

**MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
BUREAU OF EMPLOYMENT RELATIONS**

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**Petitioning Party:**

The Technical, Professional and Officeworkers Association of Michigan

and

**Responding Party:**

The Washtenaw County Road Commission

**MERC Case No. 21-I-1834-CB**



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**FACT FINDER'S REPORT AND RECOMMENDATIONS**

Pursuant to Michigan Labor Mediation Act (P.A.176 of 1939, as amended)  
[MCL 423.1 (et seq)]  
Public Employment Relations Act (P.A.336 of 1947, as amended)  
[MCL 423.201, et seq.]

**Fact Finder:**  
Allen J. Kovinsky

**Advocates:**  
  
Union Advocate: Kevin Loftis  
Employer Advocate: Michael R. Kluck

Petition filed February 16, 2022  
Panel Chair Appointed: April 7, 2022  
Scheduling Conference held: May 3, 2022  
Hearing date held: August 4, 2022  
Report issued: September 26, 2022

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## **Hearing Appearances and Witness List**

### *For the Union:*

Kevin Loftis, Advocate  
Al Brzys, Research Assistant  
David LaMontaine, Business Agent  
Mike Gibson, Local President (Temporary)  
Gerald Rothman (Steward)  
Greg Gaw (Bargaining Representative)

### *For the Employer:*

Michael Kluck, Labor Counsel  
Adam L. Lape, Director of Operations  
Dan Ackerman, Director of Finance  
Sheryl Siddall, Managing Director  
Nicole Peterson, H.R. Manager  
Austin Delano, Law Clerk

## **1. Introduction and Background**

The Washtenaw County Road Commission is a local public agency which performs the normal duties of a road commission such as snow removal, repairs and other duties normally associated with a road commission. The Washtenaw County Road Commission shall hereinafter be referred to as the "Employer."

The Technical, Professional and Officeworkers Association of Michigan is a Union representing the employees of the Employer and shall hereinafter be referred to as the "Union."

The Union and the Employer are parties to a collective bargaining agreement which had a termination date of December 17, 2021. The parties met over an extended period of time in an attempt to reach an agreement on a new collective bargaining agreement. However, they were unsuccessful, and as a result, the Union filed its Petition for Fact Finding on or about February 16, 2022.

## **2. Stipulations and Preliminary Ruling.**

The parties stipulated that the Petition was correct with respect to the description of the parties, the issues in dispute and the request for the appointment of a qualified neutral to determine the facts and make appropriate recommendations. The parties further agreed, at the time of the prehearing conference and the hearing, that the Petition was timely filed, the Michigan Employment Relations Commission had jurisdiction to conduct fact finding proceedings, the Fact Finder (Allen J. Kovinsky), was duly appointed and had jurisdiction to conduct the prehearing and hearing and to issue his findings and recommendations pursuant to the statutory authority. The parties further agreed that mediation took place on diverse dates in February of 2022.

A prehearing conference was scheduled for and took place on May 3, 2022. The participants in the prehearing conference included, on behalf of the Union, Messrs. Loftis, LaMontaine, and Brzys. The participants on behalf of the Employer were Mr. Kluck and Ms. Nicole Peterson.

During the course of the prehearing conference, the parties agreed that Mr. Kluck would be the advocate on behalf of the Employer and Mr. Loftis would be the advocate on behalf of the Union. Hearings were scheduled for August 4 and 9, 2022 at the Commission offices located in Ann Arbor, Michigan. The parties further agreed that the length of the new collective bargaining agreement would date from the date of ratification by the parties through December 17, 2024, and that due to the provisions of P.A. Act 54, there would be no retroactivity.

The parties further agreed that all of the issues in dispute were economic.

The parties further agreed as to the issues that were in dispute at that time, which were subsequently reduced to the issues hereinabove set forth. All other issues were either resolved or withdrawn by the parties prior to the hearing.

Furthermore, during the course of the prehearing conference, the parties agreed on dates for the exchange of exhibits and rebuttal exhibits, if any, as well as offers of settlement and further agreed that the time for filing briefs would be determined at the time of the hearings. It was further agreed that the Fact Finder's Report and Recommendations would be provided to the parties within 30 days of the receipt of their briefs.

The parties also agreed to provide the Fact Finder with their final offers of settlement on or about August 1, 2022, as well as exchanging those offers between the parties at the same time.

Subsequent to the hearing, the parties did file their briefs within the time limits set forth by agreement at the hearing. The briefs were received by the Fact Finder on or about September 13, 2022.

The parties also agreed in the prehearing conference to the order of presentation with the Union as the Petitioner presenting its evidence on each issue followed by the Employer providing its rebuttal evidence on each issue before proceeding to the next issue.

3. **Comparables.**

The comparables at the time of the prehearing conference were not agreed upon, but were subsequently agreed upon in further negotiations between the parties.

The Employer further agreed that it was not claiming neither poverty nor an inability to pay. However, it did reserve the right to plead for fiscal responsibility at the time of the hearing.

Subsequently, the parties agreed that the counties of Ingham, Jackson, Livingston, Oakland, and Ottawa would be utilized by the parties for comparable purposes.

#### 4. **Statutory Criteria**

The Michigan's Public Employment Relations Act (PERA) addresses fact finding in MCL 423.131 to 423.138. Section 423.137(1)(d) sets forth the requirements for a Fact Finder's Report, including the reasons and basis for the findings, conclusions and recommendations, unless the parties have waived that requirement. However, unfortunately, PERA does not specify the criteria a fact finder should utilize in reaching his or her recommendations.

As a result, many, if not all, fact finders have utilized the provisions of the compulsory interest arbitration for police and fire fighters, and the criteria set forth therein for fact finding proceedings. I have utilized in the past and will utilize with respect to this case, the criteria set forth in that Act, which is commonly referred to as Act 312 of the Public Acts of 1969. I further wish to note that although I may not make specific reference to any individual criteria set forth in that Act, each and every one of those criteria have been considered with respect to any findings and recommendations which I may make. The criteria for the Act is set forth in Section 423.239 of MCL 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.

I wish to point out further that particular emphasis has been utilized with respect to the financial ability of the unit of government to pay as well as the financial ability of the unit of government to pay being given the most significance if a determination is supported by competent, material and substantial evidence. In addition, as will be noted further in this report, the average consumer prices for goods and services, commonly known as the Cost of Living, is particularly relevant with respect to the unusual increases in the cost of living that have taken place in 2021 and the first eight months of 2022.

It should further be noted that unlike the Act 312 proceedings, the final or last offers of settlement with respect to fact finding do not require a selection, by the Fact Finder, of either the Employer or the Union last offer of settlement. The Fact Finder, with respect to his or her recommendations, is entitled to utilize, based upon his or her findings, an award which best represents a fair settlement of a particular issue with regard to the offer of the Union or the Employer.

5. **Issues before the Fact Finder**

A. **Duration of Agreement. Position of the Parties.**

(1) The Union. The Union has set forth in its brief, an issue with respect to the duration of the agreement. It should be noted that this was not litigated at the time of the hearing, nor has the Employer commented on this issue. Apparently, the dispute centers around the date for the commencement of the new collective bargaining agreement. The Union proposes that the new agreement be retroactive to December 18, 2021, with an expiration date of December 17, 2024. According to the Union, the Employer had proposed a three-year collective bargaining agreement which would start at the time the new collective bargaining agreement has been ratified and signed by the parties after the fact finding process has been completed. In support of its position, the Union refers to Section 15(b)(i) of PERA, which states:

“Except as otherwise provided in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement.”

The Union asserts that the Employer's position would result in members being without a valid collective bargaining agreement until a successor agreement is fully executed. The Union further asserts it has been long held by courts and the Michigan Employment Relations Commission that PERA reigns supreme. Thus, the Union believes that the Employer's proposed duration would completely violate PERA. The Union further asserts that the Employer's final offer of settlement proposal would result in a membership not being covered by a collective bargaining agreement from December 17, 2021 through January 1, 2023 or later. I am not certain how that reference would be valid since at some point in time, a new collective bargaining agreement would be signed, and it clearly would be valid until the expiration of the new collective bargaining agreement which would run beyond the date of ratification and include, presumably, time through January 1, 2023, as well as the additional years of the collective bargaining agreement. Apparently, the Union believes that that issue could take effect if the Employer failed to ratify the agreement before January 1, 2023.

If the parties have not resolved this issue, which apparently they have not as of the date of their exchange of briefs, it would be my recommendation that the agreement would be retroactive to December 18, 2021, in all respects except as it may pertain to any increase in wages which should take effect from and after the date of this Report. Clearly, the new wage which the parties agree upon whether it be between additional negotiations between the parties or based upon my recommendation, do not result in retroactivity, but only apply to the remainder of the calendar year from and after the date of this Report.

(2) **Ability to Pay**

The Union asserts that in the prehearing conference of May 3, 2022, the Employer did not make any claims of an inability to pay. This is true. In addition, it did not plead poverty. The Union further notes that the Employer did not provide any testimony or evidence to support a claim of inability to pay and accordingly, the Union concludes that the Employer has a very stable road fund balance and is financially sound, and therefore has the ability to pay any monetary



awards that the Union is seeking or that may be recommended by the Fact Finder.

The Employer made it clear that it does not assert an inability to pay nor poverty. However, it does believe that the Fact Finder should take into consideration the comparables, as well as the agreements agreed to by the parties, for the purpose of remaining fiscally sound insofar as any new collective bargaining agreement is concerned. It should be noted that the primary funding sources for road commissions is to be found in Act 51, which provides for the distribution of Michigan transportation funds. The transportation funds received by the Employer, as of the last report, were approximately \$32,260,000.00. The funds received by the comparable communities were Ingham County, \$22,212,000.00, Jackson County, \$19,579,000.00, Livingston County, \$25,342,000.00, Oakland County, \$114,421,000.00, and Ottawa County, \$32,957,000.00.

I further wish to note that my recommendations are based upon the belief that the Employer has the ability to pay and that they remain within a fiscally responsible parameter.

B. Wages.

(1) The Union. The Union requests a pay increase for the first year of the new collective bargaining agreement commencing on January 1, 2022 in the sum of 4%. It asserts that the Employer's final offer of settlement is also 4%. In addition, the Union has agreed to the Employer's proposal to reduce the number of wage steps from four to two. It further notes that the wage increases are not eligible for retroactivity due to Public Act 54 of the Acts of 2011.

(2) The Employer. The Employer agrees that the proposed wage increase in the first year of the contract should also be 4%, and that there should be a reduction in wage steps from four to two.

However, the Employer notes that the Union's proposed first year wage increase should take effect on "the date of the Fact Finder's recommendation." The Employer's proposed effective date would be the "first full payroll period after signing." Both parties agree that there is no retroactive wage adjustment.

(3) Fact Finder's Findings and Recommendation. Clearly, it is not necessary to make a recommendation with respect to the percentage increase nor the number of steps since the parties both agree with respect to the 4% increase and a two-step system. The only issue is when the wage increase should take effect between the Union's proposal of the date of the Fact Finder's Recommendation and the Employer's proposal of the first full payroll period after signing. It should be noted that as a result of Public Act 54, there is no retroactive wage adjustment. Accordingly, the longer the delay, the less the employees will receive with respect to the annual 4% increase for the remainder of this calendar year. In effect, if the employees only receive a wage increase over the last three months, the 4% agreed to by the parties is effectively only 1% for this calendar year. Therefore, it seems only fair that the wage increase should go into effect as soon as possible. It would therefore be my recommendation that the wage increase commence with the first full payroll period commencing after the date of this Report.

For the fiscal year of January 1, 2023 through December 31, 2023, the Union is seeking a wage increase of 4%. The Employer's final offer of settlement is 2.5%. In support of its position, the Union notes that the comparables would require an increase of 4.23% in order to be made whole with the comparable road commissions. In addition, the Union notes that Ottawa County received a 4% wage increase for 2023 while Ingham County received a \$1,500.00 bonus from the American Rescue Plan, and Oakland County received a \$2,000.00 bonus in 2022, as well as a 3% wage increase in 2023. The Union further notes that its members have not been awarded any American Rescue Plan bonuses, nor signing bonus.

In support of its position, the Employer indicates that the various road commissions received 3% increases for 2023 in the case of Oakland County, 4% in the case of Ottawa County, and 2% in the case of Jackson and Ingham counties. Apparently, Livingston County's contract terminated in 2022, and there was no figure available for the calendar year 2023.

The Employer further notes that the position of a heavy truck driver shows an average earnings of \$53,099.00. The earnings for a heavy truck driver in Washtenaw County, with a 4% increase for 2022, would be \$54,605.00, or \$1,586.00 above the average. The Employer further notes that there will be additional monies available to the employees with respect to its retirement proposals which would reduce the employees' contributions by 1% in their B-3 plan and 2% for the employers in the lower multiplier plan C-1. Further the Employer notes that the base wage

of the Washtenaw County Road Commission employees in year two would be \$56,052.00 or \$2,233.00 above the average.

The Employer further notes that pursuant to the testimony of Mr. Ackerman, the County Director of Finance for the Road Commission, the economic proposals would impact the Employer in an additional way, since the employees average about 200 hours of overtime per year. Upon a further review, the exact number of overtime on an average basis would be 192 hours per year.

Insofar as my recommendation is concerned, it must be noted that this is a very, very unusual time. For over a decade, the country experienced little or no inflation. However, the 2021 calendar year experienced an increase in the cost of living allowance of about 5.59%. It has even been worse for the calendar year of 2022. Each month has experienced an increase of 8% or higher, and in some months, beyond 9%. Any prior wage increases in the last collective bargaining agreement have been wiped out insofar as the members of this bargaining unit are concerned. As previously noted, one of the criteria set forth in Section 9 of Act 312 is the average consumer prices for goods and services, commonly known as the cost of living. All members of society, including the members of this bargaining unit, have experienced increased costs in every-day products that are required by virtually every employee in this bargaining unit. Gas prices at one point more than doubled. Food prices have increased beyond the 8% and 9% annualized cost of living figures. For example, a recent article in the Detroit Free Press (September 14, 2022), indicates that the average price of dairy and related products in the past year have increased by 16.2%, cereals by 16.4%, eggs by 39.8%, flour by 23.3%, and butter by 29.3%. In the past year, grocery prices have soared by an average of 13.5% for the biggest 12 month increase since 1979. While it is true that gas prices have recently come down, they are still at least \$1.00 per gallon higher than they were a year ago. Recently, there have been a number of articles about the increase in social security payments commencing in January of 2023, which are based upon the cost of living increases in the January through August or September period of 2022. The estimates range anywhere from over 8% to possibly as high as 10%. This is just another indication that we are in the midst of one of the highest inflationary spirals this nation has experienced in decades. The County clearly is not responsible for the inflationary environment that we are all living in, but the Employees' wage increases in the past collective bargaining agreement and whatever wages are increased percentage wise in the new collective bargaining agreement will not make them whole insofar as their inflationary losses are concerned.

Accordingly, taking into consideration all of the relevant criteria set forth in Section 9 of Act 312, and the current economy, as well as the fiscal stability of the Employer, it would be my recommendation that the Union offer of a 4% wage increase effective January 1, 2023, be included in the new collective bargaining agreement.

The Union has further proposed a wage increase of 4% for the calendar year commencing on January 1, 2024. The Employer's final offer of settlement is a 2.5% wage increase. The Union notes that Oakland County employees will receive a 3% wage increase for the calendar year of 2024 and Ottawa County will receive a 4% wage increase for 2024. The Union further submits that the three other comparables settled their agreements several years ago and were not experiencing the record rates of inflation which began to occur in early 2022. The Union concludes that with respect to those counties which negotiated their contracts two or three years ago, the wages may have been appropriate at that time, but due to increases in the cost of living, the previously negotiated wages in those counties clearly do not keep pace with inflation.

The Employer proposes a 2.5% increase in wages for the calendar year commencing on January 1, 2024. In support of its position, the Employer notes that the third year percentage increase for four of the five comparables is 2.75% while the 2024 wage rates are not available for Livingston County. The Employer notes that for the third year, the average increase among the four available employer comparables is 2.75%, however, it further notes that the 1% reduction in pension contribution is taken into account, most of the bargaining unit employees will be receiving the equivalency of a 3.5% wage increase. In reviewing the Exhibits, it should be noted that for the three calendar years of 2022, 2023, and 2024, which begin on various dates for each of the individual counties, the Oakland County Road Commission employees will receive a total of 10%, the Ottawa County employees will receive a total of 12.5%, the Jackson County Road Commission employees will receive a total of 7%, and the Ingham County road commission employees will receive a total of 7%. The Washtenaw County employee will have effectively only receive 1% for 2022 and are seeking 4% for 2023, which is my recommendation and 4% for 2024, thus only 9% in real money for those three years, although the 2022 increase of 4% clearly will be applicable in the succeeding two years as well.

Taking into account the loss of purchasing power over the last two years which will effectively wipe out all of the wage increase of the prior three years and a substantial portion of the future years and the ability of county to pay, as well as the additional 1% that the employees will receive as a result of the reduction in their pension contributions pursuant to the Employer's proposals for that issue, it would be my recommendation that the parties agree upon a wage increase of 3.25% for the calendar year of 2024.

### C. Retirement Contribution.

The Union notes that there are two separate levels of retirement benefits depending upon the employee's date of hire. Employees hired prior to January 1, 2012 have a 2.25% pension multiplier, while employees hired after that date have a 1.5% pension multiplier. The Union's final offer of settlement does not seek to change the pension benefit levels for any of the bargaining unit members. However, the Union does seek to change the rate of the employees' contribution to the pension plan. Currently, all bargaining unit members contribute 8% of their gross pay to the pension plan. The Union seeks to have its members' contribution rate reduced from 8% to 6% of gross pay, effective with the date of the Fact Finders recommendation. It further seeks to reduce the contribution rate to 5% effective January 1, 2023, and 4% on January 1, 2024.

On the other hand, the Employer's final offer of settlement proposes to reduce the employee contribution rate to 7% of gross pay for employees hired prior to January 1, 2012. For employees hired after January 1, 2012, the employer would reduce the contribution rate to 6% in 2022 and 5% one year after the signing of the agreement and reduced to 4% of gross pay two years after signing the agreement. The Union believes that the Employer's final offer of settlement may be misleading since there is no specific date for the new contribution rates to be implemented.

The Union further notes that while a majority of the road commissions which are considered to be comparable have a similar level of pension benefits as it pertains to the multiplier, the Washtenaw County employees contribute a higher percentage of their income to the pension plan than 4 of the 5 comparables. Both Livingston County and Ottawa County have a 1% multiplier, as opposed to Washtenaw County which has a 1.5% multiplier. Oakland County has a hybrid pension plan for employees hired after July 30, 2013. The hybrid plan has a defined benefit component with a 1.5% multiplier along with a defined contribution component in which additional contributions can be made by either the employer or the employee. The employees have a pension contribution of 6% for the hybrid plan. Employees hired prior to July 30, 2013, have a 2.25% multiplier and are not required to make any pension contributions. Ingham County provides either a 2.25% multiplier or a 1.5% multiplier depending on date of hire. Both groups of employees only pay a 1.2% pension contribution as opposed to the 8% in Washtenaw County. Livingston County provides either a 2.25% multiplier or a 1.7% multiplier depending on the date of hire. Both groups of employees are not required to make any pension contributions. Ottawa County provides either a 2.25% multiplier or 1.7% multiplier depending on the date of hire and both groups of employees pay a 5% pension contribution. Washtenaw County is required to contribute between 3% and 8% more money than the four comparables listed above. This, according to the Union, results in a negative impact on the employees' net compensation.

The Employer notes that it currently requires a contribution of 8% of their gross salary by the employees to the pension fund. This results in a Municipal Employees Retirement System pension containing a B-3 benefit, with a 2.25% multiplier and a vesting period of eight years. Employees hired after January 1, 2012 also contribute 8% of their gross salary and receive a MERS benefit C-1 which has a 1.5% multiplier, also with a vesting period of eight years.

The Employer further notes that the Union agrees to the proposed change for employees hired post January 1, 2012. This would result in employee contributions paying 6% of their gross pay and then periodically decrease to 5% and then to 4%. The only disagreement between the parties is the timing of these contribution reductions. The Union seeks the first reduction to occur

upon the date of the Fact Finder's Recommendation, followed by the second reduction on January 1, 2023, and the final reduction occurring on January 1, 2024. Alternatively, the Employer seeks to have three identifiable triggering points based on the timing of when the collective bargaining agreement is signed. The first reduction would occur on the date of the parties signing of the finalized collective bargaining agreement, followed by the second effective one year after the signing and the third, effective two years after the signing.

The parties do not agree on the MERS contribution rate for employees hired prior to January 1, 2012. The Union proposes the same scheme for January 1, 2012 employees with an annual reduction from 6% to 4% within the three year period. The Employer, on the other hand, is agreeable to reducing the contribution rate from 8% to 7%. The Employer further notes that its pension plan is only 57% funded. Thus, based upon its unfunded liability, the pension plan is defined under Michigan Law as underfunded. However, the Employer has currently been able to avoid the State's "underfunded status" and any associated correction orders by qualifying for a waiver under State law. The Employer currently contributes an annual payment along with several other payments throughout the year to the Michigan Employees Retirement System in an attempt to reduce the unfunded gap. Reducing employee contributions to the Michigan Employees Retirement System is a goal the Employer is offering to meet through a fiscally balanced approach. The Employer regularly consults with the Michigan Employees Retirement System to develop a plan to increase its pension funding based upon its financial capabilities. The Employer believes that the Union proposal would not result in an economic reality of the Employer taking a balanced and systematic approach to reduce its underfunded liability.

Taking into account all of the factors that are relevant under Section 9, including the financial ability of the unit of government to pay the liabilities of the unit of government, the laws of the State with regard to financial stability and requirements to make additional payments where the pension fund is not properly funded in accordance with State law, as well as the comparables, it would be my recommendation that with respect to employees hired after January 1, 2012, the proposals of the Employer to reduce the contribution rate to 6% in 2022, 5% in 2023, and 4% in 2024 should be agreed upon. However, I do not agree with the Employer's effective date for implementing those changes. It would be my recommendation that the reduction to 6% in 2022 become effective upon the first payroll after the date of the signing of this Report. It would further be my recommendation that the reduction to 5% take place on January 1, 2023, and that the reduction to 4% of gross pay take place on January 1, 2024.

With respect to the Union's proposal for wage contributions to the pension plan by employees hired prior to January 1, 2012, it would be my recommendation that the Employer's proposal of a reduction of 1% to a contribution of 7% be implemented as of the first payroll period after the date of this Report. I recommend that the pension contribution of employees hired prior to January 1, 2012 be further reduced on January 1, 2024 to 6%. It is my belief that those recommendations comply with the provisions of the criteria set forth in Section 9 of Act 312 of P.A. 1969.

#### D. Compensatory Time

The Union seeks to have a provision which would allow employees the option to receive compensatory time in lieu of overtime pay. Currently, there is no provision in the collective bargaining agreement to allow employees the ability to accrue compensatory time. The Employer's position is to maintain the status quo.

In support of its position, the Union notes that it would not allow employees to utilize compensatory time between November 1 and March 31 of each calendar year in order to make certain that the workload which increases during the winter months due to snowfall and other adverse weather conditions would not be adversely affected by employees using compensatory bank during those heavy duty times of the year. In addition, the Union would propose that it have a compensatory bank limited to a maximum of 80 hours. The Union notes that other employees are allowed to accrue compensatory time in non-represented and non-exempt positions. The Union notes that Ms. Siddall, the Managing Director of the Road Commission, indicated there are currently 25 non-represented and non-exempt job classifications which are eligible to accrue compensatory time. The restriction that the Union would agree to for the five month period in which the compensatory time could not be utilized is not applicable to those employees who are currently allowed to accrue compensatory time. In addition, the non-represented employees are permitted to bank up to 120 hours of compensatory time, while the Union proposal is limited to 80 hours. Mr. Gibson testified on behalf of the Union's position that it was his belief that members would be more willing to accept overtime assignments if they were allowed to accrue compensatory time to be used at a later date. Moreover, when an employee is absent due to sick leave, vacation time or other reasons, it is rare that the vacation position is back-filled by another employee on an overtime basis. Mr. Gibson stated that vacant positions are routinely not filled on an overtime basis even though the bargaining unit currently has 10 vacant positions for at least the past 4 years. Moreover, he indicated that many work assignments may not be completed on a daily basis, but are resumed on the next work day without the necessity of overtime.

Adam Lape, the Director of Operations for the Road Commission testified on behalf of the Employer that there are often emergencies which require employees to work on an overtime basis. On cross examination, Mr. Lape acknowledged that employees are called into work to handle emergencies due to the emergency occurring after hours or on weekends when employees are not normally scheduled to work. He did agree with the testimony of Mr. Gibson that the Employer does not currently back fill vacancies when a worker calls in sick or is on vacation or is absent for other reasons. In emergency scenarios where individuals are absent for vacation, sick leave or other reasons, overtime would be required even if a member did not take compensatory time or any other accrued time during his not normal shift, assuming that the emergency scenario required overtime. Mr Lape further agreed with Mr. Gibson that the required work was still being completed even with a large number of vacancies.

The Union further asserted that if its compensatory time proposal were to be in effect, it would actually provide a wage savings to the Employer, since if there was a vacant position due to an employee's use of accrued time in a bank, the Employer would not routinely backfill the vacant position with an employee on an overtime basis. Therefore, instead of compensating an employee eight hours of overtime on a time and one-half basis for a total of 12 hours in wages, the Employer would allow the same employee to take the 12 hours of time off at a later date with no additional wage compensation.

In support of its opposition to the Union proposal, and in support of its position to maintain the status quo, the Employer notes that the majority of comparable communities do not have compensatory time, including Livingston, Oakland and Ottawa counties. The Employer notes that Mr. Gibson in response to the Fact Finder's questions indicated that an absence of an employee off on compensatory time could result in paying an employee overtime to cover for the absent worker. The Employer further notes that according to Mr. Lape, having compensatory time available for employees to be absent from work would be very impactful. He noted that there would be an expectation from employees that if they had accumulated compensatory time, they should be allowed to take it off when requested. Mr. Lape further noted that the Employer has substantial commitments to perform millage funded construction projects, local township projects and seal coating during non-winter months. In addition, he testified if an emergency response were needed to address road conditions impacted by weather including wind and rain or vehicle accidents, a potential would exist to have insufficient numbers of personnel to confront these emergencies. He further noted that the Employer experiences thousands of emergencies annually which has in turn created staffing issues when a response is immediately needed.

It would not seem to me that there would be any economic impact if the Union proposal were to be included in a new collective bargaining agreement provided that adequate safeguards be included as well. I note that there are a number of employees who are given compensatory time by the Employer and there are some comparables which also provide for compensatory time. Compensatory time, in and of itself is not an unusual item to have in a collective bargaining agreement. I do understand that there are emergency situations in which the granting of compensatory time would adversely impact the Employer. Accordingly, it would be my recommendation that the Union proposal be included in a new collective bargaining agreement, but that additional language be included which would allow the Employer to deny a request for compensatory time when conditions do not permit it as a result of emergency situations or increased workloads. This recommendation is also based upon the fact that it would appear that when there are vacancies, as a general rule, they are not required to be filled or backfilled by the Employer with respect to its current operations.



#### E. Outside of Classification Compensation

The Union seeks a number of items with respect to classification compensation for work performed in a higher classification than that which is held by the employee. In addition, it seeks an updated description of equipment being utilized by the road commission and a description of which job titles are permitted to operate the equipment. With respect to compensation, the Union proposes that employees who are required to perform duties of a higher job title than the employee currently possesses, would allow the employee to be compensated at the rate of pay, "step-up" pay for all the time assigned to a higher equipment classification. Gregory Gaw is a heavy equipment operator for the commission for the past 12 years and an elected member of the bargaining team for the bargaining unit. He testified that the equipment listed in the collective bargaining agreement is outdated and has not been updated since 1993. In addition, he testified that there are numerous pieces of equipment which are operated by members of the bargaining unit which are not currently listed in the collective bargaining agreement. Each piece of equipment requires specific training on the proper uses of the equipment. The equipment may also require difference licensures in order to be eligible to operate the equipment. He testified that there have been times when employees have been directed to operate equipment in a higher classification, but they have been denied "step-up" compensation. Adam Lape, the Director of Operations, testified on behalf of the Employer that in his opinion, employees were not entitled to "step-up" pay unless they operated the higher classification of equipment for the entire work day.

Mr. Gaw also testified that signs and signals employees should not be part of a call-in for winter maintenance. This was based upon his opinion that those employees are not qualified to operate snow plows. To require an employee to operate heavy equipment without the proper training and licensure is a danger to the employees and the public. Mr. Lape testified that it was his intention to add the signs and signal employees be properly trained to operate snow plows but that the training has yet to occur.

In response, the Employer has indicated that it rejects the concept of paying "step up" pay for all time and employees assigned to a higher classification. The Employer already pays bargaining unit employees "step up" pay when they work for extended periods of time in a higher classification. However, the Employer is adamantly opposed to the Union's proposal to pay an employee step up pay for incidental use and/or transporting equipment to another employee to operate throughout the day. It should be noted that Mr. Lape testified on behalf of the Employer that employees who are assigned to operate equipment for four or more hours in a higher labor grade are indeed paid the "step up" pay because this is not incidental and it can be tracked. The Employer also presented testimony with regard to the placement of various pieces of equipment in opposition to the Union's position with regard to those particular pieces of equipment and where they should be placed in terms of the classifications.

In my opinion, the Union did not provide sufficient evidence to justify the proposed changes of equipment into various classifications. This should essentially be a management determination based upon their expertise as to which grade a particular piece of equipment belongs in.

With respect to step up pay, as noted, the Employer currently pays employees assigned to operate equipment in a higher classification if the assignment is for at least four hours or more. The difference between the parties is what constitutes incidental assignments which the Employer believes should be anything under four hours as opposed to the Union position which

seems to be any assignment to a piece of equipment in a higher paying classification should be paid at the higher rate regardless of the amount of time actually spent in that position. There used to be a common term utilized in labor relations that an employee should be paid a fair day's pay for a fair day's work. In the instant case, the real question should be defined as to what constitutes incidental work. Currently, the Employer chooses to define that as anything that requires less than four hours in the higher paying job on a single shift. The Union, on the other hand, would require payment for any work performed in a higher paying classification, regardless of the time spent in that classification. I do not believe that it is appropriate for the all or nothing Union position nor the four hour minimum position of management. On the one hand, there is such a thing as doing something which is truly incidental or de minimus. On the other hand, it would seem that requiring at least four hours on a higher paying job, before paying for that job, is excessive in the amount of time required. It would be my recommendation that any employee assigned to a higher classification should be paid for that classification, provided that they work at least two hours during their shift on that classification.

There is no reason to completely forbid signs and signals employees from doing winter maintenance if they are qualified to perform the work. Accordingly, it would be my recommendation that language be included in the collective bargaining agreement which indicates that signs and signals personnel may be required to do maintenance work, provided that they have been trained to perform the work and that they have obtained the necessary licensure if the equipment or work so requires.

F. Longevity

There currently is no provision for longevity in the collective bargaining agreement. The Union proposed longevity payments based upon the following schedule:

1 to 4 years of seniority	\$300.00
5 to 9 years of seniority	\$600.00
10 to 14 years of seniority	\$900.00
15 or more years of seniority	\$1,200.00

Those payments would be made on an annual basis.

Three of the five external comparables receive longevity pay. The average longevity payments of the five comparables show that the comparables received an average of \$13,500.00 over the course of a 25-year period of employment according to the Union.

The Employer opposes the Union's proposal in its entirety. The Employer points out that Exhibit 19 reflects the cost to the Employer would be \$45,300.00 in the first year. The Employer further notes that Union Exhibit 6 indicates that only three of the five external comparables receive longevity pay. Moreover, the longevity payments of the five comparables show that they receive an average of \$13,500.00 over the course of the 25 years of employment. The Employer further notes that no other employees of the Washtenaw County Road Commission receive longevity payments. In addition, the Employer notes that the employees, when one takes into account all of their compensated earnings, earn more than the average of the other five comparables. However, all five do not receive longevity pay. Ingham County has four steps which pay a maximum in each step of at least 4, but less than 8 years of \$600.00, 8 to 12 years, \$1,000.00, 12 to 15 years, \$1,400.00, and 16 or more years, \$1,800.00 annually. Ingham County, with a similar break at 4/8/12 and 16 years pays \$600.00, \$1,000.00, \$1,400.00 and \$1,800.00 for each of the steps. Oakland County calls longevity, retention pay, and has a schedule based upon 3 to 6 years of service, 7 years of service, 8 years of service, 9 years of service, 10 years of service, 11 years of service and 12 or more years of service. The payments for those years are \$600.00, \$700.00, \$800.00, \$900.00, \$1,000.00, \$1,100.00, and \$1,400.00. Accordingly, the majority of external comparables do pay longevity pay and their payments are less than those requested by the Washtenaw County employees. I also note that the longevity payments requested by the Union do not have any internal comparable payments within the County.

Based upon the factors set forth in Section 9 of Act 312, and in particular, the financial ability of the government to pay, the comparison to public employment in comparable communities, the average consumer prices for goods and services commonly known as the cost of living and the overall compensation presently received by the employees as set forth in various exhibits, it would be my recommendation that the longevity proposal of the Union be incorporated into the new collective bargaining agreement.

G. Holiday Pay.

The Union is proposing an increase in holiday pay of double time their regular rate as opposed to the current time and one-half payment. In addition, the Union is seeking the payment of double time for Sunday. The Employer wishes to maintain the status quo.

Union Exhibit 4 indicates that the counties of Ingham, Livingston and Oakland compensate their employees at double time rates when the employees are required to work on an approved holiday. In addition, the Union notes that Ingham County has 12 holidays and Oakland County has 13 paid holidays as opposed to the 11 paid holidays provided in the Washtenaw County employees' collective bargaining agreement. The Union believes that being called into work on a holiday is deserving of a higher rate of compensation than merely paying for overtime on an extended normal shift.

The Employer notes that while the Union receives 11 paid holidays, the average of the five comparable employers is less since they have a range of eight to 13 paid holidays. The Employer further notes that the winter season of November through March encompass six of the paid holidays and there is an increased probability that the employees will need to work clearing roads on those days. The Employer also notes that the Union currently receives one and a half times pay for all hours worked, plus the holiday pay and seeks the equivalent of three and one-half times the rate of pay. The Employer further notes that its holiday payments coincide with those of Jackson and Ottawa counties. The Employer also notes that the request for double time for all hours worked on a Sunday which would expose the Employer to pay double time 52 days of the year. In addition, the Employer notes that the Union presented no exhibit or testimony to support their proposals for paying double time on Sundays. In addition, none of the comparable communities pay double time on Sundays according to the Exhibits provided by the Employer. Currently, the Employer pays over \$492,000.00 annually to bargaining unit employees in overtime pay and believes that there is no compelling reason provided in the evidence to increase this cost beyond those that will occur in the increases in the hourly rates and the agreed upon compression of steps in the wage scale from four steps to two steps. Based upon the factors set forth in Section 9 of Public Act 312, I do not believe that there is any compelling reason to grant the Union's request and therefore, it would be my recommendation that the status quo be maintained with respect to holiday pay and Sunday pay.

#### H. Annual Leave.

Currently, employees receive annual leave based upon their anniversary dates of 144 hours for one through four years, 184 hours for five through twelve years, 224 hours for thirteen through nineteen years, and 240 hours for twenty years and up. The Union proposes to increase those numbers by increasing the hours in the first category to 184, the second category to 224, the third category to 264, and the fourth category to 304, with the leave to be effective based upon the date of the Fact Finder's recommendation.

The Employer indicates that no other employees of the Washtenaw County Road Commission are eligible for annual leave greater than what is presently provided to the Union employees. The Employer further notes that on a comparative basis, Oakland County grants 80, 120, 128 and 160 hours of vacation leave time based upon 9 to 4 years, 5 to 10 years, 11 to 15 years and 20 years and above. Livingston grants 80 hours up to 6 years, 120 hours for years 7 to 14 and 176 hours for 15 years and above. Ottawa County grants 80 hours for 1 to 4 years, 120 hours for 5 to 9 years, 144 hours for 10 to 14 years, 168 hours for 15 to 19 years, and 200 hours for 20 years and above. A comparison of Ingham and Jackson counties is somewhat more difficult because Ingham County includes floating holidays in their paid time off and Jackson uses paid time off, but Jackson's paid time off is 120 hours for up to 8 years according to the Employer, but I believe that the 8 years is a misprint since the next line is 7 to 10 years at 160 hours and then 11 to 15 years at 200 hours, and 16 years and above at 240 hours.

Accordingly, the Employer believes that the internal comparables at Washtenaw and a majority of the external comparables do not support the Union's proposal to add significant time to the annual leave schedule.

Moreover, the Employer asserts that the Road Commission has finite time to perform all the work demands placed upon it to perform routine maintenance. Thus, it concludes that adding additional 40 to 64 hours of annual leave to the schedule would definitely adversely impact productivity and project completion dates.

Based upon the external and internal comparables, it would be my recommendation that with respect to annual leave, the current schedule be maintained.

6. **SUMMARY OF RECOMMENDATIONS:**

ISSUE	RECOMMENDATION
Wages	Effective January 1, 2022, 4% with no retroactivity. Effective January 1, 2023, 4% Effective January 1, 2024, 3.25%
Retirement	Employees hired before January 1, 2012 decrease their contribution from 8% to 7% effective with the first payroll date after the date of this Report. Effective January 1, 2024, a reduction in the employees hired before January 1, 2012 to 6%. Employees hired after January 1, 2012, the Employer proposals for percentage reductions to 6% effective with the first payroll after the date of this Report, 5% effective January 1, 2023; and 4% effective January 1, 2024.
Compensatory Time	80 hours annually with language which will allow the Employer to deny use due to emergencies or workload requirements.
Outside of Classification Compensation	The status quo with respect to the movement of equipment from one classification to another based upon the management right and responsibility to make that determination. Accordingly, recommend no change with respect to the classification of equipment insofar as the current collective bargaining agreement is concerned, unless management makes that determination.  <u>Step-Up Pay</u> – Step Up Pay shall be paid for any assignment to a higher classification which requires two hours or more of service.  <u>Signs and Signals</u> – propose that language be included requiring any employee classified in the signs and signals classification to be trained and have licensure if the work or equipment so requires.
Longevity	Adoption of Union proposal as follows: <ul style="list-style-type: none"> <li>• 1 to 4 years of seniority - \$300.00 annually to be paid on the employee's anniversary date</li> <li>• 5 to 9 years of seniority - \$600.00 annually to be paid on the employee's anniversary date.</li> <li>• 10 to 14 years of seniority - \$900.00 annually to be paid on the employee's anniversary date.</li> <li>• 15 years and above of seniority - \$1,200.00 annually to be paid on the employee's anniversary date.</li> </ul>
Holiday Pay	Retain the status quo.
Annual Leave	Retain the status quo.

I wish to thank the parties for their complete cooperation with respect to the scheduling of the pre-hearing conference and the hearing dates and all of the items which were discussed at the pre-hearing conference. They are also to be congratulated for having reduced all of their issues by either agreement or withdrawal, with the exception of the issues hereinabove recommended.

Respectfully submitted,



Allen J. Kovinsky

Fact Finder

September 26, 2022.