STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

TUSCOLA COUNTY ROAD COMMISSION

-and- **MERC CASE NO. L00 J-8020**

TUSCOLA COUNTY ROAD COMMISSION HOURLY EMPLOYEES ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

	UNION:	JOSEPH VALENTI, PRESIDENT, IBT, LOCAL 214
	EMPLOYER:	MICHAEL F. WARD, ATTORNEY

PETITION DATA:

PETITION FILED:	MARCH 2, 2001
CASE HEARD:	JULY 10, 2001
RECOMMENDATION DATE:	OCTOBER 3, 2001

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BACKGROUND

By letter, dated April 11, 2001, the Undersigned was notified of his appointment as Fact Finder relative to the above matter. A Hearing was convened on July 10, 2001 wherein the Parties submitted evidence in support of their respective positions. Thereafter, the Advocates elected to file Post-Hearing Briefs which have been received and considered.

Even a cursory review of the evidence and argument reveal that the Parties are far apart on many issues. The Employer basically charges that the Union, recently – August 2000 – appointed as the Collective Bargaining Representative, is attempting to ignore twenty-five years of bargaining history and especially the following "cornerstone issues":

> "The Board of Commissioners knew and understood that the Union security and dues check off provisions of the contract were essential elements and the Union would not agree to a contract without these two provisions. Likewise the Union knew and understood that the concepts of binding grievance arbitration and retroactivity were not agreeable to the Board. With this understanding the parties successfully negotiated many labor agreements over the twenty five years."

The Employer urges the above understandings continue in force.

The Union begins with a bitterly critical contention that the Employer in Fact Finding is reneging on prior issues in which the Parties had reached a Tentative Agreement. The Union vigorously objects to the Employer's position on retroactivity:

> "It is apparent that members of the bargaining unit are being penalized a loss of one full year of pay for failing to reach agreement and filing for fact finding, a right they have under the law."

On specific issues, the Union says:

> "The Employer's position poses serious damage to the members of this bargaining unit – a total loss of the year 2000 with no retroactive pay; increasing the co-pay of health insurance by ten (10) times its current cost; totally destroying the classification structure for the specific purpose of stopping future negotiations, whereas the bargaining unit cannot compare their classification of work to others; and capping health care for retirees to only three (3) years."

It is the Union's view that:

> "This Employer has not submitted any proofs at all supporting these drastic cuts and reductions. Most of the issues that the Union has argued are fundamental issues found in all labor agreements."

Finally, the Union states:

> "At no time during the course of negotiations has the Employer raised the issue of 'inability to pay'."

The Parties have differing views on the matter of comparables. The Employer has selected the following as "comparable employers":

> "Lapeer County Road Commission; Huron County Road Commission; and Sanilac County Road Commission."

Selection of the above is justified as follows:

"...These three road commissions are immediately adjacent to the Tuscola County Road Commission. In addition these three road commissions and the counties they work in are closely reflective of Tuscola County. Tuscola County is a farming community consisting of large and family farm operations. The cities and villages contained within the County are small and the businesses within the small cities and villages are largely dedicated to supplying the rural farm community with machinery, goods and services. Likewise the counties of Lapeer, Huron and Sanilac are of a similar nature, i.e., farming communities with small cities and villages supplying goods and services.

The second and most important basis for selection to these road commissions as comparable is that the road commissions are located in the general labor market of the rural Thumb of Michigan. The Tuscola County Road Commission must purchase the labor necessary to perform its work from the relevant labor market."

The Employer strongly objects to inclusion of "Detroit corridor communities" which are found in Genesee, Saginaw or Bay County. Insofar as Clinton, Marquette or Van Buren Counties are concerned, the Employer states it has not attempted to recruit nor has it hired from those areas.

The Union selection of comparables is as follows:

"A. Contiguous Counties:

Huron
Sanilac
Lapeer
Genesee
Bay
Saginaw

These counties are subject to the same cost of living impact and represent the immediate job market.

B. Comparable Income Counties:

Clinton	$5,534,649.00
Van Buren	5,567,543.00

Marquette	5,557,853.00
Tuscola	**$5,498,844.00**

These counties operate within the same income levels as Tuscola."

The Undersigned finds merit in the concerns raised by the Employer relative to the contiguous Counties of Genesee, Bay and Saginaw. He is also persuaded that Tuscola County does not hire from the Counties of Clinton, Van Buren and Marquette. The remaining Counties have some divergence in income from Tuscola – Huron - $4,837,903; Sanilac - $5,292.502; and Lapeer - $6,589.681. Nevertheless, they are deemed more comparable for purposes of the discussion which follows.

The Employer has enumerated its issues as follows:

#1 – Holidays:

> *It seeks to eliminate Veterans Day (federally celebrated) and a floating holiday. The Road Commission justifies the proposal on the basis "it is an attempt...to become more efficient."*

While it is true that only one of the three primary comparables has eleven paid holidays, that fact standing alone does not justify the proposed change. The Employer has not advanced an argument that the current benefit is an item which it cannot afford.

#2 – Employee Health Insurance:

> *Employees now pay twenty dollars for health insurance coverage.* The Employer proposes:
>
> > "...that the escalating costs involved in health and dental insurance dictate that the employee contribute $150.00 per month toward their health insurance premium. The escalating cost of insurance, if not partially shared by the employee, will significantly reduce the Commission's financial ability to provide and repair the roads."

According to the Employer, the cost of health insurance for its employees for 1997-2001 has increased by some 45% – the Agreement expired on December 31, 2000. The largest increase occurred from 2000 to 2001.

The Undersigned concludes that a $10.00 increase is warranted – the latter represents an amount greater than the percentage increase in premium cost for the period 1997-2001. Two of the three comparable Counties pay the entire monthly premium for health insurance.

#3 – Retiree Health Insurance

The Employer states:

> "The Road Commission's position on retiree health insurance is that it will continue to provide current employees with retiree health insurance coverage just as it did under the expired contract. However, employees hired after January 1, 2001 shall have health and prescription drug insurance coverage available for three (3) continuous years after the date they retire.
>
> The reasoning behind this retiree health insurance change is two-fold. First employees have consistently waited to retire until they were at least 62 years old, and thus three (3) years of coverage would bring them to age 65 and an age which qualifies them for Medicare. Secondly as health insurance costs escalate and persons live longer, the cost of retiree health insurance will soon be greater, in the aggregate, than the cost of insurance for active employees."

The Union responds:

> "The Union's position is overwhelmingly supported by those counties used in the Union's case whereas in almost all of the contracts available to us, health insurance is fully paid by the Employer with no cap, or is fully paid up to the employee's age of Medicare eligibility. Based on the evidence submitted, we see no reason why the current language does not remain in effect."

The Undersigned is not persuaded that a major change is justified at this time. The Employer acknowledges that in its experience employees generally wait until 62 years of age to

retire. That means in three years they have Medicare.

A provision which specifies that upon eligibility for Medicare the Employer will provide a coordinated, supplemental benefit equivalent to prior coverage is a justified modification which should curtail its costs.

#4 – Sickness and Accident Insurance

The Employer explains:

> "The Road Commission currently provides employees with sickness and accident insurance coverage which provides a weekly benefit after the first day of injury or after the 3rd day of illness. The Commission is proposing that the deductible period be increased to provide the benefit after the 7th day of injury or after the 14th day of illness. The reason for this change is two-fold. A policy with a longer deductible period is significantly cheaper and therefore the commission can recover some of the premiums expended due to increasing insurance costs. Secondly, the short deductible period and the large benefit rate, seventy (70%) percent of wages, has resulted in only one company bidding on the coverage. Therefore, we must pay whatever price is quoted since there is no competition.
>
> Only one of the comparable counties has sickness and accident insurance: that being Huron County and it has a twenty-nine (29) day deductible period. The increased deductible period is a necessary amendment if this benefit is to be continued."

The problem which the Undersigned perceives with the Employer argument relates to the fact that sick leave for its employees was significantly changed in the prior Agreement. All of the other primary comparables have sick leave provisions wherein one day of leave is accumulated for each month of service. The availability of sick leave would impact the need for sickness and accident benefits. In the absence of any accompanying change in sick leave for the employees, the Undersigned does not agree that the availability of sickness or accident coverage

should be lengthened.

#5 – Job Classification Changes

The Employer proposes:

> "The Road Commission is proposing that the classifications of Laborer, LEO, Semi Operator, HEO, DLO, Technician and Mechanic be eliminated. The Commission would then create a new classification designated as 'worker' and place all employees, except Diesel Mechanic, in this new classification. The net result of this would be that there would be only two (2) classifications; worker and diesel mechanic."

It is explained:

> "Currently no employees occupy the classifications of 'laborer'. There is only one (1) employee in each of the Semi Operator, DLO and Technician classifications. Therefore it is obvious the vast majority of employees occupy the LEO, HEO and Diesel Mechanic. There are five (5) employees in the Diesel Mechanic classification.
>
> The reason for the redo on the classifications is to allow management more flexibility in the placement of manpower on a day to day basis and in addition to allow management the opportunity to train employees on the various types of equipment during the most advantageous times.
>
> The Commission has coupled this proposal with its wage proposal. The Commission is willing to pay employees for this additional flexibility. The Commission's wage proposal specifies that the Worker classification be paid a top rate of $16.29 per hour. This rate was arrived at by taking the HEO rate from the old contract and adding 30¢ per hour to that rate. The effect of this move is that, in the first year of the contract, employees in the old LEO classification will receive a 40¢ per hour increase, employees in the old Semi-operator classification would receive a 35¢ per hour increase in the first year, the old Technician would receive a 35¢ per hour increase and employees in the Diesel Mechanic classification would receive a 48¢ per hour increase and the employee in the Mechanic classification would receive a 61¢ per hour increase.

This reclassification would result in a substantial increase in the average hourly rate and overtime rate paid to bargaining unit members, however the Commission is willing to incur the additional cost to obtain the additional flexibility in its workforce, to increase overall skill levels of its workforce and obtain a greater degree of productivity from its workforce."

A review of the comparables reveals that this Road Commission has fewer classifications now than most of its counterparts. The Employer has not provided a reason as to why it requires a classification system vastly different than that which is in place in surrounding areas. It is simply untenable for this employer to demand the job classification change advanced herein without some showing that it has a unique need for the proposed modification.

The Undersigned does not recommend the Employer proposal.

#6 – Wages and Retroactivity

The Employer proposes the following:

"Appendix A Effective Upon Ratification of This Agreement			
Classification	**Start**	**Upon Completion of Probation**	**After One (1) Year**
Worker	$15.69	$15.94	$16.29
Diesel Mechanic	$16.30	$16.65	$16.80

Effective one (1) year after ratification the Tuscola County Board of Road Commissioners shall increase the rates above stated in Appendix A by forty (40¢) cents per hour and these rates will be increased by an additional forty (40¢) cents per hour two (2) years after the initial ratification date of this Agreement."

With regard to retroactivity, the Employer states:

"On the issue of the effective date of any wage or economic benefit the Road Commission's position is that any and all economic

benefits cannot be made effective before the ratification date of the new agreement; in short, there should be no retroactivity. As stated in the 'Background' section of this written argument, the Tuscola County Road Commission has never made any economic benefit, including wages, retroactive. In the twenty-five (25) years of collective bargaining many contracts were completed after the expiration date of the preceding contract, some as long as eighteen (18) months after expiration of the preceding contract, and retroactivity has not been granted. This long bargaining history between the parties reflects that the Union has known and accepted, in practice, that retroactivity is a concept which the Commission has consistently rejected."

The Union indicates the following is acceptable:

> "...fifty cents ($.50) the first year, forty-five cents ($.45) the second year, and forty-five cents ($.45) the third year."

It strongly opposes the Employer refusal to grant retroactivity:

> "What is unacceptable is the fact that the Employer does not offer retroactivity to the date the contract expired which is December 31, 2000.
>
> As you know, the negotiating process is lengthy, and the parties are subject to the calendars of both the Mediator and the Fact Finder. Refusal to offer retroactivity is both unfair and unreasonable, and has the same effect as penalizing members of the bargaining unit for complying with the law.
>
> **Union's Position:**
> Any wage adjustments recommended by the Fact Finder be retroactive to the first pay period in January 2001, on all hours worked."

The Undersigned has concluded that the Employer has failed to justify the need to implement a revamping of the existing job classification system.

Given the above, the Fact Finder concludes the Union proposal on wages is reasonable. A 50¢ across-the-board increase represents a 3.3% raise for the lowest earning classification –

Laborer. At the top end – Diesel Mechanic – the increase amounts to 3.1%. For subsequent years – July 2001 and July 2002 – the increase of 45¢ in each year is a smaller percentage than above.

The Undersigned perceives that the more difficult area of contention is that of retroactivity. Consideration has been given to the historical measures on which the Employer has placed strong emphasis. It should be noted that the Union herein has not been a participant in the earlier referenced negotiations. Although it cannot be said that the slate has been "wiped clean", it is appropriate to assign less significance to earlier patterns of bargaining to which this Union was not involved.

The notion of retroactivity is based on the view that employees who continue to work while a new Agreement is reached should have the benefit available upon expiration of the existing contract. Employees during the period encountered increased expenses associated with daily living and performed their job tasks without interruption. The argument against retroactivity is basically one which rests on the view that it is a cost the Employer should not have to bear.

The Undersigned does not have evidence that either side unnecessarily prolonged the negotiations herein. In balancing the conflicting equities, the balance tilts in favor of the employees. The Employer has received the services from its workers without any interruption. The Employer, to the extent that a new Agreement has been delayed, has had the benefit of avoiding the increased costs. Retroactivity does not include interest on the amounts in dispute. The employees have performed the duties to which they were assigned.

It is recommended that annual increases be granted as follows:

$.50 effective January 1, 2001;

$.45 effective January 1, 2002;

$.45 effective January 1, 2003.

The above increases should be retroactive.

Union Issues

1. Duration of Agreement

Both Parties agree to a three-year contract and that seems to be appropriate given that the Agreement now in effect has an expiration date of December 31, 2000.

2. Wages and Retroactivity

This matter has been addressed above.

3. Health Insurance

The Union proposes the following co-pays:

First year	$25.00 per month
Second and Third years	$30.00 per month

The Undersigned has found a Ten ($10.00) Dollar increase is warranted for the first year.

In the second and third year an additional Five ($5.00) Dollar increase is recommended.

4. Health Insurance For Retirees

This issue has been addressed above.

5. Buyout For Not Taking Health Insurance

The Union seeks $300.00 per month.

The Commission seeks to maintain the status quo of $100.00 per month.

The Fact Finder does not discern that the dramatic increase sought by the Union is

warranted. The Union has not referenced the comparables in support of its demand on this issue.

The Undersigned concludes that a Twenty Five ($25.00) Dollar increase is reasonable.

6. Funeral Leave Considered Time Worked

The Union seeks to amend Article XI – Holidays – Section 3 – so that an employee who is "qualified for and receiving paid funeral leave" also is entitled to Holiday Pay.

This does not appear to be a high cost item to the Employer since two events – holiday and funeral leave – must coincide.

The Undersigned would recommend this item be granted as requested by the Union.

7 & 8. Grievance Procedure and Arbitration

The Union seeks "binding arbitration as the last step in the Grievance Procedure."

The Employer vigorously opposes the demand:

> "The Road Commission has maintained, since a contract was first negotiated, that it does not desire to surrender its duty and right to manage the Road Commission to a third party. I am well aware that this Fact Finder is an arbitrator and has arbitrated many cases. However arbitration of disputes is created by the agreement of the parties and should not be created or recommended by a third party.
>
> The collective bargaining history of the parties has established a twenty-five (25) year history of working together without the forced assistance or intervention of an arbitrator. The Road Commission has paid dearly for a right to have a contract free and clear of any arbitration clause. The employees have accepted their very high rates of pay and fringe benefits in consideration for giving the Commission a contract free of the arbitration clause. The Union now wishes to keep all their wages and fringe benefits and renege on the 'no arbitration' portion of the agreement.
>
> The Union is requesting arbitration and bears the heavy burden of proving the necessity for such a clause. The Union has not cited a single breach of contract or unjust discipline to prove the need for arbitration. The only proof offered is that it, the Union, knows of

> no other road commission without an arbitration clause in its contract. This statement does not constitute proof of need. As stated in the background portion of this written argument there has been only three (3) employees discharged in the past thirty (30) years and the Road Commission reinstated one (1) of these employees at its step of the grievance procedure.
>
> The Union has not proven a need for an arbitration clause and one should not be recommended."

The position taken by the Employer on this issue is contrary to that which exists in most of the comparables – Huron allows arbitration of discharge cases only.

It is understandable that the Employer does not wish to surrender its authority, but that begs the issue. In the absence of an arbitration provision, it would seem that the only available forum would be the courts. The rationale for arbitration is that it is cheaper and quicker than the alternative. Moreover, the availability of arbitration probably reduces the exposure of the Employer as contrasted with court litigation. The latter point is reflected by the fact that an increasing number of non-union employers have incorporated arbitration as the forum for resolving employee complaints. The point here is that rule by fiat does not necessarily result from the absence of an arbitration provision.

The Fact Finder recommends adoption of an arbitration provision as the last step in the Grievance Procedure.

The other aspect of the Union's demand relates to providing Stewards with time to investigate and present grievances without loss of pay.

An Employer interest is served when the Union is given the opportunity to make a determination as to the merit of a given grievance. A reasonable amount of time to investigate and present grievances is recommended.

9. **Promotions/Seniority**

The Union seeks the following:

> "Upon an opening, the job (classification) shall be posted, listing the minimum requirements for the job.
>
> Applicants will submit their name.
>
> The most-senior applicant meeting the minimum qualifications will be given the opportunity to work in the new classification – trial period sixty (60) days."

The Union reasoning is as follows:

> "The current contract under Article IV, Seniority, Section 6 calls for a joint board of two members selected by the Employer and two members selected by the Union to interview applicants for promotions. In case of a tie vote, the Road Commission shall designate the successful applicant. The bottom line is that the Road Commission will make the final determination on who is to be promoted.
>
> The current contract also pits Union members against other Union members if they were not to support any of the applicants. All of the contracts surveyed and incorporated as proofs in this case currently support the fact that the most-senior applicant who meets the minimum qualifications be given the opportunity for the promotion. The only difference in these contracts is the length of the trial period."

The Employer disputes the need for any change:

> "...the Union proposes that the existing promotional procedure be scrapped in favor of a straight seniority approach to the promotional procedure. Again the Union has failed to offer a single shred of proof to establish a need to destroy a twenty-five (25) year history. The current system allows employees to apply for vacancies by signing a bid. The bidding employees are evaluated by a committee of four (4), two (2) selected by the Union and two (2) selected by management. This committee then votes on the best candidates for the job. If a tie vote occurs, then management selects the candidate.

> In the vast majority of cases, in the past twenty-five (25) years, the committee vote selected the candidate there has been few tie votes. This system has been accepted by the employees and management and the Union has not offered a single time that this procedure produced an unfair result. A strict seniority system cannot work and would result in a rotation of candidates through an open job when it is obvious to every objective employee and to management which employee is qualified."

The Union proposal recognizes that the Employer has the right to establish the minimum qualifications. Thereafter, the most senior applicant who meets those qualifications is entitled to a trial period on the job. If the performance is deemed sub-standard, the employee may be returned to his former position. If the Union disagrees, it can pursue the matter through the grievance procedure. The above process adequately protects the interests of both Parties.

The Undersigned is persuaded that the Union proposal has merit.

10. <u>Call-In Pay</u>

The Union seeks "a minimum call-back time of two (2) hours at the appropriate rate called for in the Agreement."

The Union explains:

> "The current contract does not provide for minimum call-in pay. The Employer has not offered any call-in pay. Employees are expected to report back to work no matter what the weather conditions are or the degree of interruption of their family life. As a matter of fact, if they do not report back to work they are subject to violating the work rules and would be disciplined up to and including discharge. There is no minimum hour guarantee once they report for work. In some cases the men have been released after only 30 minutes or maybe one hour of work. It is grossly unfair to expect these employees to dedicate their entire 24 hour day, seven days a week with no equitable return."

The Employer denies that a change is needed:

> "Employees who desire to be called into work sign a list in October of each year. If you don't want to be called in, don't sign. Employees who sign the list are called in for emergencies during the year. The chance that an employee, who has voluntarily signed the lists and gets called in, would not work at least two (2) hours, is extremely remote. The vast majority of call-ins is for snow plowing and salting. It's extremely rare that an employee who is called in for snow or ice will not work two (2) hours. Working foremen and foremen not in this bargaining unit will handle an emergency which does not require additional equipment, such as a downed stop sign, a branch across the road, etc.
>
> The 'just because others have it' reasoning is not proof of need and should not substitute for the required proof of need."

The Employer acknowledges that in most cases the two-hour minimum is satisfied. The point here is that when an employee makes the effort to return to work in response to a call-in, a minimum is warranted.

A two-hour minimum call-back is recommended.

11. <u>Vacation Time</u>

The Union requests that "employees with 16 years or more of service be given twenty-five (25) days off vacation or, putting it another way, an increase of four (4) paid vacation days after fifteen (15) years of service.

The Employer is critical of this request:

> "The Union, in continuance of its shopping cart approach, requests that employees be allowed to accumulate the equivalent of five (5) weeks of vacation after sixteen (16) years of service. This demand cannot be sustained based upon the labor market comparable date [sic] or for that matter the Union's comparables cannot sustain this demand."

A change is not deemed warranted.

12. Pension

The Union proposes:

> "Allow the employees the right to convert any hourly rate increase ratified to either the purchase of a pension or an investment into a 401K Plan provided that the employer's continued contributions into the Massachusetts Mutual financial group is diverted to whatever plan is selected by the employees. We propose that the Employer discontinue payment into the Massachusetts Mutual Fund effective during the month that the employees opt into another plan."

The Union explains:

> "The current Labor Agreement does not provide for a pension. According to the parties, several years ago the employees opted to get out of the current MERS plan now being provided to the administrators for an hourly rate increase. However, the employees are minimally covered by a financial group identified as Massachusetts Mutual. According to the Massachusetts Mutual representative, these employees cannot opt out of this plan; it does not provide for a cash out option; only the employer can contribute; vesting is after 10 years; and you cannot collect anything until you reach the age of 65, or under some stipulated reasons not mentioned.
>
> > *Example*: One of the employees in the bargaining unit has 30 years of service and reaches the age of 65. He will collect a monthly sum in the amount of $161.70 from the Massachusetts Mutual Plan. Obviously, it is impossible to live on $161 per month."

The Employer denies it is to blame for any pension deficiency:

> "The pension issue is one with a deep bargaining history at this road commission. In the early 1960's the employees of the Tuscola County Road Commission were participants in the Massachusetts Mutual financial group pension plan. In 1975 the Board implemented a new pension plan and commenced funding the plan based upon the Commission contributing 20¢ per hour worked for each employee. In 1976 the Road Commission's contribution to pension was increased to 35¢ per hour worked. As each successive

contract was negotiated the Commission's contribution was increased until it reached 65¢ per hour. In 1988 the Union came to the bargaining table and requested that this plan be terminated and the 65¢ per hour worked contribution be placed in the individual accounts of each employee under a new S.E.P. plan. The Commission agreed to establish the new S.E.P. plan and contribute the 65¢ per hour to that plan. In addition the Commission terminated, at the Union's request, the previous plan and paid out, into the individual accounts of each employee in the new S.E.P. plan the accrued value under the old plan.

(PLEASE SEE PAY OUT EXHIBIT UNDER PENSION TAB OF COMMISSION EXHIBIT BOOK.)

The Commission continued to pay 65¢ per hour into the S.E.P. plan in 1988, 1989 and 1990. In 1990 the Union came to the bargaining table and requested that the S.E.P. plan be cancelled and the 65¢ per hour be placed in each employee's wages. I personally cautioned the Union not to cancel their only existing active pension plan. I further warned the Union that the Commission would not allow the Union to plead the fact that its members were not provided a pension by the Commission at a future date if it terminated the S.E.P. plan. The Union said they didn't want a pension and would take the money. The Commission agreed to the Union's request to terminate the S.E.P. pension and place the 65¢ per hour worked in the wages of each employee.

As the pension exhibit shows, in the Commission's exhibit book, the employees were paid in case a total of $640,476.00 as a payout of the old pension plan in 1988. In 1988 employees were paid $41,019.95. In 1989 they were paid a total of $55,102.69 and in 1990, a total of $30,653.72 as payout under the new S.E.P. plan.

After receiving $767,324.36 in payout at the termination of the two (2) plans, the Union now wants to start another new pension. The Union proposes that it be allowed to join the MERS pension system and that each employee be allowed to convert any hourly wage increase into a pension contribution to MERS or into a 401k plan. The Road Commission currently has a 401k plan in effect and employees can now put money into this plan. As to the ability of the employees to participate in a MERS plan by self contribution, the option is a possibility but without further contact

with MERS the Commission must reject it at this time."

The bargaining history provided by the Employer does impact the equity of the current situation. The Undersigned does not perceive that the Union is asking the Employer to correct anything which occurred in the past.

The Union in its Brief says the following is desired:

- Divert the money now being paid by the Employer to the Massachusetts Mutual and the money being paid into such fund by the employees to a 401K account.

- Employees will be allowed to convert any or all of their wage increase into their 401K accounts.

The above measures do not increase the Employer's burden. The Fact Finder determines the Union proposal should be granted.

13. <u>Dental Insurance</u>

The Union seeks an increase in dental coverage from $800 per year to $1,000 per year.

The Employer first emphasizes that the $800 cap only applies to Class III benefits (orthodontics). It is also argued:

> "The comparable data from those road commissions in the relevant labor market establishes that the Tuscola County Road Commission is very competitive. Sanilac County Road Commission has no dental coverage. Lapeer County Road Commission has a dental reimbursement plan capped at $750.00 per year. This reimbursement plan is inferior to Tuscola's in that the $750.00 cap applies to all dental services for all family members. Tuscola's dental program is uncapped for Class I and II benefits, the most commonly used benefits. Huron County has comparable dental coverage. However the employees are required to pay twenty-five (25%) percent of the premium for dental and health coverage."

The Fact Finder recommends that the status quo be maintained.

14. Premium Pay

The Union seeks a provision which provides:

> "...that if a second shift is established by the Road Commission that a twenty-five cent (25¢) per hour premium be established."

The Union explains:

> "Issue Number 14 deals with premium pay for a second or third shift. The current agreement does not provide for a second or third shift. However, those road commissions surveyed by the Union would indicate the following: Of the 11 counties surveyed, seven provide premium pay. One would provide negotiations if a second shift were established; two counties do not have a second or third shift; and one is unknown."

The Employer response is as follows:

> "...The Commission has not established a second shift in its history. This demand is characteristic of the Union's shopping cart approach to negotiations, has no foundation in need or employee concern. Finally the Union's demand is not supported by evidence.
>
> Only those road commission contracts having a second shift contained contract language regarding shift premium. And only two (2) of those commissions have second shift premium language and only two (2) have shift premium of 25¢ per hour or more. This request should not receive the recommendation of the Fact Finder in this case."

The Undersigned is not persuaded that the Union demand is needed at the present time. Moreover, it is assumed that, if an additional shift is deemed necessary at some future date, the Employer will seek input from the Union before implementation.

15. Working In A Higher Classification

On this issue, the Union requests:

> "Employees assigned to work in a higher classification will be paid the higher rate after four (4) hours."

It is noted that at present:

> "The current contact requires employees to actually work thirty (30) consecutive days in the higher classification. This stipulation make is almost impossible for employees to be paid in the higher classification when they work in it."

The Employer references its proposal relative to classifications:

> "This request of the Union vividly demonstrates why the Road Commission has proposed elimination of all existing classifications except Diesel Mechanic and replacing the eliminated classifications with one classification, 'worker'. The creation of the new classification will eliminate this issue. The employees will always be paid at the highest rate and as they move from one piece of equipment to another their pay will always be at the highest rate."

While the Employer proposal relative to classifications would seemingly resolve this issue, it has been determined that a change of that magnitude should be a subject of negotiations before implementation. The Union asserts:

> "All contracts surveyed dealing with working in a higher classification support the Union's position."

It is not unusual for an agreement to provide that when an employee is assigned to a higher work activity the individual is entitled to compensation associated with the assignment. The Undersigned does not believe the Union proposal to be unreasonable or burdensome. As a practical matter, it would seem that the proposal will have greatest impact when a Laborer is assigned to a higher level or in the case where a unit employee is assigned to a Mechanic job. The requirement that one work in the higher classification for four hours before entitlement to the higher rate of pay affords the Employer with flexibility in regard to short term assignments. The Union proposal is recommended.

16. **Temporary Transfers Offered By Seniority**

The Union offers the following on this issue:

> "The current Agreement under Article IV, Seniority, subsection 7, provides that the Employer has the right to temporarily transfer employees irrespective of their seniority status from one job classification to another, etc.
>
> Assuming all are qualified, the Union raised the issue of 'why not apply it by seniority?' All too often overtime opportunities occur in some garages more than in other garages. What would seem to be a simple transfer could result in the least senior employee if chosen by the employer, earning considerably more money at the new location. Additionally, if the employee transferred is given the opportunity to operate different equipment, it gives that employee a leg up on the promotional process as well.
>
> It is for these two reasons alone that the Union proposes the inclusion of the words 'Wherever possible, employees will be offered such transfers by seniority'."

The Employer response is as follows:

> "As with Issue #15 this issue is resolved by the Road Commission's new classification system. The promotion training issue becomes resolved as well as the pay issue. Employees will all be in one classification and the promotion issue will be resolved. All employees will be interchangeable on all pieces of equipment within a period of time after the new classification system is established.
>
> Even without the new classification the Union's proposal is ridiculous. All employees, currently, are not competent to operate all pieces of equipment. The most senior employee may not be able to operate a given piece of equipment without serious danger to himself and the public.
>
> The Union has not offered a single shred of evidence to sustain this request. The bargaining history of this unit establishes that the Road Commission has functioned, since its creation, without the requested language and the Union has not carried its burden of proof on this issue."

To a large extent, the Employer concern relative to ability is addressed by the introductory phrase – "wherever possible". Inability to perform would render the transfer impossible. Again, it is unlikely that an employee will seek a transfer to a position for which they have no competency since the wage differential among most classifications, with the exception of Laborer and Diesel Mechanic, is not high. It is recommended that the Union proposal be adopted.

17. **Appendix B, Section 2, Progressive Discipline**

The Union proposes the following:

> "...'The Employer and the Union agree that all disciplinary action taken against an employee shall be for just cause and subscribe to the general philosophy that the primary purpose of such discipline is to correct employees' behavior and/or conduct. The Employer agrees that except in certain cases discipline should be progressive in nature and that such discipline shall be uniformly applied.'
>
> Section 2. We propose that progressive discipline should be as follows:
>
> First offense, verbal warning.
> Second offense, written warning.
> Third offense, one (1) day off.
> Fourth offense, three (3) days off.
> Fifth offense, five (5) days off.
> Any subsequent offenses may be subject to discharge."

The Union justifies the demand as follows:

> "Nowhere in the current agreement, Appendix B is there language promoting progressive discipline and/or subscribing to a general philosophy of corrective behavior. Section 1 of Appendix B lists 21 offenses that are subject to interpretation by the employer/ supervisor in which the punishment is selective depending on the supervisor and the employee committing the infraction. Putting it another way, there is no uniform progressive discipline. It can vary

from garage to garage.

Section 2 of Appendix B lists nine (9) infractions and, again, they are subject to interpretation by supervision at each location. Again, there is no progressive or corrective discipline."

The Employer vehemently disagrees with the Union on the need for the proposal:

"Appendix B contains two (2) sections. Section 1 contains rules which prohibit serious acts of misconduct by the employees. Violation of a Section 1 rule subjects the employee to disciplinary action up to and including discharge. This language allows progressive discipline and has in fact resulted in progressive discipline.

Section 2 contains rules to prohibit less serious acts of misconduct. Section 2 specifically requires progressive discipline, i..e., two (2) written warning notices and only upon commission of the third act is an employee subject to discipline.

The Union desires to create a six (6) step disciplinary process. The Union has offered no proof that the current system is unfair or has been discriminatorily applied. The Union makes the unsupported claim that '*there is no uniform progressive discipline*'. This statement is not true and the Road Commission has consistently applied its disciplinary procedure in a uniform manner giving weight to the serious nature of the rule infraction, personnel file of the employee, and any relevant mitigating factors."

The Fact Finder has reviewed Section 1 of Appendix B and concludes they reference more serious offenses for which a more stringent level of discipline may be warranted.

Section 2, on the other hand, references less severe violations. This Section provides:

"...If an employee receives two (2) written warning notices (for the same or different offenses) within a period of twelve (12) consecutive months, upon commission of the third offense, such employee shall thereupon be discharged."

The net result of the above is that discharge is mandated for the commission of three minor offenses in a twelve month period. The above outcome is deemed unreasonable.

While a six-step disciplinary process is not necessarily required, it does appear reasonable to require that an employee be put on notice the behavior is inappropriate and that an increasing level of discipline be imposed in order to correct the errant behavior before termination is imposed.

The Undersigned suggests:

Written Warning
One Day Off
Three Days Off
Termination

The above progression need not be mandatory; rather, it is the level which may result depending on operative circumstances. It is also recommended that a just cause provision relative to discipline be incorporated in the provision.

18. <u>Appendix B</u>

This proposal concerns a disciplinary offense relative to the Employer equipment or property. The current work rule provides that discipline will be imposed in the following situation:

> "Carelessness which necessitates the scrapping or repairing of Employer's equipment or property."

The Union urges:

> "It is the Union's position to add the word ***'deliberate'*** before 'carelessness,' which removes the condition of 'accidental.' There must be stronger intent to do damage proven that [sic] what the current language allows."

Justification is based on the following:

> "It is impossible to operate the Employer's equipment under the conditions that these men are subject to work without some

damage requiring repair. Plowing snow is a perfect example."

The Employer notes:

> "...The Union offers no proof of abuse by the Road Commission of this rule and in fact does not even cite a single incident to support is claim."

The Employer expresses serious concern in regard to the proposal:

> "The obvious reason the Union desires to add the word 'deliberate' is to make the burden of proof so strict that the Commission cannot enforce the rule. A determination of whether carelessness is deliberate or not requires proving the mental state of the employee. If an employee, while driving a Road Commission truck, runs a stop sign or red light and kills several persons in a car the Commission would be required to prove that the employee intentionally, with malice and aforethought, deliberately ran the red light or stop sign. The Commission cannot determine the mental state of the employee.
>
> This request cannot be recommended and to do so would result in chaos."

Given the earlier recommendation relative to Union Issues 7 and 17, the Undersigned does not perceive that the proposal herein is needed. The Employer concern in regard to the impact on its burden of proof cannot be disregarded.

It is found that the proposal lacks merit.

19. <u>Pay For Bargaining Committee</u>

The Union proposes:

> "That each garage allow one representative selected by the Union to serve on the Union's bargaining committee with pay. It is obvious that their absence does not have a negative impact on this employer because the current bargaining committee has been bargaining during their regular work hours."

In support of the above, the Union says:

"Our office randomly called several employers, and the majority reported that their Union bargaining committees were provided time off with pay while negotiating."

The Employer forcefully objects to the proposal:

"Since the inception of collective bargaining with a union, in the mid-1970's, the road commission has steadfastly maintained that it would not agree to pay the Union bargaining team for hours lost during contract negotiations. Likewise, since the inception of bargaining, the Union has always paid its bargaining team for time lost while bargaining. Therefore employees have been paid and the only issue is whether the Union now transfers this obligation to the Road Commission.

The Union collects dues from its members, each month; approximately $25.00 per month, per employee. The normal complement of employees is approximately forty (40). Therefore the Union collects approximately $1,000.00 per month from the employees, or $36,000.00 during a 36 month contract. Surely the Union can pay the hourly rate of its committee.

The bargaining committee is representing the Union employees, not the interest of the Road Commission. If the Road Commission was to pay the Union committee, this would clearly constitute a conflict of interest by the Union committee as measured by any other business or professional ethical standard.

Again the Union offers no evidence in support of its request other than some self-serving hearsay statements. This request must be denied."

The Undersigned has some sympathy with the proposal, however, he rejects recommending it at this time. The earlier recommendations provide the Bargaining Unit with significant benefits. Parenthetically, the Fact Finder states that the Employer view of the role of the Bargaining Committee is rather short-sighted. That is to say, it is in the Employer's interest to have a competent Bargaining Committee so it is not accurate to say that the Committee only benefits the Union members. The proposal is rejected at this time.

20. Loss of Seniority

This issue relates to loss of seniority. The Union explains:

> "The current contract provides that the employee's seniority schedule be terminated if he is absent for more than two (2) consecutive working days."

The Proposal is as follows:

> "The Union's position of requesting three (3) consecutive working days is overwhelmingly supported by the evidence submitted. Therefore it is the Union's position, based on the evidence, that Article IV, Seniority Rights, Section 3(c) be changed to read: **'If he is absent for three (3) consecutive work days...'**."

It is emphasized that:

> "The loss of seniority equates to the loss of a job."

The Employer reads the provision as providing a safeguard:

> "The subsection contemplates the fact that in extremely rare circumstances an employee may not be able to report for work or call in and the employee will not lose his seniority if he offers a justifiable reason for not showing or calling in, regardless of whether he offers the reason on the 3rd, 5th, 10th or any day. So why increase the time from two (2) days to three (3) days. The only logical reason appears to be so that some employee(s) can go AWOL for three (3) days with no valid reason."

It is also argued:

> "The Road Commission needs each of its employees on every work day. It cannot operate with employees taking three (3) days off anytime they please."

In view of the Employer's understanding of the subject provision, the Undersigned is not persuaded that the Union proposal is required. It is recognized that many agreements do provide that seniority is lost upon three days of "no show, no call." The provision herein contains a

shorter time frame unless a justifiable reason exists.

21. <u>Posting Minimum Qualifications</u>

The Union explains the matter as follows:

> "The current contract, Article IV, Seniority, Section 6 C states that the posting for job openings will provide the 'qualifications necessary.'
>
> The posting of qualifications can also be argued in Issue No. 9, Promotions. The current contract allows the Employer the latitude of interpreting what qualifications are necessary to perform and/or operate in certain classifications. The Employer's interpretation can range from minimum qualifications to demanding that the employee be an expert in order to qualify. It provides for a large degree of discrimination based on the likes or dislikes of an employee bidding on a job. By only applying a standard can we be assured that prejudice, favoritism, or discrimination will be eliminated from the selection process.
>
> It is for that reason that the Union's position is that the employer should either post the ***minimum*** qualifications necessary, or there must be some reference that the posting will be uniformly applied to all candidates. It would be unfair to have minimum qualifications posted for some employees and maximum qualifications posted for others."

The Employer response is a forthright denial that the proposal addresses a problem:

> "This issue is totally vacuous. The Union claims that it needs the word 'minimum' qualification in the job posting language or the Commission will apply favoritism in job posting. The Commission must list the qualifications on the job posting. At the time the job is posted the Commission has no idea who will bid on the job. How can they exercise favoritism?
>
> Secondly, the new classification system will eliminate the need for job posting. Finally the Union has not offered any proof to establish that the current posting procedure is unfair or has been the source of favoritism."

This issue is another one which exemplifies the amount of distrust between the Parties

herein. At this juncture the Undersigned has no basis on which to conclude that the Union's distrust relative to job postings is well-founded. The Undersigned is unwilling to assume that the Commission would blatantly play favorites by tailoring job opening qualifications in order that select individuals would be deemed qualified. The Fact Finder does not recommend adoption of this proposal.

22. <u>Life Insurance</u>

This proposal relates to an increase in the life insurance benefit:

> "...The Union's position is as follows: 'The Employer agrees to provide a $10,000 life insurance policy with an AD & D Rider.'"

In support of its demand, the Union asserts that:

> "The average of all of the contracts surveyed is approximately $20,000 of paid life insurance on each employee."

The Employer has no objection to the proposal *per se*. It does, however, point out that the proposal must be considered in light of the overall economic settlement:

> "The Union requests that the current life insurance be increased by $2,500.00, i.e., from $7,500.00 to $10,000.00. In the normal course of collective bargaining if the Union desires to absorb the cost of this request into the monies made available by the Commission for a total package settlement, the Commission would have no objection to this request."

This proposal is a modest one by any standard. The benefit amount which is being sought is not extraordinary and it is not indicated that the cost is prohibitive. The Fact Finder recommends that the life insurance be increased to $10,000.00.

JOSEPH P. GIROLAMO, FACT FINDER

Dated: October 3, 2001