MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY: **TEAMSTERS LOCAL 214**

- and -

RESPONDING PARTY: **GRAND TRAVERSE COUNTY**

MERC CASE NOS.:

L16 H-0801	(Health Department)
L16 H-0802	(86th District Court)
L16 H-0803	(General Employees)
L16 K-1048	(Central Dispatch)

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended) [MCL 423.1, et seq], and

Public Employment Relations Act (P.A. 336 of 1947 as amended) [MCL 423.201, et seq]

Fact Finder
Thomas L. Gravelle

Advocates
Employer Advocate: Peter A. Cohl
Union Advocate: Robert V. Donick

PETITIONS FILED:	December 12, 2016; Jan. 10, 2017
FACT FINDER APPOINTED:	March 9, 2017
SCHEDULING CONFERENCE HELD:	March 30, 2017
HEARING DATE HELD:	June 28, 2017
POST HEARING BRIEFS RECEIVED:	August 25, 2017
REPORT ISSUED:	September 25, 2017

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WITNESS LIST

1. Jody Lundquist, County Finance Director
2. Jennifer Dettaan, Deputy County Administrator
3. Thomas F. Meuzel, County Administrator
4. Heidi Scheppe, County Treasurer

1. INTRODUCTION AND BACKGROUND

The Employer, Grant Traverse County, is a semi-rural governmental unit in the northwest corner of Michigan's lower peninsula. Its major city is Traverse City. The County is a major tourist destination.

There are about 13 bargaining units in the County.

After negotiation and mediation for new collective bargaining units ("CBAs") failed to result in agreement, four Teamsters Local 214 (the "Union") bargaining units filed petitions for fact finding. These units represent employees in the County Health Department, the 86th District Court, Central Dispatch, and General Employees. MERC consolidated these four units for fact finding. Common issues and administrative efficiency support the consolidation.

There are about 180 employees in the four Teamsters bargaining units.

Other County bargaining units include an AFSCME unit and a COAM unit (both of which have agreed to new CBAs including a number of terms proposed by the Employer in the present case.)

2. STATUTORY CRITERIA

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

> When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement 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 disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R 423.137, explains the contents of the fact finder report as follows:

> Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:
>
> (a) The names of the parties.
>
> (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
>
> (c) Recommendations with respect to the issues in dispute.
>
> (d) Reasons and basis for the findings, conclusions and recommendations. ...

MERC has explained that "factfinding is an integral part of the bargaining process." County of Wayne, 1985 MERC Lab Op 244; 1984 MERC Lab Op 1142; *aff'd* 152 Mich App 87 (1986).

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties agree that except for the issues in dispute, they have agreed to the terms of the four new CBAs (of which the District Court Unit has already tentativily agreed).

4. ABILITY TO PAY

At the fact finding hearing, the Employer's financial condition was explored in depth with an emphasis on a massive unfunded liability under the retiree DB Plan and Employer liability for retiree health care benefits The Employer's financial condition is addressed below.

Several years ago, the parties agreed to replace their defined benefit pension fund with a defined contribution plan for new employees (and for existing employees who agreed to convert to the new DC plan). Existing employees were given the option of remaining in the DB Plan. This left the DB plan as an ongoing liability without employee contributions. Retiree health insurance premiums are an additional County liability. The Employer's post-hearing brief accurately summarizes the evidence of the expanding liability as follows (pages 1-5):

> In 1990 Grand Traverse County was 101% retirement funded. Now unfortunately it is down to 45% funded. If this is not addressed, the required annual employer contributions to MERS would increase by over $4 million by 2026. The yearly increases through 2019 would be approximately $550,000 per year. (Employer Exhibit 10) The County being faced with increasing contributions to MERS each year of up to approximately $9,500,000 had a pending agreement with MERS to stabilize the County's payments to $5,900,000 per year. This stabilization will require the County to pay an additional $5,600.000 to MERS in 2017. The contract has now been signed after the Fact Finding hearing. (The $5,600,000 payment assumes investment income and actuarial assumptions do not change.) (Bonding [as supported by County Treasurer Heidi Scheppe] will not change the debt but rather will add to it.)
>
> *
>
> The Employer's Fact Finding case focused on the over $61 million debt. The $61 million debt is for unfunded retirement liability and retiree health insurance. (Employer Exhibit 9) Employer witnesses and exhibits showed that Grand Traverse County is the lowest funded county in Michigan under the MERS Retirement System. It is only funded at 45%. As stated by Employer expert Mary Lannoye in her March 2016 Report: "Since 2004 the County's employer contribution to MERS has increased from $3.2 million to $4.8 million, a 50% increase. Over the next four years

(2016-2020) th employer contribution will increase by $1.6 million, or 35%." Ms. Lannoye further stated in her Report regarding other municipalities: "The average employee contribution to the MERS DB pension plan is between 5.5-6.5%." If that over $61 million debt is not properly addressed, grave consequences will occur in the future. To complicate the economic picture, the County will be required to make over $5 million in upgrades to its computer system. (Employer Exhibit 10) Testimony and Employer Exhibit 10 showed the significant amount of money needed for other necessary repairs and improvements.

Employer Exhibit 17 shows sixteen measures the County has taken to reduce its costs. These include increased employee health care contributions; requiring DB plan contributions; and reducing the salaries of the Board of Commissioners in 2017 and 2018 to $1.00.

Viewed from a different perspective, the Union explains in its post-hearing brief (page 3):

> The Employer started charging employees a 20% monthly co pay for health insurance. Before this both parties in prior contracts had agreed to a 6% co pay. The Employees are now paying 14% more per month towards health insurance. Per Public Act 152 of 2011 the Employer has the right to do that. Even if health care costs rose over 10% the Employer is paying out less towards health insurance.
>
> In the Grand Traverse County Equalization report for 2017 (Union Rebuttal Exhibit 3) it states the property tax revenue will be going up 3.6%. So even if costs went up 3% there would be a surplus not a deficit.
>
> The employer stated the predictions of a 4.6-million-dollar deficit for the coming year. After an audit was done for the 2016 budget there was and is a surplus of over **2.8 million dollars**.
>
> The employer has taken money from the employees to help with the Employer conceived crisis. The Union agrees that something should have been done with the pension debt and it was by the agreement reached with MERS. However, at the same time the Employer is spending more money than in the past.

The Employer's answer to the Union's position on ability to pay includes the following (pages 5-6):

. . . The Union submitted the County's Equalization Report, which shows an increase in revenue. However, according to the testimony of County Finance Director, Jody Lundquist, the increase in expenses will be more than the additional income from property taxes. (See Employer Exhibit 15 and Employer Rebuttal Exhibit 8). The Finance Director testified there is no "surplus." (See Employer Exhibit 15 and Employer Rebuttal Exhibit 8) Employer Rebuttal Exhibit 8 testified to by Financial Director Lundquist shows a $58,193.84 deficient even with projected property tax increase.

The Union argued that because the County has a fund balance that it should be able to provide employees with 2.5% per year wage increases for three years. That simply is not true. The testimony of Deputy Administrator DeHaan and Finance Director Lundquist proved that there are significant unmet needs of the County for the use of these funds. The most significant of which is to pay down the over $61 million debt to MERS and retiree health care. Other important unmet needs for this money include an I.T. update and infrastructure improvements (Civil Center, Jail).

The Employer recently made a one-time payment of $5.6 million to MERS for the purpose of stabilizing its ongoing liability under the DB retirement plan.

Without a financial assist from employees, the Employer's ability to maintain a surplus and to make necessary capital improvements would be in jeopardy.

5. ISSUES BEFORE THE FACT FINDER

a. Health Insurance – All Units. (Economic)

The Employer proposes the following language on health insurance:

At a minimum of 90 days prior to the expiration of this Agreement, at the request of either party, a meeting shall occur to discuss health, dental, and vision insurance coverage options.

The Employer shall provide the same health insurance benefits, under the same terms and conditions, as non-union employees receive, which may change from time to time.

. . .

Optical and Dental Insurance. The Employer shall provide optical and dental insurance benefits, under the same terms and conditions, as non-union employees receive, which may change from time to time.

The Union objects to the new language because it gives the Employer the unchecked right to change insurance plans to the detriment of its members.

The Employer argues that two bargaining units – AFSCME and COAM - have agreed to this language and that with 13 bargaining units, as a practical matter the Employer needs to be able to provide uniformity of coverage to its employees.

I recommend that the Employer's proposal be adopted with the following language from previous CBAs added after "which may change from time to time:"

provided that substantially equivalent coverage is maintained.

This modest addition will provide some protection for all employees, including non-union employees.

b. Retirement DB Plan. (Economic)

The Employer proposes to reduce the multiplier going forward and introducing a 6% employee contribution for the "very few employees in the four Teamsters bargaining units that are still on the expensive Defined Benefit Plan." The Employer adds that its proposal has been accepted by the AFSCME and COAM bargaining units and imposed on non-union employees.

The Union proposes that the affected employees "will keep their current benefit but will contribute 3% of their gross wage towards retirement."

I recommend that the Union's compromise proposal be adopted. As recognized by the parties only nine active Teamsters employees remain in the DB Plan.

The record does not show how many AFSCME, COAM and non-union employees remain in the DB Plan. The Union's proposal will help to defray the DB Plan cost without unduly burdening the handful of remaining Teamster employees who long ago elected to remain in the DB Plan.

c. Disability Insurance. (Economic)

The Employer proposes to amend long-term and short-term disability insurance to provide under the same terms and conditions as non-union employees "which may change from time to time."

The Employer argues that "currently all employees receive the same disability benefits, even though, for example, the Teamsters General Unit CBA does not contain long term disability language.

The Union's only objection to the proposed new language is that it gives the Employer the unchecked right to change insurance plans to the detriment of its members.

I recommend that the Employer's proposal be adopted with the following language from previous CBAs added after "which may change from time to time:"

provided that substantially equivalent coverage is maintained.

This modest addition will provide some protection for all employees, including non-union employees.

d. Retiree Health Insurance. (Economic)

The Employer proposes to maintain the status quo on the various provisions in the Teamsters CBAs, subject to minor scrivener's changes. The Employer proposes

to memorialize the fact that General Unit employees are not eligible for retiree hire insurance; retain current language for the Health Department Unit; and eliminate retiree health insurance language for employees in the Central Dispatch Unit who retire after January 1, 2017. No proposals have been made to change the language for the District Court Unit.

The one substantive change is the elimination of the retiree health insurance provision for Central Dispatch employees who retire after January 1, 2017.

The Union proposes that the current Central Dispatch Unit language be retained.

The Employer explains: "Once again, cost and clarification are the main reasons for the Employer proposal."

I recommend the Employer's proposal be adopted. It will align Central Dispatch with other bargaining units and will serve to reduce the Employer's significant ongoing liability for retiree health insurance.

e. Irregular Part-Time Employees (General Unit). (Non-Economic)

The Employer proposes to delete "(Civic Center Pool only)" from the description of "Irregular Part Time Employees in the General Unit CBA.

The Union proposes to eliminate all "irregular part-time employee" language because "irregulars are replacing full time union employees."

I recommend that the Employer's proposal be adopted. The language is meant to be exceptional, and if the Employer were to abuse it, the Union would have access to the grievance procedure.

f. Special Conferences (General Unit). (Non-Economic)

The Employer proposes a "housekeeping" change to the language of Article VI, Special Conferences in the General Unit CBA.

The Union does not appear to object to this "housekeeping" cnange.

For this reason, I recommend that the change be adopted.

g. Awards (General and Dispatch Units). (Non-Economic)

The Employer proposes to offer further clarity to the parties' current language regarding the finality of arbitrator awards.

The language proposed by the Employer is an accurate statement of common award language and the extent to which awards are final.

The Union does not object to this clarification.

For these reasons, the Employer proposed language is recommended.

h. Arbitration Payments (General and Dispatch Units). (Economic)

The Employer proposal to amend arbitration language includes the following:

> The expenses of the Arbitrator shall be paid by the non-prevailing party. If the Arbitrator's decision is split, the parties shall each pay 50% of the fee. However, if either party cancels the arbitration, that party shall be responsible for the full amount of any required fees relating to such cancellation.

In support of this language, the Employer argues that its Article VII proposal has been TA'd by the General and Central Dispatch Units.

In response, the Union argues that "[t]he Union did not TA the sentence about the losing party paying. "It is the Union's position now and before that the Arbitrator fees be split 50/50."

ELOURKI & ELKOURI, HOW ARBITRATION WORKS, 8th Edition (BNA Books 2016) explains:

> Arbitration costs, except for attorneys' fees and transcripts, generally are shared by the parties. Even where the parties have reached no agreement as to costs, arbitrators have required equal division since such "is common practice in arbitration." Occasionally, the collective bargaining agreement will provide that the loser in arbitration shall pay all of the costs. This is contrary to the recommendation of the President's National Labor-Management Conference that the cost of the neutral "should be shared equally by both parties.

There is no showing before me that either party has abused the arbitration process by arbitrating frivolous claims.

The parties' current General Unit CBA provides for sharing arbitrator fees but "if either party cancels the arbitration, that party shall be responsible for the cancellation fees as charged by the arbitrator."

For the above reasons, I recommend that the parties current arbitrator payment formula be retained.

i. Just Cause (Dispatch, Health and General Units). (Non-Economic)

The Employer proposes that the "just cause" language TA'd in the proposed District Court CBA be adopted for the Central Dispatch, Health Department, and General Units. This language includes the following changes: no "just cause" protection for probationary employees; and deletion of minor/ major offenses lan-

guage stating that "for all minor offenses . . . the employee shall first receive an oral warning and a written warning prior to more severe discipline being imposed." The Employer's proposal reads as follows:

> **Section 8.1. Just Cause**
> The Employer shall not discharge, demote, suspend or otherwise discipline any non-probationary employee except for just cause. It is mutually agreed that progressive discipline shall be used where appropriate. Discharge must include written notice to the employee and the Steward citing specific charges against the employee.

The Employer argues that this language should be adopted because the District Court Unit has agreed to it and because the deleted language simplifies the meaning of progressive discipline.

The Union agrees and disagrees with the Employer's proposal as follows: "The Union agrees to no "just cause" for "non-probationary employees;" however, the Union adds that "the Employer wants to delete progressive discipline language to make it easier for the Employer to jump to more severe charges."

I recommend that the Employer's proposal be adopted. The language preserves progressive (or corrective) discipline for all but egregious misconduct (as in the deleted language) and also serves to avoid procedural traps under the deleted language. For example, what would happen under the deleted language if the Employer initially gave an employee a written (rather than oral) warning or if an employee received a series of warnings for unrelated misconduct?

j. Layoff Order and Notice (General Unit). (Non-Economic)

The Employer proposes that in lieu of being laid off, employees shall be permitted to take a position in or below their grade within their "department," instead of anywhere in the "bargaining unit." The General Unit consists of 11 departments, and includes "all regular full time and regular part time employees of Grand Traverse County" except for various named categories of employees, *e.g.,* supervisors, secretaries, court employees, and sheriff's department employees.

The Employer argues that it is inefficient for an employee with one set of skills being authorized to bump into a position entailing entirely different functions: "In order to have an efficient workforce in the event of layoffs, the layoffs should be within the departments first.

The Union argues that because of the sizes of the various departments in the General Unit, the right to bump in the bargaining unit "gives more of a chance for a senior employee keeping their job instead of losing out to an employee with a great deal less seniority."

I recommend that the current language be retained.

The current language includes the following: "The [bumping] employee must be able to perform the required duties of the position." In a small department in the General Unit, presumably all the employee can perform the required duties of the position; therefore, what would this language mean if bumping was limited to one's department? Further, if an existing employee had bumped into a department vulnerable to a reduction in force, the right to bump into another position in the bargaining unit would be ended even if the employee had a sufficient skill set. The

Employer's proposal could have a chilling effect on the movement of bargaining unit members

k. Loss of Seniority - Crime (General, Health and Dispatch). (Non-Economic)

The Employer proposes to add the following language to "loss" of seniority" resulting in termination of employment:

> He/she is convicted or pleads guilty or nolo contendere to a felony or a misdemeanor which results in sentenced jail time.

In support, the Employer explains that the District Court Unit has agreed to this language. In addition, the Employer argues that "[i]f a public employee is sentenced to jail, public trust will be eroded if that person remains employed." Various Union members work with police, the sheriff, and the prosecutor.

The Union opposed this language and asks, "Why should an employee lose their job if they are arrested say, for drunk driving and spend one night in jail? By the proposed language that employee would no longer be employed." However, the Union has agreed to the proposed language for the Central Dispatch Unit. The employees in the District Court and Central Dispatch Units work on an ongoing basis with law enforcement.

For the General and Health Department Units, I recommend the proposed language for felonies but not for misdemeanors.

The proposed language does not distinguish between on-duty and off-duty misdemeanors; nor is it limited to employees working in law enforcement or public safety.

N. BRAND, DISCIPLINE AND DISCHARGE IN ARBITRATION, 2nd Edition (BNA Books 2008) 404 contains a thoughtful discussion of the issue, including the following:

> Although arbitrators apply the "workplace nexus" test in both private and public sector cases, it often appears easier for a *public* employer to dismiss an employee for off-duty misconduct. Arbitrators have tended to protect the government employer's reputation and mission, citing the public trust. Even where public employees are involved, however, a nexus between the workplace and off-duty conduct must be established.
>
> Public sector cases often involve employees working in law enforcement and public safety. . .

I. Overtime Pay (Health Department Unit). (Economic)

The Employer proposes the following language for the Health Department Unit:

> Section 12.3 Overtime. If requested to work overtime, an employee will be expected to do so unless they are excused for good cause. Overtime payment shall be at the rate of time and on-half (1 ½) of the regular hourly rate, including shift premium, under the following conditions:
>
> A. Periodically – All paid work performed in excess of 40 hours in one work week, including approved vacation leave or approved bereavement leave, but excluding paid holidays.
>
> . . .
>
> D. If the Employer violates the overtime policy, the only remedy will be to award the violated employee the next available overtime.

The Employer also proposes subsection A for the General Unit and subsection D for the General and Central Dispatch Units.

In support of its proposal to exclude paid holidays from the calculation of overtime eligibility, the Employer explains that the Fair Labor Standards Act only requires overtime pay for employees who actually work in excess of 40 hours. As for the remedy for an overtime violation, the Employer argues that "taxpayers should not have to pay overtime pay for someone that does not work it."

The Union argues that there is no good reason to eliminate paid holidays from overtime calculation and that the proposed remedy for an overtime violation already exists.

I recommend that the following clause be added to the end of the first sentence of proposed Section 12.3 Overtime:

, or another qualified employee agrees to fill in for the overtime request.

My reason is that some employees are more willing to work overtime than other employees.

As to D, I recommend that the following sentence be added:

If the Employer violates this subsection, the Employer will pay the employee for the lost overtime.

As to the elimination of paid holidays from the calculation of overtime, I recommend that the proposal be adopted. Including paid holidays is not required by law and because of the Employer's financial problems it appears to be an unnecessary benefit.

m. Parental Leave (Health Department Unit), (Non-Economic)

The Employer proposes to eliminate the parental leave language from the Health Department Unit CBA.

The Employer explains:

> While the Employer is proposing Parental Leave in some Units, it is also proposing to eliminate it from the Health Department contract. The Health Department has difficult staffing problems. To permit an employee for up to six months to be off for birth or adoption jof a child, in addition the Family and Medical Leave Act (12 weeks), is not practical, and could be very disruptive to providing Health Department services.
>
> The Employer is proposing Parental leave for the first time in Central Dispatch because there have not been the problems like in the Health Department.

The Union opposes this change because other units have this benefit and "the Union would hate to think the employer is proposing to remove this section because there are numerous young women working at the Health Department."

I recommend that for the Health Department Unit the parties adopt the proposed parental leave language for the Central Dispatch Unit, which states:

> Employees may request to take up to a six (6) month leave of absence without pay due to pregnancy, birth or adoption of a child. Accumulated vacation and personal time must be used prior to using unpaid time. Such leave of absence shall not affect continuous service and shall run concurrent with a Family and Medical Leave. Fringe benefits shall not continue or accrue during this time.

From the Employer's perspective this language is an improvement over the current Health Department language because it folds FMLA leave into the contractual leave thereby reducing the maximum leave by 12 weeks. It is beneficial to employees because it may be requested during a pregnancy rather than "beginning at birth."

n. Personal Leave (Health Department Unit). (Non-Economic)

The Employer proposes some "housekeeping" changes for the seven annual personal leave days in the Health Department Unit.

The Union has withdrawn its request for an increase in personal leave days.

For this reason, the Employer's proposal is recommended.

o. Sick Leave (Health Department Unit). (Economic)

The Employer proposes that the payout of banked sick leave be capped at 120 days.

The Union agrees with this proposal.

I note that the 120 day cap is the same as in the current General and District Court Units.

For these reasons, the Employer's proposal is recommended.

p. Longevity Pay (Non-Economic)

The Employer is proposing to introduce a cap at $400.00 on the longevity pay bonus payable under Longevity Plan B, and a clarification of the status quo under Longevity Plans B and C.

The Union opposes the $400 cap and proposes that all employees be eligible for the longevity pay rather than only those "hired before July 25, 2007."

I recommend that the status quo be retained except that a cap of $750 be introduced for Plan B longevity bonuses.

Under the current Plan B language the longevity bonus increases by $50 per year without a cap. For employees under Plan C the longevity bonus tops out at

$750. A difference between the two Plans is when an employee was hired. As for the introduction of a longevity pay bonus for employees hired after July 25, 2007, I think that the financial condition of the Employer does not warrant the introduction of this new benefit at this time.

q. Holidays re: Overtime (General Unit). (Economic)

The Employer proposes to delete paid holidays as counting for calculation of overtime. This was considered in **section I.** above where I recommend that paid holiday be deleted from the overtime calculation.

I recommend the same here.

r. Absence from Agreed Work (Central Dispatch Unit). (Non-Economic)

The Employer proposes that possible disciplinary language be added to Section

14.7 of Central Dispatch Unit CBA:

> Section 14.7 Agree to work but Don't Work: When an employee agrees and/or is scheduled to work on one of the holidays and does not work as agreed, he/she shall not receive the compensation for such holiday and may be subject to disciplinary action.

The Employer explains that two bargaining units already have agreed to this language and that the language is reasonable.

I recommend that the Employer's proposal be adopted.

It is a matter of common sense that if you don't show up for your scheduled work that you "may be subject to disciplinary action." Further, this type of no-show

is unfair to the employees who have shown up for work because of possibly having to work short-handed.

s. Vacation Accrual (General and Health Department Units). (Economic)

The Employer proposes to delete paid holidays as counting for calculation of overtime. This was considered in **sections l.** and **q.** above where I recommend that paid holiday be deleted from the overtime calculation.

I recommend the same here.

t. Vacation Carryover (Central Dispatch Unit) (Economic)

The Employer proposed to reduce the maximum of unused vacation days from 200 hours to 160 hours for the Central Dispatch Unit.

In support the Employer argues that this will ease budgeting; and reducing the payout hours "would give significant incentive for employees to take their vacation" which is desirable "because of the stress of their position."

The Union argues that every other County unit can carryover 200 hours.

I recommend that 200 hours be retained.

This is consistent with other bargaining units and there is value in consistency.

u. Promotion and Vacancies (Central Dispatch Unit). (Non-Economic)

The Employer proposes to rewrite "promotion and vacancies" language for the Central Dispatch Unit.

In support the Employer explains:

> The proposal for promotions for vacancies in the Central Dispatch Unit is essentially the same as agreed to in the Health Department and General Units. All of the proposals for the Central Dispatch Unit pertaining to promotions and transfers were agreed to by two other bargaining units. The Employer's proposal is common sense and good business practice.

I recommend that the Employer's proposal be adopted for the reasons stated by the Employer.

v. Work Rules (Dispatch, Health and General Units). (Non-Economic)

The Employer proposes to amend the language of "work rules" in the Central Dispatch, Health and General Units **(a)** to delete the word "reasonable" from "rules, regulations, policies and procedures" it reserves the right to establish: **(b)** to substitute "not in violation of a specific provision of this Agreement" for "not inconsistent with the provisions of this Agreement;" and **(c)** to provide the following review procedure:

> When existing Work Rules are changed or new Work Rules are established, the Employer shall provide them via email to each of the Stewards and to the Union Business Agent five (5) working days before the rule is effective. If during this time the Union presents an objection to a new Work Rule or to modifications made to an old Work Rule, the parties agree to discuss the issue(s) prior to implementation or enforcement at a special conference meeting as outlined in this contract.

In support, the Employer argues that "[t]he [Central Dispatch] Union could still grieve and take to arbitration the issue of whether or not the work rule is in violation of

the contract, but not as to the "reasonableness" of the rule. The same is true for the Health Department and General Units."

The Union argues that "[t]he existing language has stood the test of time," and that"[t]he employer wants to take away another benefit, the right to file a grievance on an unreasonable proposed work rule or policy."

I recommend that the Employer's proposal be adopted except that the term "reasonable" be retained, *i.e.*:

> *The Employer shall have the right to establish reasonable work rules, policies and procedures that are not in violation of a specific term of this agreement.*

First, the record does not show that the Employer has been inhibited in establishing work rules by the qualification that they be "reasonable," or that the Union has filed frivolous grievances challenging the "reasonableness" of a proposed rule.

Second, to delete the word "reasonable" would in effect give the Employer almost unreviewable discretion in establishing work rules. For example, what if the Employer were to create a work rule defining a series of behaviors (including minor misconduct) as "just cause" for immediate discharge? This may seem farfetched; but it is conceivable, especially where parties have agreed contractually that work rules no longer need be "reasonable."

Third, a requirement that work rules be "reasonable" gives considerable discretion to an employer. It is universally understood that management has the right to direct the work force (subject to the terms of a contract and external law).

w. Travel Time (Central Dispatch Unit). (Economic)

The Employer proposes to have paid travel time determined by the terms of the Fair Labor Standards Act ("FLSA").

The proposed language would replace hours "spent in travel, including as a passenger on an automobile or airplane."

The Employer argues that because rulings under the FLSA change from time to time, the Employer "should have the broad stroke as proposed by the Employer."

I recommend that the Employer's proposal be adopted provided that the Employer makes available to employees whatever the current FLSA travel standards are.

I am assuming that the language sought to be replaced reflected some version of FLSA standards which may subsequently have been refined.

x. Savings and Waiver and Past Practices. (Non-Economic)

The Employer is proposing a waiver clause for the Central Dispatch Unit CBA and the following "past practices" language for all four Teamsters Units:

> Section 19.3 Past Practices: This Agreement embodies all of the obligations between the parties evolving from the collective bargaining process and supersedes all prior relationships and/or past practices.

I recommend that the proposed waiver clause for the Central Dispatch Unit be adopted. This language is commonly known as a "zipper" clause. It is already present in the other three Teamsters Units CBAs and is contained in most CBAs everywhere.

I do not recommend that the proposed "past practice" language not be adopted.

First, it appears to be redundant where there is a waiver or "zipper" clause.

Second, "past practices" is a rule of contract construction and there are times – most notably where contractual language is ambiguous – where "past practice" is relevant to the parties' intent. The Sixth Circuit Court of Appeals has explained:

> While custom and past practice are used very frequently to establish the intent of contract provisions which are so ambiguous or so general as to be capable of different interpretations, they ordinarily will not be used to give meaning to a provision which is clear and unambiguous.

Beacon Journal Pub Co v Akron Newspaper Guild, 114 F3d 596 (6th Cir 1997) (quoting Elkouri and Elkouri, How Arbitration Works 454 (4th ed 1985) (arbitrator did not find that a past practice existed). *See also*, *Port Huron Educ Ass'n v Port Huron Area School District,* 452 Mich 309 (1996) (containing a thorough discussion of "past practice" as an aid in contract interpretation and also citing How Arbitration Works).

y. Wages. (Economic)

The Employer proposes a wage freeze.

The Union proposes a 2.5% increase for each contractual year.

The Employer argues that its proposal is based on its financial condition.

The Union argues that a wage increase is warranted because the employees have not kept up with COLA increases for several past years and have had to absorb the increase to 20% for health insurance co-pay.

I recommend that the Employer's proposal be adopted.

My reasons are set forth above in **4. Ability to Pay**. After what appears to be several years of treading water the Employer is attempting to right its ship. Because government is labor intensive, employees must at times be called on to bear a cost. This is the situation in Grand Traverse County.

It is hoped that the Employer's finances will be stabilized in the near future. If so, the employees may later benefit.

z. Duration. (Non-Economic)

The Employer is now proposing a two year CBA for each Unit commencing on January 1,2017 and ending on December 31, 2018, with either party commencing negotiations 120 days prior to the contract termination date. In addition (as I read the Employer's proposal at page 37 of its Brief), either party can reopen negotiations on one issue at any time in 2018.

The Employer is opposed to a three year contract because of its "financial uncertainty." It has increased its proposed duration to two years for the reason that various delays have rendered one year too short.

The Union agrees with the 120 day notice for new negotiations but favors a three year contract in the interest of stablity.

I recommend that the Employer's proposal be adopted

My major reason is financial uncertainty (which hopefully will run in the County's favor in 2018). The term ending at the end of 2018 will also provide short-term stability.

aa. Bereavement Leave. (Non-economic)

The Union proposes that listed "secondary" relatives be treated the same as listed "primary" relatives.

The Employer supports the status quo.

I recommend that "step-mother" and "step-father" be transferred from "second tier" to "top tier" decedents. My reason is that these relations can be uniquely closer than with biological parents.

bb. Weekend Inspections. (Ecoomic)

The Union proposes that Sanitarians be paid $75.00 for completing a temporary permit on weekends or holidays.

The Employer supports the status quo.

I recommend that the Union's proposal be adopted. For some time, Sanitarians have been paid $50.00 for this weekend or holiday service. The increase is fair compensation for the disruption caused by these assignments, which are under the control of management.

cc. Uniforms. (Economic)

The Union proposes that the CBA include DPW employees as recipients of clothing.

Section 19.4 of the current General Unit CBA includes "Department of Public Works employees."

I recommend that this language be retained for DPW employees who have clothing requirements.

6. SUMMARY OF RECOMMENDATIONS

ISSUE	RECOMMENDATION
Health Insurance	Same coverage for all County employees with any plan changes permitted if substantially equivalent coverage is maintained.
Retirement: DB Plan	DB Plan terms remain, except covered employees to contribute 3% of gross earnings.
Disability Insurance	Same coverage for all County employees with any plan changes permitted if substantially equivalent coverage is maintained.
Retiree Health Insurance	Employer proposal adopted, including eliminating health insurance for Central Dispatch employees who retire.
Irregular Part-Time Employees	Language retained except that "Civic Center Pool only" phrase deleted.
Special Conferences	Add word "Special" to "Conferences" in Article VI of General Unit CBA.
Awards	Adopt proposed language on finality of awards.
Arbitration Payments	Retain current CBA language re: arbitrator payment.
Just Cause	Adopt Employer's proposed language.
Layoff Order and Notice	Retain current CBA language.
Loss of Seniority - Crime	Adopt Employer language for felonies but not for misdemeanors.

Overtime Pay	Adopt Employer proposal "excluding paid holidays." Add "or another qualified employee agrees to fill in for the overtime requested" in 12.3. Add "If the Employer violates this subsection, the Employer will pay the employee for the lost overtime" in subsection D.
Parental Leave	For Health Department Unit, adopt current language of Central Dispatch CBA.
Personal Leave	Adopt Employer's "housekeeping" language proposal.
Sick Leave	Cap sick leave payout at 120 days.
Longevity Pay	Retain status quo except provide $750 cap for Plan B longevity bonuses.
Holidays re: Overtime	Exclude "paid holidays" from overtime calculation.
Absence From Agreed Work	Add "and may be subject to disciplinary action" at end of "absence from agreed work" section.
Vacation Accrual and Payment	Exclude "paid holidays" from overtime calculation.
Vacation Carryover	Retain 200 carryover hours.
Promotions and Vacancies	Adopt Employer language for Central Dispatch Unit.
Work Rules	Adopt Employer proposal, except retain the term "reasonable."
Travel Time	Pay travel time per terms of FLSA with Employer making available to employee current FLSA standards.
Savings and Waiver; Past Practice	Adopt Employer proposal on "savings and waiver" clause; do not adopt Employer proposal to add "past practices" clause.
Wages	Wage freeze.
Duration	Two years (January 1, 2017 – December 31, 2018).
Bereavement Leave	Add "step-mother" and "step-father" to top tier of decedents.
Weekend Inspections	Increase payment to $75.00.
Uniforms	Retain CBA reference to DPW employees.

Date: September 25, 2017

Thomas L. Gravelle

Thomas L. Gravelle
Fact Finder