MICHIGAN EMPLOYMENT RELATIONS COMMISSION

INTERURBAN TRANSIT PARTNERSHIP, MERC Case No. L11 E-7017

Employer / Respondent,

-and-

AMALGAMATED TRANSIT UNION Local 836, Kathleen R. Opperwall MERC Fact Finder

Union / **Petitioner.**

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FACT FINDING REPORT AND RECOMMENDATIONS

Six days of hearing were held on December 14, 15, 20, and 21, 2011, and January 5 and 12, 2012, in Grand Rapids, Michigan, under the provisions of Michigan's Labor Relations and Mediation Act (MCLA 423.25). The Interurban Transit Partnership (hereafter ITP or the Employer) was represented by Grant T. Pecor of the law firm Clark Hill PLC. Local 836 of the Amalgamated Transit Union (hereafter ATU or the Union) was represented by John E. Eaton of the law offices of Mark H. Cousens. The parties filed their post-hearing briefs on January 30, 2012. The purpose of the fact finding is to provide factual findings and non-binding recommendations to assist the parties in reaching agreement on a new collective bargaining agreement.

ITP is a municipal authority which provides public transportation services in the Grand Rapids metropolitan area. Its service area includes six municipalities – the cities of Grand Rapids, East Grand Rapids, Grandville, Kentwood, Walker and Wyoming.

The bargaining unit includes the non-supervisory employees of ITP, primarily operators (bus drivers) and technicians (mechanics). There are approximately 250

bargaining unit employees, including about 200 full time operators, 20 part time operators, 27 mechanics and 4 facilities employees. ITP is in the process of hiring more operators and more mechanics.

The parties' previous collective bargaining agreement was a three-year contract which covered the period from July 1, 2008 through June 30, 2011. The parties agreed on several short extensions of the contract, which continued it through September 29, 2011.

The parties were able to reach tentative agreements on 28 proposed changes to their collective bargaining agreement. However, many issues were not resolved, and the parties submitted over 30 issues to fact finding. This Report assumes that the parties will also adopt the tentative agreements they have already agreed upon, and they will otherwise continue the provisions of their 2008 - 2011 contract.

Findings of Fact

The following findings of fact are based on the testimony and exhibits presented at the fact finding hearing:

ITP is in overall good financial condition. It has sufficient financial resources to afford some increases in salaries and benefits for the bargaining unit. It is necessary, nonetheless, that ITP continue to operate in an efficient manner to make good use of its resources.

ITP has a total 2012 budget of approximately $70 million. Its 2012 budget is divided into two basic categories: (1) operating expenses, which total about $38 million, and cover general operating expenses such as wages, benefits, and fuel costs; and (2) grants, which total about $32 million, and cover capital expenditures such as purchase of

buses and facilities. ITP's 2012 fiscal year runs from October 1, 2011, through September 30, 2012.

During 2011, ITP received approval from the voters to increase its millage from 1.29 mills, to 1.41 mills starting in July 2012, and eventually to 1.47 mills. This millage increase was obtained in connection with planned improvements in services, including extending service hours and increasing frequency on some routes.

Property taxes are a significant source of operating revenue, and will contribute about $14.7 million to ITP's operating revenue for 2012. This is an increase of approximately $3 million from the previous year. The millage increase will be used for the service improvements. ITP will be hiring additional operators and mechanics during 2012. ITP is also in the process of purchasing additional full size buses and Go!Bus vehicles to support the service improvements.

Ridership has increased substantially during the last few years, and this is projected to continue. This has contributed to a growth in revenue from fares. However, like other public transit systems, ITP is still heavily dependent on state and federal assistance to balance its budget.

The 2012 budget includes $26 million in federal grant assistance. It also includes $11.2 million in State operating assistance, plus $5.8 million in State grant assistance.

Transit systems which receive federal financial assistance must comply with certain requirements of the federal Urban Mass Transit Act, including what is commonly referred to as "Section 13(c)." This provision requires the U.S. Secretary of Labor to determine whether "fair and equitable arrangements" are in place to preserve the rights, benefits, and

privileges of transit system employees, including fair and equitable arrangements for continuing their collective bargaining rights. 49 U.S.C. §5333(b)

ITP and ATU are parties to a September 23, 1993, "Arrangement Pursuant to Section 13 (c) of the Federal Transit Act." Among other things, this Arrangement provides that disputes over making or maintaining a collective bargaining agreement may be submitted to the Michigan Employment Relations Commission (MERC) for fact finding in accordance with Michigan law. The Union filed a petition for fact finding with MERC on September 27, 2011. Paragraph 16(d) of the parties' Arrangement lists certain factors which the fact finder is to take into consideration:

> In making findings of fact and recommendations for the resolution of the matters in dispute, the fact finder shall take into consideration the following factors:
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> (i) The stipulation of the parties;
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> (ii) The financial condition of the transit system, the ability of the Public Body to administer and finance the existing system and the issues proposed and the interest and welfare of the public;
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> (iii) A comparison of the wages, hours and terms and conditions of employment of the Public Body's employees with other public and private employees doing comparable work, taking into consideration any factors peculiar to the community and classification involved;
>
> (iv) The overall compensation presently received by the Public Body's employees, including wages, hours, and terms and conditions of employment, and all medical, insurance, pension, and fringe benefits received;
>
> (v) Collective bargaining agreements between the parties;
>
> (vi) The average consumer prices for goods and services, commonly known as the cost of living; and
>
> (vii) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the 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.

During 2011, the Michigan Legislature enacted what is generally referred to as PA 54. This statute provides that upon the expiration of a collective bargaining agreement, and until a successor agreement is in place, the employees will bear any increased cost for maintaining insurance benefits such as medical and dental insurance. PA 54 also requires that no wage step increases be recognized during such a "hiatus" between collective bargaining agreements.

PA 54 has complicated the bargaining relationship between ITP and ATU. The U.S. Department of Labor (DOL) determined that the enactment of PA 54 interfered with the preservation and continuation of collective bargaining rights of public transit system employees, by causing a change in the status quo prior to the parties reaching impasse in bargaining. The DOL directed ITP and ATU to engage in good faith negotiations to seek a mutually acceptable accommodation in light of PA 54's conflict with federal Section 13(c) rights. The DOL determined that this conflict could be resolved with a supplement to the parties' Arrangement, which would set forth procedures for avoiding a hiatus in the future. To date, ITP has not been willing to accept this solution. The federal government is currently holding up federal grant funds of approximately $2 million pending resolution of this. ITP is expecting to receive this $2 million to reimburse it for 12 replacement buses which have already been purchased.

During the three years of the previous contract, employees received wage increases totaling 8 percent, including a 1 percent increase which took effect March 28, 2011. At the

present time, operators start at $17.00 per hour, and after two years of service reach a top pay rate of $19.27 per hour. The pay rates for mechanics and facilities employees depend on their skills and certifications, and vary between $19.52 and $24.31 per hour.

The Consumer Price Index (CPI-U) calculated on a national level for all items increased 3.8 percent in 2008; decreased .4 percent in 2009; increased 1.6 percent in 2010; and increased 3.0 percent in 2011.

In the past the parties have had a good cooperative relationship, and have been able to negotiate successor collective bargaining agreements without resorting to fact finding. This time the process has broken down, for several reasons. The Employer brought an extensive list of issues to the table, including very significant proposed changes in scheduling. Also, the parties got a late start - the Union tried to initiate bargaining early, but the Employer was not ready to begin until April 1, 2011. The conflict between State and federal law has also been a contributing factor.

The parties explained that the most difficult issue separating them has not been wages or benefits, but changes the Employer has proposed in the manner of setting work schedules for the bus operators. Both parties felt strongly about these issues, and there was little movement on either side. These issues will be addressed below under the heading Rostering/Scheduling.

The parties did enter into one stipulation: they agreed that 2011 PA 152, which limits the amount that a public employer can contribute to employee health insurance premiums, is not applicable to ITP.

The parties also agreed that CATA, the Capital Area Transportation Authority which operates in the Lansing area, was generally an appropriate "comparable." CATA is similar to ITP in its number of buses and number of employees.

It is my conclusion that the public transit systems in Kalamazoo (as proposed by the Employer) and Ann Arbor (as proposed by the Union) can also be considered "comparables" to some extent, although there are differences from ITP in size (Kalamazoo) and labor market (Ann Arbor). It is my conclusion that the transportation operations of local school districts are less useful as comparables, because their operations are significantly different from ITP's.

Section 16(d) of the Arrangement (quoted above) also specifies that the collective bargaining agreements between the parties is a factor for consideration. The parties have a long history of collective bargaining. Issues have been worked out, over the years, with give and take on both sides. The collective bargaining agreement between ITP and ATU differs in many ways, large and small, from those of the other transit systems. Especially in the area of scheduling, each transit system has developed its own procedures, which are interconnected and quite complex.

Recommendations on Issues in Dispute

The remainder of this report will address the issues in the following general order:

- economic issues including wages and benefits
- scheduling related issues including extra board and RWL
- part time operator issues
- other contract provisions
- Union proposals
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Wages – Section 6.01

The Employer proposed a wage increase of 1.75% in the first year, 1% in the second year, and 1% in the third year. The Union proposed a 2% wage increase for each of the three years.

During calendar years 2008, 2009, and 2010 bargaining unit members received total wage increases of 7%, while the cost of living rate increased only 5%. However, during 2011 the cost of living rate went up 3%, while bargaining unit members received just a 1% wage increase (effective March 28, under the previous contract). The non-union employees of ITP received a 2% wage increase for 2011.

The current top wage rate for ITP operators is $19.27 per hour. A 1.75% increase will bring this to $19.61 per hour. The testimony indicated that ITP does not have difficulty hiring operators with its current wage scale. My analysis focuses on the operators because they make up about 90% of the bargaining unit. All the transit systems pay their mechanics at a higher hourly rate than their operators.

CATA pays its operators considerably more, with a top rate of $23.14 per hour. CATA employees are receiving 3% wages increases each year for 2011, 2012, and 2013. CATA does enjoy a significantly higher millage rate than ITP (3 mills versus ITP's 1.41 mills), which may explain some of the difference in pay scales.

The Ann Arbor Transportation Authority (AATA) operators have a top wage rate of $24.00 per hour, during 2012. They have received pay increases of over 3% per year for the last few years. The current top wage for operators in the Kalamazoo transit system is $18.03 per hour.

Recommendation: a 1.75% increase the remainder of the first year; 2.0% the second year; and 1.5% the third year.

Reasoning: I am recognizing that the ITP budget is tight. Nonetheless, these are modest recommended wage increases, especially in comparison with some of the comparables.

The 1.75% increase for the first year will only be in effect for a few months, since most of the first year (July 1, 2011 to June 30, 2012) has already passed.

During the first year, most employees have absorbed increases in their share of the health premiums. For example, an employee with two-person coverage had the employee premium share increase from $47.52 per month to $88.50 per month (UI, exhibit 31). This approximately $40 per month increase translates into more than 1 percent of average monthly wages. Under my recommendations, during the second and third years of the contract the Employer may experience increases of up to 10% in its portion of the insurance premiums. This increased cost is a part of the overall package, even though it does not show up as a direct wage increase.

Reporting and Pre-Trip Inspection – Section 6.06.

The Employer proposed reducing the time operators are paid for reporting and pre-trip inspection to 10 minutes. The Union proposed retaining the current language of Section 6.06, which provides that operators are paid 15 minutes for this.

The State of Michigan requires an operator with a commercial driver's license (CDL) to perform a multi-step inspection before driving the vehicle.

Mr. Poulet testified that based on his personal observation 15 minutes was more than was needed. Mr. Carrico testified that based on his personal experience 10 minutes was not enough. CATA provides 15minutes; Ann Arbor and Kalamazoo provide 10 minutes.

Recommendation: reduce the time to 12 minutes. This translates into a savings for the Employer of about one-half of a percent (3 minutes saved per 8 hour work day).

Reasoning: the testimony supports something between 10 and 15 minutes.

Health Insurance – Article 16.

The current contract requires employees to pay 5% of the health insurance premiums, with this employee share capped at $25 per month for single coverage, $50 per month for two-person coverage, and $60 per month for full family coverage. However, under PA 54, ITP passed through to employees the entire cost increase which occurred October 1, 2011. This resulted in almost doubling the amount employees are paying, to over 9% of premiums.

The Union proposed removing the dollar caps, and increasing the employees' premium share to 7% the first year, 8% the second year, and 9% the third year of the contract. The Employer proposed setting a dollar limit for the Employer's contribution, rather than a percentage share. The Employer calculated its proposed dollar limits based on the slightly cheaper plan provided to non-union employees, with an assumed 5% premium increase in each of the second and third years. With these assumptions, the Employer proposed paying a dollar amount calculated at 90% the first year's premiums, 85% of the second year's, and 80% of the third year's. The result is that the Employer's

proposed dollar contribution would actually decrease slightly over the three year term of the contract (Ex ER1, Tab 62).

The parties stipulated that ITP is not subject to PA 152, which generally requires other types of public employees to begin paying 20 percent of their health insurance premiums. The Employer's non-union staff is currently paying 10% of the premiums for their coverage.

The CATA agreement requires employees to pay a share which will increase to $19 by 2014; it is not clear if this is bi-weekly or monthly. Under the Ann Arbor contract, effective in 2011, the employees' premium share rose to $15 per bi-weekly pay period for single coverage, $30 for two-person, and $90 for full family.

Recommendation: the employee contribution rate remain at its current approximately 9 ½ % rate for the first year, rise to 10% for the second year, and remain at 10% for the third year. Also, that the basic terms of the plan continue to be described in the contract. I am also recommending adding a provision that if the current Priority Health coverage becomes unavailable, or if the premiums increase by more than 10% in one year, then this portion of the parties' contract will be re-opened, and the parties will negotiate replacement coverage or revisions to the coverage, so that the Employer's monthly premium amount (per employee) does not increase by more than 10% over the previous year.

Reasoning: The Employer's proposal puts an excessive amount of risk on the employees. Basically, the employees would be paying for all the increase in health insurance premiums over the three year period. The Employer argued that it needed to have a set dollar amount rather than a percentage, in order to avoid being in conflict with

federal Section 13(c) requirements again at the end of this contract. That potential conflict could be avoided by other means (see the last section of this Report). By recommending the rate currently in effect for the first year, I am trying to make it easier for the parties to come to agreement on the remedy for this portion of the existing Section 13(c) violation.

I think it is reasonable to build some additional flexibility into the contract in case the exact plan coverage becomes unavailable, or the premium costs increase more than 10 percent in any one year. I do not think it is reasonable to ask the Union to agree to remove all description of the plan benefits from the contract.

Pension Contribution - Article XVIII

The contract currently provides that the Employer contributes to the pension plan $.90 for each hour worked per employee. For an operator at the top of the scale making $19.27 per hour this amounts to about a 4.7% contribution rate. (The contract does not include the method for calculating a retiree's pension. The parties explained that this calculation is performed by the pension board based on an actuarial analysis which is performed when the bargaining unit member retires.)

Both parties were willing to remove some historical language from Article XVIII. The Union proposed increasing the contribution rate, to $1.00 per hour the first year, $1.05 per hour the second year, and $1.10 per hour the third year. The Employer proposed leaving the rate at $.90.

The CATA contract provides for weekly payments by both the employer and the employee of $79.50 per week, which will rise to $83.50 per week in two years. This is

approximately $2.00 per hour (assuming a 40 hour week), which approaches a 10% contribution rate for both employer and employee.

The Ann Arbor system currently contributes 8%, while its employees contribute 4%. The Kalamazoo contract does not include specific information about the employer's contribution rate; it appears to be a defined benefit plan using a 2.1 multiplier; the employees contribute 1%.

Recommendation: the Employer's contribution rate rise to $1.00 per hour beginning with the second year.

Reasoning: ITP's pension contributions are quite low by current standards, and are less than most of the comparables. There needs to be some increase just to keep up with increases in hourly wages. This recommended increase is equivalent to about a one-half percent increase in wages.

Paid Personal Leave – Section 17.01

The Union proposed adding 8 hours of paid personal leave to the current 56 hours per year. The Employer opposed this change.

Bargaining unit members do not receive any sick time. They use paid personal leave for sickness as well as other personal needs. It can be used in increments of 2 hours (smaller increments for mechanics). An employee who exhausts this paid personal leave is subject to points under a no fault attendance system

CATA does not have personal leave, but does provide a sickness and accident benefit (which ITP does not have). The Ann Arbor contract accrues sick leave at .037 hours per straight time hour worked, which would translate to about 74 hours per year.

Recommendation: retain the current 56 hours per year.

Reasoning: I am recommending some benefit increases in other areas. More time off may not be the best benefit, because it contributes to scheduling problems.

Holidays – Section 13.01

Section 13.01 provides holiday pay for seven holidays. However, one of these was a "floating holiday" which was converted to a paid personal leave day. In that conversion process, part time employees lost a paid holiday, because they are not eligible for paid personal leave. The Union proposed adding the employee's birthday as a seventh holiday for all employees. The Employer opposed adding a holiday.

The CATA contract recognizes 11 paid holidays, of which 4 are floating holidays. The Ann Arbor contract recognizes 10 paid holidays, of which one is the employee's birthday.

Recommendation: Add a holiday for part time employees only, calculated at 4 hours' pay per Section 19.06(C), to make up for the holiday which was inadvertently lost for them.

Reasoning: Each added day off does come with a cost, approximately .4% of wages. More days off also add to scheduling problems. I think that overall it makes more sense to apply resources to wages and benefits such as health insurance and pension.

Vacation Allowance: Section 12.01

Section 12.01 provides that employees get 1 week (40 hours) of paid vacation after 1 year of service; 2 weeks after 2 years; 3 weeks after 7 years; and 4 weeks after 15 years. Employees who have at least 2 weeks of vacation can use one of those weeks in 8-hour

increments, instead of a week at a time. The Union proposed adding a fifth week for employees with 25 years of service. The Union also proposed allowing employees to use two of their weeks in 8-hour increments, instead of just one. The Union also proposed giving employees the choice of accumulating vacation from year to year – currently it is paid at the end of the year and not accumulated. The Union also proposed adding a new subsection B 5(g) which would specify that at least four requests for 8-hour vacations "can be approved in advance and placed in the book."

The CATA contract provides 5 weeks of vacation at 20 years, and 6 weeks at 25 years. The Ann Arbor contract provides that employees with16 or more years of service receive .12 vacation hours per hour worked, which translates into more than 25 days. The Ann Arbor contract allows 10 vacation days to be used in 8-hour increments rather than weekly increments. The Ann Arbor contract states that a "slot" will be created for use for single day vacation requests (except during the Art Fair).

The ITP non-union employees earn 25 vacation days after 16 years of employment. (Employees hired prior to 2004 could earn up to 29 days.)

Recommendation: Adopt the Union proposal that employees with 25 years get 5 weeks of paid vacation. Do not adopt the other Union proposals.

Reasoning: Adding a fifth week for employees with 25 years of service should not have a major impact, because not very many employees reach this level of service. Many of the comparables provide 5 weeks for employees with this length of service. ITPs non-union staff also get 5 weeks. There are scheduling issues with the 8-hour increment vacations, which should be addressed by the parties before these 8-hour increment vacations are expanded.

Show Up Pay – Section 6.08

This provision currently reads: "All operators will be paid not less than two (2) hours for any show-up." The Employer proposed revising this to read: "All Full Time Operators will be paid not less than two (2) hours for any scheduled show-up or show up following their being called into work." The Union opposed this change.

Most of the comparables have something similar, although the exact language varies from contract to contract.

Section 19.06 of the contract does not include show up pay in the list of benefits which part time operators receive, and no evidence was presented that part time operators had received this benefit.

Recommendation: adopt the Employer's proposal.

Reasoning: this is a reasonable clarification of when an operator will be eligible for show up pay.

Spread Time – Section 7.02

This provision currently reads as follows: "In addition to their regular rate of pay, Operators will receive half-time pay for work after twelve (12) hours spread." The Employer proposed language with the intention of limiting spread pay to circumstances where the operator did not volunteer for extra work.

Spread time is designed to provide a disincentive to creating long, spaced out work days, such as an operator working from 5 am to 9 am and then being required to come back from 4 pm to 8 pm. In this example, since the "spread" from 5 am to 8 pm is 15 hours, the operator would be paid time and a half for 3 of those hours. The Employer argued that the

purpose of spread time was not served if it needed to be paid even when the operator had volunteered for the work. The Employer was not proposing to eliminate spread pay. The Employer acknowledged there were some drafting issues with its proposal.

Recommendation: the Employer's basic idea is reasonable, but it needs to be written in a clearer way.

Reasoning: the spread time pay should be a disincentive to the Employer to schedule employees for excessively long days, not an incentive for employees to volunteer for such hours.

Rostering/ Scheduling –Primarily Section 7.03

The Employer came to the negotiations determined to make some significant changes in the way work schedules are set for the operators (bus drivers). Brian Pouget, ITP's Director of Operations, has been with ITP (and its predecessor, GRATA) since 1999. He testified that when he started, there were about 90 operators, and about 10 of them were on the "Extra Board." At that time there was no bus service on Sundays, and the scheduling was fairly simple. Now, with the growth in the transit system, there are over 200 operators, and about 50 of them are on the Extra Board. The Extra Board operators are used to cover regular runs when the regular operator is off work for some reason such as: weekly days off, vacation, personal, sick, etc. The Extra Board operators also cover some of the shorter "fragments" of work. ITP also uses its part time operators to cover some of the shorter fragments of work.

Mr. Pouget estimated that currently it takes a scheduler about 6 hours per day to do the daily scheduling for the Extra Board. He testified that the changes proposed by the

Employer would accomplish the following: (1) free up some of this scheduler's time to do other things; (2) give more operators a set schedule which they would know in advance; and (3) provide a more even distribution of work hours. He did not claim that there would be a significant savings in overtime expenses – the work would still be there although it would be distributed more evenly.

ITP currently has some 26 different fixed bus routes. Some of these routes have service every 15 minutes, which requires running as many as 6 buses on that route. Many of the routes run from about 5 am to about 11 pm, although some start earlier or run later on certain days. Some routes have extra buses added at peak times. Scheduling operators to cover all these "runs" is complicated.

Section 8.01 of the parties'contract provides that seniority shall govern "in the selection of runs, days off, and vacations." Section 7.03 provides the method under which operators sign up for their runs, which occurs three times per year. The Employer prepares a list of runs, most of which are about 8 hours in length. Then, in seniority order, the operators pick a run, and choose their days off.

As of December 2011, using this system, 146 of the full time operators ended up with a regular weekly schedule. The other 48 full time operators are on the Extra Board. These Extra Board operators can choose either the day Extra Board or the night Extra Board, and can choose their days off. Section 9.01 of the parties' contract describes how the Extra Board operates. Basically, Extra Board operators get their assignments for the following day either at 6:00 pm (for the day Board) or at 7:30 pm (for the night Board). The Extra Board rotates so that work is distributed among the Extra Board operators. The

result is that the Extra Board operators work a wide variety of routes and schedules, and they have short notice of what their next day's assignment will be.

The Employer proposed making some significant changes to the scheduling system. Under its proposal, the Employer would prepare a "roster" which would include runs packaged together with days off. A key objective of the Employer was to create a greater number of regular weekly runs, and thereby reduce the number of operators on the Extra Board. Employer Exhibit 29 is an example of how the number of regular weekly runs could be increased to 179 (from the current 146). This would mean that 33 more operators would have weekly schedules, and the Extra Board would be reduced to a more manageable size.

Leon Carrico has been the Union President since January 2009, and has been an operator at ITP for the last eleven years. He testified that he was on the Extra Board for four years before he earned enough seniority to bid on a regular run. At the present time, with the ITP in hiring mode, operators are spending less time on the Extra Board. Mr. Carrico testified that the Union had taken a hard look at the Employer's rostering proposal, and had reviewed about eight modifications of the proposal. He set up a meeting where Mr. Pouget explained the rostering proposal to interested members of the bargaining unit. About 30 employees came to that meeting. Most of them were very opposed to the rostering proposal. Mr. Carrico testified that he had queried the membership, and that only a few members told him they were in favor of the proposed changes. Most of the members told him they would prefer to continue with the current system. He testified that the operators viewed the time spent on the Extra Board as a "rite of passage," after which they

have earned enough seniority to get a regular schedule. He testified that employees in the middle of the seniority list were particularly opposed to the rostering proposal.

At the fact finder's request, the parties presented additional information concerning how other transit systems handle their rostering/scheduling. Mr. Pouget testified that he spoke with the scheduler for CATA in Lansing, who advised him that CATA starts by preparing runs of regular Monday through Friday work, and then starts "stitching things together" to create additional runs. CATA prepares its schedules manually, unlike ITP which uses a computer program. CATA is somewhat different from ITP in that its Saturday service is very similar to its service Monday through Friday, whereas ITP's Saturday service is less than half of its Monday through Friday service.

Mr. Carrico testified that he spoke with the union president for the CATA system, who advised him that the CATA drivers pick their run assignments from a selection of runs and do not separately pick their days off. The union there and the CATA management work together as a team to put together the list of runs. There are a variety of other differences between how CATA and ITP operate and set schedules.

The parties also presented some transit industry literature which discussed the pros and cons of different scheduling systems. The system currently used by ITP would be considered a modified "cafeteria" system, where the operators can independently pick their days off. This is a common method used in transit systems in the United States, including transit systems which are considerably larger than ITP. The most extensive discussion was a chapter on Rostering in a report prepared by the Transportation Research Board's (TRB) Transportation Cooperative Research Program (TCRP). The Report is entitled: Controlling System Costs: Basic and Advanced Scheduling Manuals and Contemporary

Issues in Transit Scheduling (U2 exhibit 19). This report made a number of points, including the following:

> "As is often the case, the scheduler is trying to balance efficiency requirements against preferred working conditions." (page 6-5)
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> "Systems that use agency-developed rostering argue that preassembled rosters can be developed in a more cost-effective manner and thus save money. This is especially true for agencies with no daily guarantee of eight hours pay and with weekly instead of daily overtime pay." (page 6-7)
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> "Many agencies believe that it is important for an operator to work the same weekday run every day. The operator becomes more familiar with the route and also gets to know regular passengers who ride at the same time every day." (page 6-14)
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> "Agencies that use cafeteria rostering consider it a positive in terms of employee morale, since operators design their own work week." (page 6-16)

Recommendation on Rostering/Scheduling; It is my recommendation that the parties not switch to a "rostering" system as proposed by the Employer, but retain their basic scheduling system which allows the operators choose their runs and days off on a seniority basis.

Reasoning: Basically, after studying the rostering system proposed by ITP, I have concluded that the negatives for employees in terms of "quality of life" would outweigh the positives for ITP. The literature indicates that systems such as ITP which pay daily overtime do not achieve significant overtime savings by going to a rostering system. ITP did not claim that there would be significant overtime savings.

There are other methods which could be used to reduce the size of the Extra Board. Historically, work has been funneled to the Extra Board; however, doing so is not an essential feature of the current system. More work could be packaged into regular weekly

work assignments. Mr. Poulet testified that about 6 regular weekly schedules could be generated by packaging different drivers' "days off" into regular weekly schedules for other drivers. The parties are already recognizing 3 Extra Board positions as vacation relief positions; this could be formalized. The Union was willing to create some 10 hour per day, 4 day per week positions which did not pay overtime for work under 10 hours per day. Doing that could create more regular schedules by packaging shorter fragments with longer runs. One of my other recommendations is to increase the number of part time operators; that could also have some impact on the size of the Extra Board.

I spent considerable time comparing ITP's exhibits 29 and 30 (from Employer Exhibit Book 1). Exhibit 29 is an example of a "roster" which could produce 179 weekly schedules. Exhibit 30 is the actual schedule from December 2011, with 146 regular operators with weekly schedules, 48 extra board operators, and 19 part time operators. The "roster" did create 33 additional weekly schedules, but there were significant downsides.

Exhibit 30 showed that most of the operators are currently picking Saturday and Sunday as their days off. This works well for the system because there are fewer runs on Saturday and Sunday. Mr. Pouget testified that there are about 150 runs Monday through Friday, versus about 70 on Saturday and 30 on Sunday. The other chosen days off are spread through the week in a fairly balanced manner. There does not appear to be a problem of too many operators choosing the same days off. Almost all of the operators are choosing consecutive days off. Exhibit 29, the "roster," produced far more schedules where the operator did not have consecutive days off.

Section 9.01 of the contract permits Extra Board operators to pick a regular run on Saturday and Sunday, and many of them do, particularly on Saturday. This means that the scheduler who is scheduling the Extra Board does not need to schedule these Saturday and Sunday runs, because they are already part of the schedule.

Exhibit 29, the proposed "roster," showed a high percentage of schedules where the operator would run three or four or even five different runs during the week. The first 80 of the 179 schedules were generally regular with the operator having the same run each day. For the remaining 100 schedules, however, the operators averaged four different runs during the five day work week. The starting times for the different runs were different, although usually not drastically different. I think mixing the runs in this manner could be a serious negative, both for the employees and for the system as a whole. In effect, although the Extra Board would be smaller, more total operators would be running multiple routes and having irregular schedules.

It may be that with more effort and fine tuning a somewhat better roster could be devised. The Employer, however, expressed a reluctance to put many additional conditions (parameters) on how the rostering schedules would be generated. The Employer uses a computer program to generate the rostering schedules. The Employer indicated that as parameters were added, the hoped for efficiencies would decrease.

It is my conclusion that it is understandable that the operators strongly prefer the current system. 146 of the full time operators (75% of them) have enough seniority to have a regular route and their chosen days off. Under the proposed rostering system, many of the operators in the middle of the seniority list in particular would end up with worse schedules.

The Employer would like to free up some of the time of a scheduler, who currently spends about 6 hours per day scheduling the Extra Board operators. Spending this amount of time on scheduling does not seem unreasonable for a transit system the size of ITP. Even with a rostering system, there would still be an Extra Board, although it would be smaller. Some of the scheduler's time would still need to be spent on scheduling the Extra Board.

Days of Work – Section 6.03

This section currently guarantees a 40 hour workweek for operators with regular runs, provided they have no absences. It also provides that days off shall run consecutively as much as possible, and seniority shall prevail in the selection of days off. The Employer proposed several changes: to replace the guarantee with a statement that the Employer "will endeavor to provide" a 40 hour workweek; to specify that this only covers full time operators; and to remove the provision that seniority will prevail in the selection of days off. The Union proposed retaining the current contract language.

The Employer noted that some operators who work less than 40 hours per week nonetheless are paid for more than 40 hours. This could be due, for example, to the operator getting spread pay.

The Employer indicated that of its proposed changes to Section 6.03 the most important one was removing the operators' right to select days off based on seniority. This was in connection with the Employer's rostering proposal.

CATA has a 40 hour workweek similar to ITPs. Ann Arbor has a more complicated system. Kalamazoo does not define the workweek for operators.

Recommendation: retain the 40 hour guarantee; clarify that this only covers full time operators; retain the provision for selecting days off by seniority.

Reasoning: on the 40 hour guarantee, the language proposed by the Employer only requires the Employer to "endeavor" to provide a 40 hour workweek. This would likely lead to disputes over whether or not the Employer had met this vague standard.

As discussed under the Rostering section, above, I am not recommending going to a rostering system. At the present time, operators pick a regular weekday run. Most of the operators pick Saturday and Sunday off. Of those who pick other combinations, many still pick Sunday off. This works well for the system, because Sunday is the lightest day. The other chosen days off are spread quite evenly, with 8 or 9 operators choosing Monday, Tuesday, Wednesday, or Thursday off, and 13 operators choosing Friday off (Exhibit 30). I am not persuaded that the operators' choices of days off are creating insurmountable scheduling problems. It would appear to me that quite a few regular weekly schedules could be put together using the chosen days off in combination with other available Saturday and Sunday runs. It is my recommendation that the parties cooperate in doing that, to the extent feasible, rather than the Employer's more drastic rostering proposal.

Seniority Clause – Section 8.01

The Employer proposed several changes. The parties reached a tentative agreement on one of the changes - amending the second paragraph to extend the period during which an employee may return to the bargaining unit from a non-unit job, from 90 days to 180 days. A second change, to clarify a difference in the way seniority was calculated prior to January 1, 2007, was not opposed by the Union. The Union strenuously opposed the

Employer's proposal to delete the provision that seniority shall govern "in the selection of runs, days off, and vacations." The Employer proposed this change in connection with its rostering proposal.

Recommendation: make the tentatively agreed upon change, and the clarification change, but otherwise retain the current language.

Reasoning: this has already been addressed in the Rostering section of this report.

Tripper Pay – Section 6.10

Section 6.10 requires the Employer to pay regular operators a minimum of two hours pay at the overtime rate for any "tripper," which is basically a short piece of work. The Employer proposed two changes: (1) one for clarity, specifying that tripper pay is only available to full time operators; and (2) removing the following language: "No tripper shall be assigned to a regular run." This second change was in connection with the Employer's rostering proposal. The Union proposed no change to the current language.

Section 19.06 lists the benefits which part time operators receive. Tripper pay is not one of them. The Union did not dispute this.

It is difficult to make a meaningful comparison with the comparables, because each system has its own distinct features.

Recommendation: add the words "full time" as proposed by the Employer. Revise the last sentence to read as follows: "No tripper shall be involuntarily assigned to an operator who already has a regular run on that day."

Reasoning: The first change does clarify that it applies to full time operators. I think some revision of the second sentence is advisable to facilitate what I have

recommended under the Rostering/Scheduling portion of this report. Specifically, to the extent feasible, recurring pieces of work could be combined into regular weekly schedules for some of the operators who are presently on the Extra Board. So, for example, a regular weekly schedule could be created which consists of filling in for one operator who has Monday and Tuesday off, another who has Wednesday and Thursday off, and then having one or more trippers on Friday.

Extra Board – Section 9.01

Both parties made proposals to modify the Extra Board provisions in the contract. Currently the contract recognizes two extra boards – a "day" extra board which includes the early runs, and a "night" extra board which includes runs starting after 11 am. Work in the middle of the day can be assigned to either board. The contract provides that both extra boards "rotate" each day, with the first assignment each day going to the operator immediately below the last operator who received an eight-hour run the day before. The Employer must include on the extra board work which it knows is "open" as of 2 hours before the posting deadline; work which becomes "open" after this does not need to be assigned using the extra board procedures.

The Employer proposed several changes which would simplify scheduling: eliminating the separate day and night boards; and, eliminating the rotation and doing scheduling by seniority each day.

The Union proposed changes which would add detail to the contract language describing how the work on the extra board is rotated.

The evidence indicated that most transit systems use some version of an extra board. The CATA contract has one extra board, and rotates it by one person each day. The Ann Arbor contract has day and night extra boards; assignments are made based on a procedure for equalizing work hours during the pay period.

Recommendation: retain the day and night extra boards; do not add the extra detail proposed by the Union; keep the current rotation system. The parties could also consider changing to a system like that used by CATA where the extra boards rotate one person per day; I am not including this as a definite recommendation because neither party proposed this change.

Reasoning: having day and night boards is a quality of life issue for the operators. If there was only one board, the operators on the extra board would need to be available for work any time from about 4 am to midnight. This would make it very difficult for them to schedule other things in their lives, and could interfere with having a regular sleep schedule. The Employer's scheduling issues are not so severe as to require this drastic impact on the operators.

I am not recommending that the contract language be made more specific than it currently is, as was proposed by the Union. That would write things too much in stone; it is better to leave some room for flexibility when it comes to issues such as scheduling.

Rotating the extra board by one person per day, like what CATA does, might simplify scheduling somewhat, and make the next day's assignment somewhat more predictable. That would be more equitable than the Employer's proposal which would start each day with the highest seniority person receiving the first assignment.

Hold-Down Run Provisions – Sections 9.03 and 9.04

The Employer proposed eliminating Section 9.03 and revising 9.04, in connection with its rostering proposal. These sections deal with Extra Board operators "holding down" regular runs when a regular operator is off work. Section 9.03 provides that an extra board operator will be considered a regular operator on days when scheduled for a regular run.

Recommendation: no change to Section 9.03 or 9.04

Reasoning: the Employer proposed these changes in connection with rostering, which I am not recommending. Eliminating Section 9.03 would mean that an operator who had completed an eight hour run could be mandated to perform additional work, even though there were other volunteers who were willing to perform the work.

Revolving Work List – Section 7.04

Both parties had proposals for changing the procedure for the Revolving Work List (RWL) in Section 7.04. Basically, higher seniority operators who have regular runs can volunteer for extra work by signing up on the RWL. Work which is beyond the capacity of both the extra board and the part time operators goes to the RWL. Currently there is a day RWL and a night RWL. Operators sign up for 2-week periods at a time. The lists rotate somewhat similar to the Extra Board lists, with the work being offered to the operator next on the list after the operator who had the last assignment. The operator who is offered the work is not required to accept it, but an operator who declines twice during the two-week period is removed from the RWL for the remainder of that period.

The Employer proposed combining the day and night RWLs into one list, and increasing the effective time of the lists from 2 weeks to 4 weeks. The Employer also proposed adding a provision that would allow the Employer to "give preference" to operators who would not receive overtime or other premium pay (such as spread pay).

The Union proposed amending Section 7.04 (C), which currently provides that work which becomes available with less than 2 hours' notice is exempt from the RWL requirements. The Union proposed changing this to 1 hour.

The testimony indicated that the RWL is rarely used at the present time.

Recommendation: retain the separate day and night RWLs; keep the lists in effect for 4 weeks instead of 2 weeks; keep the exemption period at 2 hours; allow the Employer to pass over any operator who would receive spread time by taking the RWL assignment (but not pass over operators who would receive overtime).

Reasoning: operators who want to be on both lists can sign up for both; combining the lists might simplify things slightly but could also result in more operators needing to be contacted even though they will turn down the work. Keeping the lists for 4 weeks provides some simplification for the Employer. The 2 hour exemption period is reasonable, and fits better with how much notice employees need in order to report for work. The Employer's proposal for avoiding all premium time including overtime would create too much uncertainty in how the RWL would function, since this RWL work will normally be on overtime. However, avoiding spread time is reasonable and should be manageable.

Number of Part-time Employees: Section 19.02

Section 19.02 provides that the Employer can use up to 20 part time operators. This is currently about 10 percent of the number of full time operators, which is about 200. The Employer proposed amending this to allow the number of part time operators to rise to 20 percent of the total number of operators. The Union proposed amending the language to allow 10 percent of the number of full time operators (i.e. the number would rise as the bargaining unit grew.)

The use of part time operators gives the Employer some flexibility and considerable cost savings. The part time operators receive few benefits – e.g. no health insurance, a limited amount of holiday and vacation pay (Section 19.06). Historically, most part time employees have later become full time employees.

The CATA contract limits the number of part time employees to 31% of the number of full time employees. The Ann Arbor contract allows up to 15% of the total number of employees to be part time employees. Both the CATA and Ann Arbor contracts provide part time employees with more benefits than are provided under the ITP contract. The Kalamazoo contract limits part time drivers to 33% of the number of full time drivers.

Recommendation: amend Section 19.02 to provide that the number of part time operators will not exceed 15 percent of the full time operators.

Reasoning: the limit has been 20 part time operators since at least 2002 when the transit operation was considerably smaller (per 2002-2005 CBA). The added flexibility could help with scheduling issues. The comparables generally allow more part time operators. Part time work has historically been a stepping stone to full time work, and there is no reason to think this would not continue to be true.

Part time hours restriction – Section 19.05

Section 19.05 restricts the hours for part time employees to no more than 5-1/2 hours per day on any weekday, and no more than 26 hours per week (defined as Monday through Saturday). Sundays do not count toward the weekly limit. Exhibit 30 showed that most of the part time operators had fairly regular runs during the week which stayed within the 5-1/2 hour limit. Few of them work Sundays, and many are close to the 26 hour maximum.

The Employer proposed removing the daily limit, and increasing the weekly limit from 26 hours to 29 hours including Sunday. The Union proposed keeping the 5-1/2 hour daily weekday limit and the 26 hour weekly limit in place, but including Sunday in the 26 hour weekly limit.

The CATA contract sets a 30 hour weekly limit and a 6-1/2 hour daily limit. The Ann Arbor contract has a more complex provision with different classes of part time operators. The Kalamazoo contract does not set hourly limits for part time operators.

The Employer argued that the increased availability of part time operators could assist with staffing runs while full time operators were on vacation, including 8-hour increment vacations.

Recommendation: accept the Employer's proposal.

Reasoning: this will permit more scheduling flexibility; for example, permitting a part time operator to take an 8-hour run when a regular operator has requested an 8-hour increment vacation. (The Extra Board operators are guaranteed minimum hours under Section 9.02, so the Employer will still have financial incentives for providing them with a full week's work.)

Run Restrictions for part time operators – Section 19.07

The Union proposed a minor change to Section 19.07, to clarify it. The Employer opposed the change. It is not clear to me that the proposed change would clarify this section, and I am therefore not recommending it.

Utility and Janitorial Employees: Sections 20.13, 20.16, and 6.01

The Employer proposed deleting the entries in the wage schedule for utility and janitor positions, deleting Section 20.13 which defines these positions, and deleting the first paragraph of Section 20.16 which includes provisions for these positions. The Union opposed these deletions.

The testimony indicated that the utility and janitor positions have not been filled for many years. Instead, ITP has subcontracted out certain of the re-fueling and cleaning duties which are listed in those job descriptions. Section 6.01includes a note which recognizes that these positions have not been filled; this note has been in the parties' contract since at least 2002.

Recommendation: delete these provisions as proposed by the Employer, but add language confirming that should the Employer ever hire such employees in the future they will be in the bargaining unit.

Reasoning: removing these provisions from the contract will not prevent the Union from demonstrating, if necessary, that they were historically in the bargaining unit.

Technician Vacancies – Section 20.16

The Employer proposed renaming Section 20.16 from Vacancies to Technician Vacancies, deleting the first paragraph, and retaining the second paragraph. The Union proposed re-writing Section 20.16 so that it would give current ITP employees a preference in filling maintenance department vacancies, including facilities positions, if they could demonstrate qualifying skills within 90 days.

ITP currently has 4 facilities employees, who are paid under the maintenance employee pay scale, but whose titles and duties are separately described in Appendix 1. Their skills and work is very different than that of the mechanics who work on the vehicles. The testimony indicated that the Employer prefers to hire facilities technicians at higher skill levels who already hold certifications which are unique to facilities, such as air conditioning systems.

Recommendation: adopt the Employer proposal.

Reasoning: the skill sets are very different, even between the vehicle mechanics and the facilities technicians. An employee who has the appropriate skills would not be prevented from applying for a position in a different department (i.e. facilities).

COPE - Section 2.03

Section 2.03 currently provides that bargaining unit members can authorize ITP to deduct their union dues and assessments from their pay and transmit them to the Union. Section 2.03 has also included COPE, the Committee on Political Education, in this authorization. The testimony indicated that the Union has used COPE monies to promote

transit issues, and it used its general fund monies to promote passage of the recent millage increase.

It was undisputed that on June 30, 2011, the Michigan Supreme Court issued a decision which held that a public employer who withheld political contributions would be in violation of the Michigan Campaign Finance Act (MEA v. Secretary of State, 484 Mich 194). The Employer discontinued the COPE withholding in compliance with this decision. The Union agrees that including COPE in the withholding provision is not enforceable at this time.

Both parties agreed to delete the reference to COPE from the first paragraph of Section 2.03. The Employer proposed to add a provision that the COPE deduction would be reinstated if the Michigan Campaign Finance Act were changed to allow this. The Union proposed a slightly different provision, that the Employer would deduct voluntary COPE contributions "to the extent not prohibited by law."

Recommendation: adopt the Employer's proposal.

Reasoning: The difference between the parties' proposals is not significant. The Employer's proposal better reflects the current status of the law.

Subcontracting – Section 3.02

The parties added a subcontracting provision to their contract in 2005. Section 3.02(A) gives the Employer the right to subcontract demand response service; this portion of ITP's former operations has been sub-contracted, to MV Transportation, Inc. The contract also includes Section 3.02(B), concerning sub-contracting of maintenance work, which reads as follows:

> The Authority may subcontract maintenance work when the work cannot reasonably be accomplished in-house. Prior to subcontracting maintenance work, the Authority will meet with the Union and demonstrate that the particular work cannot be reasonably performed in-house. The Union will not withhold its consent for subcontracting that cannot reasonably be performed in-house. Failure to provide prior notice, to seek Union consent or demonstrate reasonable inability may be grieved through the grievance procedure.

The Employer proposed adding the following paragraph to Section 3.02(B):

> The parties understand and hereby acknowledge that there are times when maintenance staff are not immediately available, trained, or hold the necessary licenses/certifications to safely and/or efficiently perform repairs or assist with a maintenance issue and that, during such occasions, the Authority is authorized to seek assistance from outside entities or current contractors (such as lawn care, certain vehicle repairs, facility repairs and construction, janitorial services, and the occasional assistance of the staff of the fuel lane provider).

The Union opposed this language, and argued that it would allow the Employer to cease staffing whole shifts and then use sub-contractors because the maintenance staff was not "immediately available."

The Employer has sub-contracted janitorial work to JT Janitorial for many years. This work has included cleaning and re-fueling the buses. The Employer has also sub-contracted grounds work, previously with Care Free Lawn Service, and more recently with Summit Landscaping.

The testimony indicated that the parties have had a number of disputes recently over sub-contracting issues, including, for example, whether JT Janitorial employees should be jump starting buses.

The sub-contracting provisions in the contracts of the "comparables" vary considerably. For example, the Ann Arbor contract includes the following: "The Employer shall have the right to subcontract the grounds keeping, snow removal, and other maintenance external to the building and other work which is deemed to be beyond the

expertise of the Facilities Maintenance Person or which would require forces in excess of normal staffing levels." The Kalamazoo contract permits the employer to sub-contract work "which, in its judgment, it does not have the available workforce, proper equipment, capacity or ability to perform or cannot perform on an efficient or economical basis."

Recommendation: retain the current Section 3.02(B) language.

Reasoning: Section 3.02(B) already provides for sub-contracting maintenance work "which cannot reasonably be performed in-house." It appears that the parties have not been using the procedure which is provided in Section 3.02(B). This section provides that the Employer will meet with the Union and demonstrate that the work cannot reasonably be performed in-house. It also states that the Union "will not withhold its consent" for sub-contracting work which cannot reasonably be performed in-house. The parties should use the procedure already contained in Section 3.02(B). If the Union refuses to give consent for work which the Employer believes "cannot reasonably be performed in-house," then either party would have the right to take this to arbitration for a decision.

No Strike Clause – Section 5.02

The parties' contract already includes a short no-strike clause. Under Michigan law, IPT's employees are prohibited from striking, because they are public employees. The Employer proposed a greatly expanded no-strike clause. The Union agreed to a modest expansion of the no-strike clause, but objected to the Employer's proposal.

Many of the comparables have somewhat expanded no-strike clauses, including CATA, Ann Arbor and Kalamazoo. None of those provisions are anywhere near as broad as what was proposed by the Employer here.

Recommendation: adopt the language proposed by the Union.

Reasoning: the Employer's proposal overreaches. It includes provisions which are highly unusual. It is not reasonable to expect the Union to agree to these provisions. While it might be possible to draft an intermediate provision similar to some of the comparables, at this late stage I am not recommending that the parties spend further time and effort on this issue.

FMLA/ Unpaid Leaves – Article 21

Article 21 already contains a very brief Family Medical Leave Act (FMLA) provision, which references the Act but does not spell out the details. Article 21 also includes a general Medical Leave section. The Employer proposed some changes to the general Medical Leave section, and the parties reached agreement on those changes. The Employer also proposed expanding the FMLA section to provide more detail. The only real area of dispute was over the Employer's proposal to require employees to use available paid leave including vacation during FMLA leave. In response to the Union's objections, to Employer modified its proposal somewhat, so as not to require employees to use their 8-hour increment vacation days during FMLA leave. (The current contract provides that employees with at least two weeks of vacation can use one week in 8-hour increments.)

The Employer has already been requiring employees to use available paid personal leave during FMLA leaves. Full time employees receive 56 hours (i.e. about 7 days) of paid personal leave per year.

Among the comparables, CATA allows but does not require employees to use their vacation and floating holidays during FMLA leaves. The Ann Arbor contract does not specify that employees need to use vacation days. The Kalamazoo contract does not have an FMLA provision.

The Union argued that the Employer's proposal would have an uneven impact on employees, depending on whether the employee had already had their vacation or not.

Recommendation: do not require employees to use their vacation for FMLA leave.

Reasoning: the Employer already requires employees to use their paid personal days for FMLA leave. Most of the vacation days are scheduled far in advance (in November for the coming year, for operators), and it is likely that employees will have made vacation plans with their families. The Employer can combine pre-scheduled vacations into vacation relief Extra Board schedules.

Zipper Clause/ Intent and Waiver – new Article 22

The parties' current contract does not include a "zipper" clause. Both parties proposed language for a zipper clause. The Employer entitled its provision "Intent and Waiver." The first paragraph of the Employer's proposal is similar to the Union's proposal – they both provide that for the life of the contract neither party will be obligated to bargain collectively concerning any subject or matter which is covered in the contract, or was known to the parties, or which could have been known by reasonable diligence.

The Employer's proposal, however, includes a second paragraph which goes much further and includes, among other things, this sentence: "No past practices shall be binding on the Authority during the duration of this Agreement, unless reduced to writing

and signed by the parties." The Employer's proposal also states that the collective bargaining agreement shall be the "sole source in any and all rights and claims which may be asserted."

The Employer was trying to address the fact that the Union has raised past practice as an argument in several grievances. The arbitrators have applied general arbitration principles to determine whether the asserted practice was a binding past practice. In each case, the arbitrator determined that it was not a binding past practice. The Employer recognizes that the party asserting a binding past practice has a high burden of proof.

None of the comparables have a provision which would prohibit the parties from asserting past practice.

Recommendation: adopt the Union's proposal.

Reasoning: the Employer's proposal goes too far. The Employer has itself argued past practice in responding to some grievances (e.g. subcontracting). It is not realistic to try to identify and reduce to writing all past practices. The statement in the Employer's proposal that the contract is the "sole source" of any and all rights or claims also goes too far. For example, the Section 13(c) Arrangement is another source of rights and claims. Benefit plan documents, and personnel policies, are other examples.

Arbitrator Selection Process – Section 4.04

The parties agreed to several changes in the manner of selecting arbitrators for grievances: using the Michigan Employment Relations Commission (MERC) instead of the Federal Mediation and Conciliation Service (FMCS); and, obtaining a list of 7 arbitrators instead of 5. The Employer proposed several other changes which the Union

did not agree with: giving either party the right to reject an entire list; and, requiring the party pursuing the grievance to always go first when striking names from the list of arbitrators.

The contracts of the "comparables" have less detail than what has already been included in Section 4.04, often just specifying which agency will be used.

The Employer argued in its brief that the FMCS rules allowed for the rejection of an entire panel. However, FMCS Rule 1404.11 (d) only allows for a second panel upon the parties joint request or if that is provided in their collective bargaining agreement. The parties' previous contract specified using FMCS, but did not give either party the right to reject a whole panel.

Recommendation: adopt the Union's proposed language.

Reasoning: the new language already gives a choice of 7 arbitrators instead of 5, and switching to MERC increases the likelihood that the arbitrators will be from Michigan and the parties will have information about them. Giving both parties the right to reject a whole panel could cause considerable delay, especially if first one party and then the other exercised that right. The Union will normally be the party pursuing the grievance, so the Employer's proposal would give it an advantage in always making the final selection. The Union's proposal concerning alternating is more even-handed.

Authority of the Arbitrator – Section 4.06

The Employer proposed extensive modifications to Section 4.06. The Union proposed retaining the existing language.

Section 4.06 already includes a provision that the arbitrator "shall not add to, detract from, ignore or change any of the terms of this Agreement." This type of provision is common, including among the comparables.

The Employer proposed extensive additions to the limitations placed on the arbitrator. In my experience, limitations of this type are highly unusual. None of the comparables have language like what the Employer proposed.

The Employer also proposed adding a paragraph which would require a bifurcated hearing whenever an issue of arbitrability is raised. Of the comparables presented by the Employer, only the Saginaw transit system has a provision on arbitrability; that provision allows the arbitrator to decide whether to hear the merits of the case at the same hearing.

The Employer also proposed new language to limit the retroactivity of arbitration awards to 14 days before the grievance was submitted in writing. Many of the comparables have no provision on retroactivity; others specify that back pay is limited to one pay period prior to the filing of the grievance.

Recommendation: retain the existing language.

Reasoning: The proposed changes are not necessary to solve any existing problems. It is unreasonable to expect the Union to agree to the language limiting the authority of the arbitrator – the proposed language would be more appropriate as closing argument than contract language. The retroactivity proposal is too broadly worded and could have other consequences besides limiting back pay. The arbitrability proposal could well result in more hearings and less efficient handling of arbitration proceedings. A provision on arbitrability like the Saginaw provision would be acceptable, but is not actually necessary as most arbitrators would proceed in this manner in any event.

Exclusive Forum – new proposed Section 4.10

The Employer proposed a new provision which broadly states that disputes between ITP and the Union and the employees would be resolved exclusively through the grievance and arbitration procedure. The Union opposed this. The current contract does not have such a provision.

The Employer is attempting to address issues such as unfair labor practice claim (ULP) being filed with MERC addressing some of the same issues as a grievance. Generally, MERC will hold a ULP in abeyance pending the outcome in the grievance arbitration, if the ULP involves contractual issues.

The CATA, Ann Arbor, and Kalamazoo transit systems do not have a provision such as the Employer has proposed. The collective bargaining agreement between MV Transportation and ATU does contain a more narrowly drafted provision.

Recommendation: not adopt proposed Section 4.10.

Reasoning: For one thing, it is very questionable whether the Union has the right to foreclose its members from pursuing statutory claims. The Employer acknowledged that its proposal had some problems.

Statutory Mandate – Emergency Manager Clause

In 2011 the Michigan Legislature amended the Public Employment Relations Act to require that collective bargaining agreements for public employees include a clause that recognizes that an emergency manager who is appointed under law will have the authority to reject, modify, or terminate the collective bargaining agreement (MCLA 423.215(7)). The Employer proposed a clause to comply with this requirement.

Recommendation: include the clause proposed by the Employer in the contract.

Reasoning: It tracks the statute and is now required.

Management Right to Assign Work – Section 20.12

Article 20 of the contract contains provisions which specifically cover maintenance personnel. There are about 30 maintenance employees, most of whom are mechanics. Section 20.12 currently includes this provision: "The Authority shall determine how many of its employees are needed in each of its classifications each of its work shifts, including days off."

The Union proposed adding the following provision to Section 20.12: "Maintenance personnel shall be present during operational hours." The Employer opposed this. At the present time, the Employer is not scheduling maintenance mechanics to work on Saturday afternoons, Saturday nights, Sunday mornings, or Sunday afternoons. Up until about a year ago, the Saturday afternoon shift was being staffed.

The CATA, Ann Arbor, and Kalamazoo contracts do not have a provision such as that proposed by the Union.

The Employer argued that such a clause would be contrary to the Management Rights clause. The Union argued that such a clause was necessary to prevent further erosion of bargaining unit work.

Recommendation: do not adopt this proposal.

Reasoning: the testimony indicated that mechanical repair work which accumulates over the weekend is tackled by the shift coming on duty Sunday night. Because service is lighter on Saturdays and Sundays, there are buses which are not in use,

and these can be used to replace any buses which have mechanical problems. Eliminating the Saturday afternoon shift has created some friction between the parties. However, requiring the Employer to staff four additional shifts would not be a cost-effective solution.

Dual Class Employees

The Union proposed eliminating the use of "dual class" employees. The Employer has had a practice of selecting up to four bargaining unit employees to fill in for dispatchers or road supervisors on an "as needed" basis. These dual class employees are operators who have regular runs they have selected as operators. When a dual class employee is needed to fill in for an absent supervisor, that dual class employee's run needs to be covered by an extra board operator or a volunteer from the revolving work list.

The Union argued that the effect of this has been to reduce the pool of available operators. That, in turn, has impacted the ability of employees to take time off (i.e. denial of 8-hour increment vacation requests.) The Union also argued that it caused friction within the bargaining unit, for example, if a dual class employee reported something which could result in discipline for another bargaining unit member.

The Employer emphasized that the use of dual class employees has allowed it to identify prospective supervisors. Mr. Pouget testified that 10 of the 11 current supervisors had at one time been dual class employees. The dual class employees normally work full time as supervisors for three weeks while they are being trained. After that, they are used as supervisors when a supervisor is off work or at a meeting. Mr. Pouget testified that some of them prove themselves capable of being supervisors within the first 90 days, but others take 6 months or more, and some turn out not to have the ability. The Employer

presented as an exhibit a document entitled "Guidelines for Dual Class Program," which was dated April 13, 2001 (Ex. 54). This document states that an employee will not function in dual class status for more than 1,000 hours in a 12-month period. It also states that dual class assignments will not be made if the number of full time operators is 125 or less.

Article 8.02 of the current contract provides that employees "transferring" to non-bargaining unit positions will have 90 consecutive calendar days to return to the bargaining unit without loss of seniority. (A tentative agreement would extend that to 180 days.)

Recommendation: do not eliminate the dual class employees.

Reasoning: although there are some problems, the positives outweigh the negatives. The parties can work on solutions to the problems instead of eliminating the use of dual class employees.

Memo Book

The Union proposed the elimination of a looseleaf "memo book" that at one time was kept in the drivers' room. The testimony indicated that the previous transportation manager (who left ITP in 2010) had kept such a notebook with policy memos which had been issued over the years. At one time, this memo book may have included some older memos which had been superseded by more recent policies. In 2008, ITP completed a process of updating its employee handbook. Part of that process involved going through the memo book and the previous (1998) handbook, incorporating newer memos into the new handbook, and removing outdated memos.

Mr. Poulet testified that the current transportation manager is not keeping a memo book in the drivers' room. He testified that the memos were intended as reminders or guidance on new procedures, and he was not aware of any employee being disciplined solely on the basis of a memo.

Recommendation: that the Union withdraw this proposal.

Reasoning: the "memo book" as such is no longer being used.

Retro Pay / Bonus

The U.S. Department of Labor (DOL) concluded that the enactment of PA54 did interfere with the parties' obligations under federal transit law and under their Section 13(c) Arrangement. The DOL also concluded that it did not have statutory authority to award damages. The DOL stated that any claim for damages might be actionable under the parties' Arrangement and/or under state law. It recommended that the parties continue to bargain, and attempt to reach a mutually satisfactory agreement. (E1 ex. 59; U1 ex.53)

The process provided under the parties' Arrangement would be binding arbitration under paragraph 15, rather than fact finding under paragraph 16. The parties agreed that the issue of damages for breach of the Arrangement is separate from the rest of this fact finding procedure.

Recognizing this distinction, I am not going to make a formal recommendation concerning how to resolve this issue. I will make some suggestions which may aid the parties in their negotiations concerning this. I think the parties should try to resolve this issue as part of their overall resolution of their contract. Given the Employer's objections to individually calculated "signing bonuses," the parties should explore a more general

solution. It was my hope, in the way I structured my health insurance recommendation, that this might help narrow the gap between the parties.

PA 54 Issues for New Contract

A remaining issue is how to structure the new contract so that the parties are not dealing with the same PA 54/ Section 13(c) conflict again at the expiration of that contract.

The DOL determined that the parties should supplement their Arrangement with a document designed to address future PA 54 issues. The DOL attached a "Supplemental Employee Protections" document to its letter of November 2, 2011. This Supplement would require the parties to begin bargaining at least 6 months before the expiration of a collective bargaining agreement. If agreement was not reached by 7 days before the expiration date, the parties would enter into an "interim successor agreement" while they continued to bargain. The Michigan Attorney General's Office issued an opinion letter indicating that such interim agreements would be lawful (U1 exhibit 57). To date, ITP has not agreed to accept this Supplement to the parties' Arrangement; this has resulted in the DOL holding up federal grant funds (U1 exhibit 53).

Other Michigan transit systems have faced the same issue. CATA and its union, ATU Local 1039, agreed that they would enter into a "short-term bridge successor agreement" if they had not agreed upon a new contract prior to the expiration of their current contract. The short-term agreement would incorporate the terms and conditions of the current contract, and any other terms and conditions they had agreed upon (U2 Ex 16c).

Many other Michigan transit operations have also agreed that they will enter into short term successor agreements to avoid a hiatus between contracts.

I recognize that the Employer is not convinced that this is an appropriate solution to the problem. The Employer also continues to question whether the DOL was correct in determining that PA 54 interferes with employees' rights under federal law. The Employer argued, for example, that PA 54 did not change the "status quo," it merely defined the status quo. I did not find this argument to be a very persuasive. If the contract provided that employees would pay 5% of the health insurance premiums, it seems pretty clear that the status quo was changed when this was increased to over 9%.

I think the parties should explore modifying the Supplement proposed by the DOL, to add a provision that any short-term interim agreement will include such contract modifications as the parties have agreed upon by that date (somewhat like what CATA has done). In this round of negotiations, the parties had reached tentative agreements on over 20 contract revisions prior to the June 30, 2011, contract expiration date. I would suggest that an interim contract which included those contract revisions would likely withstand a PA 54 challenge.

Another option would be to include a PA 54 provision in the new contract which specifically addresses what will occur as the parties approach the expiration of the new contract. For example, it could provide that the dollar amount (rather than percentage) which the Employer is paying for health insurance premiums during the final month of the contract will either be continued during any hiatus period, or will increase by a set dollar amount. While the PA 54 issues are complicated, I do think they are solvable if both parties are committed to finding solutions.

Dated: February 22, 2012

Kathleen R. Opperwall, MERC Fact Finder