STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

AFSCME COUNCIL 25,
LOCAL 1071, AFL-CIO
Petitioner-Labor Organization

-and-

CLINTON COUNTY ROAD COMMISSION
Respondent-Public Employer

Fact Finding
MERC Case No. L09 J-9001
Fact-Finder: C. Barry Ott

FINDINGS, OPINION AND RECOMMENDATIONS

APPEARANCES:

For the Employer:
Michael R. Kluck (P23339)
Michael R. Kluck & Associates
4265 Okemos Road, Suite G
Okemos, MI 48864

For the Labor Organization:
Kenneth J. Bailey, Jr. (P70396)
Michigan AFSCME Council 25
1034 North Washington Avenue
Lansing, MI 48906

RECEIVED
2011 FEB -3 AM 8:32
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

PROCEEDINGS

This Fact Finding case arises pursuant to a Petition filed by the AFSCME Council 25, Local 1071, hereinafter referred to as the "Union", on March 3, 2010. The Clinton County Road Commission, hereinafter referred to as the "Employer", filed an Answer to Petition for Fact Finding on March 8, 2010. The Michigan Employment Relations Commission appointed the undersigned as the Fact Finder on August 16, 2010.

The parties' last collective bargaining agreement covered the period from January 1, 2007 through December 31, 2009. Negotiations for a successor contract began on November 13, 2009 and continued through 2010, including a mediation effort. On April 7, 2010, the Employer submitted its Final Offer to the Union. A fact-finding hearing was held on November 2, 2010, at which the parties presented their evidence and testimony on the issues in dispute. During the course of the hearing it became apparent that circumstances involving the proposed health insurance plan had changed. At the suggestion of the Fact Finder the parties were permitted to present modified Final Offers on any of the core economic issues. Subsequently, the parties executed the following Agreement and Stipulation:

" Fact Finding proceedings were convened on November 2, 2010 at the Clinton County Road Commission. Mr. C. Barry Ott presided as the Fact Finder.

Based upon the suggestion of the Fact Finder, the parties will be permitted to present modified Last Best or Final Offers on any of the core economic issues: Heath Insurance, Retirement Benefits, Wages and/or Longevity. This flexibility is necessitated by virtue of recent changes in health insurance options available and the cost thereof. Neither party is compelled to change their Last Best or Final Offers.

If the Employer presents any change in its Final Offer on the core economics, such change(s) will not be considered as breaking impasse. Should the parties be unable to reach a voluntary settlement of the contract before the expiration of the sixty (60) day period following receipt of the Fact Finder's Recommendation, the Employer shall be deemed to have preserved the right to implement, in whole or in part, or not at all, its Last Final Offer on any issue(s). No new Petition for Fact Finding, Unfair Labor Practice Charge, or any other administrative action will be initiated by virtue of such action."

Thereafter, the Employer submitted its Final Offer on Article 32 entitled "Hospitalization, Sick and Accident, Dental, and Vision Coverage" on November 24, 2010. A second day of hearing was held on November 24, 2010 for the purpose of reviewing the new health insurance proposal.

The parties submitted post-hearing briefs by January 7, 2011.

DECISION MAKING CRITERIA

Fact Finding cases are conducted pursuant to Section 25 of the Labor Mediation Act 176 of 1939 as amended, MCL 423.25, and in accordance with the provisions of R 423.131 of the General Rules of the Michigan Employment Relations Commission. The Act does not provide for any specific criteria to be used in evaluating the positions of the parties or the basis for a Fact Finders recommendation Consequently, many fact finders choose to apply the criteria set forth in Section 9 of Act 312 of 1969, as amended, MCL 423.239, which are as follows:

(a) *The lawful authority of the employer.*
(b) *Stipulations of the parties.*
(c) *The interest and welfare of the public and the financial ability of the unit of government to meet those costs.*
(d) *Comparison of the wages, hours and conditions of employment of the employees Involved in the arbitration proceeding with the wages, hours and conditions of*

Employment of other employees performing similar services and with other employees generally:

  (i) In public employment in comparable communities.

  (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Fact-finding is intended to review the facts as presented at the hearing with the realization that the report and recommendation is not binding upon the parties but may assist the parties in reaching a negotiated agreement. Toward that objective the undersigned will utilize some of the criteria outlined above as deemed appropriate to the issue in dispute and make recommendations to the parties based upon the evidence and facts that in the opinion of the fact finder reflect what the parties could reasonably have expected to negotiate.

DISPUTED ISSUES

The following list represents the identified issues in dispute by title:

New Article: Union Bargaining Committee.

Article 4: Management Rights, Subsection (n).

Article 9: Seniority.

Article 14: Layoff and Recall.

Article 16: Promotions.

Article 20: Sick Leave.

Article 22: Work Day and Work Week, Section 3.

Article 23: Holidays, Section 1.

Article 32: Sections 1,2,3,4 and 5. (Hospitalization, Sick & Accident, Dental, and Vision)

Article 35: Retirement.

Article 36: Commercial Drivers License.

Article 39: Miscellaneous, Subsection 4 and Section 10.

New Article: Longevity Pay.

Each of the issues will be addressed in specific detail in the following analysis along with record findings, conclusions and recommendations.

COMPARABLE JURISDICTIONS

The record includes data and labor agreements from three county road commissions submitted by the Employer as comparables, Gratiot, Ionia, and Lapeer. The Employer selected these jurisdictions based upon proximity to Clinton County, level of revenues received from the Michigan Transportation Fund (MFT), maintenance of road miles, and size of the bargaining units. The Union introduced the labor agreements for the Eaton County Road Commission, Midland County Road Commission and Tuscola County Road Commission. Neither party offered objects to the proposed comparables.

The record also includes the labor agreements between the Clinton County Road Commission and the Clerical Employees Chapter of Local 1071, AFSCME Council 25 for the periods of January 1, 2008 to December 31, 2009 and February 25, 2010 to December 31, 2012, as an internal comparable.

The Employer argues that limited weight should be given to the Union's list of external comparables on the grounds that there are significant differences with Clinton County Road Commission. Specifically, the Employer points out that while Eaton County is in close proximity to Clinton County, it receives 125% of Clinton's MTF revenues and maintains a much smaller bargaining unit. Midland also maintains a smaller bargaining unit, a significantly smaller portion of road miles and receives additional revenue generated by a County-wide Road Millage that is not enjoyed by Clinton. Tuscola County Road Commission is not in close proximity to Clinton and maintains a much higher road mileage than Clinton. (E24, 27, 29). In the opinion of this fact-finder, these arguments have some application to the relative standing of Clinton County Road Commission among the external comparables when evaluating the comparative wage and benefit issues.

FINANCIAL FACTOR

In any analysis of disputed economic issues the costs of the respective proposals and the financial resources available to meet those costs are of primary importance. Comparisons of wages, hours and other conditions of employment with that of other jurisdictions engaged in like or similar activity may be indicative of the relative standing of one jurisdiction to another and assist the parties in developing proposals and counter proposals, but in the final analysis such exercises must be weight against the available financial resources. Comparative data standing alone may or not support improvements or justify present levels of compensation, but if the financial resources are not available, adjustments must be made to bring those levels in line with financial reality.

The record evidence in this case reveals that the Clinton County Road Commission is experiencing a continuing decline in their primary source of revenue, the Michigan Transportation Fund (MTF). For the fiscal year ending September 30, 2004, MTF revenue stood at $6,391,196, it has declined to $5,696,129 as of September 30, 2009, a reduction of $695,067 or 10.9%. (E31). That trend continued in 2010. (E32). Employer Exhibit 33, page 9., further illustrates the declining financial position of the Employer as of December 31, 2009. Total revenue declined from $12,984,959 in 2008, to $$9,697,468 in 2009, a decline of $3,287,491, or 25.32%. Page 12. of E33 indicates that the Employer is projected to receive some $286,086 less in MTF funding in fiscal year 2010. There is nothing in the record that indicates any likely increase in revenues for the immediate future. Expenditures have varied over this time period reflecting the decline in revenue, but they exceeded revenues in fiscal 2008 by $ 57,636 and $331,339 in fiscal 2009.

Like many government entities the Employer has accumulated a substantial unfunded liability for employer financed retiree health care, $10,153,342 as of December 31, 2009. The Employer is contributing $60,000 annually toward a trust fund through the Municipal Employees Retirement System of Michigan to address this problem, but at the end of 2009 the fund had a balance of $239,459.

It isn't necessary to further review the financial plight of the Employer as the Union in its brief indicates that they are cognizant of the financial woes faced by the Employer. The record clearly indicates that present revenues will no longer support the present level of expenditures.

NEW ARTICLE: UNION BARGAINING COMMITTEE

The Employer is proposing a new article to the contract that would limit the size of the Union's bargaining committee to three employees who would be paid their regular earnings for time spent in bargaining during working hours. The current practice of seven employees plus the Union business agent has resulted in the bargaining sessions being conducted after working hours. According to the Employer their proposal would enhance the parties ability to meet their mutual obligation under the law to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. The Employer argues that the current practice of having seven employees on the bargaining team represents about 20% of the work force and that dictates that bargaining be conducted after work hours as the Employer simply cannot spare that much of the work force during work hours. Moreover, support staff is often not available after regular work hours. The Employer points to the comparable communities suggesting that the majority have smaller Union bargaining committees.

The Union rejects the Employers proposal on the grounds that; the Mediator didn't recommend adoption of this language, that the Employer's claim that many of the comparables have limits on the size of the Union's bargaining committee is not supported by the contract language, suggesting that the limits therein apply to the grievance procedure, and that the present size of the bargaining committee permits a wide variety of perspective.

RECOMMENDATION:

The recommendations of a Mediator are generally considered confidential, but in this case both parties have included them in the record. However, this Fact Finder is in no way bound by said recommendations and will make recommendations independent of that of the Mediator.

In the opinion of the Fact Finder, seven employees or about twenty percent of the work force is somewhat excessive and has resulted in a undue restriction on the scheduling of bargaining sessions. The proposal of the Employer to allow three employees to serve on the bargaining committee with pay during regular work hours seems reasonable. Seven employees represent a ratio of one representative for less than every five employees in the unit. Three employees represent a ratio of about one to ten. However, I can see no reason to limit the number to three when the parties do schedule meetings for after regular work hours. Consequently, I recommend that when meetings are schedule during regular work hours the Union committee be limited to no more than three employees and no more than seven when meetings are scheduled for after regular work hours. This compromise would result in the following amendment to the language proposed by the Employer:

> "The Union Bargaining Committee will consist of not more than three (3) members of the bargaining unit who have completed their probationary period. There will be no lost time for negotiations that occur during regular working hours. The Union agrees to notify the Employer, in writing, of the names of the employees designated as members of the Bargaining Committee or any changes. In addition to bargaining unit employees the committee will include a representative from AFSCME Council #25 who shall not be paid by the Employer. When bargaining sessions are scheduled for times outside of regular work hours the Union Bargaining Committee may include an additional four (4)

members for a total of seven (7), no member of the Bargaining Committee shall be compensated by the Employer when meetings are scheduled after regular work hours."

ARTICLE 4 – MANAGEMENT RIGHTS

The Employer proposes to add the following as a new subsection to the existing contract language:

Sub-section (n). Transfer/operate/test equipment by administrative staff.

According to the Employer this change is necessary to permit members of the administrative staff to insure the Road Commission has the ability to meet its responsibility to keep the roads safe and in response to declining revenue. The Employer argues that it is not their intent to take away Union work as it does not provide management with unfettered discretion to do bargaining unit work, but merely permits supervisors to perform such work when bargaining unit members are otherwise occupied. The Employer points to contractual provisions of the following comparables; Gratiot, Ionia, Tuscola, and Eaton Road Commissions that allow the performance of bargaining unit work by supervisory personnel.

The Union objects to the proposed language on the grounds that it is entirely too open-ended. The Union does not object to the testing portion of the proposed language, but the "transfer" and "operate" provisions are too open ended and only one comparable, Ionia, has language of the type proposed by the Employer.

RECOMMENDATION.

In reviewing the language relevant to this issue among the comparables, I find such language to be more specific and precise than that proposed by the Employer. It would appear that the Union's concerns and the expressed intent of the Employer could best be accomplished by the adoption of more precise language. Consequently, I recommend adoption of the following language:

> Sub-Section (n). Supervision may perform such bargaining unit work as may be required for the purpose of transfer of equipment, instruction, supervision, investigation, inspection or experimentation, or as may be necessary when an employee is absent or other employees are otherwise engaged, or in case of emergencies.

ARTICLE 9 – SENIORITY

The Employer is proposing several changes to the present contract language that deal with the use of "temporary employees."

The existing language defines temporary employees as follows:

Temporary employees are defined as employees used to perform seasonal work during the period starting May 15 through October 15, but not to exceed one hundred and nineteen (119) calendar days; the number of these employees shall not exceed fifteen percent (15%) of the regular hourly employees at any one time. They are not part of the bargaining unit and shall not be used to take the place of full-time employees or work in regular job classifications when other full-time employees are available, and/or work overtime.

If a temporary employee is retained as a regular employee or works beyond the length of seasonal employment, he/she shall have seniority and sick leave from the original date of hire. Temporary employees shall not be required to comply with Article 3.

The Employer proposes to increase the seasonal work period by adding the term of December 1st through March 1st, and deletes the one hundred and nineteen (119) consecutive calendar day limitation, eliminates the prohibition for overtime work, and otherwise amends the language to read as follows:

"Temporary employees are defined as employees used to perform seasonal work during the period starting December 1st through March 1 and May 15 through October 15. The number of these employees shall not exceed fifteen percent (15%) of the regular hourly employees at any one time. They are not a part of the bargaining unit and are not required to comply with Article 3.

Temporary employees shall not be used to displace regular full-time bargaining unit employees. In the event overtime work is being performed by a temporary employee when regular bargaining unit employees have completed their work, the employee ending his/her shift will notify the supervisor of his/her availability to work overtime and relieve the temporary employee. The temporary employee will be permitted to continue to work until such time as a regular bargaining unit employee relieves him/her at his/her worksite. Bargaining unit employees who relieve temporary employee will do so on a first available basis only and the Employer will not be required to consult any equalization of overtime roster."

The Union has proposed to reduce the number of days of a new hire's probation period from 240 to 120 days worked, and to shorten the calendar period of which the temporary employees

could work by fourteen (14) days, and to reduce the percentage of temporary employees permitted to work from 15% to 10% of the regular hourly employees.

The Employer contents that their proposed changes are necessary to insure that, with the limited, full-time personnel that the Road Commission is able to employ, there are enough workers available to clear the roadways during the winter. The Employer asserts that it recognizes that the winter months represents the period when most overtime opportunities are available and has fashioned its proposal to afford the bargaining unit employees first refusal of available overtime opportunities.

The Employer maintains that their proposal allowing temporary employees of up to 15% of the bargaining unit work force is already at the low end of that which is allowed among the comparables, with Ionia at 20%, Midland at 50%, and Gratiot at about 20%.

As to the Union's proposal to reduce the probationary period from 240 days to 120 days, the Employer asserts that the only reason given by the Union was that some of the comparables had shorter probationary periods and points out that two of the comparables have one year probationary periods, Ionia and Eaton. According to the Employer the existing probationary period works for them and there is no compelling reason in the record to reduce it.

The Union argues that the Employer's proposal concerning temporary employees is not supported by the comparables as to the number of days allowed, (270). Lapeer allows temporary employees to be utilized for 180 days, Ionia and Tuscola allow 120 days and the mean average of all the comparables is 139 days. Similarly, the Union notes that only two of the comparables have a longer probationary period.

<u>RECOMMENDATION.</u>

Given the declining revenue circumstances facing the Employer it is clear that it is in no position to increase the regular full-time work force to levels that would eliminate the necessity of utilizing temporary employees nor would such action be practical since required employment levels vary on a seasonal basis and are also dependent upon the volume of road-work to be done in a given year and weather conditions in the winter months. The proposal to allow the use temporary employees during the winter months is also dependent on weather conditions that might dictate the necessity of their use. In any event, the maximum number allowed is 15% of the bargaining unit work force which presently is 32 employees, resulting in some 4.8 temporary employees during the permitted time period. Since the Employer has proposed language that would safe guard the bargaining unit employees first right of refusal for overtime opportunities, the Union's expressed concern over that issue would seem to have been met. The Employers proposal does not give the Employer an unfettered right to utilize temporary employees to displace bargaining unit personnel, but it does afford the necessary flexibility to supplement the work force to meet seasonal needs.

On the issue of shortening the length of the probationary period, there is nothing in the record that would indicate a need for such a change.

For the reasons cited above, I recommend the adoption of the Employer's proposals regarding Article 9 – Seniority.

ARTICLE 16 – LAYOFF AND RECALL

The existing contract language of Section 2, provides that employees who do not hold the mechanic classification cannot bump a mechanic, and mechanics cannot bump non-mechanics. The Union proposes to delete this restriction on the grounds that it is overly broad and, in the opinion of

the Union witness, many of the bargaining unit employees were qualified to work as mechanics. The Union concedes that three of the comparables; Gratiot, Ionia, and Midland all have provisions that protect mechanics from being bumped by none mechanics, but the other comparables have contract provisions that simply require that employees bumping into a position have present skills and ability to perform the duties of the position.

The Employer argues that mechanics are a distinct group of employees who may work with special instructions from a manufacturer on the proper maintenance of equipment and must have specialized knowledge on how to maintain the fleet that other employee who are not trained would not possess. The Employer proposes to maintain the existing contract language.

The Union also proposes to amend Section 4, that provides: whenever a layoff occurs, health insurance coverage shall continue for a period of ninety (90) days from the date of layoff, to one hundred and twenty (120) days.

The Employer proposes to maintain the existing contract language.

The Union concedes that there is little support among the comparables to support their proposal to extend health insurance benefits to 120 days and the Employer did not address the issue in its brief.

RECOMMENDATION.

The record evidence and testimony on the issue of bumping into or out of the position of mechanic is very limited. The only witness to testify on this issue was Mr. Kyle Graham. He expressed the Union's concern that in the event of a layoff, senior employees could be layoff and employees with less seniority could be retained under the terms of the present language. The record does not support the Union's claim that many of the employees were qualified to work as a

mechanic. There is no record evidence concerning the qualifications or work experience of any employee regarding the mechanic position. Mr. Kyle's testified that he has seen non-mechanic bargaining unit employees assisting mechanics in performing equipment maintenance. He indicated that he did not know if the Employer required its mechanics to be certified. (T.71-75)

In the opinion of this Fact Finder the position of mechanic is a specialized classification that does not lend itself to a strict application of seniority in bumping situations. Three of the six comparables have some form of protection for mechanics during bumping as conceded by the Union. Therefore, I recommend that the Employers proposal to retain the existing contract language be adopted.

On the issue of extending health insurance coverage from 90 days to 120 days after a layoff, the record is simply not sufficient to support any change in the existing benefit. Neither party addressed this issue at the hearing, nor did the Employer address the issue in its brief. The Union conceded that there was little support among the comparables for its proposal to extend the benefit. Consequently, I recommend that the existing contract language be continued.

ARTICLE 16 – PROMOTIONS

Section 3 of the contract provides that during the fist two (2) weeks of the trial period the employee shall receive the rate of the former classification, but only if the new classification is a higher rate. Thereafter, the employee shall receive the rate of the classification being performed.

The Union proposes to delete the two (2) week period of former classification pay for employees promoted to a higher classification, while the Employer proposes to retain the existing contract language.

The Union argues that when an employee is given a temporary assignment to a higher paying classification he/she is immediately paid at the higher rate and likewise should be paid at the higher rate when the employee receives a promotion to a higher paid classification. The Union points to the comparables of Eaton, Gratiot, and Lapeer who grant the higher rate of pay immediately or at least at the start of the first full pay period after promotion.

The Employer argues that three of the comparables; Ionia, Tuscola, and Midland have waiting periods of at least 30 days before the higher rate is paid. The Employer contends that the present two week waiting period is half of that required by three of the comparables and one other grants the increase in pay at the start of the beginning of the pay period following promotion, it has worked well in the past and should be retained.

RECOMMENDATION:

The Union's comparison of instances of promotion with that of temporary assignments is not persuasive. Under the terms of the contract when employees are selected for promotion, they are subject to a trial period of up to four weeks. Selection is based upon seniority and the senior employee applying must meet the minimum requirements for the job. The trial period implies that there will be some training in the new job duties and to afford supervision an opportunity to evaluate performance and to determine if permanent status should be granted. Temporary assignments are made based upon seniority and the employee must meet the requirements for the job, not simply meet the minimum requirements. In other words an employee selected for a temporary assignment must be immediately qualified to perform the work as opposed to one that meets the minimum requirements and is given a trial period to learn the job. The comparable data

does not support any finding that the present provisions are unreasonable or inconsistent with the practices of other road commissions.

Consequently, I recommend adoption of the Employer's proposal to retain the existing contract language.

ARTICLE 20, SECTIONS 1 AND 4: SICK LEAVE

The Employer proposes to reduce the presently allowed total accumulation of 1200 hours to 1000 hours and to maintain the balance of the present contract language.

The Union has made a counter offer to reduce the maximum accumulation from 1200 to 1100 hours and to amend the contract to require employees who resign to be paid one-half of their accumulated sick leave, without the necessity of giving two weeks notice. In addition, the Union proposes to amend the contract to require the Employer to pay 100% of accumulated sick leave to employees who are laid off and not recalled.

The Employer argues that their proposal is identical to that adopted by members of the AFSCME Clerical Employees Unit in their negotiated agreement for the period of February 25th through December 31, 2012. Moreover, the Employer points out that among the comparables; Gratiot allows a maximum accumulation of 1040 hours of sick leave and pays 50% of accumulated sick leave upon resignation, Eaton allows a maximum accumulation of 1280 hours and pays out 50% upon resignation, Ionia and Lapeer do not limit sick leave accumulation, but they do not pay out upon resignation, Tuscola doesn't allow for the accumulation of sick time, and Midland allows a maximum accumulation of 720 hours with no pay out upon resignation. None of the comparables pay out accumulated sick leave to employees who are laid off and not recalled. The Employer

maintains that the proposed reductions are needed to help the Employer reduce the current sick leave liability that stood at $240,107 as of October 6, 2010. (E47)

The Union contends that it understands the desire of the Employer to reduce its financial liability for the payment of sick leave upon retirement or death and is willing to reduce the maximum accumulation by 100 hours. The Union points out that only 3 of the total unit members have actually accumulated over 1000 hours of sick leave and the vast majority had accumulated less than 400 hours.

RECOMMENDATION:

On the issue of maximum accumulation the parties are only 100 hours apart. As noted earlier, the fact-finding process is designed to produce recommendations that reflect what the parties reasonably could have expected to accomplish had they been able to reach a negotiated settlement. In this case we have a settlement agreement between the Employer and another AFSCME bargaining unit that has accepted the same offer made by the Employer on this issue. This fact together with the record evidence of the comparables that indicates that none have a provision for the payment of sick leave benefit to laid off employees simply does not support the Union's proposal. The requirement of two weeks notice of resignation to qualify for the pay out of 50% of accumulated sick leave is reasonable and easily met under most circumstances.

For the reasons stated above, I recommend adoption of the Employer's proposal.

ARTICLE 22, SECTIONS 3 THROUGH 5; WORKDAY AND WORKWEEK

The Union proposal would require double time pay for hours worked on Easter Sunday, while the Employer proposes to maintain the current contract language. The contract presently requires the payment of double time for work performed on any of the contractually designated holidays. Easter Sunday is not designated as a holiday or as a day off with pay.

The data for the external comparables indicates that three of the contracts require double time pay for work performed on Easter Sunday and three do not, none designate Easter Sunday as a holiday. The AFSCME Clerical bargaining unit similarly does not designate Easter Sunday as a holiday or require the payment of double time.

RECOMMENDATION:

There is very limited record testimony on this issue. Apparently, the instances of work being performed on a Easter Sunday is rare, Mr Graham testified that in his 13 years of employment with the Road Commission he could recall only two such instances. The data from the external comparables is evenly divided with half providing the benefit proposed by the Union and half that do not. The financial condition of the Employer and the fact that the AFSCME Clerical bargaining unit does have such a benefit mitigate in favor of the Employers proposal. Consequently, I recommend the parties adopt the Employer's proposal to maintain the status quo.

ARTICLE 23, SECTIONS 1 AND 2: HOLIDAYS

The Union proposes to add two holidays to the present list of holidays, Veteran's Day and Martin Luther King Jr. Day, while the Employer proposes to maintain the present provisions of the contract. Section 1 of the contract provides for seven identified holidays: Memorial Day, Good

Friday, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. In addition, Section 2 provides for four and one-half paid days off for a total of eleven and one half-days paid leave days. The Employer estimates the cost of two additional holidays at about $10,000.

Among the comparables, two have 12 paid days, three have 10 days, and one has eleven. Three of the comparables include Veteran's Day. The AFSCME Clerical bargaining unit employees have the same number of holidays and paid leave days, eleven and one-half.

RECOMMENDATION:

Given the Financial condition of the Employer, the data of the comparables, and the cost associated with the Union's proposal, I recommend the parties adopt the Employer's proposal to maintain the status quo.

ARTICLE 32, SECTIONS 1 THROUGH 5: HOSPITALIZATION COVERAGE

The Employer has proposed a change in coverage from the current Blue Cross/Flex Blue plan to the Mclaren Health Care Custom #7 Plan. (E51). The details of the proposal are fully explained in (E51) and need not be reproduced here in their entirety. The plan features include a deductible of $2500 for an individual and $5000 for a family. The plan includes a $20 Office Visit Co-Pay, $25/$100 ER/Urgent Care visits, $15/$25/$50 Rx, and up to $1000 in chiropractic visits. The Employee is responsible for the first 35% of the deductible and the Employer is responsible for the remaining 65%. The Employer will reimburse the eligible deductible expenses after submission of a BCBSM Explanation of Benefits form or prescription claim. In addition there will be a Dental Plan 2 (no orthontics) or equivalent and vision coverage VSP-24 or equivalent. The Employer is

responsible for the full premium cost of the plan for eligible employees, their spouses, and their dependents under age 19. However, effective January 1, 2011 the Employer proposes to limit their responsibility for any premium rate increases to no more than 3% and any increase above that amount would be the responsibility of the employee.

In Section 2. – Sick and Accident Insurance, the Employer proposes to increase the weekly benefit from $250 to $300 per week, in accordance with the insurance plan, for a total of twenty six weeks.

In Section 3. Health Care for Retirees, the Employer proposes to provide the same coverage as that of active employees. However, employees hired on or after January 1, 2010 will have no spousal or dependent health care coverage upon retirement. Medicare eligible retirees must elect Medicare A and B coverage and will be provided the United American Group Retiree Health insurance, with a $10/$40 prescription drug rider and will be responsible for all deductible expenses required under the Medicare Part B.

In Section 4. Non-Participation Payment, the Employer proposes a maximum opt-out coverage of $400 per month.

The Union is agreeable to the change to the Mclaren Plan Custom 7, but objects to the remainder of the Employer's proposals altering Article 32, particularly the employee deductible limits and the Employer's reduction in deductible responsibility to 65% from 75%. The Union also objects to the Employer's proposal to limit its responsibility for future increases in premium rates to 3%.

Recommendation:

The cost of the present health care plan for active and pre-age 65 retired employees stands at about $402,325 annually and is projected to increase to $541,290 annually. (E51). The Employer's proposal to switch to the McLaren Custom 7 plan would reduce the Employer's cost to $269,779 a savings of about $132,000 per year and the proposed change for Medicare-eligible retirees would produce an additional savings of about $67,000. Given the financial condition of the Employer, faced with declining revenues it is apparent that the present plan is not sustainable and however painful, changes must be made if health care benefits are to be continued. I have carefully reviewed the record evidence concerning the comparables and note that the plans vary considerably and I conclude that I must evaluate this issue based upon the alternatives available to the parties, not those found in other jurisdictions. The Plan proposed by the Employer appears to be a reasonable, quality plan and I recommend the adoption of the Employer's proposal with one exception. The Employer proposes to limit their responsibility for future increases in premiums to 3%. In my opinion, such a proposal is simply unfair. The parties have no experience with the proposed new plan, but it is likely that health care costs will continue to rise and in my opinion, the parties should have the opportunity to negotiate over any proportionate sharing of future premium increases, and I would recommend that the parties share equally in future cost increases.

ARTICLE 35: RETIREMENT

The Employer proposes to add the following provision to Article 35:

Employees hired after 1/1/10 would have MERS Hybrid Plan with a 1.5% Employer contribution to the defined benefit portion and 1% to the defined contribution portion.

The Employer argues that the current MERS B-4 Plan has a high employer contribution rate; presently 13.33% of participating payroll and their proposed Hybrid Plan would help reduce future cost for new employees, such savings are necessary in the face of declining revenues. The Employer points out that two employees of the administrative staff are presently under the plan and the AFSCME clerical bargaining unit agreed to adopt the same plan as proposed for new employees hired after January 1, 2010.

The Union has proposed to maintain the present provisions of the contract. The Union argues that they are opposes to splitting the bargaining unit into two different retirement plans out of concern that eventually employees with lower amounts of seniority would outnumber senior employees and would not necessarily have the same priorities. Moreover, the Union contends that none of the external comparables have such a provision as proposed by the Employer.

RECOMMENDATION:

The record testimony concerning this issue is very limited. Union witness, Mr. Graham's testimony was of an anecdotal nature, expressing concern over possible future divided interests of members of the bargaining unit that might result from separate pension plans. The testimony is of limited value in determining this issue. The record indicates that there has been limited hiring of new employees since 2008, one employee. It is possible that in the next five years there may be some 12 to 15 bargaining unit employees retiring from service. If all of these employees were to be

replaced with new hires, it is possible that the future composition of the unit would have about half the work force in the present retirement plan and the remainder under the hybrid plan. That may or may not cause problems for future negotiations, but that is pure speculation. The fact remains that under the Employer's proposal the existing work force would continue to enjoy the present define benefit plan. The costs associated with this plan are considerable, particularly in the face of declining revenue. This is a condition shared by many Michigan government entities and the cost of maintaining defined benefit plans and addressing unfunded liability is generally acknowledged to represent a major threat to the financial solvency of many jurisdictions.

The Employer's proposal represents a reasonable approach to addressing their cost/revenue problem with no immediate impact upon the present work force. They will continue to enjoy the benefits of the defined benefit plan and the new hybrid plan will provide the Employer with future cost savings. Therefore, I recommend the parties adopt the proposal of the Employer.

ARTICLE 36: CLASSIFICATION AND RATES

The Employer has proposed to delete the classifications of Stockroom Assistant, Working Foremen, Tire, Fuel, Misc. and to add a Crew Leader Classification. On wages, the Employer proposes increases as follows: 0% first full payroll period after signing, and 1% twelve months after signing, and 1% twenty-four months after signing.

The Union did not address the proposed classification changes in their brief. On wages, the Union proposes 3% for each year of the contract effective January 1, 2010.

The Employer argues that it simply cannot afford the wages increases proposed by the Union and estimates that it would raise payroll cost from the current annual amount of $1.367

million to $1.403 million in year one, $1.445 million in year two, and $1.489 million in year three. According to the Employer, the Union's proposal would cost $100,000 more in payroll by the third year than what the Employer is proposing. The Employer argues that it simply cannot afford the wage increases proposed by the Union in the face of declining revenue. Moreover, the Employer argues that (E63) reveals that the employees currently have the highest paid members out of any of the comparables and under their proposal they would maintain that position.

The Union argues that three of the comparables granted percentage wage increases ranging from 2% to 3% in each year of their contract settlements. The Union contends that their proposal is necessary in part because of the Employer's proposal on health insurance to shift the cost of future increases in premiums to the employees.

RECOMMENDATION:

The present wages schedules are competitive with the comparables and would significantly exceed them if the Union's proposal were to be adopted. In reviewing the data, and inconsideration of the recommended changes made on the other issues, particularly health insurance and pension, I conclude that some compromise between the proposals of the parties is appropriate. The Employer will realize an immediate savings in their health insurance cost if my recommendation is adopted and the employees will experience cost increases. This fact should be recognized and wage increases should be adjusted accordingly. I recommend that the wages schedules be adjusted as follows: effective retroactive to January 1, 2010, 0% increase, January 1, 2011, 2% increase, and January 1, 2012, 2% increase. As to the Employer's proposed changes to the classifications, I recommend that the parties adopt them.

ARTICLE 38: COMMERCIAL DRIVERS LICENSE

The Union has proposed that the cost to maintain the Commercial Drivers License, physicals and license renewal for endorsements be paid by the Employer.

The Employer proposes to maintain the status quo, the cost to be paid by the employee. The Employer argues that the employees required to have a CDL endorsement as a job requirement have always paid the associated cost and that practice should be continued.

The Union argues that five of the six comparables pay all or part of the cost associated with the maintenance of a CDL. Moreover, the cost is minor and should be adopted.

RECOMMENDATION:

The Union's proposal is supported by the comparable data and represents a minor cost to the Employer. Therefore, I recommend that the Employer pay for the cost of any physical exam required to maintain the CDL and pay for the difference in the cost of a regular drivers license renewal and a CDL endorsement.

ARTICLE 39, SECTION 4: MISCELLANEOUS – PAYCHECKS

The Employer proposes to change from the practice of a weekly paycheck to a bi-weekly paycheck with mandatory direct deposit. The Employer argues that the change is necessary to reduce the amount of administrative staff time and cost associated with the maintenance of the existing method. According to the Employer the change would save about $2000 per year.

According to the Employer all six of the comparables pay bi-weekly as opposed to weekly, and two require mandatory direct deposit.

The Union is opposed to this change on the grounds that many of its members live paycheck to pay check and the change would be disruptive and there is concern with the idea of electronic deposit and sharing of account numbers. The Union also points out that the ownership or maintenance of a checking account is not a condition of employment, and the Employer remains legally obligated to pay employee wages with or without direct deposit.

RECOMMENDATION:

There is support among the comparables to change to a bi-weekly pay system, but there is considerably less support for mandatory direct deposit. I tend to agree with the Union that ownership of a private checking account is not a mandatory subject of bargaining and respect the concerns expressed about sharing account information and the risks associated with it. Therefore, I recommend the parties adopt the Employer's proposal regarding the a bi-weekly paycheck system and recommend that the direct deposit requirement be made voluntary as opposed to mandatory.

ARTICLE 39, SECTION 10 (NEW SECTION): MISC. – LOADER GUIDELINES

The Employer proposes to add a new Section 10, reserving the right to establish loading or self-loading guidelines for the loader.

The Union is opposed to this proposal on the grounds that it would have a negative impact on the overtime opportunities of employees holding the loader classification.

The Employer argues that the proposal is efficiency and cost savings measure. By allowing the drivers to replenish their trucks with salt, sand, etc by loading themselves, it would eliminate the need to call-in another employee to do that work. This proposal is more efficient when operations do not require a full crew of drivers and there are only a couple of trucks on the road. In those circumstances the called in loader is not utilized in an efficient manner since when there are no trucks to be loaded, the employee is engaged in work that would not normally be performed on overtime.

RECOMMENDATION:

The proposal of the Employer is designed to utilize the work force in the most efficient and cost effective manner possible. Given the fiscal condition of the Employer the proposal seems reasonable and I recommend the parties adopt it.

NEW ARTICLE: LONGEVITY PAY

The Union proposes to add a new article that would create a system of longevity pay for employees with at least five years of service as follows:

After 5 years service	3 days pay per year
After 10 years service	4 days pay per year
After 15 years service	5 days pay per year
After 20 years service	6 days pay per year.

A maximum accumulation of one hundred eighty (180) days, or one thousand four hundred forty (1,440) hours shall be allowed. In case of death, to be paid to the employee's named beneficiary.

The Employer is opposed to this proposal and calculates it to cost a current annual liability of $22,232.40. This cost would increase annually based on wage increases and new eligibility. According to the Employer such a cost increase in the face of declining revenues is simply unwarranted. Moreover, three of the six comparables do not offer longevity pay and the AFSCME Clerical Unit contract settlement does not include longevity pay.

The Union argues that three of the six comparables do provide for longevity pay. According to the Union such a benefit is justified in view of the sacrifices it is being asked to make under the proposals of the Employer.

RECOMMENDATION:

Given the financial condition of the Employer and the fact that there is no strong support for longevity pay among the comparables or the other contract settlement with the AFSCME Clerical Unit, the proposal of the Union is not warranted. I recommend the parties adopt the Employer's proposal to maintain the status quo.

Submitted: 1-26-011 by, C. Barry Ott, C. Barry Ott, Fact Finder.