, bargaining unit employees have been covered by a preferred provider organization (PPO) health insurance plan offered by Blue Cross Blue Shield of Michigan. But on January 1, 2008, the Employer unilaterally switched the bargaining unit members from a plan called PPO 1 to a plan called PPO 3. PPO 3 requires higher out-of-pocket payments for medical services than does PPO 1, representing a qualitative change by abandoning the principle of first-dollar coverage; but there is at least one respect in which PPO 3 provides more generous benefits than does PPO 1. By switching from PPO 1 to PPO 3, the Employer:
    - ***Raised the annual deductible from zero to $250/individual, $500/family.***
    - ***Raised the coinsurance rate on many medical services from zero percent paid by the employee to 20% paid by the employee.***
    - ***Raised the annual maximum payment by the insurance plan for preventive care from $250 to $500 per insured person.*** Note that this change makes the health plan <u>more</u> rather than less generous to employees.

- ***Health Insurance: Switched from a Noncontributory to a Contributory Plan*** – Prior to January 1, 2008, the Employer paid 100% of the monthly premium for the PPO. The Employer proposed requiring bargaining unit members to contribute 15% of the monthly PPO premium, beginning January 1, 2008. Michigan law, however, prohibits employers from making payroll deductions without either the individual consent of employees or the agreement of the labor union representing the employees. The 15% employee contribution therefore has applied only to the 11 bargaining unit members who signed payroll deduction authorizations; it does not apply to the other 27 members of the bargaining unit. Employee contributions for premiums are deducted from paychecks on a before-tax basis, so that reduced income taxes and payroll taxes partly offset the cost of the employee contributions.
- ***Health Reimbursement Account (HRA) Established and Funded by Employer Contributions*** – The Employer began contributions to individual HRA accounts that employees can use to cover out-of-pocket payments under the PPO 3 plan for (a) the portion of deductibles exceeding $100 per person or $200 per family annually and (b) coinsurance. Like the increase in the annual maximum for preventive services, this is a change that makes health benefits <u>more</u> rather than less generous to employees. The Employer contribution to the HRA is $1,000 annually for employees electing single coverage under the health insurance plan, $2,000 annually for employees electing family coverage (with contributions of prorated amounts made weekly). Only those employees who signed individual consent forms to deduct 15% of the

PPO premiums from their paychecks received the HRA. Thus, since January 1, 2008, 11 of the 38 bargaining unit members have had the HRA benefit; the other 27 have not. The HRA's for bargaining unit members have a "use it or lose it" provision: amounts not used by the end of the calendar year to pay for health care deductibles or coinsurance are forfeited by the employee and returned to the Employer. An Employer representative estimated at the fact-finding hearing that the typical bargaining unit member would forfeit 40% of the amount contributed to the HRA (though this would obviously vary depending on the individual's use of medical services in a given year).

- ***Raised prescription drug co-pays from $10 for either generics or brand name drugs to $15 generic, $30 brand name*** – The prescription drug insurance plan is separate from the Blue Cross Blue Shield of Michigan PPO.

III. Proposals of the Parties

The Employer seeks a three-year collective bargaining agreement from July 1, 2007, to June 30, 2010, that adopts the changes in wages and health benefits that the Employer unilaterally implemented on January 1 and July 1, 2008. This would extend to the 27 members of the bargaining unit who did not sign individual payroll deduction consent forms (a) the 15% employee contribution for PPO premiums and (b) the Employer contribution for an HRA. The Employer expects that, on balance, requiring a 15% contribution for PPO premiums while providing an Employer contribution for an HRA would save the Employer money.

The Employer's offer to the Union on March 12, 2008, proposed three additional changes to be made in the future. First, raise hourly wage rates approximately 1.25% effective July 1, 2008. Second, change the PPO 3 plan effective July 1, 2008, so that the co-pay for physician office visits increases from $10 to $20. Third, raise the employee contribution rate for PPO premiums to 20% of the premium effective July 1, 2009.

At the fact finding hearing, the Union presented a new proposal that appears to narrow the differences between the parties on health care benefits. The Union indicated that they would accept most of the Employer's proposed changes in health insurance if the Employer would agree to a $1.00 per hour across-the-board wage increase retroactive to July 1, 2007, plus additional 3% wage increases in 2008 and 2009. Specifically, the Union would accept (a) the health plan change from PPO 1 to PPO 3 (i.e., the new deductible and coinsurance out-of-pocket payments), (b) the increase in the prescription drug co-pay from $10 for either generic or brand name to $15 for generic and $30 for brand name, (c) the Employer-funded HRA, and (d) the principle that employees would contribute part of the premium for health insurance. But the Union believes that the Employer's percentages for employee PPO premium contributions are too high. Instead of 15% through June 30, 2009, and 20% beginning July 1, 2009, the Union proposes that employees contribute 7% of PPO premiums in 2008 and 10% in 2009.

The Union requested a 4% wage increase for 2008 and another 4% increase for 2009 if there is not a $1 per hour across-the-board increase retroactive to July 1, 2007.

With regard to contract duration, the Union favors a three-year contract if the contract provides a target date for reaching the average wage rate for comparable employers. Without

such a target date, the Union prefers either (a) a two-year contract, or (b) a three-year contract with a wage reopener.

IV. Rationales Presented by the Parties

The rationales presented by the parties for their proposals can be grouped into three categories: comparability, ability to pay, and equity.

Comparability:

The Union's argument on comparability focused on wages. At the fact-finding hearing, the Union noted that health insurance plans varied considerably from county to county, making it difficult to discern the norm for what comparable employers provide with regard to health insurance. But the Union could obtain wage data for 2007 that allowed comparisons between what the Employer paid and what other county road commissions in Michigan paid.

The Union argued that a $1 per hour across-the-board increase retroactive to July 1, 2007, plus additional 3% raises in 2008 and 2009, were necessary in order to achieve comparability in wages. The Union presented data indicating that the wage increase needed to achieve comparability varies slightly according to job classification (truck drivers, heavy equipment operators, and mechanics) and comparison group. The Union presented three comparison groups of county road commissions in Michigan. Comparison group 1 included four counties whose revenues from the Michigan Transportation Fund (MTF) were similar to those of Cass County: Barry, Chippewa, Ionia, and St. Joseph. Comparison group 2 included four counties contiguous to Cass County: Berrien, Kalamazoo, St. Joseph, and Van Buren. Comparison group 3 includes

one county whose total revenues were similar to those of Cass County: Ionia.

Table 1 summarizes data presented at the fact finding hearing by the Union regarding the wage increases needed to bring the 2007 Cass County pay up to the average for the comparable group in 2007 (the latest year for which data are available for the comparable counties), adding in percentage figures I calculated from the Union's wage figures.

Table 1: Hourly wage rates in 2007: Cass County and counties the Union deems comparable

	Truck Drivers	*Heavy Equipment Operators*	*Mechanics*
2007 Pay Rate			
Cass County	**$15.95**	**$16.34**	**$16.69**
Comparable 1	$17.33	$17.76	$17.87
Comparable 2	$17.11	$17.70	$18.05
Comparable 3		$17.83	$17.83
Cass County $ increase needed to match comparable			
Comparable 1	$1.38	$1.42	$1.18
Comparable 2	$1.16	$1.36	$1.36
Comparable 3		$1.49	$1.14
Cass County % increase needed to match comparable			
Comparable 1	8.65%	8.69%	7.07%
Comparable 2	7.27%	8.32%	8.15%
Comparable 3		9.12%	6.83%

Data source: Teamsters Local 214 presentation at fact-finding hearing.
Comparable 1: Barry, Chippewa, Ionia, and St. Joseph
Comparable 2: Berrien, Kalamazoo, St. Joseph, and Van Buren
Comparable 3: Ionia (truck drivers included in same job class as heavy equipment operators)

The Employer also addressed the issue of comparability. One difference between the Employer and the Union concerned the group of employers to which the Cass County Road

Commission was compared. The Employer, like the Union, selected county road commissions in Michigan as comparable employers. Factors that the Employer considered in identifying comparable employers included geographic location, the size of the service area (i.e., lane miles and service population), and the amount of MTF funding received. Based on these factors, the counties that the Employer considers most comparable to Cass County are Barry, Branch, Hillsdale, and St. Joseph. Note that two of these counties, Barry and St. Joseph, are also considered comparable by the Union. Branch and Hillsdale, which are not considered comparable by the Union, receive somewhat less MTF funding than Cass County but also have state contracts for road maintenance that provide them with additional funding not available to Cass County.

The Employer also provided data on road commissions in four neighboring counties that the Employer does not consider comparable: Allegan, Berrien, Kalamazoo, and Van Buren. Each of these counties has a population at least 50% higher than that in Cass County, receives at least $1.5 million more per year in MTF funding, and has at least 20% more miles of roads to maintain. The gap in MTF funding is particularly large when comparing Cass County ($4.6 million in MTF funding) to either Berrien County ($10.8 million) or Kalamazoo County ($13.1 million).

Berrien, Kalamazoo, and Van Buren (but not Allegan) were also included in the Union's list of comparable counties. The Union acknowledged in the hearing that Berrien was not fully comparable because it received substantially more funding; the same reasoning could also be applied to conclude that Kalamazoo is not fully comparable. The Employer also noted that

Kalamazoo County was more urban than Cass County and argued that this made the labor markets in the two counties different.

The Employer rejected the Union's assertion that Chippewa was an appropriate comparison county, despite the similarity in MTF funding for Chippewa and Cass. Chippewa is located in Michigan's Upper Peninsula, far away from Cass County, greatly limiting the extent to which employers in the two counties compete in recruiting and retaining labor.

The more important difference between the Union's comparability analysis and the Employer's comparability analysis concerns the compensation elements being compared. The Union presented dollar per hour figures only for wages (although the Union also provided descriptive details of the health benefits provided by other counties). The Employer presented dollar per hour figures not only for wages, but also for total compensation including employee benefits. The Employer argued that the appropriate number to use when assessing comparability is total compensation per hour, not wages alone. The Employer argued that lower than average wages could be offset by higher than average employer contributions for employee benefits. The Employer noted that Cass County employer contributions for employee benefits equal 91.2% of wages, substantially above the figures for comparable counties (Barry 74.6%, Branch 84.1%, Hillsdale 73.0%, and St. Joseph 72.6%) or for neighboring counties that are not comparable (Allegan 73.6%, Berrien 73.6%, Kalamazoo 65.1%, and Van Buren 74.7%).

The Employer presented an exhibit at the fact-finding hearing indicating that total compensation, including both wages and benefits, was $31.22 in Cass County in 2007, vs. $30.45 in Barry, $30.60 in Branch, $27.98 in Hillsdale, and $31.31 in St. Joseph. The Employer

noted that total compensation in 2007 was higher in Cass County than the $30.10 average for the four counties that the Employer considers most comparable. The Employer also stated that total compensation as of June 1, 2008, was $31.61 Cass County, vs. an average of $30.23 for four nearby counties (Allegan, Berrien, Kalamazoo, and Van Buren) that the Employer acknowledges are not fully comparable. The Employer noted that Cass County offered an HRA, while other counties did not; and that Cass County provided for retiree health care, while some other counties did not.

In short, the Union argued that Cass County *wages* are lower than those paid by comparable employers, while the Employer argued that Cass County *total compensation* (including both wages and benefits) is higher than that provided by comparable employers.

Ability to Pay

The Employer presented extensive information at the fact-finding hearing about limits on their ability to pay. Rising prices in world markets for crude oil have had an adverse impact on both the revenues and the costs of the Employer. Most of their revenues come from the Michigan Transportation Fund, funded by a 19¢ per gallon tax on gasoline. As gasoline prices have risen, consumers have bought fewer gallons of gasoline, reducing state gasoline tax revenues. This will reduce MTF revenues received by county road commissions. At the same time, costs of materials used for roadwork, such as asphalt, vary with crude oil prices. The rise in crude oil prices has thus hit the Employer with a financial double whammy.

A second financial factor affecting ability to pay is the rapid increase in employee benefit

costs. The Employer presented a table at the fact-finding hearing noting that employee benefit costs to the Employer rose from $8,938 in Fiscal Year 2002 to $16,334 in FY 2007. The Employer's expenditures on employee benefits in FY 2007 equaled 91.22% of wages (so that total compensation equaled 191.22% of wages). A major cause of the increase in employee benefit expenditures has been the rise in health care costs.

Ability to pay also depends on the availability of revenues from sources other than MTF. The Employer noted that some other counties receive state contracts for road maintenance; Branch County, for example, received about $1.3 million in annual funding from a state contract, in addition to the $4.2 million they received in MTF funds. Cass County, in contrast, has no state contract funds to supplement the $4.6 million they received in MTF funds.

Some counties have imposed county-wide property tax levies to provide additional funding for the county road commission. The Cass County Board has authority to levy up to 1 mill for this purpose but did not take action on a request by the Cass County Road Commissioners that they do so. Instead, the Cass County Board put the matter on the primary ballot in the spring of 2008, but voters turned down the proposed levy by a substantial margin. The Engineer-Manager of the Employer and the Cass County Road Commissioners lack authority to impose the 1-mill levy; only the County Board or the voters can impose it.

The Employer noted that the budget for FY 2008 (ending September 30, 2008) shows revenues of $5.3 million and expenditures of $6.5 million, excluding pass-through funds from both revenues and expenditures. The projected deficit of over $1 million will completely deplete the Employer's cash balance. The Employer projected a cash balance of negative $1.1 million

by the end of FY 2009 unless there are reductions in the Employer's expenditures for health care. The Employer has substantially reduced both the number of bargaining unit employees and the number of administrative employees, has allowed the average age of equipment to increase by deferring purchases of new equipment, and has allowed the condition of the roads in Cass County to deteriorate somewhat. Michigan statutes prohibit the Employer from adopting a budget with a deficit; with the Employer's previously accumulated cash balance soon to be fully depleted, the Employer sees no viable options other than (a) cuts in compensation, (b) layoffs, or (c) approval of a county-wide property tax. In short, the Employer argues that limited ability to pay justifies the Employer's collective bargaining proposals.

The Union acknowledged the adverse financial impact of rising crude oil prices on the Employer but argued that other county road commissions in Michigan were affected the same way. Thus, in the Union's view, rising crude oil prices do not provide an excuse for the Employer to pay less than comparable employers do.

The Union also argued at the fact-finding hearing that the Road Commissioners may eventually be able to get the 1-mill property tax levy passed. If it is passed, this would improve the financial situation of the Road Commission.

The Union also argued that the Employer has the ability to pay but "places little value on the employees."

Equity

The Union argued that the Employer unfairly favored non-bargaining unit employees in

employee benefits. The Union noted that bargaining unit members receive lower life insurance benefits and that, prior to 2008, bargaining unit members had $10 prescription drug co-pays while administrative employees had $2 co-pays.

The Employer argued that two changes effective January 1, 2008, addressed Union concerns about equity. First, the prescription drug plan was changed so that bargaining unit members and administrative employees have the same co-pays. Second, the Cass County Board, when increasing the number of Road Commissioners three to five effective January 1, 2008, decided that the two newly appointed Commissioners (unlike the three previously appointed Commissioners) would not receive health insurance benefits, further reducing the extent to which Road Commission compensation policies seemed to favor non-bargaining-unit personnel.

The Employer acknowledged at the fact-finding hearing, however, that the HRA established January 1, 2008, had different provisions for bargaining unit and non-bargaining-unit personnel. Bargaining unit members face a "use-it-or-lose it" provision. In contrast, non-bargaining-unit personnel are permitted to roll over up to 50% of the HRA funds to the following calendar year if they do not have enough qualifying health care expenses to exhaust their HRA account in a given calendar year. And bargaining unit members pay 50% of the PPO premium for dependents between the ages of 19 and 25, whereas non-bargaining-unit personnel pay 25%.

V. Fact Finder's Analysis of the Rationales

How to Measure Comparability

As previously noted, the Union focused on wages, while the Employer focused on total compensation. *I agree with the Employer that it is appropriate to consider both wages and employee benefits when assessing comparability*. If employer A spends $16 per hour on wages and $14 per hour on employee benefits, while employer B spends $18 per hour on wages and $12 per hour on employee benefits, then employer A and employer B provide equal total compensation ($30 per hour), even though their wage rates differ. The exact trade-off between wages and employee benefits is a matter best left to the individual employer and the individual union to determine through collective bargaining.

At the fact-finding hearing, the question arose whether Cass County provided better employee benefits or simply paid higher prices for benefits that were no better. This question does not matter in terms of employer ability to pay; all that matters is what the employer spends. Still, employees care not about what the employer spends, but about what the employees get. Increased employer expenditures for benefits can help an employer recruit and retain labor and can give the employees a sense of being treated equitably if, and only if, the expenditure increases take the form of better benefits rather than higher prices for benefits.

The problem with comparing what the employees get is that employee benefits are often multi-faceted, so that a health plan that is superior in one respect could be inferior in another respect. One plan might have generous mental health benefits but not-so-generous prescription drug benefits, while another plan might have not-so-generous mental health benefits but

generous prescription drug benefits. It is not obvious which of these two health plans is better, overall, for employees. In the absence of evidence that a particular employer is foolishly paying above-market prices for health insurance, the most practical way to compare the value of the health plans provided by different employers is to compare the dollar contributions made by employers, which is the method proposed by the Employer in this case.

This is not to say that the nature of employee benefits, other than their dollar cost to employers, is irrelevant. If a union were to propose employer-provided housing, that would fail the comparability test because very few public employees in Michigan receive housing from their employer. (University presidents are among the rare exceptions.) If an employer were to propose total elimination of employer contributions for health insurance, that would fail the comparability test because almost all public employers in Michigan contribute to the cost of employee health insurance. But in this case, both the Union and the Employer have made employee benefit proposals that fall within the common range for public employers. *I therefore adopt here the Employer's measure of total compensation per hour, including both wages and employee benefits, as the appropriate way of assessing comparability.*

The other key issue in assessing comparability is which other county road commissions in Michigan are included in the comparison group. I divide the counties suggested by the parties into tiers, with more weight given if the tier is, in my view, more comparable to Cass County:

Tier 1 (most comparable): Barry and St. Joseph

Tier 2 (next most comparable): Branch, Hillsdale, Ionia, and Van Buren

Tier 3 (somewhat comparable): Allegan, Berrien, Chippewa, and Kalamazoo

I assigned Barry and St. Joseph to Tier 1 because both parties agreed that these counties are comparable to Cass County. I assigned Allegan, Berrien, and Kalamazoo to Tier 3 because they have substantially more MTF funding, more miles of road to maintain (especially in the case of Allegan), and larger and more urban populations (especially in the case of Kalamazoo) than does Cass County. I assigned Chippewa to Tier 3 because it is geographically distant from Cass County and thus draws employees from a different labor market.

The Union and the Employer both presented hourly wage figures for each county they considered comparable; the Employer also presented figures for total compensation per hour, including benefits. Both parties presented the same figures for 2007 wages for Barry, Cass, and St. Joseph. The Union's 2007 figures were identical to the Employer's 2008 figures for Berrien; they were also identical for truck drivers in Van Buren. The Van Buren wage rate for heavy equipment operators was listed as $17.39 by the Union and as $17.15 by the Employer, while the Van Buren wage rate for mechanics was listed as "Not Reported" by the Union and as $17.47 by the Employer. It is quite plausible to me that Van Buren pays mechanics more than heavy equipment operators; I suspect that the $17.39 figure listed by the Union is the weighted average of $17.15 for heavy equipment operators and $17.47 for mechanics. Therefore, I will use the Employer's figures for wages for heavy equipment operators and mechanics in Van Buren. For Kalamazoo, the Union's 2007 figures were slightly lower for truck drivers and mechanics but slightly higher for heavy equipment operators than were the Employer's 2008 figures. I will somewhat arbitrarily use the Employer's figures for Kalamazoo. The data are shown in Table 2 on the following page.

Table 2: Wages and total compensation at road commissions in Cass County and comparable Michigan counties, 2007

	Cass County (2007)	Tier 1: most comparable (Barry and St. Joseph)	Tier 2: next most comparable (Branch, Hillsdale, Ionia, and Van Buren)	Tier 3: somewhat comparable (Allegan, Berrien, Chippewa, and Kalamazoo)
Wage rate				
-truck driver	**$15.95**	$17.49	$16.65	$17.26
-heavy equipment operator	**$16.34**	$17.94	$17.04	$17.64
-mechanic	**$16.69**	$17.94	$17.11	$18.03
Average of three wage rates	**$16.33**	$17.79	$16.93	$17.64
Percent by which Cass average wage is higher (+) or lower (-)		**-8.96%**	**-3.72%**	**-8.06%**
Average of three wage rates (without Ionia and Chippewa)	**$16.33**	$17.79	$16.64	$17.76
Average employee benefit percentage (without Ionia and Chippewa)	**91.22%**	73.61%	77.26%	70.80%
Average total compensation per hour (without Ionia and Chippewa)	**$31.22**	$30.89	$29.50	$30.33
Percent by which Cass total compensation is higher (+) or lower (-)		**1.07%**	**5.52%**	**2.84%**

Data sources: Union and Employer presentations at fact-finding hearing. Data on employee benefits not provided by the Employer for Ionia and Chippewa (which were not listed by the Employer as comparable counties).

The most striking finding from Table 2 is that Cass County's wages are below average for comparable employers but that Cass County's employer expenditures on employee benefits are above average. For wages, Cass was 8.96% below the average for the two most comparable county road commissions, Barry and St. Joseph. Cass wages were 3.72% below the average for the next most comparable road commissions (Branch, Hillsdale, Ionia, and Van Buren) and 8.06% below the average for the somewhat comparable road commissions (Allegan, Berrien, Chippewa, and Kalamazoo). Yet employer expenditures on employee benefits in 2007 were 91.22% of wages for Cass County, vs. expenditures of 73.61%, 77.26%, and 70.80% for the three groups of comparable employers. Because of this large difference in employer expenditures on employee benefits, total compensation (wages and employer expenditures on employee benefits combined) was 1.07% higher in 2007 in Cass County than in the two most comparable counties, Barry and St. Joseph. Total compensation in 2007 was 5.52% higher in Cass County than in the next most comparable group and 2.84% higher in Cass County than in the somewhat comparable group.

The data in Table 2 strongly support the Employer's argument that Cass County provided total compensation in 2007 that was competitive with or somewhat above what comparable employers provided. Hence, I do not find convincing the Union claim that a retroactive wage increase of $1 per hour is needed to bring 2007 compensation in Cass County up to the level of compensation provided by comparable employers.

But the Employer made major changes in health benefits effective January 1, 2008, that reduced the Employer's expenditures on employee benefits. The Employer has also proposed

changes, notably the beginning of PPO premium contributions by the 27 bargaining unit members who did not sign payroll deduction forms, that would further reduce the Employer's expenditures on employee benefits. The conclusion that the Employer provided competitive total compensation in 2007 depends crucially on the very high 91.22% figure for the Employer's contribution to employee benefits. Because of the changes in Cass County in the PPO and the prescription drug plan effective January 1, 2008, that 91.22% figure is now outdated, and it will become even more outdated if 27 more bargaining unit members begin contributing to PPO premiums.

Expenditures by the Employer in 2008 for employee benefits are surely below 91.22% of wages because of the cutbacks in health benefits effective January 1, 2008. Exhibits presented by the Employer at the fact-finding hearing indicated that the monthly premium for family coverage under the old health plan, PPO 1, were $1,164 in 2007 and would have been $1,313 per family in 2008; but the shift to the less generous PPO 3 cut that to $970 per family from January through June 2008 and $1,081 per family from July through December 2008 (both figures less than $1,164). In addition, the Employer saved money from the 11 employees who signed payroll deduction authorizations because Employer contributions to the HRA were less than the 15% employee contribution for PPO premiums. If employee contributions to PPO premiums and the HRA are extended to the other 27 bargaining unit members, that will further reduce expenditures by the Employer on employee benefits, as would the proposed increase in employee contributions for PPO premiums from 15% to 20% effective July 1, 2009. The increase in prescription drug co-pays effective January 1, 2008, may have reduced the Employer's

prescription drug costs by more than rising prices and utilization of prescription drugs have raised such costs.

Of course, employer expenditures for employee benefits could also be changing at comparable employers. It is very likely that health insurance costs are rising elsewhere, which would tend to raise the figure at comparable employers for employer expenditures on benefits as a percent of wages. On the other hand, comparable employers may also be attempting to shift some of the financial burden for health care from the employer to the employees, either by requiring employees to contribute more toward health insurance premiums or by requiring higher out-of-pocket payments when employees use medical goods or services. In the absence of 2008 information on employee benefits costs for Cass County and comparable counties, it is impossible to know exactly how Cass County's total compensation compares in 2008.

My best guess is that the Employer's shift on January 1, 2008, from PPO 1 to PPO 3, the beginning of employee contributions to PPO premiums, and the increase in prescription drug co-pays have reduced the difference in employer contributions for employee benefits. Thus, the gap in employee benefits expenditures as a percent of wages between Cass County and comparable counties is likely to be less in 2008 than the 2007 gap between 91.22% in Cass and 70.80% to 77.26% in comparable counties. My net conclusion is that *Cass County may provide a little less in total compensation, as of today, than comparable employers do, but the gap in total compensation is very likely to be smaller than the gap in wages. If 27 additional bargaining unit members begin contributing to PPO premiums, then the Employer will need to raise wages in order to make total compensation competitive with what comparable employers provide.*

Future increases in wage rates at comparable employers will to some extent reflect inflation. At the hearing, an Employer representative acknowledged that the assumption of 3% inflation may be a little low. I have therefore assumed that future increases in wage rates at comparable employers will be 3.5% rather than 3%.

Ability to Pay

The Employer presented a compelling argument that the Cass County Road Commission faces very serious economic pressures. The cutbacks in health insurance implemented January 1, 2008, appear to be motivated by genuine financial problems facing the Employer, rather than by a lack of concern about the welfare of employees. Given the widespread tendency of employers throughout the U.S. to move away from first-dollar coverage in health insurance plans, it was probably inevitable that the Cass County Road Commission would eventually require employee contributions for health insurance premiums and impose higher out-of-pocket expenses (deductibles, co-insurance, and co-pays) when employees or their dependents use medical goods or services.

Still, *one must distinguish reluctance to pay from inability to pay*. If some counties choose to impose a property tax millage to supplement revenues from the gasoline tax, while other counties choose not to impose a property tax millage, then the counties choosing not to impose a property tax millage are merely reluctant to pay rather than unable to pay. The Employer acknowledged at the fact-finding hearing that Allegan and St. Joseph County levy property taxes to supplement MTF funds and that the Cass County Board has the authority to

levy a 1-mill property tax for this purpose if they so choose. *The Engineer-Manager and the Road Commissioners have been assertive in telling the bargaining unit members that they must accept cutbacks in health care. They need to be equally assertive in telling the Cass County Board that a 1-mill property tax dedicated to funding the Road Commission is needed, in light of (a) escalating costs due to factors beyond the control of the Road Commission, (b) declining MTF funding, and (c) some deterioration in the condition of Cass County's roads.*

To get an accurate assessment of employer ability to pay, one would have to add in the amount of revenue that would be generated by a 1-mill county-wide property tax. The ban in the U.S. Constitution on *ex post facto* laws means that the Cass County Board cannot retroactively change tax liabilities for previous years. From the perspective of the fall of 2008, *the revenues that could be generated by a 1-mill county-wide property tax, effective for the period beginning January 1, 2009, should be included when calculating the Employer's ability to pay. But no such revenues for the period prior to January 1, 2009, should be included*. The evidence presented at the fact-finding hearing did not address the dollar amount that would be generated by a 1-mill levy; but it seems consistent with ability to pay to backload some of the Employer's cost increases so that they occur on or after January 1, 2009.

Equity

The Employer recognized the Union's equity concerns by reducing the differences between bargaining unit members and other personnel in the health benefits provided by the Employer. Differences remain in (a) the HRA rollover at the end of each calendar year: none

for bargaining unit members, 50% for other personnel; and (b) the employee contribution for PPO premiums for dependents aged 19-25: 50% for bargaining unit members, 25% for other personnel. But, although the Union expressed general concerns about equity, the Union made no specific request to change the HRA rollover provisions or the employee contribution for PPO premiums for dependents aged 19-25.

Another potential equity issue is that members of the bargaining unit get different health benefits, depending on whether they signed the payroll deduction form. The 11 who did sign pay 15% of the PPO premium but get an HRA. The 27 who did not sign pay no part of the premium and do not get an HRA. Employers and Unions can reasonably give individual employees some discretion about which benefit package they choose, depending on each individual employee's needs. But the fact that the package (15% premium contribution + HRA) saves the Employer money suggests that the 11 who signed are simply getting lower compensation for the same work than are the 27 who did not sign. *Providing the same health benefits to all 38 members of the bargaining unit is likely to increase the perception of equity.*

V. Administrative Issues with an HRA

Because of Internal Revenue Service regulations, HRA's are administered on a calendar year basis. Beginning an HRA during the middle of a calendar year might pose difficulties. If an HRA were established effective October 1, 2008, for example, could HRA funds be used to cover health expenses incurred between January 1 and September 30, 2008? If so, what happens to employees who threw out Blue Cross Blue Shield Explanation of Benefit statements from

earlier in the year, not knowing that they would eventually be able to use them to get reimbursement from an HRA that would be established later?

It might be administratively easier wait until January 1, 2009, to extend the HRA to the 27 bargaining unit members who did not sign payroll deduction forms.

VI. Recommendations of the Fact Finder

I make the following recommendations regarding a new collective bargaining agreement:

- The agreement should last for three years, from July 1, 2007, through June 30, 2010.
- The change in the health plan from PPO 1 to PPO 3, effective January 1, 2008, should be adopted as part of the collective bargaining agreement.
- The change in the prescription drug co-pay to $15 for each generic prescription and $30 for each brand-name prescription, effective January 1, 2008, should be adopted as part of the collective bargaining agreement.
- All bargaining unit members should contribute 15% of the premium for the PPO 3 plan, effective October 1, 2008. This 15% contribution rate should continue until the expiration of the collective bargaining agreement.
- The 11 bargaining unit members who signed payroll deduction agreements for health insurance premiums, effective January 1, 2008, should have the HRA for calendar year 2008. The 27 bargaining unit members who did not contribute for health insurance premiums during the period from January 1 through September 30, 2008,

should not have the HRA for calendar year 2008.

- All bargaining unit members should have the HRA for calendar years 2009 and 2010.
- The wage rates continued from the expired collective bargaining agreement for the period July 1 through December 31, 2007, should be adopted as part of the new collective bargaining agreement.
- The wage rates unilaterally adopted by the Employer for the period January 1 through June 30, 2008, should be adopted as part of the collective bargaining agreement.
- The approximately 1.25% wage increase unilaterally adopted by the Employer effective July 1, 2008, should be replaced by a 3.5% wage increase, retroactively applied beginning July 1, 2008.
- There should be a 50¢ per hour across-the-board wage increase, effective October 1, 2008, in order to maintain the comparability of total compensation once the entire bargaining unit begins paying 15% of the premium for the PPO. I emphasize here that this 50¢ per hour wage increase (for all bargaining unit members) and the beginning of employee contributions of 15% of the PPO premium (for the 27 bargaining unit members who did not sign the payroll deduction authorization) should begin on the same date. If, for some reason, the PPO premium contributions do not begin until January 1, 2009, then the 50¢ per hour wage increase also should not take effect until January 1, 2009. I recommend that both begin on October 1, 2008, if administratively possible, given the time needed to ratify a new collective bargaining agreement.

- There should be a 3.5% wage increase effective July 1, 2009.
- The parties should determine any wage increase that takes effect on July 1, 2010, when they negotiate their next collective bargaining agreement. (The Employer proposal had included wage changes on July 1, 2010, one day after the expiration of a three-year agreement beginning from July 1, 2007.)

The fact finder's recommendation for the beginning of Appendix A of the collective bargaining agreement, reflecting the wage recommendations above, is shown below.

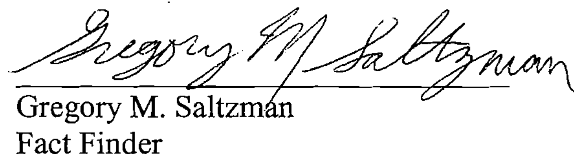
APPENDIX A

The following rates of pay shall be effective for the respective labor grades on and after the dates shown below:

DATE	GRADE E	GRADE A	GRADE B	GRADE C	GRADE D
7/1/2007	16.69	16.34	15.95	15.61	14.86
1/1/2008	16.90	16.54	16.15	15.80	15.04
7/1/2008	17.49	17.12	16.72	16.35	15.57
10/1/2008	17.99	17.62	17.22	16.85	16.07
7/1/2009	18.62	18.24	17.82	17.44	16.63

CONCLUSION

The above report represents the Findings of Fact and the Recommendations arrived at as a result of the hearing I conducted and my review of the parties' submissions.



Gregory M. Saltzman
Fact Finder

Issued: August 24, 2008
at Ann Arbor, Michigan