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MICHIGAN DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

UNITED STEELWORKERS, LOCAL 9036

Union

and

MERC Case No. L-11-G-0854

SAGINAW TRANSIT AUTHORITY REGIONAL SERVICES ("STARS"), Saginaw, Michigan

Employer

FACT FINDER'S RECOMMENDATIONS AND REPORT

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I. INTRODUCTION

The United Steelworkers Local 9036 (hereinafter referred to as the "Union") and the Saginaw Transit Authority Regional Services (hereinafter referred to as the "Employer") began negotiating for a new collective bargaining agreement on or about August 23, 2011. The parties met approximately 11 times in an attempt to reach a new collective bargaining agreement. The contract, which was current at that time, had a termination date of September 30, 2011.

During the course of negotiations, there were at least three (3) and possibly four (4) attempts to ratify various tentative agreements. Unfortunately, none of those attempts were successful. During the course of negotiations the parties had the assistance of both federal and state mediators.

On January 5, 2012, the parties met in an attempt to reach an agreement. At that time, the mediators came forward with a mediator's recommended package (Union Exhibit 4), which the Employer indicated to the Union's representatives it would accept if the Union ratified the proposed package.

However, at the same time the Employer made known its position to the Union that if its members failed to ratify the package by January 13, 2012, the Employer would as a result of an impasse impose its last best offer (Employer Exhibit 1) as of January 15, 2012.

The mediators recommended package was rejected by the Union membership and the Employer did then impose its last best offer. According to the Employer, its last best offer projected a savings of approximately $228,318 of which $179,672 would be

achieved during the remainder of the fiscal/contract year which began on October 1, 2011 and terminated on September 30, 2012.

During the course of negotiations, the Employer had advised the Union that it was suffering a shortfall of approximately $559,355. It had further advised the Union that $232,000 of that shortfall would be realized by discontinuing Saturday bus service. As a result of discontinuing Saturday bus service, there was a lay-off of a number of employees including a mechanic.

The Union objected that a "C" mechanic with 22 years of seniority was laid off while an "A" mechanic with less seniority was retained. The Employer acknowledges that it imposed lay-offs based on seniority with the exception of the mechanic where certifications mandated that the more experienced individual be retained. The Employer further notes that if it had laid off an "A" mechanic, it would have achieved an even greater savings over the "C" mechanic's wages. However, the Employer determined that the "A" mechanic's certifications were necessary in order to have quality work performed.

The Employer maintained that the remaining savings were to be generated from both non-union and union groups of employees on a ratio of approximately 27 percent for non-union and 73 percent for union units of employees. Initially the Employer sought $238,444 in savings from the union-representative employees and $88,911 from the non-union employees. Subsequently, the Employer revised the amount sought from union-representative employees to the sum of $228,318. In addition, the Employer claims that the actual savings were reduced to $179,672 because it had not been able to generate any savings related to the amount of money sought in savings between

October 1, 2011 and January 15, 2012 during the course of negotiations and before the unilateral imposition of the Employer's last best offer.

It should be noted that the Union felt that the Employer had taken a position in which it was unwilling to have non-bargaining unit employees assume the same concessions as those which were being requested of the bargaining unit. According to the Union, this was most notably a reduction in PTO hours and the addition of co-pays when utilizing a medical insurance.

Thus, based upon the alleged Employer's unwillingness to make equal concessions to those being requested of the Union, its members began to question the Employer's need for concessions and despite numerous attempts by the Union's bargaining representatives to convey the sentiment of the bargaining unit, the Employer ultimately did not require similar concessions of all employees of the authority.

The Union notes that the Employer has taken the position that concessions are needed to maintain the solvency of the authority and that the failure to achieve the savings sought would result in a significant depletion of unrestricted net assets by 2015.

II. FACTUAL BACKGROUND

The Employer is a public transportation system for the urbanized Saginaw area. Its modes of transportation utilized approximately one and a half million miles per year. Approximately 2,700 people ride the Employer buses each day to work, doctor's visits, shopping or school. It also serves the handicapped, senior citizens and persons with disabilities.

The members of the Union constitute approximately 59 employees with an average salary of $28,058 for the fiscal year ending September 30, 2010. As previously noted the parties entered into extensive negotiations along with mediation but were unsuccessful from August of 2011 through January 13, 2012 to reach a new collective bargaining agreement.

The Union notes that most notably the differences between the parties constituted unwillingness on the part of the Employers non-union employees to suffer the same concessions as were being sought from the Union, most notably in a reduction in PTO hours and the addition of co-pays when utilizing medical insurance. The Union notes that in the past when such concessions were requested of the bargaining unit members to maintain the solvency of the authority, the concessions were also borne by all employees of the authority, including the non-bargaining unit employees and management as well. The Union notes that in the current situation, non-bargaining unit employees did not suffer a loss of PTO time and had no changes in their health care coverage other than the state required co-pays for premiums as mandated by Public Act 152 of 2011 which the Employer utilized for the purpose of

selecting the statutory provision which requires a 20 percent premium share contribution by the employees of the authority.

There are a number of issues which will be commented upon along with recommendations by the fact finder subsequently in this report.

The Employer in its background information notes that there were eight (8) employees who at one time were members of a bargaining unit as dispatchers and performing services who were represented by the SEIU. However, in October of 2010, those individuals became non-union and a part of the non-union group of employees. At that time there were approximately 22 non-union employees. As a result of the cost-saving measures undertaken by the Employer, two (2) positions within the non-union group were eliminated, reducing the number to 20. The Union, as previously noted, has approximately 59 members, some of which are full time and some of which are part time bus operators and mechanics.

The Employer maintains 50 vehicles and has annual revenue of approximately $7.5 million. It receives funding from the State of Michigan and from the federal government and receives a 3 mil property tax level for operations from property owners in the City of Saginaw. It also receives revenue from bus-rider fares and has some other revenue sources such as concessions and advertising as well as receiving certain grants regarding particular bus routes.

For every dollar expended by the Employer, it receives a maximum reimbursement of 30 cents from the State of Michigan. The State has a single pool of money used for reimbursement in the total amount of $166 million which is shared among all the transportation companies in the State of Michigan which receive state

funding. The 30 percent figure is the maximum but can be reduced depending on the allocations made by the State. When the Employer eliminates a dollar in expenses, it only saves 70 cents because it no longer receives the 30 cent reimbursement from the State.

The Union and Employer disagree on what would constitute adequate retained earnings. The Employer believes it should have retained earnings equal to approximately one year of the property tax levy for the City of Saginaw, which would be approximately $1.5 million. That amount constitutes 20 percent of the Employer's annual revenues. In addition, because of the timeframes in which the state and federal governments reimburse the Employer, there are 7 to 9 months of the year during which the Employer does not receive reimbursement and must use its unrestricted retained earnings in order to have a sufficient cash flow to pay its bills. The employer notes that if it did not utilize the retained earnings, it would have to borrow money from a bank in order to operate thereby incurring additional expenses in the form of interest charges.

III. EMPLOYER'S NEED FOR CONCESSIONS

The Employer states that but for its elimination of Saturday services and the imposed concessions upon the Union employees its unrestricted retained earnings would dwindle to the sum of $73,951 and its cash on hand would in fact be a negative $395,013 by the year 20155. The Employer is required under federal government guidelines to prepare a 3-year rolling projection of operating costs, capital expenditures, cash available and unrestricted retained earnings.

The Employer denies the Union contentions that its calculations on the necessary concessions were done in a haphazard manner and with no substantiation for the need for cuts. It claims that it gave the Union a number of financial exhibits during the course of negotiations and that there were additional financial exhibits given to the Union which it cannot remember. A witness on behalf of the Employer indicated that its Exhibits 10-24 with the exception of Exhibit 12, were all given to the Union during the course of negotiations and that all relate in one form or another to its finances. Moreover, the Employer concludes that those exhibits clearly establish its need for concessions. Accordingly, it rejects the Union contention that its calculations were performed in a haphazard manner and contrary to that assertion there was more than sufficient substantiation for the need for the concessions. The Employer further indicates that the need for concessions is further buttressed by the drastic step it took in eliminating Saturday bus service which directly affected the riders of the buses.

With respect to certain Union allegations regarding the former SEIU members who are now non-union employees, there was testimony that those individuals formerly received overtime pay in addition to their salary, but now, those individuals receive a

salary of $33,500 a year but do not receive overtime pay. Accordingly, the Employer maintains that they did not receive a salary increase.

IV. EMPLOYER'S CLAIM FOR EQUALITY OF SACRAFICE

The Employer believes that it has required an equality of sacrifice from its non-union and management employees. The ratio of concessions of 27.16 for non-union and 72.84 for union employees which were rounded to 27 and 73 percent were based upon the number of non-union and union employees. The Union has suggested that the ratio should be 32 percent for non-union and 68 percent for union employees. However, that was based on the 2009/2010 payroll and a calculation of the rates of pay for all of the non-union employees including the top 5 paid employees.

The Employer notes that the Union's calculation by its admission for 2009/2010 did not include the 2 percent increase received by the Union employees effective October 1, 2010. Nor did it reflect the fact that beginning on October 1, 2010, the non-union employees were subjected to a wage freeze.

VI. DISCUSSION AND RECOMMENDATION FOR SETTLEMENT OF ISSUES

A. DISCUSSION

Unlike Act 312 arbitration, the fact finding process in the State of Michigan is not binding upon the parties. Nor is there any statutory indication of factors which are to be considered by the fact finder with respect to his or her recommendation.

The only statutory authority for the fact finding process is found in Section 25(1)(2) of Act 176 of the Public Acts of 1939, as amended, which states:

> (1) When in the course of mediation under Section 7 of Act number 336 of the Public Acts of 19947, as amended, being Section 423.207 of the Michigan Compiled Laws, it shall become apparent to the Commission that matters in this agreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the Commission may make written findings with respect to the matters in this agreement. The findings shall not be binding upon the parties but shall be made public.
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> (2) A writing prepared, owned, used, in the possession of, or retained by the mediation panel in performance of an official function shall be made available to the public in compliance with Act 442 of the Public Acts of 1976.

Subsequent to the enactment of the Public Employment Relations Act, in 1969 the State provided for the compulsory arbitration of labor disputes in police and fire departments being Act 312 of the Public Acts of 1969. In that Act, which provides for binding arbitration unlike the fact finding in the current case, the legislature did in fact provide the arbitrators with factors to be considered including such factors as the lawful authority of the Employer, stipulations of the parties, the interest and welfare of public and the financial ability of the unit of government to meet those costs, comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions and employment of other employees

performing similar services and with other employees generally in the public and private sectors, the average consumer prices for goods and services, commonly known as the cost of living, the overall compensation presently received by employees, including direct wage compensation, vacations, holidays and other excuse time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received, if changes in any of the foregoing circumstances during the pendency of the arbitration proceedings provided for under Act 312, such other factors not confined to the foregoing factors 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 and recent amendments to that Act which provided among other items that special reliance should be placed upon the employer's ability to pay.

I believe that those factors along with such other factors as may become relevant should be utilized by the fact finder and have in fact been utilized by this fact finder with respect to the recommendations which follow. In addition, I believe that the tentative agreement of January 5, 2012 which was reached between the parties with the services of the mediation process should also be reviewed by the fact finder and where appropriate utilized as a basis for his recommendations in the instant case since that agreement although tentative was in fact satisfactory for both the employer and the union representatives. It is unfortunate from the fact finders point of view that the Union membership chose to reject that proposal which in turn caused the employer to impose in some instances more drastic concessions than would have otherwise been required.

B. POSITIONS OF THE PARTIES AND ISSUE BY ISSUE RECOMMENDATIONS OF THE FACT FINDER

1. Part-Time Employee Wages

The Employer as part of its unilateral imposed concessions reduced 6-full time employees to part-time status. According to the Employer on an annualized basis this generated a savings of $123,684. The Employer notes that it had initially proposed a reduction of 8-full time employees to part-time status.

The Employer notes that the Union representative, Ms. DeVore, during the course of her testimony acknowledged the Employer's need to utilize part-time employees and further indicated that the Union could agree to the utilization of part-time employees but felt that it needed greater clarity with respect to the usage of part-time employees.

The Employer believes that its part-time employees represent a significant cost savings which does not adversely impact the per-hour earnings of the remaining full-time employees. Insofar as further clarity is concerned, the Employer notes that the Union need only request a meeting with the Employer's representatives in order to work out the necessary details to achieve that degree of clarity. The Employer acknowledges that it imposed its last best offer and has a continuing obligation to bargain with the Union in an attempt to ultimately reach an agreement. The Employer states that it is ready to do so.

The Employer claims that the rate of pay for part-time employees of $13.92 per hour was the rate of pay in the prior labor agreement. The Union's position is that the rate of pay for part-time employees should be $16.12 per hour. The $2.20 per hour differential between the positions of the respective parties would represent an increased

cost to the Employer of $19,950 per year. Thus, its projected savings with respect to part-time employees would be reduced from $123,684 per year to $103,734.

It should further be noted that the Union has raised concerns regarding the number of part-time employees at any given time. The status of the part-time employees due to taking leaves of absence, as well as full-time employees taking leaves of absence, and in some instances part-time employees substituting for full-time employees results in a flexible situation in which the designated number of part-time employees of 6 may rise to 8 or be reduced to 4 depending upon the situation and the number of employees who are on a leave of absence be they part-time or full-time employees.

The Union notes that with the addition of part-time employees there was a complete loss of benefits for those employees which include pension, medical insurance, PTO, life insurance and short term disability as well as a reduction in the number of hours worked and an obvious reduction in the gross pay.

The Union further believes that the need for concessions with regard to the part-time bus drivers being instituted and the elimination of 6 full-time positions was not substantiated by the Employer. The Union further believes that the Employer's un-restricted retained earnings policy of the equivalent of one year's property taxes revenue results in an excessive un-restricted earnings policy.

The Union further believes that the Employer should not have reduced the full-time work force by taking 6 members and reducing them to part-time status. It believes that the language in the prior collective bargaining agreement referencing part-time work force contemplated new hires rather than the reduction of 6 full-time employees to

part-time status. The Union believes that by utilizing the prior language as well as its unilateral imposition, the Employer because of leaves of absence affected and continues to affect more than 6 members of its bargaining unit with part-time status.

(1) The Union would be willing to agree to the 6 part-time positions if the Employer added language which allows part-time operators to bid on full-time positions once openings occur, (2) that part-time positions are to be bid and awarded by seniority but if there are an insufficient number of volunteers then those positions are to be filled by the lease senior employees, (3) that the rate of pay be the same rate as the pay of full-time operators, (4) that the number of guaranteed hours should be no lower than 30 hours per week with overtime being paid for hours worked above 40 hours per week, (5) that pension time should be credited on a pro rata basis for all hours worked as part-time employees, (6) that all earned and current PTO time is to be honored with all hours worked on full-time to be counted toward the minimum number of hours needed for the next year's PTO allotment and that if minimum hours by part-time employees are not met for full allotment, then the allotment is to be pro-rated using 1800 hours as the number needed for full credit, (7) that all contractual holidays are to be recognized for part-time employees in the same manner as for full-time, (8) that the part-time employees are to maintain other contractual benefits including but not limited to leaves, bereavement leave and jury duty, and (9) that the part-time language contained in the prior collective bargaining agreement which was unilaterally removed by the Employer be reintroduced into a new collective bargaining agreement.

Based upon the factors previously here and above set forth, as well as the exhibits and testimony introduced during the hearing, it would be my recommendation

that the parties agree on contractual language which would allow part-time operators to bid on full-time positions if there is a vacancy and that part-time positions were to be awarded by seniority and if there are no volunteers then by forced reduction with those with the least seniority being required to fill the part-time positions.

Furthermore, pursuant to the mediator's tentative agreement of January 5, 2012, it would be my recommendation that the part-time bus operators numbering 6 would not have a 40 hour guarantee, would not obtain fringe benefits, but should be compensated at the rate of $16.12 per hour from and after January 1, 2013. In addition, the part-time operators who work in excess of 40 hours per week should receive and be eligible to obtain overtime payment for all hours in excess of 40 hours and should perform the duties of a part-time bus driver for a minimum of 30 hours per week.

In addition, it would be my recommendation that contractual holidays be paid per the full-time language set forth in Article 30 of the prior collective bargaining agreement for part-time drivers.

It would further be my recommendation that all earned and current PTO time should be paid and honored according to the PTO provisions of the collective bargaining agreement and that all hours worked in a calendar year in full-time employment should be counted toward the minimum hours needed to qualify for the following year's PTO allotment.

It would further be my recommendation that language be placed in a new collective bargaining agreement that full-time employees hired prior to November 1, 2011 who are converted to part-time employment shall not have their vesting in the pension plan affected. Rather, they shall retain whatever vesting rights they had in the

pension plan. In addition for those full-time employees who were not yet vested, they shall be allowed to continue to accumulate years of service as a part-time employee toward service credit for vesting purposes. Those provisions shall be as discussed and agreed by in the mediator's proposal and tentative agreement of January 5, 2012.

Further, with respect to the part-time employees, the employer does not pay the $1.25 per hour in pension contributions for each hour worked as it does for full-time employees and that payment should be continued for full-time employees but no payment should be made for part-time employees based upon the mediation proposal of January 5, 2012. With respect to vesting credits that the position of the Employer is hereby recommended since whether or not a part-time employee receives vesting credit is dependent upon the provisions of the steelworkers' pension fund. If in fact part-time employees do receive vesting credit under the steelworkers' pension fund, that procedure should be continued and the employer should continue to report to the fund the hours worked by the part-time employees in order for them to receive vesting credit.

With respect to the issue of PTO time, the Employer was willing as part of the mediator's proposal to grant part-time employees all earned and current PTO according to the PTO provisions of the prior collective bargaining agreement with the hours worked in a calendar year in full-time employment to be counted towards the minimum hours needed to qualify for the next year's PTO allotment. I know of no reason why that practice should not be continued and recommend that it be continued based upon the tentative agreement reached in the mediator's proposal of January 5, 2012.

Insofar as other fringe benefits are concerned such as bereavement pay, jury duty, life insurance and medical insurance, as well as short or long-term disability the

Union representatives had agreed to the elimination of those benefits for part-time employees in the mediator's proposal of January 5, 2012. I do not perceive that there has been a significant change in circumstances based upon the exhibits and testimony and, accordingly, recommend that the no fringe benefits proposal of the January 5, 2012 mediator's proposal be implemented with the exceptions hereinabove set forth.

2. Health Insurance Co-Pays

The Employer states that the Union has claimed that non-union employees have co-pays covered under their health insurance plan whereas the Union employees have to make co-pays. The Employer notes that in its mediator's package of January 5, 2012 the proposal provided for co-pays for emergency room visits in the amount of $50, for urgent care visits in the amount of $30 and for office visits in the amount of $30. Further, during the course of testimony according to the Employer, the Union representative indicated that the Union was comfortable having co-pays as part of the overall savings since it had originally submitted the co-pays as its own proposal.

The Union notes that there was an increase in premium based upon the legislation of 2011 (Act 152) wherein the Union membership is now required to pay 20 percent of the health insurance premiums. According to the Union, this represented a savings to the employer of $39,068. In addition, the co-pays for office visits, urgent care and emergency room resulted in an additional savings to the Employer of approximately $27,072 and the elimination of reimbursement for future retirees resulted in approximately $53,000 in savings according to the Union.

The Union understands that the 80/20 premium share split is a requirement of P.A. 152 and does challenge that specific item. The Union does not believe it is fair nor

equitable for the Employer to require Union members to add co-pays for doctor visits, urgent care and emergency room visits when the Employer has not required the same changes from its non-bargaining unit employees. The Union believes that the Employer could have achieved an additional $9,000 in savings had it required its non-bargaining employees to be subject to the same co-pays as are being required of bargaining unit employees. In addition, the Employer eliminated reimbursements for future retirees resulting in a savings of approximately $53,000. According to the Union, those reimbursements were added since the 2008 contract was negotiated as a way to maintain a level of benefits, keep employees whole and yet save money for the Employer. The Union further maintains that as such the language in the contract did not reflect the reimbursements for retirees and during the course of negotiations, the Employer had expressed to the bargaining unit that the language would need to be updated in order for the practice to be maintained.

The Union believes that it conceded over $53,000 with respect to that benefit but was not given any credit toward the $238,000 figure that the authority was looking for in concessions. Further, the Union believes that one of the Employer's witnesses testified that the $238,000 concession figure would have needed to be adjusted by $53,146 in order for the Union to receive credit for the concession since that figure was not included in the budget calculations.

The Union believes that in order to be fair and equitable the medical insurance should be exactly the same for both non and bargaining unit employees. According to the Union, non-bargaining unit employees share in the premium costs in the same manner as do Union employees but there are no deductibles.

According to the Union, if the authority can afford to not require co-pays for non-bargaining unit employees the situation must not be as grave as the Employer alleges and Union members should not be treated as second class citizens but rather should be treated the same as the non-union members. It is my belief that the exhibits, testimony and factors (hereinabove set forth) lead to the conclusion and recommendation that the proposal for health care as set forth in the tentative agreement with the mediators of January 5, 2012 should be implemented. Accordingly, in addition to the 80/20 split of the medical coverage premium, it would be my recommendation that the plan include full family coverage including dependents between the ages of 19 and 26 and provide for 100 percent of co-pays as set forth in that proposal which are to be paid for by the employee (er equal $50, uc equal $30 and ov equal $30) and further that the health care include the same vision care program that is in effect for non-union employees. In addition the dental benefit plan should include 100 percent coverage for class 1 services, 75 percent coverage for class 2 services and 50 percent coverage for class 3 services. Further, the Employer should agree to add a hearing aid plan to the benefit package and the parties should reach agreement that there will be a $5 generic and $10 name brand co-pay for prescription drugs. The authority shall also have the right to unilaterally switch health insurance carriers so long as there is no reduction in the level of coverage and benefits to the employees.

3. Shift Premiums

The Union believes that the shift premium of 45 cents per hour should not have been eliminated from bus operators who work after 3:30 p.m. According to the Employer the savings for the shift premiums would represent approximately $10,300 in

savings. The Employer and the Union agree that shift premiums for mechanics whose shift starts at or after 3:30 p.m. should be maintained. The Employer maintains that if the shift premium for bus operators were to be reinstated, the Employer would have to obtain $10,300 in savings from Union employees from a different source and the Union has not offered any alternatives.

The Union notes that in the prior collective bargaining agreement, a shift premium of 45 cents per hour was given to bus operators for all hours actually worked between 3:30 p.m. and 12 a.m. and a 50 cents per hour premium was given for all hours actually worked between 12 a.m. and 5 a.m. The Union notes that currently no one works between 12 a.m. and 5 a.m. but almost all of the drivers work some hours after 3:30 p.m.

The Union further notes that the Employer schedules drivers in a manner which requires many of them to utilize all of the hours on a split basis between 6 a.m. and 9 p.m. This is utilized by the employer in order to meet the 40 hour guarantee of work per week. Since the scheduling is as time constricting as it is, the Union believes that the shift premiums should be continued for all bus drivers.

It certainly is not unusual to pay a shift premium for hours of work which fall outside of the normal daylight shifts of work which may begin at 6, 7 or 8 a.m. and terminate 8 hours later. However, that is not the situation at this employment location. The bus drivers do not normally work 8 consecutive hours in a 40 hour week. As noted by the Union, they work a split shift and often the split shift of 8 hours occurs within a 15 hour period of time.

This clearly represents a convenience to the Employer since it does not have to schedule two shifts, but rather can utilize one shift of employees by utilizing them for example from 6 a.m. to 10 a.m. and then 2 p.m. to 6 p.m. Thus, the employees are required to be on standby and/or scheduled duty for far more than a normal 8 hour shift. If the Employer does not wish to utilize more than one shift, it would appear that the employees should be compensated with a shift premium for the inconvenience of having to be on call for hours in excess of a normal straight 8 hour shift.

It would not appear that this issue was a part of the mediator's recommended tentative agreement of January 5, 2012.

However, based on the factors hereinabove set forth, as well as the testimony and exhibits of the respective parties, it would be my recommendation that the shift premium language contained in the collective bargaining agreement which expired in 2011 should be reinstated as set forth therein with a 45 cent per hour shift premium paid to bus operators for all hours actually worked between 3:30 p.m. and 12 a.m. regardless of when their shift began and a premium of 50 cents per hour for all hours actually worked between 12 a.m. and 5 a.m. regardless of when their shift actually began.

4. Paid Time Off

Initially it should be noted that the mediator's proposal of January 5, 2012 provided for a reduction of PTO of 16 hours per service level with the modification of the table provided for in Article 28, Section 3 reflecting that change. Both the Employer and the Union representatives agreed to that change in the tentative agreement but as previously noted the tentative agreement was rejected by the Union membership. The Employer then imposed a 40 hour reduction in paid time off which it asserts generates a

savings of $21,744. In response, the Union seeks to have the 16 hour reduction in paid time off substituted for the 40 hour reduction which, of course, would generate a savings of only 40 percent of the $21,744 figure. Thus, the savings would amount to the sum of $8,697.

The Employer notes that the Union position was that they preferred the reduction in paid time off as opposed to an across the board reduction of wages which in fact would have equaled the same savings. The Union further objected according to the Employer to the 40 hour reduction because the Union felt that that would be too great a burden on newly-hired employees who receive only 120 hours of paid time off in a combination of vacation, sick and personal time. Those employees then would have only received 80 hours of paid time off. An employee with 25 years or more of service receives 320 hours of paid time off and if the reduction were implemented into the future, they would continue to receive 280 of paid time off. However, the Union opposed a larger reduction in paid time off for more senior employees and a lesser reduction of paid time off for junior employees.

The Employer maintains that the Union position that there should be a reduction in paid time off for non-union employees which would generate more work time is not reasonable since the work of non-union employees is performed by those employees with whatever hours are available to them and there are no replacement employees to do their jobs in contrast to the Union representatives thus, there would be zero cost savings for the Employer with respect to the non-union bargaining unit.

With all due respect to the position of the Employer, as well as its exhibits and testimony it did not offer a reasonable rationale why it would have agreed to a reduction

of 16 hours of PTO in the mediator's proposal and tentative agreement of January 5, 2012 but when the bargaining unit rejected the proposal it imposed a reduction of 40 hours. The mediator's proposal did not indicate a reduction in the hourly wages for the full-time employees and so it is somewhat mysterious that the Employer was willing to agree to the reduction of 16 hours of PTO time until the bargaining unit rejected the mediator's proposal. It appears that the imposition of the loss of 40 hours of PTO time was more related to being punitive than to a cash savings to the Employer insofar as the Employer was concerned.

Accordingly, it would be my recommendation that the proposal contained in the tentative agreement of January 5, 2012 be implemented from and after January 1, 2013 and that the PTO hour reduction for the fiscal year from October 1, 2012 to September 30, 2013 be amended to reflect a reduction of 16 hours rather than 40 hours of PTO time.

5. Cash In Lieu of Health Insurance

According to the Employer, it is the Union's position that the Employer should have continued the cash in lieu of health insurance so that employees could opt-out which in turn would generate a savings estimated by the Union to be $31,768. However, the Employer notes that if no one takes the cash in lieu of health insurance there are no savings. Currently there were only 4 employees who took advantage of the "opt-out" provision and two of those employees were married to other employees in the bargaining unit. Accordingly, those employees were covered under their spouses health insurance at the Employer's cost but still received the opt-out payment. It is because of this practice that the Employer wished to discontinue the opt-out. The

Employer believes that the opt-out payment elimination currently produces about $9,400 in savings. The Employer notes that by eliminating the opt-out cash in lieu provision it has maintained a definite savings; however, insofar as the Union position is concerned, there is no certainty of any savings whatsoever.

According to the Union, the annual premium rates after an adjustment for 20 percent employee premium share are$3,342 annually for a single employee, $8,023 annually for a married employee and $9,694 annually for an employee with a family. When one calculates the cash in lieu payment for an employee opting out of the plan, the Employer would still save $2,102 annually for a single, $5,543 annually for an employee who is married and $6,894 annually for an employee with a family.

The Union believes that there are currently 5 employees in the bargaining unit who take cash in lieu of health coverage and that this represents a savings to the Employer of $31,768 annually. Thus, the Union believes that the provision is a desirable one and should not have been eliminated unilaterally by the Employer.

It should be noted that once again there is nothing in the mediator's proposed tentative agreement of January 5, 2012 with respect to the elimination of the cash in lieu of insurance incentives. There is nothing unusual about that type of provision in a collective bargaining agreement. No one can argue with the fact that an Employer who pays a small proportion to an employee of what the monthly premiums for insurance would be in order to have the employee opt-out of the plan does not save money. Clearly, in this instance the Employer should in fact give employees incentives to take the cash in lieu based upon the savings it could effectuate even after the cash in lieu payments. However, there is some merit to the Employer's position that it does not

effectuate much in the way of savings for employees who are married to other employees in the bargaining unit one of whom takes the insurance coverage and the other of whom opts-out of the insurance coverage becoming his or her spouse's dependent and still obtain the cash in lieu payment. I believe and hereby recommend that the fair and equitable settlement of this issue would require married employees to select one of the two as the insured with the other being covered as a dependent or married partner however the insurance company words that provision and in that case the partner who does not have the insurance but rather is listed as a dependent or spouse should not be eligible for the cash in lieu payment. All other employees who opt-out of the insurance because of coverage either with another employer or through a spouse who has coverage through another Employer should continue to be eligible for the cash in lieu payment. I believe that this recommendation satisfies both the Union desire to continue it for persons who actually save the Employer money and the Employer's concerns that there is no savings when there are married employees in the bargaining unit or for that matter, one employee in the bargaining unit and another in the non-union unit. I do not recommend an increase or decrease in the amount of the payment.

6. Wages

According to the Employer it has proposed a 3 year wage freeze. The years would be related to the fiscal years of the Employer which commence on October 1, 2011 and ended on September 30, 2012 for the first year with the next two years commencing on October 1, 2012, terminating on September 30, 2013 and the final year commencing on October 1, 2013 and terminating on September 30, 2014. The

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employees did not receive increases for the years commencing on October 1, 2010 through September 30, 2011 and October 1, 2011 through September 30, 2012 with respect to non-union employees as well.

The Employer notes that there was agreement by the Union for a wage freeze for the three years of new collective bargaining agreement retro-active to October 1, 2011. However, the Employer notes that the Union in order for it to agree to the wage freeze wanted to insert a "me to" clause which would provide that if there were any increases in wages for non-union employees the Union would get identical increases. However, as the Employer notes, the Union was not willing to give a similar "me to" clause if there were decreases in the salaries of non-union employees. In addition, the Employer notes that the mediator's package of January 5, 2012 did not reference any "me to" clause as being sought by the Union at that time.

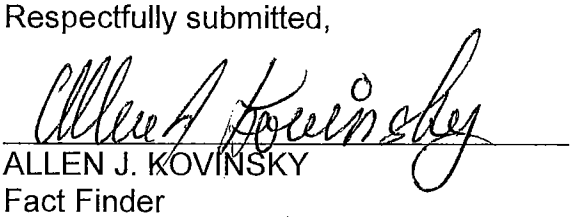
It would appear that the Union position is one of wanting its cake and eating it too. While the requested "me to" clause is not unreasonable with respect to wage increases, the position of the Union objecting to the same "me to" provision with respect to decreases is not reasonable. The Union has consistently maintained that it wants to be treated fairly and equitably in the same manner as the non-union employees. Accordingly, it would be my recommendation that the parties either agree to a three year wage freeze with no reference to "me to" language or in the alternative that the parties agree to "me to" language with respect to both any increases or decreases which may be imposed by the Employer on the non-bargaining unit employees. So that there is no misunderstanding, this would mean that if the non-bargaining unit employees received for example a 2 percent wage increase, so too would the members of this

bargaining unit. On the other, if the non-bargaining unit employees were to have imposed a 2 percent wage decrease a similar 2 percent wage decrease would be imposed upon the members of this bargaining unit. Should this not be acceptable to the Union and the Employer, then the alternative would be for a three year wage freeze with no "me to" language whatsoever.

VII. CONCLUSION

I wish to thank the parties for their cooperation in bringing this proceeding to a conclusion. They were agreeable to meeting within reasonable timeframes, setting a hearing date within a reasonable timeframe and concluding the hearing within a reasonable timeframe. Their exhibits, testimony and briefs were helpful to the fact finder in reaching his conclusions and recommendations and the parties are to be congratulated on their respective presentations.

Respectfully submitted,



ALLEN J. KOVINSKY
Fact Finder

Dated: December 4, 2012