STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

EMPLOYMENT RELATIONS COMMISSION

FACT FINDING

IN THE MATTER OF:

MACOMB COUNTY ROAD COMMISSION
Petitioner-Public Employer

-and-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 893
Respondent-Labor Organization

MERC Case No. D08 J-1264
_____/

APPEARANCES:

For the Employer: Timothy K. McConaghy, Esq.
Hardy, Lewis & Page, P.C.

For the Union: Aina N. Watkins
Counsel for the Union
Michigan AFSCME Council 25, AFL-CIO

FINDINGS, OPINION AND RECOMMENDATION

The Union represents a bargaining unit of approximately 138 employees of the Macomb County Road Commission. The collective bargaining agreement between the parties expired on October 7, 2007. Negotiations on a replacement agreement began in 2007 and continued throughout 2008, including mediation efforts that did not result in a new agreement.

On January 30, 2009, the Employer filed a petition for Fact Finding with the Michigan Employment Relations Commission. On June 5, 2009, the Union filed an Answer to the Petition for Fact Finding. On September 10, 2009, The Michigan Employment Relations Commission appointed the undersigned as the Fact Finder. A hearing was held on December 8, 2009, wherein the parties were afforded an opportunity to present exhibits and testimony in support of their respective positions. The parties filed post-hearing briefs on January 25, 2010.

DECISION MAKING CRITERIA

Fact Finding cases are conducted pursuant to Section 25 of the Labor Mediation Act 176 of 1939 as amended, MCL 423.25, and in accordance with the provisions of R 423.131 of the General Rules of the Michigan Employment Relations Commission. The Act does not provide for any specific criteria to be used in evaluating the positions of the parties or the basis for a Fact Finders recommendation. Consequently, many fact finders choose to apply the criteria set forth in Section 9 of Act 312 of 1969, as amended, MCL 423.239, which are as follows:

(a) *The lawful authority of the employer.*
(b) *Stipulations of the parties.*
(c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
(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:*
    (i) *In public employment in comparable communities.*
    (ii) *In private employment in comparable communities.*
(e) *The average consumer prices for goods and services, commonly known as the cost of living.*
(f) *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.*
(g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
(h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Fact-finding is intended to review the facts as presented at the hearing with the realization that the report is not binding upon the parties but may assist the parties in reaching a

negotiated agreement. Toward that objective the undersigned will utilize some of the criteria outlined above as deemed appropriate to the issue in dispute and make recommendations to the parties based upon the evidence and facts presented at the hearing that in the opinion of the fact finder reflect what the parties could reasonably expect to have negotiated.

FINANCIAL FACTORS

In this case, the Employer has advanced a serious ability to pay argument. Like many Michigan public service entities, the Macomb County Road Commission has been experiencing a continuing decline in their primary source of revenue, the Michigan Transportation Fund (MTF) and a steady increase in the cost of operations. The last collective bargaining agreement between the parties was effective October 3, 2003 and expired on October 7, 2007. The record evidence indicates that total revenue from the MTF stood at $40,000,000 in 2004 and is anticipated to be at $34,000,000 in 2010, a loss of $6,000,000. Conversely, expenses have risen dramatically. In 2003, total salary, health care and pension expenses were approximately $21,440,000 and are projected at approximately $29,000,000 for 2010, an increase of some 35%. As a percentage of the total MTF funds received in 2003, personnel costs represented 57% and are projected at 85% for 2010. This leaves a balance of some $5,000,000 in the MTF for 2010 to fund all operations beyond personnel costs. Budgeted costs in 2010 for fuel, salt, parts and material alone is $4,000,000, leaving only $1,000,000 to cover all other operating costs and nothing left over for the general fund. Over the past five years the cost for salt has increased by 350%, fuel by 270%, equipment parts and materials by 70%.

The general fund is used to cover the cost of new roads or lanes construction. Federal highway funds are restricted to the cost of roadway construction and may not be used to finance daily operating costs. The record indicates that general funds are used to pay the cost of road construction, typically 20-40% of a project with federal highway funds financing the balance. Consequently a decline in the general fund translates to fewer federal dollars for road construction.

The Road Commission must and has looked to the cost of operations side of the ledger in an effort to reduce operating cost. Since 2004, the Road Commission has reduced the number of budgeted personnel by 22%, delayed the purchase of new equipment and increased prescription co-pay for retirees and non-union employees and froze wages for the administrative non-union staff. (Employer Exhibits 4 A – D.)

Obviously the Road Commission is faced with a serious financial challenge for the future. Continued cost increases will erode their ability to maintain service levels without corresponding increases in revenue and there is nothing in the record to indicate that such an increase in revenue is likely to occur. Financial reality simply cannot be ignored and must play a major role in evaluating the issues in dispute.

The Employer's approach to negotiations reflects its desire to control the rate of increased cost of wages, health care and pensions by seeking a combination of immediate and long-term adjustments for current employees and reductions in wages and benefits for future new hires. Accordingly, their proposals reflect, more or less, those made to the other bargaining unit, the ADTECH Union, which has achieved an agreement.

The Union expressly recognized the financial problems faced by the Employer but points out that they have had already made concessions and at this juncture is attempting to preserve the benefits deemed most important in a declining economy.

DISPUTED ISSUES

There were some fourteen issues presented at the beginning of the fact finding hearing, some of which have been withdrawn. The remaining issues are as follows:

ARTICLE 24 - LEAVES OF ABSENCE WITHOUT PAY.

The Employer proposes to amend the existing language by updating the Family Medical Leave Act provision and to change the discipline schedule for attendance and tardy infractions. The existing language regarding the FMLA is as follows:

Not withstanding the above, leaves taken for a purpose covered by the Family and Medical Leave Act (FMLA), 29 USC Section 2601, et seq, shall be governed by the mandatory provisions of the federal law.

The Employer proposes the following language:

Leaves taken for a purpose covered under the Family and Medical Leave Act (FLMLA), 29 USC Section 2601, et seq., shall be governed by mandatory provisions of the Federal Law.

An employee's FMLA leave is unpaid. An employee may elect to use paid time off (i.e. vacation; or sick days)concurrently with his/her FMLA leave.

The year for purposes of the FMLA is defined on a rolling 12-month calendar basis. Under this method, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12-weeks, which has not been used during the immediately preceding 12 months.

If an employee does not return to work following a FMLA leave for a reason other than (1) the continuation, recurrence, or onset of a serious health condition which would entitle the employee to FMLA leave or (2) other circumstances beyond your control, the

employee may be required to reimburse the Company for its share of health insurance premiums paid on his/her behalf during the FMLA leave. In the event the employee fails to return to work following the expiration of the leave, the employee may be required to repay the cost of those benefits and will be considered to have voluntarily terminated their employment.

Notice and the opportunity to bargain shall be provided to the UNION when any part of the contract must be changed to conform to the FMLA or the application of the mandatory requirements impact upon the contractual rights of the other bargaining unit Employees.

The Union did not respond to this portion of the Employer's proposal in their brief and nothing in the record was offered in rebuttal. The language does in the opinion of this fact finder raise a question regarding the use of earned paid leave while on FMLA leave in the event that an employee elects not to return upon expiration of the leave. Does the employee have to repay those referenced benefits while on paid sick leave or vacation? It might be wise to clarify this matter to avoid any future dispute. Except for that concern, this fact finder is of the opinion that the Employers proposal is reasonable, and should be adopted by the parties.

The existing language regarding disciplinary action for absenteeism and tardiness is as follows:

A. *Unauthorized absence shall be disciplinary action as follows:*

1. *When an employee has exhausted sick and green days, (s)he will be considered to have zero time. An absence is considered to be an absence of one half (1/2) hour or more.*

2. *1st zero time absence – verbal warning.*
   2nd zero time absence – written warning.
   3rd zero time absence – one (1) day suspension.
   4th zero time absence – five (5) day suspension.
   5th zero time absence – seven (7) day suspension.
   6th zero time absence –fifteen (15) day suspension.
   7th zero time absence – subject to discharge.

   Occurrences shall be counted during any twenty four (24) month period, which is defined as a combination of twenty four (24) consecutive months. An absence of consecutive days will count as one occurrence. One occurrence will be deducted for each twelve (12) month period where an employee has no zero time absence.

3. *The following absences will not count as an occurrence for the purpose of this Article:*

a. *on the job injury;*
b. *long or short term disability, or;*
c. *illness or injury of a continuing non-recurring nature (heart disease, cancer, serious injury, etc.)*

B. *All employees are expected to be at their regularly assigned Service Center at their scheduled starting time. If any employee is tardy, which is defined as not at their regularly assigned Service Center at their scheduled starting time, he/she will be subject to the following progressive disciplinary action if said tardiness occurs within any twelve (12) month period:*

2 tardies – verbal warning
4 tardies – written warning
6 tardies – one (1) day disciplinary leave
8 tardies – three (3) day disciplinary leave
10 tardies – five (5) day disciplinary leave
12 tardies – subject to discharge

Being considered tardy begins with the date of the first occurrence. One (1) occurrence will be deducted for each month where an employee has no tardiness.

The Employer proposes to amend Section A schedule for zero time absence as follows:

A. 1st *zero time absence – verbal warning*
2nd *zero time absence – written warning*
3rd *zero time absence – 1 day suspension*
4th *zero time absence – 3 day suspension*
5th *zero time absence – subject to discharge*

Zero time absences shall be counted during any twenty-four (24) month period, which is defined as a combination of twenty-four (24) consecutive months. Each day of an unauthorized absence will count as one (1) zero time absence. One (1) zero time absence will be deducted for each six (6) month period where an employee has no zero time absence.

The following will not count as zero time absences for the purposes of this Article. Absences because of:

A. *On the job injury*
B. *Long or short term disability*
C. *Approved leave under the Family and Medical Leave Act*

The Employer proposes to amend Section B schedule for tardiness as follows:

2 tardies – verbal warning
3 tardies – written warning
4 tardies – 1 day disciplinary leave
5 tardies – 3 day disciplinary leave
6 tardies – 5 day disciplinary leave
7 tardies – subject to discharge

The Union objects to the proposal to short the steps to discharge for absenteeism and tardiness on the grounds that the present provisions are a benefit the employees have enjoyed and that there is no severe burden on the Road Commission to continue the present language. However, the Union would agree to the changes if the Employer would agree to add four (4) days to Article 41 – Sick Leave.

Neither party offered any evidence as to statistics reflecting employee tardiness or absenteeism. One would certainly hope that in these difficult economic times and the staggering loss of jobs in Michigan's economy that employees would recognize the importance of having a reliable job and would conduct themselves accordingly in reporting to work on time on a reliable basis. The present provisions of the agreement do appear to this fact finder as somewhat overly permissive, but there is no evidence in the record to support any finding of employee abuse of such provisions. Had such evidence existed the Employer certainly could have produced it and there would have been a basis to recommend modifications to the present provisions. If indeed there is such evidence and potential savings to the Employer by securing the desired changes the Union has indicated a willingness to accept the proposal in return for a modification to the sick leave article. Such an expression would seem to afford the parties an opportunity to negotiate a compromise.

ARTICLE 29.5 – WAGES

The Employer has proposed and the Union has agreed to a 25% reduction in the wage schedule for new hires, that includes a five year catch-up schedule, that allows a newly hired employee to be paid 25% less than the rate, 20% less after one year service, 15% less after two years service, 10% less after three years and 5% less after four years service, with the employee reaching the current maximum rate at five years service. The agreement provides that wages for current employees will remain unchanged during the term of the agreement with no increases except for annual step incremental increases as set forth in the parties' Employee Wage Schedule in the 2003-2007 Agreement.

The only dispute is the difference between the Union's proposal to request to reopen the contract each year for wages only, while the Employer proposes to allow the Union to

request to re-open negotiations one year after ratification of the Agreement and annually thereafter on economic issues.

In the opinion of the Fact Finder the dispute on this matter is a difference without a distinction. The language of both proposals gives the Union the right to request to reopen negotiations, not the Employer. If the Union wants to limit their request to reopen only wages they are at liberty to do so. Indeed, only the Union may request to reopen negotiations on any or all economic matters and the Employer is at liberty to grant the request or decline to reopen negotiations. The Union's argument that all they are requesting is the same as that provided in the settlement the Employer reached with ADTECH Union is persuasive. The Employer has argued that they have conducted their negotiations in an effort that mirrored the negotiations with ADTECH, and the Union's proposal is identical to the language contained in the ADTECH agreement. In any event, ratification of an agreement is not likely to occur much before a significant term of the proposed contract has expired.

For the reasons cited above I recommend that the parties adopt the language proposed by the Union. *One (1) year after ratification of this Agreement and annually thereafter, the Union may request to re-open negotiation on wage issues only.*

ARTICLE 31 – OVERTIME WORK REQUIREMENT AND OVERTIME EQUALIZATION

This issue is complicated by the fact that the Employer withdrew language it had offered during negotiations during the course of the hearing. The record testimony of Mr. Bo Kirk, Director of Personnel revealed that the Road Commission had directed him to withdraw the proposed language. That action results in continuing the existing contract language, but the Union is now proposing to add language from the policy of the City of St. Clair Shores. Unfortunately the Union did not include in their exhibits the text of that policy. The record testimony of Union President, Len Bruley indicates that the existing language of the agreement has been the subject of several grievances because in the opinion of the Union the language conflicts with the Federal Motor Carrier Safety Regulations, (FMCSR Pocketbook, #395.3, Maximum Driving Time for Property-Carrying Vehicles, May 12, 2004). According to the Union, employees suffer financial losses after they are called in for overtime and must use sick and personal time when the regulations prohibit them from working their next regularly schedule work shift. Mr. Bruley characterized the St. Clair Shores policy as allowing the employees who have reached the maximum number of hours in a twenty-four hour period to go off duty with pay for the balance of their next regular shift.

As noted earlier, the financial condition of the Road Commission is such that any additional expense of having to pay for additional time not actually worked is simply unwarranted however; there is a question of fairness involved in this issue. Work

circumstances that require extended overtime hours are often required and it seems unfair that employees must use their earned time off to avoid the loss of regular shift earnings because they worked overtime. The problem is not the fault of the Employer but rather the result of the application of Federal Law.

There may be an alternative solution to the problem, I would recommend that the parties consider developing a shift adjustment policy that would allow a temporary change in an employees regular shift hours sufficient to allow for compliance with the law following the circumstance of a period of extended overtime and avoid the necessity of using paid leave or the loss of regular shift pay. The alternate to such a plan is simply to retain the existing contract language and continue the present practice until the matter is resolved through the grievance procedure.

ARTICLE 33 – VACATION

The parties seem to have reached agreement on this issue as the Union in it's brief indicates that the Union agreed to accept the Employer's proposal regarding paragraph J. The only concern expressed by the Union is the question of the term "per contract year" as used in paragraph K., of the Employer's proposal, and asks the question of what happens if someone's birthday falls on 12/31? The new provisions mirror that of Fact Finder William E. Long in the case involving the ADTEC unit that was accepted by the Employer.

Paragraph K., contains the sentence that "Theses days cannot be carried over to subsequent years". It isn't clear if the use of the term "per contract year" has any particular significance but it seems a minor issue that can be reasonable solved.

I recommend the adoption of the Employers proposal with the following suggested changes: Substitute calendar year for contract year in the first sentence of paragraph K., and provide an exception when an employees birthday falls on 12/31 to permit the use of the personal day during the week following the actual birthday.

ARTICLE 35 – LONGEVITY PAY

The Employer proposes to maintain the present longevity payment schedule for employees hired prior to October 7, 2007 and seeks to extend the service eligibility requirement from five (5) to ten (10) years to ten (10) years for employees hired after an unspecified date in 2008. The record indicates the Union would agree to the ten (10) years service requirement if the Employer would agree to increase the maximum longevity base cap from the current $25,000 to $28,000. In the alternative, the Union proposes to maintain the existing longevity provisions.

The Employer's proposal is designed to delay the cost implications of longevity payments for new hires until they have achieved ten (10) years of service. The Union's

proposal to increase the maximum cap to $28,000 would generate an immediate cost increase that would negate any costs savings generated by the extended service requirement. The present financial circumstances of the Road Commission that have resulted in a reduction in the employee head count of some 57 employees, would indicate that it is unlikely that the employer would be hiring any significant number of new employees in the near future, thus the proposed change in the service requirement would generate very little in the way of cost savings.

The Union's argument that Macomb County, Local 411 and Oakland County Road Commission, Local 92 both have service requirements of less than ten (10) years is not persuasive when one considers the overall longevity benefits provided. Local 92 enjoys a benefit from 7 – 10 years of 2%, 10 –13 years of 4%, 13 – 16 years of 6%, 16 – 19 years of 8% and 19+ years 10%. Moreover, the schedule for employees hired after January 9, 1978, is substantially reduced, beginning with $200 at 6 years and increases at the rate of $50 per year for each year of service up to a maximum of $900 after 20 years. Local 411, enjoys a benefit of 2% after 5 – 9 years, 4% from 19 – 14 years, 6% from 15 – 19 years, 8% from20 – 24 years, and 10% after 25 years. Of even greater significance is the fact that these percentages are limited to a base not to exceed $18,000. Overall, Local 893 enjoys a longevity benefit that significantly exceeds both of the above benefit levels.

The impact on existing employees of the Employers proposal is minimal at worst since it would not apply, only new hires would be affected and they would be in a position to decide if the 10-year service requirement is a deterrent to accepting the job.

For the reasons stated above I recommend that the parties adopt the proposal of the Employer.

ARTICLE 36 – RETIREMENT BENEFITS

The Employer proposes a number of significant changes to the present pension plan as follows:

1. Establish a sixty (60) day window period following ratification or implementation of the Agreement allowing current employee's to retire during the window period under the previously existing "70 point rules". At the expiration of the sixty (60) day window period, the 70-point retirement plan will remain in effect with a minimum retirement age of 50. Ninety days prior to the expiration of this Contract (expiration will be 12/31/11) the minimum age will increase to age 55.
2. New hires will not be covered by the 70 point plan. New hires may retire at the age of 55 after 25 or more years of service or at age 65 after 8 or more years of service.
3. The final average compensation used for calculating benefits will be the employees last three consecutive years of services.

4. New hires will have health care and retirement only for the employee (not spouses or dependents) and must have 15 years of service in order to qualify for health care in retirement.
5. All employees retiring under the terms of this Agreement will have health care matched to the health care of current active employees; the same changes will be immediately implemented for the retiree and his or her spouse and/or dependents.

The Union proposes to maintain the current contract language except for paragraph G. which the Union seeks to modify as follows:

G. Employees hired prior to _____, and retiring within sixty (60) days after ratification of this Agreement but in no case later than _____, (the "window period"), may apply for voluntary retirement after the total of his/her years of service and his/her age equals seventy (70). Employees hired prior to _____, and retiring after the window period may apply for voluntary retirement after the total of his/her years of service and his/her age equals seventy (70), provided the Employee has attained the age of fifty (50) years. Employees hired on or before January 1, 1992, and who have twenty-six years of service may apply for voluntary retirement regardless of age. The Seventy (70) point retirement system will be made available to all eligible Employees, including those Employees who were previously eligible and did not apply for and retire within the applicable period under any prior Collective Bargaining Agreement as well as those Employees who become eligible under this Agreement.

Employees hired on or after _____, who have attained the age of fifty-five (55) years and have twenty-five (25) or more years accredited service or have attained the age of sixty (60) and have eight (8) or more years of accredited service, may retire upon written application filed with the Macomb County Employee's Retirement Commission.

The Union argues that the seventy (70) point plan must remain the same because it is the same as that provided in the Macomb County Local 411 retirement plan. Additionally, the Union contends that both the Oakland County Road Commission and Wayne County plan allow employees to retire with 25 years of service and/or with a minimum age of 50 years.

The Union contends that employees who retire after June 1, 2007 but before a new contract is signed have vested pension benefit rights that should not be altered. The Union cites a number of court cases dealing with the duty to bargain over mandatory subjects of bargaining. In the opinion of the Fact Finder the most important legal principle cited is that of *Allied Chemical & Alkali Workers, Local No. 1 v. Pittsburg Plate Glass Co., 404 U.S 157, 159 (1971).* The Court held that the term employee does not include retired workers, and that retired workers were not employees included in the bargaining unit. *Id. at 166-182.* The Court stated that once these bargained for benefits are vested, retired workers may have enforceable contract rights. The Union also makes an argument of *Promissory estoppel* and contends that rights accrued under the contract included those retiree benefits in the contract and were vested when the employees retired from the Macomb County Road Commission.

It isn't necessary to engage in a detailed analysis of promissory estoppel principles. In the opinion of the Fact Finder, employees who retired under the terms of the 2003 – 2007 contract are no longer employees subject to the negotiations on a successor agreement and are entitled to the benefits vested at the time of their retirement under that contract. Moreover, future changes in the contract after their retirement under the old contract will have no effect on their retirement benefits since they are no longer employees subject to negotiated changes occurring after their retirement. Changes to the pension plan will only effect current employees who retire after the ratification of the new contract. If that new contract contains a provision that mirrors health insurance benefits for current employees and is applicable to retirees, it can only be applicable to retirees who retired under the terms of a contract that contains such a provision. It would not have effect on those retirees who retired under the terms of a contract that did not contain a mirror clause.

The record does not include any financial data concerning any savings contemplated by the changes proposed by the Employer, nor has there been any explanation for the proposed change in the final average compensation factor from the current average of an employee's three (3) highest years of compensation of the last ten (10) years of service to the last three (3) consecutive years of service.

Given the financial condition of the Employer, particularly the ever-increasing cost of retiree health care and pension costs, some changes are warranted. I recommend that the Union's proposal regarding paragraph (G) be adopted with some elements of the employer's proposal. I recommend that the second paragraph of (G) as proposed by the Union be amended to require that new hires who have attained the age of fifty-five (55) years and have twenty-five or more years accredited service or have attained the age of sixty-five (65) and have eight (8) or more years of accredited service, may retire, etc.

I recommend that new hires, hired after the date of ratification of the contract must have a minimum of fifteen (15) years of continuous employment with the Road Commission to qualify for retirement health care benefits.

I would recommend that the parties adopt a provision that provides that employees who retire under the terms of the new contract after the date of ratification have health care and dental coverage consistent with benefits provided to the active Employees. These benefits shall be subject to the same changes made in the future for active Employees. The reason for this recommendation is to reduce the number of variable insurance plans that must be maintained over time under the existing retirement plan. It is noted that I interpret this to apply to benefit levels and not to premium payment provisions.

I recommend that all other existing provisions of the pension not recommended for alteration by this fact finding be maintained.

ARTICLE 37 – LIFE INSURANCE

The Employer proposes to reduce retiree life insurance from $10,000 to $5,000 for employees hired after a date in 2008.

The Union proposes to maintain the current contract language and benefit level, and argues that Macomb County, Wayne County and Oakland County Road Commission provides life insurance benefits greater than $5,000 for all employees.

The Employer did not submit any cost savings data concerning their proposal and that makes it difficult to evaluate. The present plan is akin to a declining term coverage benefit and such plans generally are modest in cost. The Union's contention that their external comparables all provide a greater benefit has not been rebutted by the Employer, however, a review of the contract with Local 411 indicates that Macomb County provides retirees with a death benefit of $2,000. The agreement between Local 92 and the Oakland County Road Commission does not provide a greater level of coverage than that of Macomb County Road Commission, upon the death of a retiree a benefit is payable on a sliding scale from $400 after 10 years service to $2,000 after 30 years service.

While the savings may be slight, the financial condition of the Road Commission is such that any savings will be of assistance in meeting the financial challenge. A $5,000 benefit for new hires is consistent with and exceeds that provided for Local 92 and Local 411. For these reasons I recommend adoption of the Employer's proposal with the amendment that the effective date be upon ratification of the agreement and for new hires after that date.

ARTICLE 38 – HEALTH, OPTICAL AND DENTAL INSURANCE

The Employer proposes to provide Community Blue modified Plan 1 with a $10/$20 prescription co-pay and coverage as identified in the "benefits at a glance" attachment to the proposal.

The Union seems to agree with the Employer's proposal except for the 50% mental health rider and the lack of a dental coverage specification sheet. According to the Union the 50% mental health-rider is too low. The Union contends that both Wayne County and the Oakland County Road Commission coverage level are between 90-100% for mental healthcare.

The Employer's proposal mirrors the settlement achieved with the ADTEC unit. Again the parties have failed to provide any cost data associated with their respective proposals. As to the relative weight of the comparables, this Fact Finder is of the opinion

that the settlement reach with the ADTEC unit is of greater significance than that of external comparables.

I recommend that the parties adopt the Employer's proposal with the addition of a dental specification sheet that reflects, as much as possible, the present level of dental benefits.

ARTICLE 41 – SICK LEAVE

The Union has linked this issue to that of Article 24 and has indicated a willingness to accept the Employer's proposal in Article 24 in exchange for four additional "green days" to paragraph (C) of Article 33. The present "green day" allowance is 3 days and I have indicated in my review of Article 24 that there is no record evidence of abuse to warrant the change requested by the Employer. I left the matter open to the parties to resolve. I do feel that the Union proposal to raise the "green day" allowance from 3 to 7 days is a bit excessive, I would suggest that the level be set at 5 days and in turn the Union accept the Employer's proposed changes to Article 24. It may appear to be an arbitrary number of days but the art of compromise is often arbitrary.

MEMORANDUM OF UNDERSTANDING RE: 2009 SUMMER SCHEDULE

The Employer proposes to delete this provision from the contract, as it is not interested in developing a summer schedule utilizing a four –ten hour day schedule. The Union would like to pursue such a schedule.

Since 2009 is long gone by, and it is likely that an agreement may not be reached much before the end of spring 2010, I recommend that the parties continue with the existing schedule and leave this matter for future negotiations.

ARTICLE 49 – EFFECTIVE DATE; ARTICLE 50 RATIFICATION

The Employer did not submit a proposal regarding these two Articles and the Union wants to maintain the current contract language.

I recommend that the current contract language be maintained with the appropriate changes in the effective dates.

ARTICLE 51 – TERMINATION AND MODIFICATION

The Employer proposes an expiration date of December 31, 2011 while the Union proposes a date three years from the ratification date.

It makes sense to this Fact Finder to have a common termination date for the two bargaining units. Therefore, I recommend an expiration date of December 31, 2011.

Submitted: March 2, 2010

C. Barry Ott, Fact Finder

C. Barry Ott