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MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

AFSCME Local 3451.12

and

RESPONDING PARTY:

Ypsilanti Community Utilities Authority

MERC CASE NO.: 21-I-1788-CB

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
Gregory M. Saltzman

Advocates
Employer Advocate: John P. Hancock, Jr.
Union Advocate: Carlotta Jones

PETITION FILED: January 5, 2022
PANEL CHAIR APPOINTED: February 17, 2022
SCHEDULING CONFERENCE HELD: March 18, 2022
HEARING DATES HELD: May 23, 2022, and June 1, 2022
REPORT ISSUED: July 14, 2022

TABLE OF CONTENTS

WITNESS LIST

For the Union:

1. Jeanette DiFlorio – Full Service Staff, AFSCME Council 25

2. Jeffrey Zaker, bargaining unit member

3. Luther Blackburn, bargaining unit member

For the Employer:

1. Dwayne Harrigan, Finance Director, YCUA

2. Debra Kinde, Human Resources Director, YCUA

1. INTRODUCTION AND BACKGROUND

The Ypsilanti Community Utilities Authority (YCUA) is a local public agency formed in 1974 to serve as the water and sewer department for the City of Ypsilanti and Ypsilanti Township in southeastern Michigan. YCUA buys water from the Great Lakes Water Authority, transmits and distributes water, provides wastewater treatment, and maintains the water and sewer infrastructure for the City of Ypsilanti and Ypsilanti Township. In addition, YCUA provides wastewater treatment for and, in some cases, distributes water to other nearby townships, though it does not maintain the water and sewer infrastructure for these nearby townships. YCUA obtains its revenues from customer payments of water and sewer bills.

The collective bargaining agreement (CBA) between YCUA (hereinafter the Employer) and AFSCME Council 25, AFL-CIO, Local 3451.12 (hereinafter the Union) covered all YCUA employees except executive employees, confidential employees, and members of a separate bargaining unit of supervisors represented by Teamsters Local 214. The CBA expired on August 31, 2021. The full text of the expired contract is provided in Union book 2, exhibit 1.

Negotiations for a new contract occurred, and the Employer and the Union reached tentative agreement on most issues. But some issues remained in dispute, despite the assistance of a MERC mediator. At the time that the Union filed the petition for fact finding, there were 65 employees in the bargaining unit.

2. STATUTORY CRITERIA

Michigan's Public Employment Relations Act (PERA) addresses fact finding in MCL 423.131 to 423.138. 423.137(1)(d) requires the fact finder's report to include "Reasons and basis for the findings, conclusions and recommendations" unless the parties have waived that requirement. But PERA does not specify what criteria a fact finder should use in coming to a recommendation.

Michigan's Act 312, which provides for compulsory interest arbitration for police and fire fighters, does not apply to water and sewer utility workers and so is not binding in this fact finding proceeding. Nevertheless, statutory criteria from Act 312 for interest arbitration awards could at least suggest criteria that might be relevant for a fact finder's recommendation. The Act 312 statutory criteria in MCL section 423.239 are as follows:

> (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

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

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

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that 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.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

3. STIPULATIONS AND PRELIMINARY RULINGS

As fact finder, I stated that, although Michigan Act 312 (regarding interest arbitration for police or fire fighters) is not binding on YCUA or YCUA employees, I would consider the Act 312, MCL section 423.239, criteria for deciding interest arbitration awards when deciding my fact finding recommendation in this case. But I indicated that I would not use the Act 312 final offer approach, which would require me to recommend either the Employer proposal without modification or the Union proposal without modification for each economic issue.

4. COMPARABLES

The parties presented separate lists of comparable employers and bargaining units, but there was some overlap between their lists.

Employer list of comparables:

Wastewater Treatment

- Ann Arbor Wastewater Treatment Plant and AFSCME/Local 369
- Warren Water Resource Recovery Facility and GELC/Local 227
- Oakland County Clinton River Water Resource Recovery Facility (formerly Pontiac Wastewater Treatment Plant)
- Jackson Wastewater Treatment Plant and MAPE
- East Lansing Water Resource Recovery Facility and UAW/Local 2256

Water Transmission and Distribution

- City of Ann Arbor and AFSCME/Local 369
- Canton Township and AFSCME/Local 3860
- City of Westland and AFSCME/Local 1602
- City of Warren and GELC/Local 227
- City of Taylor and AFSCME/Local 1128
- Pittsfield Township and TPOAM

Union list of comparables:

- Ann Arbor Wastewater Treatment Plant, AFSCME Local 369
- Jacobs, AFSCME Local 1659.14
- City of Livonia, AFSCME Local 192
- Northville Township, AFSCME Local 2720
- YCUA, Teamsters Local 214 – internal comparable with unit of supervisors
- Ypsilanti Township, old AFSCME Local 3451 now POAM (for grass cutters and janitors only)

Jacobs is a private, for-profit, firm operating in many locations. The Union listed as a comparable a Jacobs operation in Southeastern Michigan.

In assessing comparability, I give ***GREATEST*** weight to the City of Ann Arbor and AFSCME Local 369 because both parties agreed that these were a comparable employer and bargaining unit. Still, I give ***SOME*** weight to the other employers and bargaining unit that either the Employer or the Union thought were comparable.

5. ISSUES BEFORE THE FACT FINDER

a. LONG-TERM DISABILITY (economic issue)

Statement of the Issue

Article 10F of the expired CBA provides for tax-free long-term disability (LTD) benefits equal to 60% of the employee's hourly wage at the time he or she becomes disabled, subject to a maximum of $2,100 per month.

The Employer has agreed with the Union that this monthly maximum should be increased in the new CBA, but the parties disagree on how much the increase should be.

Union's Position on Long-Term Disability

The Union has proposed increasing the maximum monthly LTD benefit from $2,100 to $3,000. The Union argues that (a) many employees potentially could have their LTD benefits reduced below 60% of prior earnings because of the monthly maximum and (b) $2,400 per month is not enough for employees to meet their monthly expenses, even if it is tax free.

The Union also cited an internal comparable: the YCUA bargaining unit of supervisors represented by Teamsters Local 214. The CBA for the YCUA supervisors for January 1, 2019, through December 31, 2022, provides for a maximum LTD benefit of $3,684 per month [Union book 2, exhibit 7, page 12], substantially higher than the $2,400 per month cap offered by the Employer to the nonsupervisory bargaining unit involved in this fact finding proceeding.

Employer's Position on Long-Term Disability

The Employer has proposed increasing the maximum monthly LTD benefit from $2,100 to $2,400. The Employer argues that very few employees use LTD benefits because these do not include health insurance, whereas alternatives such as Social Security disability benefits or Municipal Employees' Retirement System (MERS) disability retirement benefits do include health insurance. The Employer argues that it is difficult to justify paying higher premiums to raise the monthly cap beyond the $2,400 they have already offered if very few employees use the LTD benefits.

Fact-Finder's Analysis on Long-Term Disability

Most people do not experience long-term disability prior to normal retirement age, but LTD can be financially catastrophic if it happens. The disabled employee not only suffers a sustained loss of income, but also faces additional expenses of treatment or accommodations for the disability. It is important to have adequate LTD benefits.

The question in this case is whether disabled YCUA employees are likely to use alternatives to the LTD benefits, such as Social Security disability benefits or disability retirement from MERS, so that they can obtain Medicare (for Social Security disability) or Employer-provided health insurance (for MERS disability retirement). If these alternatives are likely to be inadequate for some YCUA employees, then there is a stronger case to improve YCUA's LTD benefits.

Social Security disability benefits have important advantages, such as lifetime adjustments for inflation, but Social Security has a stringent definition of disability. To qualify, one must be unable to perform not only one's previous occupation, but almost any paid employment. Private LTD insurance, in contrast, may provide benefits if one is unable to perform one's previous occupation. For example, a YCUA Pay Grade 17 Automobile Mechanic who because of disability is no longer able to work as a mechanic (say, because of a severely injured hand) but who is still able to work as a greeter in Wal-Mart would qualify for benefits under a private LTD insurance plan but ***not*** under Social Security. The bigger the gap between the earnings in one's previous occupation and the earnings in a low-paid job such as Wal-Mart greeter, the more money a person potentially gains from having private LTD insurance as an additional layer of income protection beyond Social Security disability.

The other disability income option for YCUA employees, besides Social Security, is MERS disability retirement benefits. Would MERS disability benefits be adequate to meet the income needs of disabled YCUA employees? The Employer offers a MERS defined benefit plan, with annual benefits based on this formula:

$$\text{Annual Benefit} = \begin{array}{c}\text{Final}\\ \text{Average}\\ \text{Compensation}\end{array} \times \text{Service Credit} \times \text{Benefit Multiplier}$$

where Service Credit = years of employment at YCUA,

and Benefit Multiplier = 2% for employees hired before September 1, 2013,

and Benefit Multiplier = 1.5% for employees hired after September 1, 2013.

The replacement rate is the percentage of pre-retirement earnings that MERS benefits would replace. The replacement rate for an employee who retired with 30 years of service (Service Credit = 30) thus would be 60% = 30 × 2% for an employee hired before September 1, 2013, vs. 45% = 30 × 1.5% for an employee hired after September 1, 2013.

The same benefits formula applies to people taking disability retirement, but the Service Credit would likely be less than 30 for a person taking disability retirement. If, for example, an employee took disability retirement after only 15 years of employment at YCUA, then the annual MERS disability retirement benefit would be only 30% of Final Average Compensation for an employee hired before September 1, 2013, and a mere 22.5% of Final Average Compensation for an employee hired after September 1, 2013.

For relatively junior employees who become disabled, MERS disability retirement benefits provide too low a replacement rate to avoid agonizing reductions in the disabled employee’s standard of living. Thus, having LTD insurance as an alternative to MERS disability retirement benefits is especially important for YCUA’s relatively junior employees. Their risk of disability is low, but they may face financial ruin if they become disabled.

On the other hand, because relatively junior employees tend to have relatively low wages, a monthly maximum benefit is less likely to reduce their LTD benefits below 60% of pre-disability earnings. I present below a table with my calculations of the hourly wage rate, above which the monthly maximum LTD benefit becomes the limiting factor, with the result that LTD benefits replace ***less*** than 60% of the disabled worker's earnings just prior to disability. My hourly wage calculations assume that earnings prior to disability are based on 40 paid hours per week and 52 paid weeks per year.

	Expired CBA	Employer proposal	Union proposal	YCUA supervisors
Maximum monthly LTD benefit (nontaxable)	$2,100	$2,400	$3,000	$3,684
Taxable monthly earnings for which this maximum monthly benefit would be exactly 60%	$3,500	$4,000	$5,000	$6,140
Taxable annual earnings for which this maximum monthly benefit would be exactly 60%	$42,000	$48,000	$60,000	$73,680
Hourly wage rate above which LTD benefits would be less than 60% of prior earnings (because of the monthly cap on LTD benefits)	$20.19	$23.08	$28.85	$35.42

Because of the $2,100 per month cap on LTD benefits in the expired CBA, any bargaining unit member earning more than $20.19 per hour prior to disability will receive LTD benefits that are less than 60% of his or her prior earnings. The more above $20.19 per hour his or her wage rate is, the more the LTD benefits will fall below 60%.

To put these numbers in perspective, compare these hourly wage rates to figures from the AFSCME Base Wage Scale Table effective September 1, 2020 [Union book 2, exhibit 1, page 42]:

- The $2,100 maximum in the expired CBA is equivalent to $20.19 per hour, which is close to the $20.03 that a starting employee at Pay Grade 9 (the second lowest of 10 grades) earns. The $2,100 monthly cap would likely push LTD benefits below the 60% replacement rate for almost all bargaining unit members.

- The $2,400 maximum proposed by the Employer is equivalent to $23.08 per hour, which is close to the $23.06 that an employee earns if he or she has two years of seniority and is at Pay Grade 10.
- The $3,000 maximum proposed by the Union is equivalent to $28.85 per hour, which is close to the $28.92 that an employee earns if he or she has 10 years of seniority and is at Pay Grade 15.
- The $3,684 maximum under the current contract for YCUA supervisors is equivalent to $35.42 per hour, which substantially exceeds even the $31.73 per hour that an AFSCME bargaining unit employee earns if he or she has 30 or more years of seniority and is at Pay Grade 17 (the highest pay grade for this bargaining unit). If the monthly maximum were $3,684, this cap would be irrelevant; all AFSCME bargaining unit members would get LTD benefits equal to 60% of their hourly wage rate just prior to disability.

Based on the above calculations, I would argue that a $2,100 per month cap on LTD benefits is much too low, leaving many junior employees in the bargaining unit (who would not get much from MERS disability retirement because of their low years of employment at YCUA) with LTD benefits well below 60% of their prior earnings. On the other hand, a $3,684 per month cap for the supervisory bargaining unit represented by Teamsters Local 214 is so high that it would be irrelevant for the nonsupervisory unit represented by AFSCME. For the AFSCME unit, a $3,684 cap is like having no cap at all; every member of the nonsupervisory unit would receive 60% of his or her pre-disability base wages.

Finally, it is important to note that some bargaining unit members who choose Social Security disability or MERS disability retirement as an alternative to LTD benefits will ***NOT*** have health insurance from this alternative. Medicare benefits for the disabled do not begin until 24 months after a person begins Social Security disability benefits. And the Employer will not be providing post-retirement health insurance, either for regular retirement or disability retirement, to employees hired on or after September 1, 2009. Instead, these employees have a health savings plan. This is specified in Section 4F of Article 25 Health Insurance of the expired CBA. [See Union book 2, exhibit 1, page 33.] This makes MERS disability retirement less attractive as an alternative to LTD benefits for employees hired after the September 1, 2009, cutoff date than it is for employees hired earlier.

Because of the elimination of post-retirement health insurance for employees hired in the past 13 years, the Employer's argument – why pay more for an LTD benefit that few employees use? – will have progressively less force as the fraction of employees hired on or after September 1, 2009, rises.

Recommendation on Long-Term Disability

I strongly recommend continuing the Employer's LTD benefits (something that both the Union and the Employer support) for three reasons. First, MERS disability retirement benefits replace a relatively low percentage of pre-disability earnings of those becoming disabled with 15 or fewer years of service, and a low replacement rate likely means an inadequate income. Second, there is a stringent definition of disability to qualify for Social Security disability benefits, and many bargaining unit members would face a significant cut in their living standards if forced because of partial disability to switch to a low-wage, nonunion job with another employer. Third, the replacement of post-retirement health insurance with a health savings plan for those hired after September 1, 2009, increases the importance of adequate LTD benefits in addition to having MERS disability retirement benefits, as MERS disability retirement benefits would be less attractive without post-retirement health insurance.

I propose a somewhat larger increase in the LTD maximum monthly benefit than the $2,400 that the Employer proposes because many relatively junior employees would be adversely affected by a $2,400 cap. I also propose annual increases thereafter because of our current bout of inflation. But the Employer's insurance carrier might object to changing LTD insurance benefits retroactively back to September 1, 2021.

Specifically, I propose the following monthly caps for LTD benefits:

- $2,100 effective September 1, 2021 [level in expired CBA]
- $2,700 effective September 1, 2022
- $2,850 effective September 1, 2023
- $3,000 effective September 1, 2024

Note: if the parties do ***not*** adopt my duration recommendation that there be a one-year contract for 2021-22 followed by a three-year contract for 2022-2025, then the parties should disregard my monthly LTD cap recommendation for September 1, 2024.

b. UNIFORMS – ALLOWANCE FOR BOOTS OR COLD-WEATHER GEAR (economic issue)

Statement of the Issue

Article 18 of the expired CBA provides an annual allowance of $125 for boots and cold-weather gear. The Employer has agreed with the Union that this annual allowance should be increased in the new CBA, but the parties disagree on how much the increase should be.

Union's Position on Uniform Allowance

The Union has proposed that this allowance be increased to $295 per year. The Union presented exhibits and testimony indicating that the cost of adequate boots and cold-weather gear has risen substantially in recent years and that $200 is insufficient. The Union brief (page 11) noted that Northville provides two pairs of boots per year (which presumably costs substantially more than $200) and that Livonia provides an allowance of $400 per year.

Employer's Position on Uniform Allowance

The Employer has agreed to an increase but proposes that it be limited to $200 per year. The Employer brief argued that their $200 offer is a substantial increase over the current level of $125, and it notes that Ann Arbor allows only $150 per year [Employer brief, pages 19-20].

Fact-Finder's Analysis on Uniform Allowance

Going from $125 per year to $200 per year is a 60% increase, which is indeed substantial. But $200 still seems a bit low given the Union's testimony and exhibits about cost of adequate boots and cold-weather gear.

The integration of the massive Chinese labor force into the global economy depressed prices for basic manufactured goods, such as boots and clothing, for over a decade. But times have changed. Chinese manufacturing is shifting away from the footwear and clothing industries to higher value-added industries such as medical device manufacturing. Now we are in a period of supply chain bottlenecks and rising prices. It seems reasonable to assume that the prices of work boots and cold-weather clothing will continue to rise for the next several years. Inflation adjustments in an allowance for work boots and cold-weather clothing are appropriate for a multi-year contract.

This benefit is not provided through insurance, so that the Employer does not need insurance company agreement to change a policy retroactively to September 1, 2021.

Recommendation on Uniform Allowance

Raise the allowance for boots and cold-weather gear from $125/year to:

- $250/year effective September 1, 2021

- $265/year effective September 1, 2022
- $280/year effective September 1, 2023
- $295/year effective September 1, 2024

Note: if the parties do ***not*** adopt my duration recommendation that there be a one-year contract for 2021-22 followed by a three-year contract for 2022-2025, then the parties should disregard my monthly uniform allowance recommendation for September 1, 2024.

c. JUNETEENTH HOLIDAY (economic issue)

Statement of the Issue

Article 20 of the expired CBA provides for 13 paid holidays each year, not including Juneteenth. The issue in dispute is whether the new CBA should add Juneteenth as a 14th paid holiday or should merely leave the addition of Juneteenth as a possibility.

Union's Position on Juneteenth Holiday

The Union has proposed adding Juneteenth as a 14th paid holiday to recognize and honor diversity. The Union presented testimony that the City of Ann Arbor and Ypsilanti Township have agreed to recognize Juneteenth as a holiday.

Employer's Position on Juneteenth Holiday

The Employer has proposed the following language: "If, in the future, YCUA determines to be closed for business in observance of Juneteenth, it will be added to Article 20 as a paid holiday at that time."

The Employer brief states (page 12):

> YCUA's business hours mirror those of the City and Township [of Ypsilanti] with respect to being open for business. It is not unreasonable to think that the City and Township may, in the future, determine to be closed for business in observance of Juneteenth; however, that is not YCUA's call. If and when that does occur, YCUA will follow suit.

Fact-Finder's Analysis on Juneteenth Holiday

President Joe Biden signed legislation in 2021 establishing Juneteenth as a holiday for federal government employers. Growing numbers of state and local government employers and private employers are adding Juneteenth as a holiday, too. Addition of this holiday is in part a statement of support for racial equity in the aftermath of the killing of George Floyd in 2020.

The statement in the Employer's brief about following suit goes beyond the contract language that the Employer has proposed. I suggest that the parties adopt contract language that codifies the Employer's commitment to follow suit.

Recommendation on Juneteenth Holiday

Add the following language to Article 20 Paid Holidays:

"YCUA will add Juneteenth as a paid holiday for YCUA employees if and when the City of Ypsilanti and Ypsilanti Township add Juneteenth as a paid holiday for their employees."

d. WAGES (economic issue)

Statement of the Issue

The parties agree that bargaining unit members should earn more in the next CBA, but they disagree about (i) the size of the increase in earnings, and (ii) the mix between bonuses and increases in wage rates.

The expired CBA uses two equivalent terms: the Base Pay Schedule (as it is called in Article 30 on page 36) and the AFSCME Base Wage Scale Table (as it is called on pages 41 and 42) [see Union Book 2, Exhibit 1]. When I refer to a 1% increase in the Base Pay Schedule, I mean that each wage rate in the Base Pay Schedule is raised by 1%.

The Employer testified that increases in the Base Pay Schedule are included in Final Average Compensation for purposes of the MERS defined benefit pension formula and thus increase pension benefits, but bonuses are excluded from Final Average Compensation. Also, increases in the Base Pay Schedule raise overtime pay, whereas bonuses do not. A 1% increase in the Base Pay Schedule is thus more valuable to bargaining unit members – and more costly to the Employer – than is a 1% bonus.

Union's Position on Wages

The Union wage proposal is:

- A $2,400/person signing bonus at ratification,
- A 4% increase in the Base Pay Schedule effective September 1, 2021,
- A 5% increase in the Base Pay Schedule effective September 1, 2022, and
- A 5% increase in the Base Pay Schedule effective September 1, 2023.

The Union did not anticipate a contract extending beyond August 31, 2024, so they made no proposal for a wage increase effective September 1, 2024. I believe that it is very reasonable to assume, however, that the Union would want an increase in the Base Pay Schedule effective September 1, 2024, if the contract were to extend through August 31, 2025.

The Union does not consider bonuses a satisfactory substitute for increases in wage rates. The Union brief (page 11) noted that the Employer provided only bonuses and no increases in wage rates for a period of eight years ending in 2017. The most recent expired CBA provided increases in the Base Pay Schedule of 3.5% effective January 1, 2018; 1.5% effective September 1, 2018; 2% effective September 1, 2019; and 2% effective September 1, 2020 [Union book 2, exhibit 1, pages 36 and 41-42]. These add up to 9% over the life of the contract. But this 9% increase in the Base Pay Schedule was partly offset by increasing employee pension contributions by 2% of wages.

The Union presented testimony that bargaining unit members need a large wage increase to meet their basic living expenses, given the relatively low cumulative increase in wage rates over the prior 12 years and the large recent increases in consumer prices. Employee contributions for the Employer's health insurance plan rose by about 1.5% of base pay effective January 1, 2022, and the prices of gas and groceries are rising. A Union witness testified that inflation is now over 8% per year. Another Union witness testified approximately as follows: "A raise will not lead us to go on vacation or buy a car; we'll use it to stay afloat and pay off some credit cards." This witness works full time at YCUA but also has another job elsewhere; his wife is about to take a second job so that they can stay afloat financially. This witness knows multiple members of the bargaining unit who have taken second jobs out of economic necessity.

The Union considers Ypsilanti Township and POAM a comparable employer and bargaining unit for grass cutters and janitors. The Union brief (page 12) noted that they agreed to a 2.5% increase for 2021. The Union brief (page 13) also stated that Ann Arbor and AFSCME Local 369, which both parties consider a comparable employer and bargaining unit, provides a more generous Benefit Multiplier for pensions than does

YCUA, and Ann Arbor (presumably unlike YCUA, though the Union brief does not state this) provides up to 12 weeks of paid parental leave and continuation of wages and most benefits for employees injured on the job.

The Union testimony at the hearing and the Union brief did not directly compare the wage rates at YCUA to those at comparable employers. But I infer that the Union reference to more generous benefits at Ann Arbor than at YCUA was an effort to show that, from the perspective of total compensation rather than wage rates alone, YCUA employees are not overpaid.

Employer's Position on Wages

The Employer wage proposal is:

- A 3% lump sum bonus at ratification,
- A 5% lump sum bonus effective September 1, 2022,
- A 3% increase in the Base Pay Schedule effective September 1, 2023, and
- [If the Union agrees to a contract through August 31, 2025] A 3% increase in the Base Pay Schedule effective September 1, 2024.

The Employer argued that the compensation they provide is constrained by their ability to pay. The Employer brief (page 3) states: "YCUA entered this labor negotiation following three consecutive years of reduced revenues resulting in operating losses of $9.8 million. To manage through these challenges, YCUA has expended 45% of their cash reserves. . . [resulting in] a cash balance reduction from $21.6 million in 2018 to $11.8 million in 2021."

The Employer's revenues have been reduced in recent years by two factors (Employer brief, page 4). First, record rainfalls during the summers of 2019, 2020, and 2021 reduced sales of water for lawns and gardens while still sending water to the sewers to be treated by the wastewater plant. The Employer incurs extra costs for treating this rainwater at the wastewater plant without collecting any extra revenues. Second, the Covid-19 epidemic led to temporary shutdowns at Eastern Michigan University, one of the Employer's biggest customers for water and sewer service. The Employer brief (page 9) stated that "YCUA is optimistic that the factors contributing to lower revenues are anomalies," suggesting that they will not continue in the future.

The Employer wants a substantial portion of the increase in compensation for bargaining unit members to come in the form of bonuses rather than increases in wage rates. Although this saves the Employer money on overtime (as bonuses do not raise overtime pay), the Employer's principal concern is pension liability and the pension funding ratio.

In the interest of clarity, I present here my own detailed explanation (not included in the Employer's testimony or brief) of the pension liability and pension funding ratio issue:

> Pension liability is the amount of money that the pension plan needs to cover all future pension benefit payments that have been promised as of today. This is measured by what economists call discounted present value: the number of dollars, invested today, that, together with investment earnings, would be exactly sufficient to make all future pension benefit payments that have been promised as of today. If promised future pension benefits rise, then pension liability rises.
>
> The key here is that the MERS pension benefit formula treats wages differently from lump sum bonuses. An increase in wage rates raises Final Average Compensation, and thus raises future pension benefits – and pension liabilities. But the Employer has testified that a bonus has no impact on Final Average Compensation for purposes of the MERS pension benefit formula. By giving compensation increases in the form of bonuses rather than increases in wage rates, the Employer can stop the growth of their pension liabilities.
>
> The growth of pension liabilities recently became a more urgent concern for local public employers in Michigan because of a 2017 Michigan law regarding the pension funding ratio. This ratio is given by the following formula:

$$\text{Pension funding ratio} = \frac{\text{Current market value of assets in pension fund}}{\text{Discounted present value of future pension benefits}}$$

$$= \frac{\text{Current market value of assets in pension fund}}{\text{Pension liabilities}}$$

> A pension funding ratio of 100% means that there are exactly enough assets (e.g., stocks and bonds) now in the pension fund to pay for all future pension benefits that employees have earned as of today. A pension funding ratio of 100% means that current and retired employees can be confident that they will receive the pension benefits that they have earned. The farther below 100% the pension funding ratio is, the greater the risk that current and retired employees will ***<u>not</u>*** receive the pension benefits that they have earned. A low pension funding ratio thus is bad for current and retired employees.

The Employer presented testimony that Michigan Public Act 202 of 2017 requires employers to develop a correction plan if the funding ratio for their defined benefit pension plans falls below 60%. Employer Exhibit 2 shows that YCUA's funding ratio was only 59.8% for fiscal year 2020 (ending August 2020), triggering "underfunded status" as defined by PA 202 of 2017. The same exhibit shows that their funding ratio increased to 65.3% for fiscal year 2021. The pension actuary's report for calendar year 2021 was not available at the time of the fact finding hearing, but more recent data seem to have arrived in time for the Employer brief. This brief noted on page 4 that "The plan is currently funded at 68% [I assume that this figure is for December 31, 2021], up from 57.9% in 2018."

The Employer asserted that their wage rates were competitive with those of comparable employers, providing further justification for the use of lump sum bonuses instead of increases in wage rates for the period from September 1, 2021, through August 31, 2023. The Employer, unlike the Union, provided extensive testimony during the hearing and devoted a substantial portion of their brief to the issue of comparability. Employer Exhibit 4 provides wage comparisons with Ann Arbor and AFSCME Local 369, the only employer and bargaining unit that both the Employer and the Union agreed were comparable. The Employer brief (page 7) states that Ann Arbor operates "a wastewater treatment plant much like YCUA's, which allows us to look at positions with similar job duties for comparison." The Employer brief (page 8) argues that "YCUA is strongly competitive [with Ann Arbor], and, in most cases, higher paid going into this contract cycle. Based on its most recent offer, YCUA would remain strongly competitive coming out of this contract cycle."

The Employer brief (pages 8-9) asserted that YCUA wages were higher than those for Taylor, Westland, and Pittsfield Township and that their starting wages were higher than those for Canton. It acknowledged that Canton paid more for employees with at least 2 years seniority but asserted that YCUA wages were higher if the senior employees obtained job-relevant licenses.

The Employer brief stated (page 5), "Time and again during the negotiation process, the Union has brought up the subject of raising water rates to cover the cost of their demands. YCUA Leadership is dedicated to providing competitive wages to our workforce but recognizes that this goal must be balanced with water affordability for our customers and market conditions." The Employer brief objected to anything "outside of modest [water and sewer] rate increases on an annual basis" (page 6).

The Employer also noted that negotiated increases in each wage rate in the Base Pay Schedule of the CBA are not the only source of wage increases for an individual employee. The Employer brief (page 6) reported that a Union witness who had testified that he had received only a 9% wage increase in 12 years (because that was the contractually negotiated increase in each wage rate in the Base Pay Schedule) actually received an increase from $24.99 per hour to $30.28 because of such factors as attainment of job-related licensure and increased longevity. By my calculations, going from $24.99 to $30.28 is a 21% increase.

Fact-Finder's Analysis on Wages

(i) Increases in Base Pay Schedule are not the only source of wage increases

As the Employer asserted, there are multiple ways that bargaining unit members can get wage increases. First, the Union and the Employer can negotiate increases in the Base Pay Schedule, which raise the wages for everyone. Second, individual employees can transition to a different category for years of service to the employer (e.g., moving to the right one column in the Base Pay Schedule from the column for 4 to 9 years of service to the column for 10 to 14 years of service). Third, individual employees can transition to a job in a higher pay grade because, for example, the new job requires more skill (e.g., moving one row down in the Base Pay Schedule from the row for pay grade 14 Line Service Technician to the row for pay grade 15 Hydrant Maintenance/Line Staking Technician). Fourth, individual employees can change from the day shift to the afternoon shift or the midnight shift, getting premium pay in exchange for work schedules that most employees consider undesirable.

If many individual employees can get wage increases without changes in the Base Pay Schedule, then there is less justification for an increase in the Base Pay Schedule.

(ii) Employer ability to pay: factors reducing Employer revenues

It is difficult to determine whether record summer rainfalls in recent years are merely a coincidence of fluctuating weather or a new normal resulting from climate change. If they are the new normal because of climate change, then the Employer will face ongoing reductions in revenues from water sales and ongoing increases in uncompensated costs of wastewater treatment for rain. I am thus ***less*** optimistic than the Employer is that the adverse financial impact on YCUA of heavy summer rainfalls will diminish in future years.

The widespread availability of the Covid-19 vaccine, however, seems to have substantially reduced the likelihood of future business shutdowns (such as of Eastern Michigan University) due to the Covid-19 epidemic. Based on the improvement in the Covid situation, I agree with the Employer's optimism that the adverse impact of Covid-19 shutdowns in 2020 and 2021 on YCUA revenues will diminish in future years.

(iii) Employer ability to pay: raising water and sewer rates

To what extent could the Employer increase their ability to pay by requesting increases in water and sewer rates? There are two possible constraints on rate increases: market forces, and political forces.

Market forces

For the City of Ypsilanti and Ypsilanti Township, there is little basis for the Employer's concern about market conditions constraining their ability to rate water and sewer rates. In those markets, YCUA is an entrenched monopoly because they own the pipes. The water and sewer pipes in the City of Ypsilanti and in Ypsilanti Township are a substantial portion of the $1 billion in capital assets that the Employer brief reported (page 3) that YCUA owns. The Employer's ownership of these pipes poses a formidable barrier to entry by a rival water or sewer provider.

Furthermore, YCUA customers will still buy water from YCUA even if the price rises substantially. Water and sewer services are necessities rather than luxuries. And substitutes for YCUA water and sewer services, such as well water and septic tanks, are impractical for large users such as Eastern Michigan University that have a high ratio of people to land.

Ypsilanti water customers have little choice: they must continue buying water from YCUA. In terms of market conditions, YCUA can raise their total revenues a great deal by raising their rates for the City of Ypsilanti and Ypsilanti Township.

This is less true for other townships for which the Employer provides water and sewer services because the Employer does not own the water and sewer pipes for these other townships. Thus, rival water or sewer suppliers could take the business of some or all these other townships if YCUA raises its rates too much. And wells and septic tanks may be a viable alternative for townships with low population density and few industrial, commercial, or other institutional water and sewer customers.

Political Forces

Even for the City of Ypsilanti and Ypsilanti Township, the Employer is constrained by concern about affordability for customers. Elected officials accountable to the voters would object if YCUA behaved like a ruthless private monopoly out to maximize its profits. There is a political limit to the extent to which the Employer can raise water and sewer rates for any of their customers, and there is also a market limit to the extent to which the Employer can raise water and sewer rates for customers other than those in the City of Ypsilanti and Ypsilanti Township. But I believe that the Employer could raise water and sewer rates ***somewhat*** more than they had planned to cover the cost of wage increases or bonuses, especially at a time when many other organizations are raising the prices of the goods or services that they sell.

(iv) Employer ability to pay: pension costs

I commend the Employer for taking seriously their obligation to avoid "underfunded status" for the pension plan, as defined by PA 202 of 2017. Beyond meeting a legal requirement, the Employer is helping to protect the security of the retirement income for current and former bargaining unit members.

Article 27 Employees' Pension Plan of the expired CBA [Union Book 2, Exhibit 1, page 34] includes two provisions that will gradually but substantially improve the Employer's funding ratio for their pension. First, it provides a less generous defined benefit plan for those hired after September 1, 2013, than for those hired earlier. Testimony was presented at the hearing that the Benefit Multiplier in the MERS pension benefit formula was reduced from 2% for those hired before September 1, 2013, to 1.5% for those hired after. Second, Article 27 requires that employees contribute 5% of pay towards the pension plan effective January 1, 2018. Since a Union witness testified that employee pension contributions increased by 2% of wages during the term of the last CBA, I infer that the employees only had to contribute 3% of pay towards the pension plan prior to 2018. Over a period of decades, these provisions of Article 27 will reduce pension liabilities and raise pension assets, raising the pension funding ratio a lot, other things being equal.

The Employer's push for a period of over a decade to give compensation increases in the form of lump sum bonuses instead of increases in wage rates has reduced pension liabilities, and thus also tended to raise the pension funding ratio, other things being equal.

But other things are not necessarily equal. Another important influence on the pension funding ratio is the rate of return in financial markets. When the bond market and, especially, the stock market, are doing well, then MERS pension assets grow, and the pension funding ratio improves. When financial markets do badly, then pension assets shrink, and the funding ratio deteriorates.

MERS reported their asset allocation and portfolio performance in "MERS Total Market Portfolio, 1Q 03/31/22" [available July 13, 2022, at https://resources.mersofmich.com/SharepointFormsService/Default.aspx?SummarySheet=TotalMarket-I.pdf]. They had 53.5% of their assets in publicly traded stocks, 22.0% in bonds, and 24.5% in private equity. MERS had three years in a row (2019, 2020, and 2021) with investment returns between 13.29% and 14.09%. The very favorable financial market conditions in those years helped improve YCUA's pension funding ratio. High rates of return raised the numerator (current market value of assets in the pension fund) in the formula for the pension funding ratio.

Unfortunately, financial market conditions have been unfavorable so far in 2022. The MERS portfolio lost 4.18% between January 1 and March 31, 2022, according to their first quarter report. I assume that the MERS portfolio declined further in the second quarter of 2022, based on poor overall conditions recently in financial markets.

I do not have enough information to determine whether YCUA faces imminent danger of falling below a 60% funding ratio again. But I cannot exclude the possibility that this is a realistic concern, depending on what happens in financial markets for the remainder of 2022. This makes me favor making compensation increases prior to September 1, 2023, take the form of bonuses rather than increases in wage rates.

(v) Wages in comparable employers and bargaining units

Employer exhibit 4 compares YCUA and Ann Arbor wage ranges for each of 15 YCUA job classifications, presenting both the current wage ranges and those effective January 1, 2025, assuming that YCUA provides a 2% base wage increase on September 1, 2024. But the Employer brief (page 10) offers a 3% rather than 2% base wage increase on September 1, 2024, so that Employer exhibit 4 slightly **understates** the extent to which the Employer's wage rates will be competitive with those to be offered by Ann Arbor as of January 1, 2025.

According to Employer exhibit 4, in 12 of the 15 YCUA job classifications, YCUA wage ranges were at or above those offered by Ann Arbor, both currently and (based on the Employer's wage proposals, assuming a 2% rather than 3% increase on September 1, 2024) effective January 1, 2025. For three classifications (Pay Grade 15 Hydrant Maintenance/Line Staking Technician, Pay Grade 15 Laboratory/Industrial Surveillance Technician, and Pay Grade 17 Automobile Mechanic), the top end YCUA wage ranges (for those with more seniority) lagged those for Ann Arbor, especially for Ann Arbor employees hired prior to 2015. (Ann Arbor has a two-tier wage schedule with higher wages for employees hired prior to 2015.) Despite these three exceptions, I agree overall with the Employer claim that YCUA pays wages that are competitive with those of Ann Arbor. Admittedly, the total compensation (rather than wage-only) comparison may be less favorable to YCUA if the employee benefits package is better overall for Ann Arbor; but I do not have detailed enough information about the benefits packages at YCUA and Ann Arbor to determine if that is the case.

The Employer evidence regarding wages offered by Taylor, Westland, Pittsfield Township, and Canton further supports the claim that YCUA wages are competitive with those offered by comparable employers.

(vi) Cost of living

A just-released report indicates that the increase in the cost of living is even larger than the 8% figure mentioned by a Union witness at the fact finding hearing. On July 13, 2022, the U.S. Bureau of Labor Statistics released figures for the increase from June 2021 to June 2022 in the Consumer Price Index for All Urban Consumers: U.S. City Average. ***The annual increase in the cost of living was 9.1%*** [U.S. Department of Labor, Bureau of Labor Statistics, News Release USDL 22-1470, "CONSUMER PRICE INDEX – JUNE 2022," available online June 13, 2022, at https://www.bls.gov/news.release/pdf/cpi.pdf].

The Federal Reserve recently has moved aggressively to raise interest rates, which should eventually relieve inflationary pressures. But there is uncertainty about how long it will take for monetary policy to slow the increase in the cost of living. Meanwhile, it takes more dollars for bargaining unit members to cover the cost of necessities for themselves and their families.

(vii) Summing up various considerations regarding wages

The strongest argument for raising compensation is the rapid increase in the cost of living, which was unexpected as recently as a year and a half ago. Also, Covid-19 vaccines have reduced the likelihood that Eastern Michigan University will shut down again soon, reducing the risk that YCUA will have low revenues in future years. And I believe that the Employer could reasonably request somewhat larger increases in water and sewer rates than the Employer seems inclined to request.

On the other hand, the Employer has good reason to be concerned right now about anything that increases their pension liabilities, which is an argument for lump sum bonuses rather than increases in wage rates for the period prior to September 1, 2023. Second, wage rates at YCUA do not need to be raised to match what comparable employers pay (though I do not know the full story on total compensation, including benefits). Third, many individual employees can receive increases in their hourly wage rates by gaining seniority and by being promoted to higher Pay Grades, even if each wage rate in the Base Pay Schedule remains unchanged.

So, I agree with the Employer's proposal to emphasize bonuses rather than wage increases for the two years beginning September 1, 2021, and September 1, 2022. (The Employer has already offered 3% increases in wage rates effective September 1, 2023, and September 1, 2024.) But instead of ***8%*** in lump sum bonuses (3% upon ratification, presumably in August 2022; and an additional 5% on September 1, 2022), I recommend

11% in lump sum bonuses because of the unexpectedly large increases recently in the cost of living. Also, I propose paying out these lump sum bonuses over a longer period. And, because I support the Employer's proposal of a one-year contract for 2021-22 followed by a three-year contract for 2022-25, I propose dividing the ratification bonus into two components.

Instead of one 3% lump sum ratification bonus, as the Employer proposed, I propose the following two ratification bonuses, totaling 4%:

- A lump sum bonus equal to 1% of annual base pay, effective on ratification of the one-year contract for September 1, 2021, through August 31, 2022, and

- A lump sum bonus equal to 3% of annual base pay, effective on ratification of the three-year contract for September 1, 2022, through August 31, 2025.

My assumption is that both contracts would be ratified no later than August 31, 2022, so that these ratification bonuses would be paid out soon thereafter.

Instead of the 5% lump sum bonus payable on September 1, 2022, that the Employer proposed, I propose a total of 7% in lump sum bonuses, spread out in five payments of 1.4% each. These 1.4% lump sum bonuses would be payable on November 1, 2022; January 1, 2023; March 1, 2023; May 1, 2023; and July 1, 2023.

I apologize in advance to the Employer's payroll department for inconveniencing them, but I believe that it is in the interest of bargaining unit members to spread out the bonus payments. An employee with iron self-control would do fine receiving a 4% in lump sum bonus for contract ratification in August 2022, a 7% lump sum bonus on September 1, 2022, and no bonuses or wage increases for the following 12 months; he or she would save some of the 11% in lump sum bonuses received in August and the beginning of September for the leaner months to follow. But employees with less than iron self-control would be better off receiving an ongoing stream of smaller bonuses spread throughout the year, rather than getting all the money at once.

I do not know how MERS calculates Final Average Compensation for purposes of their pension benefit formula. It is important that the Employer check whether my proposal of dividing the 7% lump sum bonus into five separate bonuses would cause these bonuses to be included in Final Average Compensation. If so, then my suggestion of spreading out the bonus payments would be problematic; it would undermine the goal of improving the Employer's pension funding ratio.

If the parties do ***not*** adopt my duration recommendation that there be a one-year contract for 2021-22 followed by a three-year contract for 2022-2025, then:

- I recommend a 4% lump sum bonus upon ratification of the three-year contract for 2021-2024, and
- The parties should disregard my pay recommendations for September 1, 2024.

Recommendation on Wages

- A lump sum bonus equal to 1% of annual base pay, effective on ratification of the one-year contract for September 1, 2021, through August 31, 2022.
- A lump sum bonus equal to 3% of annual base pay, effective on ratification of the three-year contract for September 1, 2022, through August 31, 2025. [My assumption is that both contracts would be ratified no later than August 31, 2022.]
- Five lump sum bonuses, each equal to 1.4% of annual base pay, payable on November 1, 2022; January 1, 2023; March 1, 2023; May 1, 2023; and July 1, 2023.
- A 3% increase in each wage rate in the Base Pay Schedule, effective September 1, 2023.
- A 3% increase in each wage rate in the Base Pay Schedule, effective September 1, 2024.
- A wage reopener to allow additional bargaining about wage rates and bonuses for the period beginning September 1, 2024, if the annual inflation rate for calendar year 2023 is at least 4.0%. [See Duration recommendation for specific language.]

e. **FATIGUE TIME** (economic issue)

Statement of the Issue

The expired CBA has no language concerning fatigue time, i.e., paid time off if employees have worked substantially longer than a normal workday because of an emergency such as a water main break or power failure. The Union has proposed fatigue time language. The Employer accepted the concept of fatigue time but countered with different proposed language.

Union's Position on Fatigue Time

The Union noted that water main breaks, power outages, and other emergencies sometimes require bargaining unit members in the Maintenance and Service departments to work unexpected overtime. This may happen five times or more during a single winter and also during other seasons. An employee might work his regular shift from 8 AM to 4

PM, then be called back to work at 6 PM to deal with the emergency. In some cases, the emergency work may continue to or even beyond the start of the employee's next regular shift at 8 AM the following day.

A Union witness testified that he understands and accepts the Employer's need to require unexpected overtime to handle emergencies. I commend the bargaining unit members for their unselfish willingness to disrupt their own lives to deal with crises such as water main breaks. Still, the Union is also concerned about employee fatigue. Such fatigue potentially poses a serious safety hazard to the employee working overtime and to the public if the employee is driving a vehicle either as part of his job or to return home once he is off duty. Although handling a water main break may be sufficiently urgent to justify having the employee work when fatigued, the routine duties that the employee would perform on his next regular shift should be postponed if necessary to provide a rest break.

Therefore, the Union wants a mechanism to allow an employee to go home and sleep during his next regular shift – ***without losing his regular pay*** – if he has just worked many hours of emergency overtime. Under the expired CBA, an employee could use accrued sick time or vacation time to go home and sleep during his next regular shift, without losing his regular pay. But recently hired employees may not yet have accumulated enough sick time or vacation time to do this, and employees who have recently been on sick leave or on vacation may not have any sick time or vacation time left. In these cases, an employee going home to sleep during his next regular shift, after having worked emergency overtime, would forfeit part or all the pay from his next regular shift.

The Union's fatigue time proposal is the following [Union book 1, exhibit 17]:

> All employees are to receive fatigue time from a pool of 2000 hours per calendar year January 1st through December 31st. All fatigue time must be used to supplement the employees regular work hours. To qualify for fatigue time such employees must work a total of 12 continuous hours and these 12 hours must bump up to or be within their regular work. If an individual's overtime work is completed within two hours of their normal start and he has worked a minimum of 12 hours the individual can also qualify for fatigue time. An employee may use a maximum of four hours of his accrued time to supplement the hours to reach 12 continuous hours to qualify for fatigue time but again the overtime work must be completed to use this option. In case of an emergency the use of the last option may be denied by management.

The Union brief stated (page 25), "Although the Employer has offered fatigue time language, the Union's language is preferred because it provides an option for BU [bargaining unit] employees to use their own time [i.e., sick time or vacation time] to reach 12 hours if the overtime is not within two hours of their next shift or within the regularly scheduled shift."

The Union brief (pages 24-25) also presented fatigue time language in contracts for two employers the Union considers comparable, Livonia and Northville. Livonia requires employees to work at least 16 hours within a continuous 24-hour period to qualify for fatigue time, while Northville requires them to work at least 12 hours within this period.

Employer's Position on Fatigue Time

The Union exhibits (Book 1, Exhibit 12) listed the Employer proposal on fatigue time as follows:

> An employee who works 16 or more hours to or into their regularly scheduled shift and is released before the end of their regularly scheduled shift will be paid for the remainder of their regularly scheduled shift at straight time.

The more recent Employer brief (page 13) lists a somewhat different Employer proposal on this issue:

> If an employee is on the clock for more than 16 hours within any consecutive 24-hour period, the employee will qualify for fatigue time in equal proportion for all hours worked in excess of 16 hours. Fatigue time can only be applied at the start of the next regularly scheduled shift if it occurs within 8 hours of this 24-hour period.
>
> For the purpose of determining fatigue time eligibility, the 16 hours "on the clock" refers to "actual hours worked" and does not include any other paid time.

Fact-Finder's Analysis on Fatigue Time

Though both parties accept the concept of fatigue time, they differ on (a) whether the employee should work 12 hours or 16 hours with a 24-hour period to qualify, and (b) whether the employee should be allowed to use up to 4 hours of sick time and vacation time in addition to actual hours worked to qualify. On the latter issue, I side unequivocally with the Employer; employees do not suffer from fatigue if they use sick time or vacation time to qualify. The choice between 12 hours or 16 hours to qualify is a closer call.

The Union brief (page 24) presented relevant contract language from the City of Livonia, included in their contract article on overtime:

> Any Employee who works 16 or more hours within a continuous 24-hour period commencing with the starting time of the Employee's shift will, whenever possible, be released for an eight-hour period before they are required to report to work for their next normal workday. If, however, the City is unable to release such Employee, they shall continue to receive two times the normal straight-time rate for all hours worked in excess of 16 hours until they are released from work for eight hours. If all or any part of such eight-hour period coincides with the Employee's next normal workday, they shall suffer no loss of their straight-time pay they would ordinarily earn during such period. If, in the judgment of the City, the Employees cannot be gainfully employed during the portion of their normal workday remaining after the expiration of such eight-hour period, such Employee may be excused from work for the remainder of their normal shift without loss of their straight-time pay. An Employee shall not normally be required to report back for less than two hours.

I quite like this Livonia language for three reasons. First, it focuses on preventing fatigue that could, for example, lead to motor vehicle collisions. It does this by (a) specifying that the employees will, "whenever possible," be released for eight hours of rest after they have worked 16 hours or more within a 24-hour period and (b) requiring double-time pay, rather than only time-and-a-half pay, for all hours worked in excess of 16 (so that supervisors are less inclined to abuse the "whenever possible" language). Second, it provides fatigue-time pay if part of the 8-hour rest period coincides with the employee's next normal work shift, so that an employee is not tempted to forego biologically essential sleep to avoid loss of pay. Third, in my view, the Livonia language is specific, clear, and unambiguous.

Since the Union has proposed allowing employees to use accrued sick time or vacation time to qualify for fatigue time, and since I do not like that proposal, I would modify the Livonia language slightly to clarify that only actual hours worked, and not any other paid time, counts towards the 16 hours needed to qualify for fatigue time. Another modification I recommend is to specify that the employee must be released for eight ***continuous*** hours after working for 16 hours. Making the 8 hour continuous increases the probability that the fatigued employee will be able to sleep.

Recommendation on Fatigue Time

Add the following new Section P to Article 15 Overtime Pay to the three-year contract for 2022-25 (but ***NOT*** to the one-year contract for 2021-22 because this provision cannot easily be applied retroactively):

> "P. Any employee who works 16 or more hours (counting only actual hours worked and not any other paid time) within a continuous 24-hour period commencing with the starting time of the employee's shift will, whenever possible, be released for an eight-hour period before they are required to report to work for their next normal workday. If, however, the Employer is unable to release such employee, they shall receive two times the normal straight-time rate for all hours worked in excess of 16 hours until they are released from work for eight continuous hours. If all or any part of such eight-hour period coincides with the employee's next normal workday, they shall suffer no loss of their straight-time pay they would ordinarily earn during such period. If, in the judgment of the Employer, the employees cannot be gainfully employed during the portion of their normal workday remaining after the expiration of such eight-hour period, such employee may be excused from work for the remainder of their normal shift without loss of their straight-time pay. An employee shall not normally be required to report back for less than two hours."

Note: If the parties do ***not*** adopt my duration recommendation that there be a one-year contract for 2021-22 followed by a three-year contract for 2022-2025, then add the following language at the end of Section P: "This provision takes effect September 1, 2022."

f. DURATION (partly an economic issue)

Statement of the Issue

Article 43 of the expired CBA specified that the contract was in effect from March 1, 2018, through August 31, 2021 [Union book 2, exhibit 1, page 40]. The old contract thus had duration of 3 years and 5 months. The issue in dispute is the duration of the new CBA.

Union's Position on Duration

The Union wants a three-year CBA so that the length of the CBA does not exceed the "contract bar" period. The National Labor Relations Board (NLRB) has a longstanding contract bar rule under which the NLRB will not process any union representation or decertification petition during the first three years of a valid CBA. Although NLRB policies are not binding on Michigan Employment Relations Commission (MERC) policies for Michigan public employees, MERC often follows the NLRB's lead. By limiting the CBA to three years, the Union is protected from challenges by rival unions or from decertification petitions for the full duration of the CBA.

Employer's Position on Duration

Although the Employer would reluctantly be willing to accept a three-year CBA, they prefer a four-year CBA. The Employer brief proposed a way of addressing the Union's concerns about consistency with the contract bar period while also decreasing the frequency of contract negotiations (at least for this contract cycle). That is to have the parties agree to ***TWO*** CBA's, both presumably to be ratified by August 2022. The first would be a one-year contract for the period from September 1, 2021, through August 30, 2022. The second would be a three-year contract for the period from September 1, 2022, through August 31, 2025.

Fact-Finder's Analysis on Duration

The proposal in the Employer's brief seems to address in full the Union's stated desire to have the CBA duration be no longer than the contract bar period. The proposal in the Employer's brief also has the advantage to the Union of guaranteeing a 3% increase in wage rates (and not just a lump sum bonus) effective September 1, 2024.

Still, extending the CBA to include the period from September 1, 2024, through August 31, 2025, raises another issue: the uncertainty about how long the current bout of inflation will last. If efforts by the Federal Reserve to fight inflation achieve quick success, then that will reduce the need for employee compensation increases in the period from September 1, 2024, through August 31, 2025. But if inflation is persistent, then bargaining unit members will need a larger compensation increase during the period from September 1, 2024, through August 31, 2025, to avoid a cut in what economists call "real wages" (wages adjusted for changes in the cost of living: in other words, the purchasing power of wages).

Article 31 of the expired CBA provided for a cost-of-living allowance based on increases in the Consumer Price Index. If the cost-of-living allowance were still in effect, then that would mitigate the concern that a longer-term contract might lead to a reduction in real wages. But Section E of Article 31 states, "Due to the increases in pension benefits, the cost-of-living allowance shall be frozen and not paid during the term of this contract."

In any case, Article 31 limits cost-of-living adjustments in base wage rates to a maximum of 2 ½%. It provides bargaining unit members with full protection against the first 2 ½ percentage points of inflation but no protection for inflation beyond that level. If 9% inflation continues for some time, then bargaining unit members' real earnings would erode significantly even if Article 31 were not dormant.

I therefore propose adopting the Employer's preferred duration of a one-year contract followed by a three-year contract, both presumably ratified by August 2022, but with a wage reopener in February 2024 if inflation during 2023 exceeds a certain threshold. (The federal government should report the annual inflation rate for 2023 in January 2024.) My expectation is that the parties would agree to an additional wage increase or bonus if inflation exceeded that threshold.

The wage reopener would apply to pay for the period from September 1, 2024, through August 31, 2025, so that the Employer would have sufficient lead time to request water and sewer rate increases to cover the cost of any negotiated increases in compensation for bargaining unit members.

Recommendation on Duration

- A one-year contract for September 1, 2021, through August 31, 2022, AND
- A three-year contract for September 1, 2022, through August 31, 2025.
- Both contracts to be ratified by August 31, 2022.
- The following wage reopener clause to be added to Article 43 Duration of Agreement in the three-year contract:

  "The parties agree to reopen Article 30 Base Pay Schedule for further bargaining regarding wage rates and bonuses for the period from September 1, 2024, through August 31, 2025, if the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: U.S. City Average has increased by at least 4.0% for the most recent 12-month period reported as of February 1, 2024."

6. SUMMARY OF RECOMMENDATION

ISSUE	RECOMMENDATION
Long-term disability	Set monthly cap on LTD benefits at: • $2,100 effective September 1, 2021 [level in prior CBA] • $2,700 effective September 1, 2022 • $2,850 effective September 1, 2023 • $3,000 effective September 1, 2024

Uniform allowance	Raise the allowance for boots and cold-weather gear from $125/year to: • $250/year effective September 1, 2021 • $265/year effective September 1, 2022 • $280/year effective September 1, 2023 • $295/year effective September 1, 2024
Juneteenth holiday	Add the following language to Article 20 Paid Holidays: "YCUA will add Juneteenth as a paid holiday for YCUA employees if and when the City of Ypsilanti and Ypsilanti Township add Juneteenth as a paid holiday for their employees."
Wages	• A lump sum bonus equal to 1% of annual base pay, effective on ratification of the one-year contract for September 1, 2021, through August 31, 2022. • A lump sum bonus equal to 3% of annual base pay, effective on ratification of the three-year contract for September 1, 2022, through August 31, 2025. [My assumption is that both contracts would be ratified no later than August 31, 2022.] • Five lump sum bonuses, each equal to 1.4% of annual base pay, payable on November 1, 2022; January 1, 2023; March 1, 2023; May 1, 2023; and July 1, 2023. • A 3% increase in each wage rate in the Base Pay Schedule, effective September 1, 2023. • A 3% increase in each wage rate in the Base Pay Schedule, effective September 1, 2024. • A wage reopener to allow additional bargaining about wage rates and bonuses for the period beginning September 1, 2024, if the annual inflation rate for calendar year 2023 is at least 4.0%. [See Duration recommendation for specific language.]
Fatigue time	Add the following new section to Article 15 Overtime Pay to the three-year contract for 2022-25 (but not to the one-year contract for 2021-22 because this provision cannot easily be applied retroactively): "P. Any employee who works 16 or more hours (counting only actual hours worked and not any other paid time) within a continuous 24-hour period commencing with the starting time of the employee's shift will, whenever possible, be released for an eight-hour period before they are required to report to work for their next normal workday. If, however, the Employer is unable to release such employee, they shall receive two times the normal

<table>
<tr><td></td><td>straight-time rate for all hours worked in excess of 16 hours until they are released from work for eight continuous hours. If all or any part of such eight-hour period coincides with the employee's next normal workday, they shall suffer no loss of their straight-time pay they would ordinarily earn during such period. If, in the judgment of the Employer, the employees cannot be gainfully employed during the portion of their normal workday remaining after the expiration of such eight-hour period, such employee may be excused from work for the remainder of their normal shift without loss of their straight-time pay. An employee shall not normally be required to report back for less than two hours.”</td></tr>
<tr><td>Duration</td><td>A one-year contract for September 1, 2021, through August 31, 2022, AND
A three-year contract for September 1, 2022, through August 31, 2025.
Both contracts to be ratified by August 31, 2022.
The following wage reopener clause to be added to Article 43 Duration of Agreement in the three-year contract:

“The parties agree to reopen Article 30 Base Pay Schedule for further bargaining regarding wage rates and bonuses for the period from September 1, 2024, through August 31, 2025, if the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: U.S. City Average has increased by at least 4.0% for the most recent 12-month period reported as of February 1, 2024.”</td></tr>
</table>

Finally, I thank the parties for their cooperation in meeting deadlines and for their civility in discussing contentious issues. And I thank both the bargaining unit members and everyone else at YCUA for their important work in promoting public health by providing clean water and effective sewage removal.

Respectfully submitted,

Gregory M Saltzman

Gregory M. Saltzman, Ph.D.
Fact Finder
July 14, 2022