

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS

IN THE MATTER OF FACT FINDING

KALAMAZOO COUNTY ROAD COMMISSION,

Employer,

and

MERC Case No. L14 B-0153

TEAMSTERS LOCAL 214,

Petitioner.

FACT FINDER: EUGENE LUMBERG

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FACT FINDING REPORT AND RECOMMENDATION

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INTRODUCTION

Petitioner filed for Fact Finding on September 4, 2014 following excessive negotiations and mediation sessions. The parties selected Eugene Lumberg, Esq. as Fact Finder. Two (2) days of Hearings were held on March 17, 2015 and March 18, 2015 in Kalamazoo, Michigan.

The parties submitted Final Briefs which were received in May, 2015.

The parties submitted issues consisting of twenty-four (24) issues of the Petitioner and twenty-six (26) issues of the Respondent. Several issues were settled and a number were consolidated during the two (2) days of Hearings. A total of 23 combined issues were submitted by the parties.

Last Best Offers were submitted by the parties.

The County of Kalamazoo is located in the west part of the State of Michigan, which is subject to lake effect snow and is comprised of 26 employees which are garage, sign shop and road maintenance employees. These employees are responsible for the maintenance, repair and construction of roads in Kalamazoo County, as well as snow removal and storm damage.

The most recent Contract between the Respondents and Petitioners expired in April, 2014.

The Respondent is an Independent Commission within the County of Kalamazoo and is responsible for the care and maintenance of the roads as stated above. Their funding comes basically from the State of Michigan via gasoline taxes. During the Hearings the issue of Proposal 1, which was pending at that time, may have produced some additional income to Road Commissions throughout the State of Michigan. However, that Proposal was defeated and, to date, there is no additional funding available to the Road Commission ("Respondent").

Comparable Road Commissions were selected as follows:

- Calhoun County
- Allegan County
- Van Buren County
- Ingham County
- Jackson County

Also selected was Kalamazoo County AFSCME Local Unit as an internal comparable.

Kalamazoo County Road Commission is "in the black" due to cost cutting over a period of the past several years. There has been a reduction from fifty-six (56) employees to approximately forty (40) total employees (both Union and non-Union) in the Road Commission. The Teamsters Bargaining Unit of Road Commission Workers has decreased to twenty-six (26) employees.

The Commission receives funds basically from the State of Michigan Transportation Fund. Those funds have been reduced according to the Commission. Presently the Road Commission maintains a balance fund sufficient to fund 3.9 months of operational expenses. The Commission is financially solvent and maintains a high fund balance.

The employees pay no pension contribution or health insurance contribution. In addition, they have longevity at a cap of 7% pursuant to a schedule based on years of service.

The primary purpose of the Road Commission is the winter maintenance. The operation is a "bare bones" operation and worker's absences and time off is a concern, as well as employees being late for work or not showing up at all. In addition, call-ins in emergency situations are an issue as far as the Commission is concerned.

The Road Commission is at the mercy of the weather conditions. Michigan has endured several winters in a row that have been severe with higher than average snowfall. There is no way of predicting what future winters will be like.

In the past four (4) years there have been approximately fifty-six (56) grievances filed by the employees as well as four (4) Arbitrations along with Fact Finding. The Arbitrations were in regard to Contract interpretation, time off and other grievances of a disciplinary nature.

In addition, work rules are an issue as they effect attendance, discipline issues and operation efficiency which is paramount for the Road Commission operations.

The Union states that many of the issues before the Fact Finder are not financial in nature, but are of a different nature as well as language issues. Labor management relations, grievance procedures and special conferences are some of the issues that the Union raises. I have heard two (2) days of testimony and a reviewed of the Transcripts of said hearings consisting of over 800 pages as well as my notes and a multitude of Exhibits submitted by the parties which were offered and accepted into evidence. My findings and recommendations are based on all of the material, et al, submitted by the parties.

Ability to Pay:

I find that the Road Commission has the ability to pay and has the necessary funds to effectuate the terms and recommendations as set forth herein. I based my opinion and my findings on the fact that the Road Commission has had an excellent history of budget control and maintains a higher than normal reserve fund.

The reserve fund of the Road Commission is approximately 1/3 of the yearly budget. I recognize that said reserves are not easily replaced, especially in view of the recent history of declining funding.

A review of the requests by the Union, which are of a monetary nature, shows that, if adopted, should not materially diminish the reserve to a point that it would place the County at peril.

Issues:

1. Winter Maintenance
2. Vacations
3. Special Conferences
4. Early Call-Ins
5. Jury Duty/Witness Leave
6. Union Appointment Leave
7. Overtime
8. Disability Sick Leave
9. Grievance Procedure
10. Longevity
11. Wages
12. Insurance Re-Opener
13. FMLA
14. Right to Work - Dues Check Off
15. Union Membership Rules
16. Funeral Leave
17. Work Rules
18. Retirement Health Insurance
19. Health Insurance Re-Opener
20. Team Leaders
21. General - Article XVI
22. Union Bulletin Board
23. Vacation and Resignation/Termination

Last Best Offer:

While the parties and the Fact Finder discussed using “last best offer” for purposes of the recommendation, I do not feel that “last best offer” is appropriate. This is a fact finding and the parties have presented testimony as to their respective positions. However, I have heard the last best offers and will make a recommendation based upon the testimony and exhibits.

ISSUE - Winter Maintenance:

The Road Commission operates with three (3) levels of workers:

- Level 1: Workers that operate key pieces of equipment as well as mechanics, which are the highest paid workers.
- Level 2: Includes workers that operate certain pieces of equipment.
- Level 3: Entry level, i.e. truck drivers.

During Spring, Summer and Fall there is one (1) shift. They do not have separate shifts to cover around the clock maintenance until winter.

During the winter the workers are split into three (3) shifts to perform snow removal and other normal winter maintenance. The workers bid on the shifts. If there is no need for snow removal they perform other maintenance projects. The shifts are as follows:

- Shift 1: From 7:30 a.m. to 4:00 p.m. They are subject to an early call-in and understand that when they bid for this shift. It should be noted that under certain circumstances independent contractors may be used for some of the snow maintenance if the snow gets to heavy.
- Shift 2: From 4:00 p.m. to 12:30 a.m.
- Shift 3: From 12:00 am. to 8:30 a.m. There are six (6) drivers on this shift during the winter. If there is a need for overtime, that shift carries over past 8:30 a.m.

The Commission maintains an area of twenty-four (24) square miles which has an excess of 1,200 miles of roads and five (5) major routes. Six (6) trucks are on the road for winter maintenance - one per major route with one of the routes having two (2) trucks to complete the work. The major routes are cleared first, then the secondary routes and so on until the work is completed.

A written agreement was entered into regarding staffing for winter maintenance in 2012. That agreement was continued through the 2013 - 2014 winter season. The Employer wishes to have the same agreement implemented for the 2014 - 2015 winter season, which has already passed, to continue for the life of this three (3) year Contract.

The Employer feels that such an agreement is important to the effectiveness of the maintenance of the road system during the winter season.

The Union disagrees to some extent in that they wish to have language in the contract giving them the right to have two (2) employees who can bid by seniority to not be called in early, i.e. 4:00 a.m., even in the event of a snow emergency.

Recommendation:

The Fact Finder finds and recommends that the 7:30 a.m. - 4:30 p.m. shift should not have a provision for two (2) employees to permanently opt out of an early 4:00 a.m. call-in, if necessary. The Fact Finder remains unconvinced that the provision allowing two (2) employees to opt out of the early 4:00 a.m. call-in during a snow emergency would be an efficient utilization of the manpower for the Commission.

The **next issue** within the winter maintenance is the Union's wish to have a provision in the Contract stating that employee's "shall" receive vacation time according to the current vacation awarding process during the spring, summer and fall season, thereby guaranteeing two (2) employees time off for vacations during those seasons. Further, the Union wishes to add language stating that at least one (1) employee shall be allowed vacation time during the winter season. They further wish to have language stating that the employees having the vacation granted to them shall receive the weekends off adjacent to their scheduled vacation, and that same be done by seniority.

Recommendation:

The Fact Finder finds and recommends that the proposal of the Union is a reasonable proposal and it is recommended that said language be adopted and implemented in the contract.

The **final issue** is discipline for missing mandatory overtime call-outs that occur outside of shifts and weekends.

The Union proposes that discipline for missing such overtime call-outs should accrue only on a day when all three (3) shifts are called out.

Recommendation:

The Fact Finder finds and recommends that the Union's proposal be implemented and incorporated into the Contract, i.e. that discipline for missing mandatory overtime call-outs that occur outside of shifts and on weekends shall accrue only on a day when all three (3) shifts are called out.

ISSUE - Vacations:

Vacation time is normally granted according to seniority. It must be requested, in writing, by April 1st of each year. The number of people that can take the same vacation periods varies according to the season. During the non-winter months there could be as many as 4-5, and during the winter 1-2 with 2 being a guaranteed number for vacation times by selection. Therefore, the first vacation time is via bid by April 1st. Thereafter, it is requested and is approved at the discretion of management.

The workers receive from 2-4 weeks of vacation time per year. Entry level receives 2 weeks. As seniority is reached there is up to a maximum of 4 weeks vacation per year. Vacation time does not carry over from year to year. Therefore, the vacation days must be used or forfeited. Single days may be granted upon approval.

Recommendation:

The Fact Finder finds and recommends that the following language should be incorporated into the Contract: "An employee who has been approved for a time off request for vacation for an entire week shall be eligible to be excused from service for both weekends of his/her scheduled vacation. The Employer may allow two (2) employees to be pre-approved for scheduled vacations to be dismissed from service for the weekends upon written request. Employees shall be eligible based upon the order of the request, unless pre-approved prior to April 1st. Requests prior to April 1st shall be based upon seniority, once approved with a time off request form."

The Fact Finder further finds and recommends that the following language should be implemented into a Contract: "Employees excused from availability for the weekend/weekends of their approved vacation time, shall not be called for emergency overtime service and shall not be subject to disciplinary action."

ISSUE - Special Conferences:

Article 1, Sec. 8 - Special Conferences. Special Conferences are called for multiple reasons. The Employer wants Special Conferences to be initiated via electronic means, i.e. computer, e-mail, etc. Notices should be given to both the Union Steward and to the Union Business Representative.

An agreement on this issue has been reached between the parties.

Recommendation:

The Fact Finder finds and recommends that Special Conferences shall be on City time and Grievances shall be on Union time. Further, notice shall be via U.S. Mail or electronic notification, with a Proof of Service of said notification, allowing sufficient time for U.S. Mail to be received by the opposite party. Notice shall be given to the Union Steward and the Union Business Representative.

The terms of the above agreement shall be implemented in the new Contract.

ISSUE - Early Call-In:

Should the weather warrant, workers on Shift 1 that normally begin work at 7:30 a.m. may be called in at 4 a.m. As each worker bids for the Shift, they understand that early call-in is a strong possibility. My recommendation is that the early call-in for a 4 a.m. shift is a management right issue and should be determined by the Road Commission. It should be noted that there are multiple snow routes to be cleared of snow in the County, thus making manpower essential.

On weekends and holidays they call-in shifts as needed. There is no regular shift scheduled for weekends and holidays. The shift that is closest to the start time is called in as needed for the service. The Commission is not required to call in a full shift. They use an emergency overtime list to call in individuals. That list is rotated based on hours worked. They may call in a complete shift or use the emergency list to call in individuals as needed. There is a premium for the night shift during the winter season. The Union wishes to have two (2) people on the early shift permanently assigned from 7:30 a.m. to 4:00 p.m. not to be subject to early call in. The issue is how to select the two (2) individuals who are assigned a permanent 7:30 a.m. to 4:00 p.m. shift and not be called in at 4:00 a.m. This is a staffing issue and a management right which is not subject to bargaining or Arbitration. The language in the Contract should state that an early call-in at 4 a.m. should be on an "as needed" basis. At least two (2) people may be excused from weekend call-ins and holiday call-ins, subject to management approval.

Recommendation:

The Fact Finder finds and recommends that this is a staffing issue and a management right and should not be the subject of bargaining or arbitration. The language in the Contract should state that an early call-in at 4:00 a.m. should be on an "as needed" basis. Individuals may be excused from weekend call-ins and holiday call-ins, subject to management approval.

ISSUE - Jury Duty/Witness Leave:

Article VI, Sec. 7.

The Road Commission and the Union are in agreement as to the first two paragraphs of Sec. 7, which should read as follows: "A full time employee who is subpoenaed as a witness to testify for KCRC shall be granted a leave of absence to serve as required. The Employee shall be at work at all hours when not serving." "Employees subpoenaed for matters to testify against KCRC may elect to use accrued and unused vacation or take the days as unpaid." The only remaining issue is as to when employees are subpoenaed arising from or concerning their work and whether they should receive paid leave for that time.

The Commission does not wish to have the above language in the Contract. The Union is requesting that said language be in the Contract.

The Union states that comparables Contracts are silent. However they do note, that a worker can not refuse to appear once subpoenaed and that they should be paid for honoring a subpoena if the issue arises as a result of their employment.

The Union states as example when a party is subpoenaed in a lawsuit by two employees where the cause of action arose during work or as a witness to a traffic accident while working.

It is only fair that an employee be paid for his/her time off while honoring a Subpoena for a work related matter.

Recommendation:

The Fact Finder finds and recommends that the language that the Union proposes, i.e. "employees who are subpoenaed arising from or concerning their work shall receive a paid leave for that service time" should be implemented.

ISSUE: Article VI, Sec. 6 - Union Appointment Leave

The Kalamazoo County Road Commission is requesting that the language be removed from the Contract which allows a Union member, either elected or appointed, to a major State office within the Union to receive a leave. Presently the Contract provides that an employee who is elected or appointed to such a position will be granted a reasonable time off without loss of seniority and without pay or benefits for a period not to exceed one (1) year.

The comparables vary with Ingham County providing up to two (2) years off for Union appointments and other Counties not having such a provision in their Contract.

The Employer's AFCME Unit does not have Union leave provisions.

The Commission argues that as they operate on a "skinny" basis, they need all of their workers to be available and on duty at all times.

The Fact Finder finds that, in fact, the Kalamazoo County Road Commission does operate on an efficient, "skinny operation," and that its workers are important to the people of Kalamazoo County for the purposes of road maintenance, snow maintenance, et al.

Recommendation:

The Fact Finder finds and recommends that the present language of leave under these circumstances should be left in with a cap of one (1) year with the added proviso that only one (1) employee shall be allowed such leave at a given time. Further, the same employee shall not be entitled to a Union Appointment Leave for consecutive years.

ISSUE - Overtime:

Winter maintenance creates overtime situations for the employees. Kalamazoo County has an average snowfall of approximately 80" every winter and in severe winters the average snowfall greatly exceeds that. Add to that the lake effect due to where Kalamazoo County is located and the need for overtime for winter maintenance snow removal is important.

The Commission seeks to change the language of the Contract by having one (1) list for emergency call-outs/overtime as opposed to a present language regarding overtime located in Article X - Hours of Work, Sec. 4 (D). This language states that "Overtime work and personnel assignments therefore will be divided into the following three departments: 1) equipment maintenance; 2) road maintenance and 3) traffic/sign shop."

It appears that the Road Commission seeks to eliminate overtime by department. They are not suggesting that overtime be eliminated, only that overtime be assigned to the list of all workers regardless of department.

The Union is requesting that the current language in the Contract be maintained and the assignment of overtime initially be by the three (3) departments.

In the present Contract there is language that states that if there is an insufficient number of employees who are willing to work overtime as needed by the Employer. The Employer shall have the right to require the senior employees, who, in its judgment are qualified to perform the work, from the appropriate department, to work overtime.

Recommendation:

The Fact Finder finds and recommends that the present Contract language should remain intact and be implemented, keeping overtime in accordance with the three (3) departments, being the equipment maintenance, road maintenance and traffic/sign shop to ensure that the workers with the proper training are utilized for the overtime with the understanding that overtime by departments could be abrogated and employees be called in to perform snow maintenance and overtime, if needed.

ISSUE - Disability/Sick Leave:

The expired Contract calls for up to a fifty-two (52) week disability benefit at \$360/wk. which equates to \$18,720/yr.

The Commission proposes twenty-six (26) weeks at \$450/wk. which equates to \$11,700/yr.

The Union proposes a change to thirty-nine (39) weeks at \$450/wk. which equates to \$17,550/yr.

Obviously, the difference between the present \$18,720/yr. benefit and the Employer's proposed \$11,700/yr. benefit is approximately \$7,000/yr. The difference between the Union's proposal of 39 weeks at \$450/wk. is approximately \$1,200 less, per year, than the present benefit.

The benefit is for those employees who suffer some type of disability/sick leave. It would be anywhere from -0- employees each year to all of the employees each year. One would have to look back and determine the history of the usage has been for disability and sick leave payment over the years.

The Union states that the present benefit is already less than Jackson County and Ingham County, two of the comparables, and would be even less if the Employer's proposal is put into place.

Recommendation:

The Fact Finder finds and recommends as follows:

1. Sickness and disability benefits shall be reduced to 39 weeks.
2. The benefit amount per week be increased to \$400/wk.

The above amounts to a total benefit of \$15,600 for that period of time. All remaining provisions in the Contract should stay in force for the life of the new Contract regarding disability/sick leave.

ISSUE - Grievance Procedure:

The parties are virtually in agreement with the Grievance Procedure with several exceptions:

1. The language in the second step Grievance Procedure now has a time limit of five (5) days. The Union is requesting ten (10) days at the second step.

Recommendation:

The Fact Finder Finds and recommends, after a review of the comparables and hearing the testimony, that the second step should contain the ten (10) day notice provision.

2. The Employer raises an issue as to a prior Arbitrator's Decision wherein the Arbitrator allegedly ignored prior Grievance Letters of Understanding and/or settlements. The Fact Finder finds and recommends that an Arbitrator shall not ignore prior grievance Letters of Understanding or Settlement(s).

Recommendation:

The Fact Finder finds and recommends that the Letters of Understanding and/or Settlements should be made a part of the Contract and the new Contract should contain such language when same is implemented.

ISSUE - Longevity:

The Union proposes leaving the longevity as it is. The Employer wishes to grandfather in the present employees as to longevity payments and eliminate new hires from receiving longevity.

Article 9, Sec. 3 "Qualifications." The present language of the Contract states that "For the purpose of this Article continuous service shall be broken by: 1) quit; 2) discharge or 3) retirement. The Employees or their estates shall receive the pro rata share upon retirement. Employees are eligible to receive longevity pay who retire, quit, become permanently disabled or in the event of death prior to qualifying for their longevity pay. One would assume that if an employee quits or is discharge they would forfeit any pro rata share of longevity pay.

It should be noted that the employees pay nothing toward health care or pension contribution.

The reserve fund is approximately \$6 - \$7 Million, or about 1/3 of their annual expenditures. The reserve funds in the comparables range anywhere from 15% to 38.9%. Plante Moran recommends a minimum of 25% and a maximum of 45%.

The comps show Calhoun County's longevity is rolled into the hourly rate. Allegan tops out at 4% longevity. Van Buren: \$250 per year after a set number of years. Jackson County does not have any longevity. Ingham County is capped at \$1,800/yr. in longevity.

The proposal is to do away with the provision in the contract that pays a pro-rata share to workers who quit, are discharged or retire. The comparables indicate that pro-rata longevity is given under certain circumstances.

The Commission argues that the only longevity provisions remaining of the comparables are Allegan and Van Buren, and they pay less. Van Buren pays a maximum of \$250/yr. for employees who have worked there for 25 years or more. Allegan pays a maximum of 4% for employees that work 29 years or more.

Using \$39,000 as an average salary (base pay) 7% amounts to \$2,700/yr. Ingham, who caps at \$1,800 eliminated for new hires.

Recommendation:

The Fact Finder finds and recommends as follows:

1. The Contract contain a provision for longevity awarding 3% after five (5) years of service.
2. After ten (10) years of service longevity payments shall be capped at 5% of wages, thus eliminating the twenty(20) year provision.
3. The longevity provision shall apply to all employees, including new hires.
4. Language should be implemented and the Contract should contain language that in the event of retirement, death or permanent disability, pro rata longevity pay shall be paid. Further, in the event that the employee quits or is discharged he/she shall not receive pro rata longevity pay. (and they pay less??)

ISSUE - Wages:

The Union is seeking a wage increase. The Employer is not adverse to an offer of a wage increase. The difference comes in the percentage of the yearly increase over the life of the contract and the issue of any retroactivity. Pursuant to current law any increases in wages should not be retroactive and should be as of the date of the signing of the contract and through the life of the contract and ending at the end of the third year, pursuant to the County's fiscal year. Based upon the argument and facts, a 3 year contract be put into place beginning immediately.

Wages should be set for each of the 3 years of the contract at 2% - 2.5% - 3%. This is based upon the ability of the Employer to pay. The Employer has fund reserves sufficient to run the Commission for a period of 3.9 months, or approximately 30-33% of the total operating expenses for a twelve (12) month period. It appears that the fund balance that the Road Commission maintains is an excellent fund balance for a governmental budget.

It appears that the comparables all gave their Road Commission employees raises in their last Contract. In the last Contract the Union received raises of 2% - 1% - 1% with supervisory employees receiving merit raises.

Pursuant to the documents submitted by both parties, the cost of the raise for the Union Members would not be exorbitant or out of line. It is noted by the Fact Finder that fund reserves are important, that the Road Commission does a fine job of managing its department and maintains a fund reserve that is superior to fund reserves of other Road Commissions.

It appears that Ingham County received a wage re-opener of 2%. Van Buren County received 1.8%. Calhoun: 1.5%. Jackson received a lump sum of \$400. Ingham County: 2% and 2%.

Exhibits show that the Union received raises in the last contract of 2% - 1% - 1%. Supervisory employees receive merit raises.

Recommendation:

The Fact Finder finds and recommends as follows:

- A. The parties should enter into a three (3) year Contract, commencing on the date of ratification of same;

B. That wages be set as follows:

- i. Year 1 - 2%
- ii. Year 2 - 2.5%
- iii. Year 3 - 3%

This is based upon the ability of the Employer to pay. It should be noted that the Commission is run very efficiently. As a result, they have a fund balance to run the Commission for a period of nearly four (4) months.

ISSUE - Insurance Re-Opener:

The expired Contract included an insurance only re-opener in its third year. The Union proposes that this language be made a part of the new Contract and suggests the following language: "the parties will have a single issue Contract re-opener to negotiate changes in the health care plan only if the employer seeks to change carriers or if the cost to employees increase significantly."

The Employer wishes to have the following language in the Contract: "the employer shall have the right on 60 calendar days written notice to modify, delete, reduce or expand health insurance coverage at its discretion in order to comply with State or Federal law or to lower premium costs to employees provided that the change has been previously, or will simultaneously be, implemented with the non-union employees."

The Fact Finder agrees that there should be a Contract provision to change health care insurance coverage if necessary to be compliant with Federal and State law. They suggest that any changes be made only if those changes are the same as changes made to non-union Commission employees. The Employer cites the AFSCME Contract which has the same language that they propose above.

Any such change should include all types of health insurance, i.e. medical, dental, optical, et al.

The Fact Finder agrees that the term "significantly" is a word that is difficult to define. The Fact Finder does agree that both the Employer and Employee should have a right for a re-opener in health care expenses. The language the Employer recommends protects the Employer. However the language the Employees recommend is difficult to determine. What is "significant?"

Recommendation:

The Fact Finder finds and recommends as follows:

1. If the cost increases more than 5%, or if the coverage materially changes, the employer or employees may call for a re-opener.
2. Any change of coverage includes all types of health insurance, i.e. medical, dental, optical, et al.
3. Any changes in coverage are to be the same as any changes made for non-Union Commission employees and the County's AFSCME Unit.

ISSUE - FMLA, Article 6, Sec. 8:

The Employer proposes eliminating FMLA from the Contract. They cite USC Sec. 2611(2)(B)(ii) which states that in order to be covered under FMLA an Employer has to have 51 employees. The County Road Commission only has a total of 41 employees, both Union and Non-Union. Therefore, the Employer's position is that they are not subject to FMLA.

The Employer cites the fact that the Road Commission is not a part of County Government as are other comparables. Hence, they do not qualify as having 51 employees or more because they can not use the number of County Employees to gain the eligibility for FMLA.

Recommendation:

The Fact Finder finds and recommends as follows:

1. Under current law the Road Commission Employees are not subject to FMLA as they have less than the requisite number of employees in the bargaining unit.
2. The Contract shall not provide for leave time under FMLA, unless the total number of employees of the Road Commission increases to the requisite number under current Law.

ISSUE - Agency/Shop Right to Work Dues Check-Off:

These issues arise under Article 1 - Recognition, and more specifically Article 1, Sec. 6 - Wage Deductions, Article 1, Sec. 7 - Agency/Shop.

The Contract, which expired on April 11, 2014, recognized that the Union was the sole and exclusive collective bargaining agent for all its garage, sign shop and road employees, excluding dispatchers, office/clerical employees, engineering and technical employees, weekend telephone operators, watch person, stock clerks, part-time employees, seasonal employees, guards, executives and supervisors. *See* Article 1, Sec. 1. Hence, the expired contract specifically identified 3 classes of employees as being members of the Union, again, those being garage, sign shop and road employees, only.

Michigan being a right to work State does not mean that Unions are forbidden. Certainly, a worker may join a Union at his/her option. Once having joined a Union it would be expected that the worker would pay dues. On the other hand, if a worker elects to not join a Union pursuant to the present laws of the State of Michigan, they would not be required to pay dues.

Another option is the so-called Beck Rights where an employee may elect to pay an amount to cover the cost of certain services they would receive from a Union. Once an employee joins a Union, upon eligibility pursuant to the Labor Agreement, i.e. after 31 days of employment, they may agree to have the fees/dues deducted in accordance with the rules of the Union. That being said, recognizing that they may opt-out or opt-in at any time, a period of time for such opting-in/opting-out should be established on a once per year annual basis. There are comparables that have variations in their present Contracts regarding this issue.

Recommendation:

The Fact Finder finds and recommends as follows:

1. In accordance with the Right to Work Act and any other applicable State and Federal Law. The appropriate payroll deduction authorization shall be signed by a Union Member who is requesting dues check-off. Said authorization shall be in accordance with the Right to Work Act.

2. Any opting-in/opting-out, other than for new employees, should be within the 30 days proceeding the start of the new fiscal year of the Road Commission.
3. The employer shall, upon collection of dues, remit same to the Union once per month. The indemnification clause contained in the expired Contract should remain in force, being that the Union agrees to indemnify, save and hold the employer harmless against any/all claims of actual expenses and any other liability that may arise out of the action taken by the Employer in compliance with the Contract.

ISSUE - Union Membership Rules:

The Fact Finder has reviewed the information provided and the comparables.

Recommendation:

The Fact Finder finds and recommends that a section entitled "Union Membership Rules" should be inserted into the Contract providing that the Union shall have the right to make its own rules with respect to membership in the Union as provided by Michigan Law.

ISSUE - General Leave:

Article VIII - Funeral Leave. The Employer proposes to modify Article VIII as follows:

- Sec. 1 to include language for attending and/or arranging for a ceremony to honor the deceased immediate family member and add a word in the following clause which shall end with the day after the funeral ceremony. "Ceremony" being the added word.
- Days are to be granted for immediate family members' funerals, which is defined in Sec. 1 (A). It seems that there is no argument as to Sec. 2 of the Employer's proposed language. The sole objection is to Sec. 3, where the Employer has added the phrase "... must be taken within ten (10) business days of the death of the immediate family member."
- The Employer has also added after the word "funeral" the word "ceremony" and the Union does not object to the addition of the word ceremony. The objection is to the ten (10) business days following the death of the immediate family member.

During the Hearing there were various examples of situations that have arisen or may arise where a funeral/ceremony may be more than ten (10) days following the death. Examples would be in the event a body for, whatever reason, can not be recovered or released for more than ten (10) days, such as in natural disaster, man made disaster, acts of war, etc., or where the parties agreed to meet at some location to conduct a ceremony more than ten (10) days after the death of an individual, i.e. a memorial, which happens frequently. While this situation is not usual, it could occur.

Certainly there is nothing to preclude an employee from using vacation/leave days to attend a funeral or ceremony more than ten (10) days following the death of an individual, with the exception of scheduling those days in accordance with the work rules that govern time off.

A military situation could very easily exceed the ten (10) day period following a death where a body is brought back from overseas and a funeral and/or ceremony might be arranged at a National Cemetery or a Veteran's Cemetery or like location.

One might argue that two (2) leaves are possible, one being a funeral and the second being for a ceremony that is held for some reason thereafter.

Recommendation:

The Fact Finder finds and recommends that for the purposes of the Contract, it should be one leave of three (3) days within ten (10) days of death, except in the event of a funeral/ceremony for a member of the immediate family of the employee that occurs more than ten (10) days after the death of the family member.

ISSUE - Work Rules:

A violation of any provision in Sec. 1 subjects and employee to disciplinary time off without pay and/or up to and including termination for a first offense.

Sec. 2 provides that an employee who violates the rules in Sec. 2 will receive a written reprimand for a first offense and disciplinary time off without pay for any subsequent violation. Three (3) or more violations of the work rules as contained in Sec. 1 & 2 within period of twenty-four (24) consecutive months will subject the employee to discharge,

The Employer has submitted a proposal to re-organize the list of violations into three (3) sections:

1. Major conduct violations.
2. Minor conduct violations.
3. Attendance.

The Employer wishes the Contract to provide that for a major conduct violation the employee "shall" be terminated for a first offense. The Employer is requesting a provision in the Contract that states that three (3) or more violations of minor conduct rules within a twenty-four (24) month period shall cause the employee to be terminated. However, it appears that the Employer is now willing to modify said language to four (4) violations within a twenty-four (24) month period shall "cause the employee to be terminated."

The Union's position is that they agree with the Employer's published list of work rules as proposed by the Employer during the Fact Finding Hearing. Further, they agree that the rules will be contained in three (3) sections, i.e. major rules violations, minor rules violations and attendance rules violations.

The Union is requesting that the language for a violation of rules be modified from "shall be terminated" to "subject to discharge." Further, the Union proposes that violations not be pyramided among the three (3) sections.

The Employer seeks termination at a third step while the Union proposes that in order to be discharged or subject to discharge an employee must be at the fourth step.

The Union seeks to have the time limits changed from 24 months to 30 months.

Recommendation:

The Fact Finder finds and recommends as follows:

1. The Employer's published list of work rules should be made a part of the Contract.
2. That there be three (3) sections:
 - a. "major;"
 - b. "minor;" and
 - c. "attendance violations."
3. That the work rules as applied to disciplinary action, should not be pyramided among the three (3) sections above.
4. For major work rule violations the language should read "shall be terminated."
5. That the language for minor and attendance violations should be "subject to discharge."
6. That being subject to discharge should be a fourth step.
7. That the time period for the infractions should be kept at a twenty-four (24) months.

ISSUE - Retirement Health Care Insurance - Article XI, Sec. VIII

The majority of the comparables continue to provide for retiree health benefits for all new hires.

Recommendation:

The Fact Finder finds and recommends that the current language be maintained providing retirement health care coverage for all Union Members of the Road Commission, including new hires.

ISSUE - Notice of Intent to Retire:

The next proposal is to add a provision as follows: "An employee must submit written notice of intent to retire to the Finance Director not less than sixty (60) days prior to the effective date of retirement. Failure to do so would result of forfeiture of accrued and unused leave."

The Union is not in disagreement with the above language as to notice to retire, but requests that the notice be not less than thirty (30) days written notice rather than sixty (60) days.

The Employer states that AFSCME has agreed to a sixty (60) day notice provision and that all non-bargaining unit employees also be required to submit written notice within sixty (60) days of the effective date of retirement. The Fact Finder finds that 30 day notice should be sufficient.

Recommendation:

After a review of the comparables and hearing the testimony, the Fact Finder finds and recommends as follows:

1. The current language should be maintained providing retirement health care coverage for all Union Members of the Road Commission, regardless of the date of hire.
2. That notice of retirement be not less than 30 days prior to the date of retirement.

ISSUE - Team Leaders:

The Employer proposes an amendment to modify Appendix A - Job Classifications and Rates of Pay to include language regarding team leaders selection and pay. The proposed language is as follows "Team Leader: Employees may be assigned the status of team leader at the direction of management on a daily basis. Employees may refuse to accept the position and the employer shall have the right to withdraw the assignment from any employee at any time without justification and assign the position to any employee it deems qualified. Team leaders who are required to return to work outside their regularly scheduled shift to respond to a call will receive pay according to Article XI, Sec. 7, including his/her team leader premium. Team leaders will be paid a premium of an additional \$1.00 per hour for all hours worked while so assigned."

The Union wishes to maintain the status quo and does not agree that a team leader should be unilaterally appointed by the Road Commission.

The Commission's proposal is an effort to advance opportunities within the work force for employees who have the attributes and skills necessary in the discretion of the Employer. The Employer feels that it should have the right to determine who is best suited for the job based on skills, ability and experience and not be bound by any seniority rules.

The Union, in wishing to maintain the status quo, is concerned about favoritism and the use of such appointments and extra pay is a means that may cause a division within the work force.

Recommendation:

The Fact Finder finds and recommends that the Commission should have the management right of appointing team leaders, with extra pay. It is the Fact Finder's opinion that if the Employer wishes to exercise its management rights for pay that it should have that right.

ISSUE - General Article XVI:

The Commission proposed amendments to Article XVI - General. The parties have a tentative agreement regarding Sec. 1 and Sec. 2 as proposed by the Employer. The proposed changes to Sec. 3 were withdrawn by the Employer. Therefore, only one (1) issue remains open, i.e. modification of Sec. 6 regarding "Employees to possess valid Group A Commercial Driver's License (CDL)."

Originally, the Employer requested that language be inserted into the Contract requiring the necessary license(s) to be obtained by January 1, 2015. The parties are in agreement to extending the deadline to January 1, 2016 in an effort to allow the employees adequate time to obtain their CDL's. As of the date of the issuance of this Fact Finding Report, the Fact Finder notes that January 1, 2016 is quickly approaching. Therefore, I recommend that the deadline be extended to one (1) year from the date of implementation of the Fact Finder's report.

The Employer further requests that a provision be added to the Contract stating that obtaining a CDL by the contractual date be a condition of employment. The Fact Finder finds that this is a reasonable request by the Employer and recommends implementation of said language into the contract.

Recommendation:

The Fact Finder finds and recommends as follows:

1. The agreements made by the parties are acceptable and the provision regarding obtaining a CDL within one (1) year of the date of implementation of the Fact Finder's Report and should be a condition of employment. It should be noted that the previous Contract did state "It is understood and agreed it shall be a condition of continued employment." It further states that "An employee must meet any/all standards, regulations or license requirements of the State of Michigan and that it is a condition for continued employment with the Commission." It is recommended that this language be made a part of the new Contract.

2. It is recommended that the Employer provide the necessary equipment for the Employee to take the appropriate and necessary testing for their licensure.

ISSUE - Union Bulletin Board - Article XVI, Sec. 3:

The present Contract contains a provision regarding the maintenance of the bulletin board in the garage where the Union shall be permitted to post notices regarding its businesses and activities. It prohibits anything of a political or defamatory nature.

The Employer wishes to eliminate the bulletin board in the garage.

The Union wishes to keep the present language of Sec. 3 in the new Contract giving the Union members a location where they can post notices regarding the Union business and Union activities. The Union cites that four (4) of the comparable Counties have bulletin board language available for the Union members.

Recommendation:

The Fact Finder finds and recommends that the current language should be kept in the new Contract.

ISSUE - Vacation - Article XIV, Sec. 6:

The Employer proposes to change the vacation provisions in Article XIV, Sec. 6 and Sec. 7 as follows:

Sec. 6 - Limitation:

The proposed language is as follows "An employee shall not be paid for vacation time off while drawing sick leave, unemployment, worker's compensation and other benefits. If someone is not actively employed on their anniversary date, vacation would not be credited to that employee's account until they return to work."

The present Contracted states as follows "An employee will not be paid for vacation time off while drawing sick leave, unemployment, worker's compensation and other benefits."

The Employer seeks to add the additional language as proposed above.

The Union is requesting that the current language be maintained in the new Contract without the additional language.

Recommendation:

The Fact Finder finds and recommends that the comparables having been reviewed, the Fact Finder agrees with the Union that the current language in the expired language should be maintained in the new Contract and status quo as to Article XIV, Sec. 6 should be maintained.

ISSUE - Article XIV, Sec. 7 - Resignation/Termination:

The Employer requests the addition of language regarding terminations and resignations. The language is as follows: "Employees resigning from KCRC shall submit a resignation, in writing, at least two (2) weeks prior to the effective date of resignation. If a resigning employee gives the required notice prior to resigning, accrued but unused vacation will be paid on a prorated rate earned from the anniversary date to the time of termination. After the 15th of a month, it is to be considered one (1) month. Payment will be made in one lump and not extended beyond the employee's last date worked. If an employee resigns without providing the required notice, the employee forfeits all vacation."

In addition, the Employer wishes to add further language as follows: "Leaves of absence may not be taken during the required notice. Failure to give proper notice or to otherwise comply with this provision shall result in the loss of any accrued and unused leave."

The Employer wishes to add language as to vacation pay upon termination as follows: "Approved but unused vacation will not be paid to involuntarily terminated employees."

The Employer wishes to exclude the current language in Sec. 7 of the expired contract - "Termination in its Entirety."

The Employer states that its proposal is consistent with that which is in place for its non-bargaining unit and its AFSCME Employees. The Employer states that an employee should not earn vacation while on extended leaves of absence and that the Employer has encountered great difficulty with employees who will often leave for up to two (2) years and then want to use paid vacation prior to actively returning to work.

The Employer states that Michigan Law does not require the Employer to pay accrued but unused vacation upon termination, but has not cited the applicable Michigan Law.

The Union wishes to maintain the current language and not restrict vacation payout benefits. The Union states that if the Employer's language were to be added to the Contract, it would mean fewer benefits that State of Federal Law provides. However, there is no cite for the applicable State or Federal Laws that the Union is relying upon.

The Union cites the comparables that apply. The comparables have no restriction. One comparable requires two (2) weeks notice.

Recommendation:

The Fact Finder finds and recommends as follows:

1. The giving of two (2) weeks notice when an employee resigns is not onerous. However, if a employee is involuntarily terminated, two (2) week notice may be impossible.

As to the issue of payment of accrued vacation pay upon termination, the Union argues that the present language should remain in the Contract. The comparables indicate that vacation pay, if terminated, would be paid. There are some exceptions, i.e. termination if fired for disciplinary actions (one might assume criminal actions).

- Jackson County does not pay vacation if fired for discipline.
- Van Buren seems to indicate that employees shall receive unused vacation if discharged.
- Allegan County indicates that no vacation pay will be paid and same will be forfeited if fired for drugs, workplace felony or causing bodily harm.
- Ingham has no restrictions.

Recommendation:

The Fact Finder finds and recommends as follows:

1. If an employee is terminated for the use of illicit drugs, workplace felony, or causing bodily harm in the workplace, then that employee should forfeit any unused vacation pay.
2. Therefore, the Fact Finder finds that the language contained in the expired Contract should remain with additional language regarding forfeiture of vacation pay if fired for drugs, workplace felony or causing bodily harm.

CONCLUSION

At this time I wish to state that the parties introduced a great amount of material and testimony. In addition, they submitted Briefs, which I found very helpful to assist in deciding the issues and making my recommendations.

While my recommendations may not satisfy each party to the Fact Finding, I would hope that the comments and recommendations would be of some benefit to the parties, and that perhaps through this process they will be able to reach an agreement that all parties can abide by.

It is important that the parties consider these recommendations and use them to alter their respective positions and reach an agreement.

This concludes the Fact Finder's Report and Recommendations. It has been a pleasure serving in this capacity.

Dated: _____

8/7/15

EUGENE LUMBERG