

State of Michigan  
Department of Consumer and Industry Services  
Employment Relations Commission

Michigan AFSCME, Council 25,

Petitioner,

And

Case No. L 10 G-5003

Kinross Township,

Respondent.

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**REPORT AND RECOMMENDATIONS OF FACT FINDER**

On January 24, 2012, the undersigned was appointed by the Employment Relations Commission (MERC) as Fact Finder in this case, pursuant to 1939 PA 176. The Petition for Fact Finding was filed on October 19, 2011 and the Answer to the Petition was filed on November 18, 2011. After appointment of the Fact Finder, a pre-hearing conference was held, discovery period granted, and the fact finding hearing held on May 23, 2012 in Kinross Township, in a conference room in the township hall, without objection.

The representatives were present, as well as Judy Wright of AFSCME, and Ed DeWitt, Julie Munro, and Brenda Case of Kinross Township. The representative for Kinross Township, Stephen Schultz, is an attorney; the representative for AFSCME, Council 25, Peter Dompierre, is not. The representatives provided the Fact Finder with opening statements, and evidence, including sworn testimony of witnesses, and offered exhibits. The representatives, per request granted by the Fact Finder, provided their closing arguments in writing in June, 2012. The hearing was not recorded, other than by written notes taken by the Fact Finder.

Upon receipt of the post-hearing briefs, the Fact Finder allowed time for receipt of same by mail and filing of rebuttal briefs. No rebuttal briefs were submitted, and on July 2, 2012, the Fact Finder served a letter taking the matter under advisement. The Fact Finder has now reviewed the evidence and arguments, and issues this report with recommendations, pursuant to Part 7 of the MERC rules. In this report, exhibits are identified as they were marked for the record. The exhibits marked, offered, and admitted consist of eight joint exhibits, and sixteen Petitioner's exhibits.

## Findings and Recommendations as to Disputed Issues

### Introduction

The parties agreed to joint exhibits I through VIII, which were admitted by the Fact Finder. Joint Exhibits are referenced herein as "Jt. Ex.", followed by the Roman numeral. As to Jt. Ex. I, it was also stipulated that the exhibit reflects Kinross Township's (hereinafter, "the Township") position on open issues as of mid-2011. As to Jt. Ex. VIII, it was stipulated that articles in it with a "TA" marked next to them are resolved, and that the rest of the articles are open issues, with AFSCME, Council 25's (hereinafter, "the Union") position as of mid-2011.

The parties agreed in opening statements that this is an initial contract.

In this case, the disputed issues were for the most part not listed in the testimony and exhibits, but rather in the parties opening statements at hearing and

closing arguments in their post hearing briefs. They roughly can be categorized as financial and/or language issues. However, in their post hearing briefs, both representatives stated in various terms that the key issue is that between “At Will” and “Just Cause” employment, so that issue is first addressed.

1. “At Will”/”Just Cause” Employment

This issue is termed in post hearing briefs by the Petitioner Union as “the primary difference” between the parties, and by the Respondent Township as “the most important issue” to it.

Jt. Ex. I is the Township’s Comprehensive Package Proposal dated October 3, 2011. Article 2 on pages 1 and 2, in pertinent part, would retain to the Township, as employer, management rights including, “to hire, recall, schedule, assign, transfer, promote, demote, suspend or discipline or discharge at will.”

Jt. Ex. II is the Township’s current “Employee Policies and Procedures Manual”, last amended June 6, 2005. On page 1, “101 **Nature of Employment**” states in pertinent part that “Kinross Charter Township may terminate the employment relationship at any time, with or without notice or cause, so long as there is no violation of applicable federal or state law.” That section also later references “its policy of employment at-will.” Also, on page 19, “405 **Employment Termination**” repeats the right of both the employee and Township to “terminate employment, with or without cause, at any time as defined by the law.” This being an initial contract, there is no argument that there has ever been a “just cause” provision for this Township.

Jt. Ex. VIII is the Union’s Response to Employer’s Comprehensive Package, dated August 30, 2011. On page 1, Article 2, the Union disagrees with the Township’s proposed language for that article by inserting the words “for just cause” in place of “at will” where it appears in Jt. Ex. I.

Petitioner’s Exhibits are referenced herein by “Ex. P”, followed by the Arabic numeral. Ex. P 16 is the Union’s Response to Employer’s Proposals on March 21, 2012 And Counter... .” Susan Cameron, Staff Representative of AFSCME,

Council 25, testified that Ex. P 16 was a significant change in the Union proposal. However, review of Ex. P 16 shows that the Union accepted the Township's proposal as to Management Rights "if Employer deletes "At Will", which is not found to be a change of position on this particular issue.

Ex. P 1 through 14 inclusive are selected comparables from contracts in other municipalities (townships, cities, and municipal utility boards). Like Kinross Township, they are all in Michigan's Upper Peninsula. The Union is correct, as argued in its Post Hearing Brief, that all of those agreements contain "just cause" (or, it is found, a "proper cause" or simply "for cause" or "reason") provisions in various articles as to discipline and discharge. The Township argues, in its Post Hearing Brief, that it has negotiated "to remain an at-will employer, like the overwhelming majority of public employers in this state.... ." Yet, the Township did not offer any comparables, as also pointed out by the Union, and fact findings have to be made from the evidence alone.

There was no other evidence offered as to this important issue, but the positions of the parties are simple and straightforward.

The Township, in its post hearing brief, does cite *McNeil v Charlevoix County*, 484 Mich 49, 79; 772 NW2d 18 (2009): "In the absence of a contract providing to the contrary, employment is usually terminable by the employer or the employee at any time, for any or no reason whatsoever." The Township is correct, that situation is usually only changed if a contract so provides, i.e., "just cause." And since there is no contract currently between the Township and Union, that situation applies here, with at will employment. The Fact Finder also agrees with the Township's argument that a "just cause" provision is not an entitlement. However, it does not follow that an initial contract cannot by law contain a "just cause" provision, or even should not in the future.

The Township next argues that even the at-will standard does not permit it to discharge or discipline in a way that is discriminatory, in violation of federal and/or state laws. The Township proceeds in its post hearing brief to cite

examples of discharge that would violate discrimination laws (i.e., case law as to public policy, and statutory law like the Persons With Disabilities Civil Rights Act, Elliot-Larsen Civil Rights Act, or Whistleblowers' Protection Act). The Township also states that an at-will employee cannot be legally discharged for engaging in union formation, organization, or other activities under "PERA", MCL 423.210. And that is certainly also a correct argument.

However, the rest of the Township's argument, that under such discrimination laws the Township is **always** required to have a good faith basis for its treatment of its employees, does not necessarily hold true, and is beyond the scope of the legal authorities it cites. The Fact Finder finds that the examples given of discharge for activities protected by discrimination laws or PERA are narrower in scope than discharge that could occur without just or proper or even any cause, or in bad faith. In other words, the Township, could currently discipline or discharge an employee without any cause (per *McNeil*) or even in bad faith, as long as it does not violate specific laws that protect union activity or against discrimination. And, even if it is true, as footnoted by the Township, that almost every person falls within some classification protected by law, it is rather whether the employer's basis for discharge included such classification that may trigger such protections. So, the "just cause" provision desired by the Union would provide broader protections against discharge or discipline than those required by law. Nevertheless, the question is as to a future contract.

The legal citations and arguments of the Township do not detract from the evidence in Ex. P 1 through 14, and the Fact Finder disagrees with the argument that they are "inapposite on this point." The variety of government structures that are party to those comparable agreements is a consideration, especially since they only include two townships, but that consideration is not shown by law or evidence to entirely defeat the relevance of the exhibits, which were admitted without objection. They constitute credible evidence as to this issue.

Accordingly, it is found as to this disputed issue, that Kinross Township employees are currently and always have been, "at will." The fourteen

comparables, including two townships, and the rest ,cities and utility boards also from the Upper Peninsula, all have some form of “just cause” or similar cause provision contained therein.

It also must be considered that the Township, in its opening statement, modified its position from at-will employment across the board, so that discharges could go to binding arbitration at the discharged employee’s request. While this is a substantial modification of position, the Fact Finder was not provided with any law or evidence to support this option for discharges.

The Fact Finder would be inclined to recommend this modified Township position, but for the fact that no evidence such as comparables was offered to support either it or the Township’s original position of at will employment in a contract.

Recognizing the importance of this issue, and based entirely on the evidence, Exs. P 1 through 14, the Fact Finder’s recommendation is to accept the Union’s position of a provision for discharge or discipline for just cause. That evidence cannot be overlooked, despite the fact that it only includes two townships among the fourteen comparables. And, there is no other evidence in the record to outweigh those exhibits.

2. Financial issues

A. Wages and longevity, including “call pay”

I. Wages

In Jt. Ex. I, (Township’s Comprehensive Package Proposal), Article 39 incorporates the wage schedule in Appendix “A” attached thereto. That appendix sets forth hourly rates for various classifications, and further provides for wage rates being frozen for the duration of an agreement. The Township’s Post Hearing Brief incorporates Exhibit B from its Pre Hearing Summary into its arguments as best illustrating the disparity between the parties’ positions. In that Exhibit B, the Rate per Hour after one year column is for each classification consistent with those in Appendix “A.”

In Jt. Ex. VIII (Union’s Response), the Union’s Appendix “A” is incorporated as

attached thereto. That appendix sets forth hourly rates for various classifications that differ somewhat from those in the Township's Appendix "A." The Union's Appendix "A" provides for increases in wage rates at six months, one year, and then annually after the start date, for up to the duration of a five year agreement. (It is noted that Exhibit B to the Township's Pre Hearing Summary was based on this Union position, as the Township had not been provided yet with the change in the Union's position discussed later herein). As Susan Cameron testified, this represents wage raises, on the basis that "some positions were underpaid." On behalf of the Union, she has reviewed the township's finances, including collecting budgets and audits.

Ex. P 16, which Ms. Cameron authored and created, is the Union's counter proposal to a Township proposal dated March 21, 2012, which, as found above, constituted a "significant change in the Union's proposals." In that exhibit, item number 9 includes yet a new Appendix "A" list of wage rates. (By agreement in the hearing, the exhibit was amended to add wording to the classifications therein to make them more consistent with Appendix "A" in Jt. Ex. I, the Township's proposal, for comparison purposes).

The Appendix "A" in Ex. P 16 changes the Union's proposed starting wage rates, and consequently, later wage rates, for all classifications listed. Actually, while the starting or 5 year rates remain the same for some classifications as in Jt. Ex. VIII, every classification shows change in the wage rate at start and/or later on. Further, some classifications have wage reductions proposed from Jt. Ex. VIII, others have larger wage raises proposed, and some go from a lower starting wage to a higher wage at 5 years, in comparison to Jt. Ex. VIII. The important thing is that Ex. P 16 eclipsed Jt. Ex. VIII as the Union's proposal as to wages.

Ms. Cameron testified that the Union's wage proposal in Ex. P 16 was budgeted for by the Township.

It is noted that Exs. P 1 through 14, the Union's comparables, also each include a schedule of classifications and wage rates. Ms. Cameron testified that she looked through those as well. The Fact Finder has reviewed the same, and the

classifications listed in each differ greatly from one another, and from the Union and Township proposals for Kinross. It is generally not possible for the Fact Finder to compare the classifications in the comparables with one another or the Township's or Union's appendices, due to these differences and lack of any information provided from which to do so. Nor has the Union at any time presented any evidence or argument basing any part of its wage proposal on the comparables. The Fact Finder does note that in reviewing the wage schedules in Exs. P 1 through 14, to the extent that he could compare a few classifications with those in Ex. P 16 from identical job titles, the comparables universally showed a higher wage for every such classification, except for one position in one exhibit.

Julie Munro, Township Treasurer (and a Trustee) testified for the Township that it has not made any cuts in payroll rates while bargaining, because it cannot by law. Consequently, employees are receiving step increases. On the other hand, the Township Board members have taken a 20% cut in pay each, and the Township Supervisor has taken an 8% cut. The pay of the Township Clerk and Treasurer have been frozen, and hours of their deputies cut.

As noted above, Exhibit B to the Township's Pre Hearing Summary best illustrates the disparity between the parties' then -positions as to wages in Jt. Exs. I and VIII. However, the Union's position then changed, as also noted above, and as now reflected in Ex. P 16.

Comparison of the respective Appendix "A" 's in Jt. Ex. I and Ex. P 16 shows the following (with the accurate comparison, per the record, being to the "5year" column in the Union's appendix) : 1) in some cases, the rates proposed by the Township in Jt. Ex. I are greater than even the 5 year rate proposed by the Union in Ex. P 16, i.e., DPW Operators and Mechanics, 2) in the case of Clerical II Secretary, the rate proposed by the parties is the same, and 3) in the case of all other classifications, the Township's proposed rates are less than the Union's (and in the case of three classifications, less than the starting rate proposed by the Union).

In those instances where the Township's wage proposal is higher than or the same

as the Union's as to a few of the classifications, the Fact Finder does not however believe he can "cherry pick" those are areas of perceived agreement or recommend for specific classifications without also considering the remaining. That is because each Appendix "A" is clearly a part of a package proposal. And, overall, the Township's Appendix "A" proposes lower wages than the Union's.

The Township's position as to wages is based in great measure upon its finances overall, and the Union argues that it has based its proposal on the same. However, the parties have differing perceptions as to that financial picture and the Township's ability to pay wage raises.

Ms. Munro testified that she took office in November, 2008. As of that time, the township was starting to use its fund balance for payroll and other ongoing bills, as there was not enough money in "the local accounts." She stated that to some degree, this happens in the fall of every year, but that year, more fund balance monies had to be withdrawn.

Jt. Ex. VII is a budget document for 2010 -13, dated the end of January, 2012. On the first page of that exhibit, the line item "Other Financing Sources" is monies transferred from the township's fund balance into its savings as part of its general fund, according to Ms. Munro. The years identified in the column headings, per her testimony, are the fiscal years ending in that year. Ms. Munro said that the township is on an April 1 through March 31 fiscal year. So, the column headed by "2010 Actual" is the 2009-10 fiscal year. That fiscal year, \$10,000 was transferred from fund balance to the general fund; \$4,000 for the next fiscal year; and from April 1, 2011 through January, 2012, over \$116,000 was transferred. Ms. Munro stated that the current fiscal year budget calls for about \$62,000 to be transferred from fund balance to the general fund. She said that the majority of the fund balance is in Edward Jones accounts.

Additionally, Ms. Munro testified, and the Fact Finder finds, that during the past four years approximately, the township has raised fairground rates, and water and sewer rates in 2011. The township board has eliminated its own health insurance benefits as well as all benefits the Township Supervisor used to receive. Since the

Deputy Clerk and Treasurer have been reduced from full time to part time employment, their benefits have also been cut out. Expense reimbursements have also been reduced.

Pursuant to Jt. Ex. VII and Ms. Munro's testimony, the water and sewer budgets are separate from the general fund. Increased costs of those utilities were entirely passed on to customers in the 2011 rate increases. Those continuing customers had to be forced to absorb additional costs resulting from the closure of a state prison located in the township that was a major user of those utilities, as were the congregate of prison employees that moved away. Ms. Munro stated that major causes for budget deficits have included billing problems for the ambulance service, going with a different company, costing \$20,200; Parks and Recreation (about \$23,000 transferred from fund balance in the most recent fiscal year); and capital outlays in the current budget. These capital outlays are for projects being funded by the township, but they are not extraordinary or major projects.

Also, revenue sharing is down a lot, as well as property tax base and revenue from former employees of the prison that closed.

Ms. Munro said the Edward Jones accounts fund balance was over \$2,000,000 at one point, that the Fact Finder presumes to have been in about 2008. She testified that Kinross' Department of Public Works several months ago moved its portion of that fund balance, over \$800,000, to separate accounts at Edward Jones.

She testified that for the 2011-12 fiscal year, the township had an operating deficit of \$684,000 that had to be taken from fund balance to balance the budget. She stated that for the current fiscal year, there will also be an operating deficit that will be in the \$500 to \$600 thousand range, and that the township will then have only about three years of funds remaining for operations. (From review of Jt. Ex. VII, it is found that these figures must include funds other than just the General Fund).

Also, she stated that about \$97,000 was transferred to the township's golf course, but that amount was not included in the deficit figures that she testified to.

The Union admits in arguments that its position as to wages represents increases

overall, but contends they are to correct “labor market deficiencies.” It claims the Township has systematically scheduled projects to give the appearance of a cash flow shortage, and that a closer examination includes a budgeted increase in wages and salaries in excess of \$78,000, an amount more than sufficient to resolve the dispute. While the timing of those projects in the evidence are circumstantial proof that the latter claim could be true, the Union has not submitted evidence or arguments sufficient to do any more than raise a question. None of the specific situations causing the township’s financial problems was delved into deeply enough in testimony to permit determination of whether or not it would be unjust to deny wage increases on their account. Further, there is no question that the scheduled projects are real and legitimate, as are the budget deficits in general.

Jt. Ex. III, Financial Statement, on page 12 shows about a \$376,000 decline in the township’s net assets during the 2010-11 fiscal year, and on page 19, an operating loss for that year of \$372,809. On page 16 of the exhibit, a negative change of about \$180,000 in “net assets of governmental activities” is set forth for that year. Government funds include revenue sharing, which page 8 shows to have decreased over the years (32% per year since ten years ago).

The facts are found to be consistent with all of the above evidence.

As for the Union’s argument that the township has budgeted sufficiently to meet its proposal, there is no specific evidence cited, nor specific arguments, but certainly the township may have “budgeted for the worst”, given the pendency of these negotiations at budget time. Attempts at prudent budgeting should not create a self fulfilling prophecy.

The wage issue comes down to the Union’s proposal for overall increases, vaguely supported by Exs. P 1 through 14, the comparables, versus the Township’s proposal in its Appendix “A”, supported by the evidence as to its financial situation and lack of ability to pay increases over the long term. Regardless of financial circumstances that may exist in the other communities from which comparables were drawn, the Fact Finder agrees that Kinross Township must operate within its annual fiscal means and revenues. Accordingly, based on ability

to pay wages, the Fact Finder recommends the Township's Appendix "A" in Jt. Ex. I be accepted. This is with the understanding that, while it calls for a 5% reduction in starting wages, no current employee would be subjected to a decrease in wages.

## II. Longevity

The Fact Finder has reviewed all the joint exhibits and the testimony. Interestingly, there was no evidence therein as to longevity, except Ex. P 16, the Union's Response. The parties did identify longevity as a disputed issue, however, in both of their opening statements. The Union proposed a "modest increase"; the Township proposed there be no longevity or steps. Ex. P 16 merely sets forth the proposed increases based on years of service, in terms of additional hourly wage. (It is noted that the absence of evidence from the Township supports their opening statement position). Both Post Hearing briefs are silent on this. Therefore, no fact findings are possible. However, the Fact Finder, to be consistent with the recommendation as to wages above, also recommends the Township's position of no longevity, as stated in its opening statement, be accepted.

## III. Call Pay

Jt. Ex. VIII, the Union's Response, in item 22, proposed that (A) employees called out and physically reporting to work be guaranteed at least two hours of pay at their current rate at time and one half, and that (B) employees placed on call receive \$2 per hour for all hours on call. That proposal was changed by Ex. P 16 to a guarantee of at least two hours of pay at their current rate (i.e., not stated to be time and one half), and \$1.50 per hour for all hours on call.

Susan Cameron testified that she believes, on behalf of the Union, that proposal would, if adopted, save the township some money.

The Township did not present evidence or argument on this item, nor brief it. Accordingly, the facts are found to be consistent with Ms. Cameron's testimony, and the Fact Finder recommends the Union's proposal in Ex. P 16 as to Call Pay be accepted.

#### IV. Health Insurance

Jt. Ex. I, Article 28, on pages 19-20, states the Township's proposal as to Health, Dental and Vision Insurance. It would include the provision of such insurance plans (same as offered to management level) upon application, and extension for six months during illness or injury. A procedure is set forth for reporting family changes and waiver of coverage, with a payment in lieu of coverage.

It is found the above proposal would add important provisions to the brief health insurance clause in the current policy in Jt. Ex. II.

The township's attorney, in his opening statement, said "while we have an agreement today on health care", under Public Act 152 the township has the right to revisit it annually. Susan Cameron, on cross examination, testified a health care proposal the Union made at one point was not part of the collective bargaining process, but instead, part of the township's budgeting process.

The Union presented no evidence or argument on this item, despite the reference in the Township's Post Hearing Brief to "the Union's opposition."

Jt. Ex. VI is a Memorandum regarding this year's health care costs. It is found that the township determined that costs in excess of the aggregate hard cap permitted under Act 152 be shared proportionally by the 21 covered employees, by a formula in that exhibit.

To the extent that there is a disputed issue (which is not clear in the evidence and arguments), the Township makes a convincing argument in its Post Hearing Brief, and the Fact Finder recommends the Township's proposals in both Jt. Ex. I and VI be accepted.

#### B. Paid Leave

##### I. Holidays

Jt. Ex. I, Article 17, pages 13-14, sets forth the Township's proposal for paid

holidays, with a list of recognized holidays, and pay and conditions.

Comparison of Jt. Ex. I to Jt. Ex. II, the current policy, shows the Township would eliminate Martin Luther King and Presidents' Days as holidays, and cut New Year's Eve to a half day. It would also appear to restore an earlier provision that, to be eligible for holiday pay, employees must work both the immediately preceding and following scheduled days (unless excused by the Township), and change special provisions regarding the Ambulance Department and holidays that fall on a weekend or an employee's vacation leave.

On the other hand, Jt. Ex. VIII, the Union's Response, would have added holiday pay for part time employees, added Good Friday and Columbus Day to the list in Jt. Ex. II, provided for holiday pay at time and one half for those who work that holiday, and for all holidays to be paid if they fall on a weekend or an employee's vacation leave. However, Ex. P 16 changed that position by proposing the status quo be continued for full time employees (and withdrawing the proposal for holiday pay for part time employees).

The Township's Pre Hearing Summary (incorporated in its Post Hearing Brief) contains charts of holidays observed in Exs. P 1 through 14, the Union's comparables. The point is well made that almost none of the Union's own comparable communities have Martin Luther King or Presidents' Day as paid holidays. On the other hand, the chart shows that ten of the fourteen grant all day New Year's Eve as a holiday. However, review of Ex. P 1 through 14 also shows that many comparable communities recognize holidays that Kinross Township does not, including the employee's birthday in some cases.

Based on the comparables, the Fact Finder recommends the Township's proposal in Jt. Ex. I be accepted in part, to-wit, that both Martin Luther King and Presidents' Days be eliminated as paid holidays. It is recommended that the Union's position in Ex. P 16 be accepted for full time regular employees continuing the status quo in all other respects.

## II. Vacation

Jt. Ex. I, Article 18, on pages 14-15, states the Township's proposal as to vacations, constituting a re-write of the current policy in Jt. Ex. II in the following respects: 1) increase years of service needed for additional paid vacation days per year, 2) eliminate extensions of benefit years, 3) increase increments in which vacation time must be taken from 1 to 4 hours, 4) add detail and criteria to the approval process, 5) add a provision for eligibility based on hours worked before vacation can be taken, 6) limit to one half the unused vacation days that can be carried over to the next year, and 7) require 14 days notice of voluntary termination of employment as a condition of receiving compensation for unused vacation days.

Jt. Ex. VIII, the Union Response, agreed with limiting carryover of unused days to one half, and otherwise, appears to propose continuing the status quo, except to add paid vacation for part time employees. Ex. P 16 amended the Union's position to continue the status quo for current employees, and accept the Township's proposal for "New Hires."

There was no evidence presented on this issue other than the above as to the parties' proposals and positions, except that the Township again refers to the Union's comparables, Exs. P 1 through 14. As it did with holidays, the Township's Post Hearing Brief also incorporates a chart from its Pre Hearing Summary, based on the comparables, this as to five year employees. However, it is noted that as to five year employees, both parties propose 10 days of annual paid vacation.

Review of Ex. P 1 through 14 show a wide range of differing provisions, some of which support the Township's proposal, but about half of which provide for 10 days of annual paid vacation after two years service, as is the current Kinross policy that the Township seeks to change. In fact, one comparable provides for 10 days vacation even prior to conclusion of the first year's service, a few provide for the same after one year, and one provides for seven days of paid vacation during the first year. The comparables do not clearly support either party's position over the other's.

the first year. The comparables do not clearly support either party's position over the other's.

The township's attorney, in opening, stated that its proposal is necessary as part of balancing the budget.

It is found that there is no evidence presented to make a case for the Township's proposals to the extent that they change the status quo, other than general financial condition of the township. But assuming the employees are meeting their workload assignments in a timely fashion, so that additional employees need not be hired to cover vacations (and there is no evidence to the contrary), it is found that it is not necessary to cut existing vacation benefits to balance the budget. However, even though not carried over to Ex. P 16 from Jt. Ex. VIII, where it was agreed to in the Union's proposals, the Fact Finder does recommend that the proposed limit of unused days that can be carried over the next year of one half be accepted and adopted, as a reasonable measure to balance an employee's need to schedule their vacations in the manner they believe best, with the employer's interest in not having employees accrue an inordinate amount of time to use all at once, or seek compensation upon termination. There is no evidence to explain how the other aspects of the Township's proposal would help balance the budget, such as increasing increments to four hours. (It is noted that in discussing a parallel issue as to sick leave in his opening statement, the township's attorney said that one hour increments are hard to keep track of, as employees "come and go." That is found to have merit, but only most indirectly and minimally as to budgeting).

Accordingly, except as stated above, the Fact Finder recommends the Union's proposal in Ex. P 16 be accepted, and as to "New Hires", that recommendation is based on the Union's agreement in that exhibit presented at the hearing.

### III. Sick Leave

Jt. Ex. I, Article 18, on pages 15-17, the Township's proposal, is an extensive re-write of the current policy on page 13 of Jt. Ex. II. The proposal would: 1) decrease sick leave to 80 hours per year, 2) require it be used in increments of four hours, 3) require it only be used for illness or injury of the employee, rather than

also a family member, 4) add to the requirements when absences reach three days an authorization for release of medical information to the employer, medical examinations or tests at the Township's choice and expense, and that the employer remain in a medical facility or at home unless the Township grants permission, 5) add requirements for workman's compensation and taking of sick leave to supplement it, 6) change the provision for employees reporting to work while sick, 7) change accrual of sick leave and compensation for unused days upon termination of employment, and 8) add a 14 day notice of voluntary termination of employment requirement as a condition of that compensation.

In Jt. Ex. VIII, the Union's Response was basically to propose the status quo continue with some minor changes, but also to extend some sick leave benefits to part time employees. Later, Ex. P 16 changed the Union's position on the amount of sick leave per year, and withdrew its proposal as to part time employees.

It was stated that the parties agree to accrual of up to 520 hours of sick leave, but disagree as to other aspects, notably annual accrual (10 days versus 13 days) and cash payout on termination (up to all 520 hours, versus up to 480 or 160 hours depending on date of hire, at 50%).

As to the rate of accrual and pay out of sick leave, the Township in its briefs argues Ex. P 1 through 14, the Union's comparables, are supportive of the Township proposal. Summary review of the comparables shows that the Township's proposal is indeed within the range of the comparables (as stated in the Pre Hearing Summary), but is not "better than those communities" (as argued in the Post Hearing Brief). Specifically, the Township's proposal that sick leave accrue at no more than 10 days per year is within, but at the low end of, the range in the comparables. The proposed 50% payout is also within the range of comparables, which range from 33% to 100%, sometimes depending on years of service. The majority of comparable communities allow cash payout on termination of employment greater than the 480 hours proposed by the Township for long time employees, and much more than the 160 hours. While the Township makes the above arguments, and the Union has not argued its comparables at all as to this

issue (similar to the holiday and vacation leave issues above), it is found that Ex. P 1 through 14 do not clearly support either party's position over the other's.

It is found that there is insufficient evidence presented to make a case for changing the status quo to the proposal of the Township. Accordingly, the Fact Finder recommends that the Union's position in Ex. P 16 be accepted, with the following exceptions and for the reasons stated: 1. unused sick leave be accumulated up to 520 hours per full time employee, by stated agreement of the parties, and 2. part of the Township's proposal is recommended, to-wit that in Jt. Ex. I, Article 18, sub-items (F) and (G) on pages 16-17 (excluding the 14 day notice proposal, to be consistent with the recommendation above as to vacation). This is the proposal limiting cash payout on termination to a percentage and limited maximum number of hours depending on date of hire. This is recommended for the reason that it addresses a very direct budgetary issue that significantly impacts the township's critical financial situation as discussed above. While this recommendation, if followed, would result in a reduction in a current benefit of employees, the fairness of continuing that benefit at the same level is found to be outweighed by the evidence of the township's finances. The payout as proposed by the Township still would provide a potentially large amount to a terminated employee above and beyond their wages.

### C. Other Benefits

#### I. Pensions

Jt. Ex. I, Article 33, on page 21, the Township's proposal, would require employees to participate in a specific defined pension plan, which could be later changed at the Township's option, as long as the new plan were "substantially the same."

Jt. Ex. II, the current policy, only provides that a defined benefit pension plan may be available to employees.

Jt. Ex. IV is a "Summary Plan Description for the Charter Township of Kinross Group Pension Plan." That plan went into effect on April 1, 2002.

In Jt. Ex. VIII, Response, the Union stated that it agreed, and its representative stated at the hearing that issue is resolved by marking "TA" (for tentative agreement) next to the item in that exhibit.

There was no other evidence presented as to pensions, nor were there any arguments in the briefs. The Township's Post Hearing Brief does state that its proposal (in Jt. Ex. I) would continue the status quo.

It is found that this does not appear to be a disputed issue for the Fact Finder. If that is incorrect, then based on the above, the Fact Finder would recommend that the Township's proposal in Jt. Ex. I be accepted.

## II. Life Insurance

Jt. Ex. I, Article 27, on page 19, proposes that employees be provided a life insurance plan, which may be changed by the Township upon 30 days notice.

Only the proposal for possible change upon notice would be significantly different than the current provision in Jt. Ex. II.

Jt. Ex. V is the current plan and certificate.

Jt. Ex. VIII, the Union Response, agrees with the proposal, its representative stated that the issue is resolved, and he marked "TA" next to the item in the exhibit.

There was no further evidence or arguments. The Township's Post Hearing Brief states that its proposal would continue the status quo.

It is found that this does not appear to be a disputed item for the Fact Finder. If that is incorrect, then based on the above, the Fact Finder would recommend the Township's proposal in Jt. Ex. I be accepted

## III. Personal Leave

Jt. Ex. I, Article 19, on page 15, proposes each full time employee have 16 hours paid personal leave each year, to be requested in writing at least 24 hours in

advance, and not used the day before or after a holiday or vacation time.

While Jt. Ex. VIII contains disagreement and a Union proposal that those employees receive the same amount of paid personal time per year, but “based on normal hours worked” (a phrase the Fact Finder does not fully understand), in Ex. P 16 the Union agreed with the current policy continuing.

The only argument was in the Township’s Post Hearing Brief, which characterizes its proposal in Jt. Ex. I as a continuation of the status quo.

It is found, however, that Jt. Ex. I proposes changes to the status quo, to-wit the requirements of 24 hour notice and no usage immediately before or after holiday or vacation. These appear to be the only disputed points as to this issue, and to the extent that may be true, it is found that a case has not been made for adopting those additional requirements in Jt. Ex. I. The Fact Finder recommends continuation of the current policy set forth in Jt. Ex. II, per the Union’s most recent proposal in Ex. P 16.

#### IV. Educational Assistance

Article 35, on page 22 of Jt. Ex. I, proposes the Township may provide education assistance to full time employees of one year or longer, but if the employee separates from employment within one year thereafter, the amount of payment received within the previous three years may be withheld from final pay and/or recovered otherwise from the employee as a loan repayment.

That proposal appears to be generally consistent with current policy in Jt. Ex. II, as contended in the Township’s Post Hearing Brief, although worded differently.

The Union has not disagreed, and this does not appear to be a disputed issue. However, if that is incorrect, the Fact Finder would recommend the Township’s proposal in Jt. Ex. I be accepted, as generally consistent with current policy.

## V. Compensatory Time

In Jt. Ex. I, the Township proposes to delete compensatory time off.

The same is currently part of policy on page 17a of Jt. Ex. II. Non exempt employees who work over 40 hours in a week accrue compensatory time off at one and a half times those hours, up to a cap of 240 hours (480 hours for emergency personnel), after which overtime must be paid over 40 hours.

In Jt. Ex. VIII, the Union proposed applying the same cap of 240 hours to all non exempt employees, and otherwise, continuing current policy. That position did not change in Ex. P 16.

There was no further evidence on the issue.

In its Post Hearing Brief, the Township concedes its proposal would require payment of overtime for over 40 hours to non exempt employees. It argues convincingly that the comp time provision “creates an unfunded liability that hides the real cost of overtime”, and that to “better manage overtime, the Township needs to pay for what it uses and budget accordingly.” The Fact Finder so finds. While comp time is a widespread program among many employers, it is found to be a direct budgetary issue impacting this township’s financial health and accounting. It is viewed by this Fact Finder as an option, not a requirement, for the employer. Its deletion would not leave employees totally without a benefit that they have now. The benefit would just be in the form of money rather than additional time off. Therefore, the Fact Finder recommends acceptance of the Township’s proposal in Jt. Ex. I.

## VI. Funeral Leave

Jt. Ex. I, Article 20, on page 15, proposes three days bereavement leave for an employee for attending the funeral of an immediate family member within 30 days after date of death. It would eliminate brothers and sisters- in -law from the definition of “immediate family.”

Jt. Ex. II, the current policy, allows five days.

In Jt. Ex. VIII, the Union proposed a compromise of five days for full time employees, and two and one half days for part time employees, taken only on scheduled work days, and retaining the current definition of “immediate family.” That position was changed in Ex. P 16 to continuation of the current policy.

In its Post Hearing Brief, the Township argued that its proposal is to bring Kinross Township in line with the other municipality employers represented in Exs. P 1 through 14, the Union’s own comparables. The Fact Finder has not reviewed those exhibits as to this issue, but instead accepts the summary of them in footnote 6 on page 11 of the brief, the same not having been rebutted after opportunity. That summary shows only two of the comparables provide for five days, or anything more than three days, and then only for the closest immediate relatives’ funerals. The Fact Finder so finds.

Based on the above, the Fact Finder recommends the Township’s proposal in Jt. Ex. I be accepted as to this issue.

#### IV. Remaining Disputed Language Issues

The Union’s Post Hearing brief lists, beginning on page 2, a number of additional issues that it characterizes as “major”, and numbered 1 through 11. All of those are identified as being “in dispute and ripe for the Fact Finder’s recommendation.” The Union presents its argument as to each. There was no testimony, and no argument made by the Township, on these. They are as follows (numbered consistently with the brief):

##### 1. Union Dues and Initiation Fees

In Jt. Ex. I, the Township proposes deleting this provision.

In Jt. Ex. VIII, the Union disagreed with that, and proposed language for such a provision, that is incorporated herein by reference to that exhibit in the record.

The Union argues that Exs. P 1 through 14, the comparables, all contain such provision. The Fact Finder has not reviewed the exhibits as to this issue, there being no rebuttal, and accepts the Union's representation of fact, so finding. Based on the above, the Fact Finder recommends that the language in Jt. Ex. I, Article 5, that was proposed by the Township to be deleted, instead be adopted.

## 2. Union Representation

Jt. Ex. I, Article 46, on pages 4-5, proposes deleting subsections (B) (2) and (3), essentially eliminating bargaining during paid work time.

In Jt. Ex. VIII, the Union disagrees with that Township proposal.

There being no evidence, and no argument from the Township on this point, the Fact Finder recommends the Union position in Jt. Ex. VIII be accepted.

## 3. Special Conferences

In Jt. Ex. I, Article 5, on page 5, Township proposes deleting pay for employees while attending and preparing for Special Conferences.

In Jt. Ex. VIII, the Union proposes continuing that provision. It argues in its Post Hearing Brief that the provision has little or no impact on the township's operations.

There being no other evidence, other than that as to the township's financial situation, it is found the provision does have financial impact, but minimally.

Jt. Ex. I provides that such Special Conferences are held by "mutual agreement." That makes this an even issue. The Union, as petitioner, has the burden of proof, and there is no preponderance of evidence. Yet, it is also found that it would be unjust to not pay employees for attending Special Conferences that may be mutually agreed to at the initiation of a request from the employer. Accordingly, the Fact Finder recommends that a new provision be accepted whereby employees shall not lose any more than one half of time or pay for attending such conferences.

#### 4. Grievance Procedure

Jt. Ex. I, Article 6, sets forth the Township's proposed grievance procedure, ending at the Township Board level.

The Union's proposed competing procedure is in Jt. Ex. VIII, including steps for mediation and arbitration.

The Fact Finder recommends the Union's proposal be accepted, as the employer should not be the final level of the grievance procedure. However, the Fact Finder does include in his recommendation the identity of the specific panel of arbitrators proposed in Step 4 of the Union's proposal, there being no evidence upon which to base such recommendation, and it being possibly beyond the scope of the matters as to which a recommendation should be made in fact finding.

#### 5. Disciplinary Process

Article 8, on page 7 of Jt. Ex. I, is the Township's proposal as to disciplinary process. One aspect of that proposal assumes "at will" employment, which the Fact Finder has not recommended above. The Township would also eliminate offering union representation if unavailable or extraordinary circumstances require immediate action, and a current "reasonable" requirement.

In Jt. Ex. VIII, the Union proposes its language as to the process, disagreeing with the changes proposed by the Township. It is found that the Union proposal is for the status quo as to this issue.

To be consistent, and there being no other evidence on this issue, the Fact Finder recommends the Union's proposal in Jt. Ex. VIII be accepted, with the exception that it is recommended that union representation need not be offered if same is "unavailable", that being beyond the employer's control if such situation were to materialize.

#### 6. Discharge and Discipline

Jt. Ex. VIII contains the Union's proposal. In Jt. Ex. I, the Township proposes to

delete all but section (A) of that proposal, with section (A) being agreed upon. The Union's proposal appears to be a continuation of status quo. The Union argues in its Post Hearing Brief that the provisions the Township would eliminate are "intrinsic" and "basic" rights of employees. Those provisions have to do with employees meeting with the district steward, referral of discharges or suspensions to a Special Conference, and use of records of past infractions.

The Fact Finder recommends that the Union's proposal in Jt. Ex. VIII be accepted, except for section C, which is found to conflict and be inconsistent with the Special Conferences, which in turn provide for such conferences only by "mutual agreement", which is a provision not in dispute itself. This recommendation, if adopted, would not preclude Special Conferences on discharges or suspensions; they would still be available by mutual agreement, consistent with that provision. Nothing is gained by instead continuing to require a conference if one party does not agree.

#### 7. Trial Period

In Jt. Ex. VIII, the Union first agrees with section (A) in Jt. Ex. I, and the same is recommended. In Jt. Ex. I, the Township proposes to delete section (B), providing for union representation of probationary employees for certain purposes, and (F), providing for all employees to receive all benefits after 30 days of employment. In its Post Hearing Brief, the Union argues the Township's language is deficient. The Fact Finder agrees, and recommends the Union's proposal in Jt. Ex. VIII be accepted as to this issue, except to the extent that if any specific provision of the Collective Bargaining Agreement provides employees not receive a specific benefit until after a time period different than 30 days.

#### 8. Loss of Seniority

Jt. Ex. I, Article 12, on page 8, would change the conditions and time period under which an employee may lose seniority in a couple of respects.

Jt. Ex. VIII, the Union response, appears to be a continuation of status quo.

It is noted that under the Township proposal, failure to return from a layoff would no longer result in loss of seniority, which appears to be favorable to the Union as a change, but that is disagreeable to the Union.

The Union argues that Exs. P 1 through 14 support its position, and that is not rebutted after opportunity. From that evidence, the Fact Finder recommends the Union proposal in Jt. Ex. VIII be accepted as to this issue.

#### 9. Seniority of Stewards

In Jt. Ex. I, the Township would eliminate this provision.

In Jt. Ex. VIII, the Union would appear to retain the status quo.

The Union's Post Hearing Brief argues that this provision is and has been historically very important to it, as preventing the employer from undermining the Union by targeting union officers for layoff, while not effecting the employer's operation in an ill way. The Fact Finder agrees and recommends the Union proposal in Jt. Ex. VIII be accepted.

#### 10. Layoff and Recall

In Jt. Ex. I, the Township, on pages 9-10, would delete the Layoff and Recall provisions.

The Union in Jt. Ex. VIII proposes to keep the current provisions, and argues that the Township position would result in there being no procedure in place to provide a seniority system for layoffs and recalls, leaving them subject to untenable, political whims. The Fact Finder agrees and recommends the Union's proposals in Jt. Ex. VIII be accepted as to these issues.

#### 11. Job Posting and Bidding

Jt. Ex. I, Article 14, proposes a number of changes to the procedures for job posting and bidding.

The Union response in Jt. Ex. VIII represents a continuation of the current provision. The Union's Post Hearing Brief argues that the Township's proposal is deficient, has no specific criteria, and is extremely subjective to the political whim of the Employer.

The Fact Finder recommends the proposal of the Union in Jt. Ex. VIII be accepted, with the following changes: a. in section (A), insertion of the words "and preferred", and "Thereafter, the Employer may accept applications from outside applicants" per Jt. Ex. I, as comporting to ordinary general practice, b. in section (B), the Township's proposal in Jt. Ex. I is recommended in the interests of mutual and obvious fairness, c. in section C, the Township's proposal to strike the words "is unsatisfactory in the new" and replacement with the words "returns to his/her new" where indicated in Jt. Ex. I is recommended as favorable to both parties, and d. in section (F) A., the Township's proposal is recommended as favorable to both parties. A case has not been made in the evidence or arguments for recommending the other changes proposed by the Township as to this issue.

### Summary

In brief summary, the Fact Finder recommends an initial contract as stated above.

July 30, 2012



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Thomas B. North

Fact Finder By Appointment

Michigan Employment

Relations Commission

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