STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

INTERURBAN TRANSIT PARTNERSHIP,

Employer / Respondent,

– and -- MERC Case No. L15 A-0068

AMALGAMATED TRANSIT UNION
LOCAL 836,

Union / Petitioner. /

Report

Thomas L. Gravelle, Fact Finder
June 26, 2015

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing was held on May 19, 2015 in Grand Rapids, Michigan.

Present for the Union were:

Richard Jackson -- President/Business Agent
Brent Majors – Financial Secretary/Treasurer

Present for the Employer were:

Brian Pouget – Chief Operating Officer
Al Wiltse – Human Resources Manager
Steve Shipper – Facilities Manager
Nicole Paterson, Esq.
Grant T. Pecor, Esq.

The Employer has submitted 72 exhibits and a 55 page post-hearing brief. The parties exchanged their exhibits one week before the hearing. At the hearing, the Union declined to offer its exhibits into evidence.

FINDINGS OF FACT

The Petitioner for fact finding is the Amalgamated Transit Union, Local 836 (the "Union" or "ATU"). It represents about 309 bus drivers, mechanics and facility employees.

The Respondent is the Interurban Transit Partnership (the "Employer" or "ITP" or "Authority"). It is a public sector employer which provides public transportation services for six communities in the area of Grand Rapids, Michigan. It is overseen by a board of directors of 15 members from the six communities.

The parties' current CBA is for the period May 7, 2012 through June 30, 2015. (E–2).

On February 25, 2015, the Michigan Employment Relations Commission ("MERC") date stamped as received the Union's petition dated January 30, 2015.

Between December 9, 2014 and May 7, 2015, the parties engaged in 16 bargaining sessions (E-11). Some of these were with the assistance of a MERC mediator.

Beginning on January 26, 2015, ITP proposed to switch the parties' defined benefit plan ("DB Plan") to a defined contribution plan (DC Plan"). (E-12 D, p. 9). The parties continued to disagree about this issue in their ensuing negotiations. (E-12 E *et seq*).

Section 13(c) of the Federal Mass Transit Act "sets forth minimal standards that a [public] transit authority must satisfy before it may receive federal funding." *Burke v. Utah Transit Authority*, 462 F.3d 1253, 1258 (10th Cir. 2006). The parties have entered into a Section 13(c) agreement to meet these standards.

Paragraph 16(d) of the parties' Section 13(c) Agreement (E-6, pp. 15-17) states:

> In making findings of fact and recommendations for the resolution of the matters in dispute, the fact finder shall take into consideration the following factors:
>
> (i) The stipulations of the parties;
>
> (ii) The financial condition of the transit system, the ability of the Public Body to administer and finance the existing system and the issues proposed and the interest and welfare of the public;
>
> (iii) A comparison of the wages, hours, and terms and conditions of employment of the Public Body's employees with other public and private employees doing comparable work, taking into consideration any factors peculiar to the community and classification involved;
>
> (iv) The overall compensation presently received by the Public Body's employees, including wages, hours and terms and conditions of employment, and all medical insurance, pension, and fringe benefits received;
>
> (v) Collective bargaining agreements between the parties;
>
> (vi) The average consumer prices for goods and services, commonly known as the cost of living; and
>
> (vii) Such other factors not confined to the foregoing, which are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties in the public service or in private employment.

The record of these factors includes the following:

(i) The parties have reached tentative agreements on 20 issues.

(ii) ITP's financial condition is adequate, but not robust. In 2014, ITP's expenses matched it revenues; and for 2015 the same has been budgeted. (E-19, pp. 1-3). For 2015, about 57% of expenses are for employee compensation; and such employee expenses are more than $1 million higher than for 2014. (*Id*).

ITP's current unrestricted fund reserve is 7%, and in recent years has been lessening. A 7% reserve is at the lower end of responsible financing. Not all costs are

predictable. For instance, fuel prices are a major cost which are subject to fluctuations beyond the parties' control. ITP spends over $4 million annually on fuel. (Recently, lower fuel prices have benefitted ITP; but it is uncertain where these prices will go.)

ITP provides an essential public service to the public in six communities with the result that the interest and welfare of the public requires ongoing quality service.

(iii) ITP has proposed five "comparable" employers:

Ann Arbor Transit Authority ("Ann Arbor")
Lansing Capital Area Transp.Authority ("Lansing")
Kalamazoo Metro Transit ("Kalamazoo")
Flint Mass Transp Authority ("Flint")
MV Transportation, Inc. ("MV")

At the fact finding hearing, ITP explained that through discussions and exchange of exhibits with counsel, the Union's proposed "comparable" employers are:

Ann Arbor
Lansing
Kalamazoo
Detroit Suburban Mobility Authority for Regional Transp. ("SMART")

The parties appear to be in agreement on Ann Arbor, Lansing and Kalamazoo. Further, in her 2012 report, Fact Finder Kathleen Opperwall accepted these three as "comparable." Also, in 2013 the Michigan Department of Transportation ("MDOT") designated Ann Arbor, Lansing, Kalamazoo and ITP as "urban large" transit agencies. (E-24). I find these employers to be comparable.

As to the Flint proposal, ITP explains that a study named the 2030 Transit Master Plan compared 10 "peer" systems. Two of the 10 systems are in Michigan: Ann Arbor

and Flint. (E-21). Further, MDOT has included Flint as an "urban large" transit agency. (E-24). I am accepting Flint as "comparable"

As to the MV proposal, ITP explains that subsection iii of paragraph 16(d) of the parties' agreement explicitly requires consideration of "private employees doing comparable work." MV employees 115 bargaining unit bus operator and maintenance employees. MV employees are represented by the Union in the present case. (E-2; E-35). ITP has subcontracted work to MV including work which ITP is responsible by statute to be performed. MV is in the same local labor market as ITP. Some MV employees have become employees of ITP. I find MV to be "comparable" in the sense of being in the same local labor market and providing similar transportation and maintenance services as ITP, although as a private employer MV may not enjoy the same public subsidies as ITP.

As to the Union's SMART proposal, ITP argues that it is not comparable. It is much larger than ITP with nearly double the budget. (E-23). MDOT designates SMART as an "urban metro" transit agency rather than an "urban large" transit agency (*e.g.*, ITP, Ann Arbor, Kalamazoo and Lansing). Also, the record before me does not include SMART CBAs, which precludes a comparison of employment terms with ITP. I do not find SMART "comparable."

Additional facts relating to the "comparable" employers are discussed below where appropriate.

(iv) The overall compensation of the employees represented by the Union includes wages, pensions, health insurance and leave banks.

(v) The parties have a long apparently successful bargaining history. Their current CBA runs through June 30, 2015.

(vi) In recent years, inflation has been mild. A news release of the U.S. Bureau of Labor Statistics (updated May 27, 2015) explains that from February to March 2015 the CPI decreased by 0.1%; and for the previous 12 months increased by 0.2%.

(**vii)** In February 2012, MERC Fact Finder Opperwall published her Fact Finding Report and Recommendations. (Ex. 9) Her Report includes findings of fact at pages 1 through 7 which I have considered subject to the record before me.

RECOMMENDATIONS ON ISSUES IN DISPUTE

ISSUE: **Section 4.06 (Authority of the Arbitrator)**.

ITP has proposed to amend Section 4.06 to provide that ITP may require an expedited hearing or submission of briefs where it challenges the arbitrability of a grievance. ITP also has proposed to exclude from arbitration "any question or matter outside of this Agreement, to establish wage scales or rates on new or changed jobs, or to change any pay rate unless it is provided for in this Agreement."

The Union has proposed that a bifurcated hearing on arbitrabiity be "by mutual agreement." Except for the bar on the arbitrator's considering "any question or matter outside of this Agreement," the Union also has proposed the additional limits on the arbitrator's authority.

Recommendation: I recommend that ITP's proposal be adopted.

Reasoning: The parties agree to language that "[t]he arbitrator shall not be empowered . . . to establish wage scales or rates on new or changed jobs, or to change any pay rate unless it is provided for in this Agreement." (E-36).

The disputed issue concerns procedure for obtaining an arbitrator's ruling on whether a grievance is arbitrable. On this issue, the last sentence of the first paragraph of Section 4.06 of the parties' current CBA states:

> If the issue of arbitrability is raised, an arbitrator shall not determine the merits of any grievance unless arbitrability has been affirmatively decided.

ITP's proposal explains <u>how</u> the arbitrator is to decide the issue of arbitrability.

ITP is requesting this language because of its belief that the Union has erred in seeking arbitration of the merits of grievances where the grievances are not arbitrable.

ISSUE: **Section 4.07 (Effect of Time Limits).**

ITP has proposed that under the parties' grievance procedure time is of the essence and that if the Union "sits" on a grievance for more than 14 days the grievance is forfeited whereas if ITP does so the grievance will move to the next step" except nothing herein contained shall be construed to automatically advance a grievance to arbitration.

The Union has proposed that if either party "sits" on a grievance for more than 14 days "the grievance shall be considered resolved against the party in violation."

Recommendation: I recommend that the parties address their timeliness concerns by amending the following sections to read:

<u>Section 4.02: Time Limit for Filing Grievances</u>

NO GRIEVANCE shall be entertained or considered unless it is presented in writing within 14 calendar days

A. After the incident giving rise to the controversy involving the interpretation or application of the express terms of this Agreement as herein set forth; or

B. After the discipline, suspension or discharge of any employee for violation of any rule of the Authority.

Section 4.03: Procedure

Step 1: . . .

Within 14 calendar days after receipt of the written grievance, the Department Manager shall answer the grievance in writing.

Step 2: Such answer shall be final unless the grievance is appealed by written notice given to the Authority's CEO or designee within 14 calendar days from the date of the Manager's written answer in Step 1.

A decision on said appeal shall be rendered within 14 calendar days after receipt of the written appeal by the CEO or designee in writing.

Step 3: The Step 2 answer shall be final unless the Union demands in writing that the grievance be submitted to arbitration within 30 calendar days of the Union's receipt of the Step 2 answer.

Section 4.04: Arbitration

A. [Parties to simplify third paragraph to avoid either party delaying MERC arbitrator selection.]

Section 4.07: Effect of Time Limits

[Retain current language.]

Reasoning: Both parties agree that untimeliness of grievance processing is to be addressed. (E-37).

I think the best way to do it is to clarify and simplify Sections 4.02, 4.03 and 4.04 of the current CBA.

Section 4.01 defines two types of grievances: A. Contract interpretation, and B. Discipline.

Section 4.02 A then provides a 10 day time limit for filing a grievance as to contract interpretation or discipline. For clarity, the parties can divide current 4.02 A into 4.02 A (contract interpretation) and new B (discipline) to reflect the dual definition of a grievance in Section 4.01 A and B. In addition, consistent with their 14 day "sitting" proposals, the parties might simply substitute "14 calendar days" for 10 days excluding Saturdays, Sundays, and holidays in current 4.02 A and B.

Step 3 of Section 4.03 contains somewhat imprecise language on the timeliness of processing a demand for arbitration; and Section 4.04 lacks time limits on arbitrator selection before MERC. My recommendations address these issues.

ISSUE: **Section 4.09 (Arbitration Expenses).**

ITP has proposed that if the arbitrator finds a grievance to be frivolous, the arbitrator may award ITP its attorney's fees, or "[a]lternatively, the ITP urges the Fact Finder to revise the current proposals to better address the issues at hand." (Brief, p. 30).

The Union has proposed that the status quo be retained.

Recommendation: I agree with the Union to retain the current language of Section 4.09.

Reasoning: I believe I have largely addressed ITP's concerns about the arbitration process. Therefore, I am not addressing any sanctions for a frivolous grievance.

ISSUE: **Section 4.11 (Class Action).**

ITP has proposed that the following language be added:

> No more than one dispute may be heard by any arbitrator unless expressly agreed between the parties. Class action grievances involving discipline are expressly prohibited unless otherwise agreed in writing.

The Union rejects this proposal.

Recommendation: No disciplinary grievance shall be in the form of a "group" or "class action" grievance absent written agreement of the parties. However, (a) if individual grievances arise from the same incident and (b) if the Union demands arbitration, the individual grievances may be consolidated for hearing before a single arbitrator if the Union requests this in its written demand for arbitration or if the parties so agree in writing.

Reasoning: The parties agree that a grievance defined in Section 4.01 as "[a]ny [non-discipline] controversy between the Authority and the Union as to any matter involving the interpretation or application of the express terms of this Agreement" may be presented as a "group" or "class action" grievance where the disputed issue is common to the group or class.

The parties differ as to a disciplinary grievance defined in Section 4.01.

ITP argues that its proposal is necessary because of "the Union's insistence on pursuing group grievances involving disciplinary actions despite the obvious individualistic mitigating factors and defenses" and because "class actions involving disciplines are generally inappropriate given individual facts, mitigating factors, and defenses." (Brief, p. 26).

The cause of ITP's concern appears to be a grievance filed in behalf of 31 employees who were disciplined for failing to attend a mandatory meeting scheduled in June and July 2013. (E-45). Because of the parties' progressive discipline rules, the disciplines imposed ranged from a written warning to termination.

I agree that disciplinary grievances should be individual absent identical circumstances. To avoid controversy over this, where an employee has been disciplined he or she need submit an individual grievance. However, for the purpose of efficiency including expenses, a "group" arbitration should be available where the disciplines arise from the same incident. On the 31 employee group grievance, it would have been cumbersome and needlessly expensive to have 31 separate arbitrations.

ISSUE: **Section 6.01 (Wages).**

ITP has proposed:

(a) Wages rates for Full-Time & Part-Time Operators shall remain unchanged.

(b) Wages rates for Maintenance Employees shall be increased by 2% Year 1, 1.5% Year 2, and 1.75% in Year 3.

(c) The Authority shall reimburse a Technician for the ost of passed MECP, ASE, State of Michigan, IMI/CMI certifications and registration fees upon proof of certification or recertifiction, and proof of payment.

If the Union will agree to withdraw the matter or, at a minimum, waive any remedy in the pending rostering hours guarantee arbitration heard by the Arbitrator on November 17, 2015, the Authority will agree to increase the wage rates for Full-Time & Part-Time Operators by 2% Year 1, 1.5% Year 2, and 1.75% in Year 3.

The Union has proposed a wage increase of 3.5% per year for all employees, and in connection with its proposal agrees to withdraw and waive any remedy in the pending rostering hours guarantee arbitration.

Recommendation: I recommend that the pending rostering hours guarantee arbitration be withdrawn and that ITP's proposal on across-the-board wage increases for all bargaining unit members be adopted.

Reasoning: Under the parties' current CBA, employees have received annual wage increases of 2% and 1.5% in the last three years. (E-2, p. 11). During this period inflation has been low. ITP's proposal to raise wages by between 2% and 1.5% annually is consistent with the parties' agreement under the current CBA and also at least for now is consonant with low inflation.

In addition, ITP is not seeking increases in employee contributions for health insurance, which is advantageous to employees.

ITP has estimated that the cost of its wage proposal is **$655,387** (exclusive of FICA/Medicare (at 7.65%) and worker's compensation) whereas the cost of the Union's wage proposal is **$1,235,536** (exclusive of added costs of FICA/Medicare and worker's compensation. (E-46). The difference between the two wage proposals is **$580,148.**

In comparison with "comparable" employers, Exhibit 49 shows the following hourly wage for full-time bus operators in 2015:

	Starting Hourly Wage	Top Hourly Wage
ITP	$17.00	$20.30
Ann Arbor	$22.75	N/A
Lansing	N/A	$24.91
Kalamazoo	$15.01	$17.56
Flint	$17.49	$18.58
MV	$ 9.85	$16.26

Exhibit 50 does the same for maintenance/service employees:

	Starting Hourly Wage	Top Hourly Wage
ITP	$20.56	$25.61
Ann Arbor	$19.80	$24.65
Lansing	$24.91	$27.57
Kalamazoo	$13.36	$21.53
Flint	$16.24	$21.04
MV	$10.62	$22.16

This data shows that ITP wages are consistent with the wages paid to "comparable" employees, and are competitive.

ISSUE: **Section 6.03 (Days of Work).**

ITP has proposed to clarify the language of Section 6.03 the following underlined language:

> THE WORKING week of all Operators shall be five days, unless otherwise agreed. The Authority guarantees that Full Time Operators will receive the equivalent of ~~a~~ forty (40) hours of pay per workweek to Full Time Operators with regular schedules, provided they have no absences or late arrivals during that workweek. Days off shall run consecutively as much as possible.

The Union has proposed to retain the current language.

Recommendation: I recommend that ITP's proposal be adopted.

Reasoning: ITP's proposal has arisen in the context of a pending arbitration proceeding. There, the Union has claimed that the language of current Section 6.03 requires ITP to provide 40 hours of work per week, whereas ITP has claimed that "forty hours of pay" means pay and not work. The parties have agreed to hold the arbitration in abeyance.

Under Section 6.01 (Wages) I have recommended that the issue be withdrawn. In addition, in the context of the parties' new "rostering" system, ITP's clarifying language appears reasonable.

ISSUE: **Section 6.05 (Overtime Pay) (E-55).**

ITP has proposed to eliminate daily overtime payments and provide overtime payments for employment in excess of 40 hours per week.

The Union has proposed that the current language be retained.

Recommendation: I recommend that ITP's proposal be adopted

Reasoning: ITP's proposal will result in substantial savings for ITP which can be used to cover other increased expenses. Further, employees who work more than 40 hours in a calendar week will receive overtime pay. In addition, those who qualify for "spread time" under Section 7.02 will continue to receive overtime pay.

ISSUE: **Section 6.09 (Run Changes).**

ITP has proposed to change "run" changes to "roster" changes, with Section 6.9 modified to read:

> IF THE pay time of a roster is changed by more than one hour and fifteen minutes, said roster shall become open for pick.

The Union has proposed that a roster shall reopen for a pick if the pay time is changed by more than 45 minutes

Recommendation: I recommend the following language:

IF THE pay time of a roster is changed by more than one hour ~~and fifteen minutes,~~ said roster shall become open for pick.

Reasoning: The parties have agreed to a roster system with all "run" references in the current CBA being changed to "roster." (E-56). Under the new roster system, operators make one selection rather than the previous five individual run selections subject to 15 minute changes in pay time. ITP's position is to multiply 15 minutes by five, whereas the Union's proposal is a multiple of 3.

My recommendation is a middle ground between the competing proposals.

"One hour" has the virtue of being quicker to compute and administer than 75 minutes.

ISSUE: **Section 8.06 (Loss of Seniority). (E-58)**

ITP has proposed that seniority will terminate for an employee who is not on an approved leave of absence whose certification or licensure is not renewed within 30 days after it has lapsed.

The Union has proposed that the renewal period be 45 days. The Union also proposes that the provision be placed in Section 6:14: License Renewal and not in

Recommendation: I recommend that ITP's proposal be adopted.

Reasoning: ITP's practice is to notify an employee in writing 60 days prior to expiration that his or her license/certification is set to expire. A 30 day grace period to renew an expired certification/license appears to be more than adequate. No evidence to the contrary appears in the record.

If a renewal hold up has occurred, the extra 15 days would be consonant with the Union's proposal.

ISSUE: **Section 13.02 (Holiday Pay).**

The Union has proposed to increase holiday pay from eight hours of straight time pay to "ten (10) hours for employees working a four (4) day work week."

ITP has proposed to retain eight hours of holiday pay for all employees

Recommendation: I recommend that the Union's proposal be adopted but only if limited to hours missed due to a holiday stoppage of service.

Reasoning: The cost of the Union's proposal over three years would be $42,644. (E-61). The record does not support ten hours of holiday pay in all instances.

ISSUE: **Section 17.01 (Paid Personal Leave Allowance).**

The Union has proposed to increase the credit for Paid Personal Leave from 56 to 64 hours each year on the employee's seniority date.

ITP has proposed to retain the status quo of 56 hours.

Recommendation: I recommend that the current 56 hours be retained.

Reasoning: In the previous fact finding, Ms. Opperwall recommended against adding eight hours of paid personal leave. (E-9, pp. 13-14). Her reasons were that she had recommended some increases in other areas and more time off "contributes to scheduling problems." The Union has not presented evidence warranting its requested increase.

ISSUE: **Section 19.02 (Number of Part-Time Operators Allowed).**

ITP has proposed to increase the cap on Part-Time Operators from 15% to 20% of the number of Full Time Operators.

The Union has proposed to retain the 15% cap for Part-Time Operators.

Recommendation: I recommend that ITP's proposal be adopted.

Reasoning: ITP has experienced ridership growth in recent years. Much of the increase has occured during peak travel hours. Hence, the need for part time bus operators who are also necessary to fill in for full-time operators who are not at work.

Comparable employers support ITP's proposal. Exhibit 63 shows the following percentages of part-time bus operators:

Ann Arbor	20% of all bargaining unit employees
Lansing	31% of all bargaining unit employees
Kalamazoo	33% of total number of full-time drivers
Flint	N/A
MV	25% of total number of full-time drivers

ISSUE: **Article XVIII (Pension)**.

ITP has proposed the following major changes in pensions:

Union can take either of two options:

(a) Terminate current defined benefit plan and replace it with a defined contribution plan. The Authority will convert the actuarial value of any existing benefits into a payment toward each employee's account under the Authority established 457 plan. Replace Article XVIII (Pension) with the following:

Article XVIII (Retirement Benefit)

The Authority agrees to contribute five percent (5%) of each employee's total compensation into employee's account under the Authority established 457 plan.

(b) Freeze current plan so that no individual gains any additional years of service and replace Article XVIII (Pension) with the following:

Article XVIII (Retirement Benefit)

The Authority agrees to contribute five percent (5%) of each employee's total compensation into employee's account under the Authority established 457 plan.

The Union has proposed the following underlined changes in contributions to the existing defined benefit plan:

The Authority agrees to contribute ninety-five cents ($0.95) for each hour worked per employee toward the pension plan effective July 2, 2012. Effective June 30, 2014, the Authority will contribute one dollar ($1.00) per each hour worked per employee toward the pension plan.

<u>Increase Contribution to $1.10 in year 2</u>

<u>Increase Contribution to $1.20 in year 3</u>

Any member of the pension plan may retire with fifteen (15) years of service at age sixty-two (62) without penalty.

The parties agree to direct their representative trustees to insturct Plans Actuary to base the calculations upon a minium funding basis of twenty five (25) years.

Recommendation: As I read the parties' Plan, it cannot be changed absent mutual agreement. ITP has explained that "any changes to the pension plan . . . must be approved by members of the Union." (Brief, p. 46). Therefore, in the reasoning that follows I will attempt – as a neutral outsider – to invite the parties to weigh the pros and cons of any changes in the current Plan. My purpose is to encourage the parties to carefully consider the most beneficial pension for employees with an eye to the long term financial condition of ITP. A pension which becomes too expensive can tilt a budget to the prejudice of active employees and the public.

Reasoning: In the subsections that follow, I am addressing (A) the parties' pension plan, (B) the parties' most recent actuarial report, (C) projected costs, (D) comparable employers, and (E) conclusions.

A. The Plan

For many years the Union and ITP have maintained a defined benefit plan titled the Interurban Transit Partnership and Amalgamated Transit Union Pension Plan. (E-65). The Plan began in 1946.

Key excerpts from the Plan include the following:

- 2.34: ITP Interurban Transit Partnership is the Plan Sponsor.
- 14.1: The Plan forbids participant contributions.
- 14.3: "The benefits of the Plan shall be provided from the assets of the Trust Fund. There shall be no liability or obligation on the part of Employer to make any further contribution to Trustee in the event of termination of the Plan at any time.
- 16.1: The Plan Sponsor unilaterally can amend the Plan only "in order to maintain the status of the Plan as a Qualified Plan."
- 16.3: "The Plan shall terminate when the Collective Bargaining Agreement expires and is not renewed, or upon mutual agreement between Employer and the Union."
- 16.3 [continued]: "If the Plan is terminated, the Accrued Benefit of each Particpant as of the date of termination shall be fully vested and nonforfeitable to the extent funded."
- 16.4: "Upon partial termination of the Plan, Trustee shall account for separately, on behalf of the Participants with respect to whom the Plan has been

terminated, the proportionate interest of such Participants in the Trust Fund. The proportionate interest shall be determined by the Actuary, on the basis of contributions made under the Plan and such assumptions as are determined reasonable by the Actuary and are approved by the Plan Administrator."

The parties' current CBA supplements the Plan by providing for employer contributions of $1.00 per each hour worked per employee effective June 20, 2014, pension eligibility with 15 years of service at age 62, and a 25 year actuarial period for ITP's minimum pension funding. (E-2, pp. 33-34).

B. The current actuarial valuation report

On December 8, 2014, the Plan's actuary published "an actuarial valuation report for your defined benefit pension plan for the year ending June 30, 2015." (Ex-66).

The actuarial report at page 3 includes summaries which include the following:

ONGOING VALUATION (CONTRIBUTIONS)

	2012-2013	2013-2014	2014-2015
Actuarial liability	$ 8,258,189	$ 8,977,259	$ 10,054,540
Unfunded actuarial liability [UAL]	2,176,515	2,309,934	2,662,973
[*UAL stated as a percentage*	*26.4%*	*25.7%*	*26.5%*]

ACCRUED BENEFIT VALUATION (FUNDED STATUS – TERMINATION)

Value of vested benefits	$ 11,883,935	$ 12,953,430	$ 14,031,841
Value of all accrued benefits	12,306,747	13,216,457	14,440,997
Market value of assets	5,697,925	6,456,024	7,476,399
Accrued benefit funded ratio	46.3%	48.8%	51.8%

PARTICIPANT DATA

Number of participants:

Active	231	264	264
Terminated vested and transferred	85	91	95
Retired and beneficiaries	72	77	85
Total	388	432	444

The report also contains an expected employer contribution of $549,120 for the period July 1, 2014 through June 30, 2015, *i.e.*, $1.00 per hour for 264 active participants working 40 hours per week for 52 weeks. (*Id*. p. 4). The report adds that "[l]ast year's actual contribution was $578,632, indicating more hours worked than expected." (*Id*).

In reviewing the health of a defined benefit plan what finaly matters "is whether current assets and future anticipated contributions are sufficient to pay benefits when due." (*Id*, p. 5)).

In reliance on the parties' CBAs, the actuarily report (*id* at p. 9) shows:

Employer contribution rates

Effective	Rate/Hour per Employee
07/01/2009	$ .80
07/01/2010	$ .85
07/01/2011	$ .90
07/01/2012	$ .95
07/01/2013	$1.00

Between Plan years beginning on July 1, 2000 and July 1, 2014, both benefit payments and Employer contributions have tripled. (*Id* at p. 21). For each of these years, Employer contributions have exceeded benefit payments. (*Id*). For these years, the average actuarial rate of return has been 5.63% and has fluctuated between negative 10.7% (July 1, 2008) and positive 21.1% (July 1, 2010). (*Id*).

(C). Costs of the parties' pension proposals

Employer Exhibit 68 projects the costs of the parties' proposals for three years.

ITP's 5% contribution on total compensation: **$2,033,925.**

The Union's proposals of $1.00, $1.10 and $1.20 hourly contributions**: $1,732,104.**

Per these projections, ITP's proposal is higher by: **$301,821**.

In addition, under the first of its two proposals -- to terminate the Plan and replace it with a Section 457 defined contribution plan -- ITP has proposed to convert the actuarial value of any existing benefits into a payment in the 457 plan. Exhibit 67 shows the amounts to be transferred to each employee's DC account. The amounts are as high as $219,000.

(D). Comparable employers

Exhibit 64 shows the types of pensions of comparable employees. Ann Arbor has a defined contribution plan ("DC Plan") in 2015 with employees required to contribute 5% of eligible earnings and the employer contributing 9% of earnings. Flint has a DC Plan with both the employer and the employee contributing 4% of wages. MV has a 401(k) Plan under the ATU National 401(k) Pension Fund Agreement and Declaration of Trust.

Lansing has a defined benefit plan ("DB Plan") which requires employees to match employer contributions, as of December 2013 each contributing $83.50 per week. Kalamazoo has a DB Plan with employee contributions.

The DB Plan in the present case forbids employee contributions.

A DC Plan would not render ITP uncompetitive among comparable employers.

(E). Conclusions

Even for minimum funding, the Plan is getting more and more expensive for ITP, with the result that money is less available for other kinds of employee compensation. The Union's proposal is for a 20% increase in ITP funding by year three of the new CBA, *i.e.*, from $1.00 per hour to $1.20 per hour. (As recently as 2009, ITP's contribution was $0.80 per hour: $1.20 per hour would represent a 50% increase.)

Even with minimum funding, ITP's contributions have steadily increased in large amounts in recent years.

Despite these increased contributions, the parties' actuary has explained that the Plan's unfunded accrued liability for 2014-2015 is $2,662,973. This is a substantial increase in unfunded liability over 2012-2013 ($2,176.515) and 2013-2014 ($2,309,934). These numbers represent a substantial negative trend.

Stated as a percentage, in recent years despite increased ITP contributions the Plan's unfunded accrued liability has been 26% of the actuary's computation of the Plan's liabilities. This is an alarming percentage.

Despite the above, the Plan is not especially lucrative. The retirement benefit is $34 a month per year of service. At the hearing, Mr. Pouget gave the following example: A 30 year employee would receive a $1,020 monthly benefit.

The Plan is not portable and precludes any employee contributions to increase the monthly retirement benefit.

ITP's proposal includes immediate vesting and portability and allows – but does not require – employees to make contributions to the DC Plan in order to increase the value of their DC Plan.

ITP's first option (terminating DB Plan) includes a conversion of the actuarial value of employee's benefits under the DB Plan. Exhibit 67 shows the amounts to be transferred to each employee's DC account. The amounts are as high as $219,000.

ITP's second option (freezing DB Plan) does not expressly address additional funding of the frozen DB Plan. Without additional funding it would eventually become insolvent.

ITP's proposals in the short run will cost ITP more than if the status quo were maintained. The benefit to ITP is assurance of what its pension liability will be over time, *e.g.*, 5% of total compensation (although the percentage would be subject to bargaining).

As a general matter, a DB Plan places the risk of investment performance on the employer whereas under a DC Plan the employee bears the risk of investment performance.

ISSUE: **Appendix A (Policy Manual) (E-69).**

ITP proposes to introduce the following new preamble to Appendix A:

> Although the Authority is expressly authorized by the Union to issue discipline [in] accordance with the penalties described herein, the disciplinary steps provided in this Appendix are meant as guidelines only. For example, where the Authority believes the circumstances dictate a lesser discipline, the Authority may issue discipline at a level less than that detailed in this policy.

The Union's counter-proposal is:

> The parties recognize the disciplinary steps provided in this Appendix are meant as guidelines only. ~~For example, where the Authority believes the circumstances dictate a lesser discipline, the Authority may issue discipline at a level less than that detailed in this policy~~. Consistent with commonly accepted precepts of just cause, a particular violation may warrant a lesser penalty based on the entirety of the circumstances surrounding the rule violation or misconduct and employee's work record.

Recommendation: I recommend that the preamble to Appendix A read as follows:

> The Authority and the Union agree to the terms of this Appendix with the understanding that each disciplinary penalty is a guide which may be reduced by ITP if the employee's violation of a rule merits a lesser discipline.

Reasoning: Section 3.01 of the parties' current CBA sets forth management rights, which include the following:

> 7. The right to make and enforce reasonable policies and procedures:
>
> 8. The right to discipline and discharge for just cause.

Section 4.01 B defines a disciplinary grievance to be:

> Any controversy between the Authority and the Union as to whether or not any employee disciplined, suspended or discharged for violation of any rule of the Authority is guilty of such violation.

Appendix A: Conduct and Discipline (E-70) describes 41 offenses: 21 are subject to progressive discipline and 20 list discharge for a first offense. ITP explains that Appendix A "is a negotiated set of work rules." (Brief, p. 49).

Appendix A is a responsible effort by the parties to put employees on notice of what is expected of them. T. ST. ANTOINE, THE COMMON LAW OF THE WORK-PLACE, 2nd Edition (BNA Books 2005) – a major treatise on labor arbitration -- explains at pages 213-214:

§6.17 Notice of Consequences

An employee is entitled to be informed of, or to have a sound basis for understanding, the disciplinary consequences that will result from violating policies or work rules in effect at the employee's place of employment.

Comment:

a. This proposition is similar to the right to notice and opportunity to be heard before discipline is imposed for a specific offense (*see* § 6.13, above). In general, arbitrators believe that employees are entitled to know what is expected of them in the workplace, and conversely, to know what action will befall them in the event they violate an employment policy or work rule. This employee awareness often comes from collective bargaining contract provisions and from published or posted work rules and procedures. Some offenses are sufficiently serious, however, that as a matter of common sense and common understanding employees will be held to know the consequences of committing them..

ITP argues that under its proposal it "has the right to issue penalties in accordance with the penalties described in Appendix A while recognizing that circumstances may exist that dictate a lesser discipline." (Brief, p. 49). If what ITP is claiming is a management right -- unreviewable by an arbitrator – to impose the penalty set forth in Appendix A solely on the basis that an employee in fact violated the rule while retaining unreviewable discretion to lessen the penalty prescribed in Appendix A, stronger language would be required to this end because the core of both parties' proposals is that "the disciplinary steps provided in this Appendix are meant as guidelines only."

ITP also argues that without its proposed language, "the Union will challenge the ITP's failure to mitigate penalties in two grievances over the past term of the Agreement." (Brief, p. 50).

THE COMMON LAW OF THE WORKPLACE, above, addresses "procedural rights" at pages 171-173:

> **§6.2 Procedural Rights**
>
> **The just cause principle entitles employees to due process, equal protection, and individualized consideration of specific mitigating and aggravating factors.**
>
> . . .
>
> *b. Mitigating Factors*. Mitigating factors include an employee's seniority, good work record, good faith, the absence of serious harm from the employee's conduct, and, in appropriate cases, the presence of provocation or misrepresentation leading to an employee's misconduct.
>
> . . .
>
> *c. Aggravating Factors*. Aggravating factors include such things as the seriousness, willfulness, or repetition of the employee's misconduct and the presence of serious harm stemming from the misconduct.

These factors are part of "just cause." However, because the parties' have agreed to be guided by the penalties set forth in Appendix A, mitigating and aggravating factors where an employee in fact has violated a rule will not swallow the prescribed penalty. Guidelines are principles of guidance.

All I am saying is that an employee's "procedural rights" should not be left to the unreviewable discretion of ITP. Although severely inhibited by the parties' agreed upon penalties, an arbitrator would not be completely barred from considering "procedural rights" where an abuse of same is proved.

Respectfully submitted,

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