

**MICHIGAN DEPARTMENT OF LICENSING  
AND REGULATORY AFFIARS**

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

**BUREAU OF EMPLOYMENT RELATIONS**

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CAPITAL AREA TRANSPORTATION AUTHORITY,

Petitioner, Public Employer,

-and-

AMALGAMATED TRANSIT UNION LOCAL 1039,

Respondent, Labor Organization,

MERC CASE NO.: 20-A-0155-CB

**FACT FINDER'S REPORT**

Pursuant to Michigan the Michigan Labor Mediation Act (PA 176 of 1939, as amended)  
[MCL 423.1, *et seq*] and

Public Employment Relations Act (PA 336 of 1947, as amended)  
[MCL 423.201, *et seq*]

Fact Finder  
Kenneth W. Zatkoff

Advocates  
: Grant T. Pecor, attorney for Employer  
Taylor E. Muzzy, attorney for Union

PETITION FILED: June 26, 2020

FACT FINDER APPOINTED: August 4, 2020

SCHEDULING CONFERENCE HELD: August 19, 2020

HEARING DATE(S): October 28 and 29, 2020

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**WITNESS LIST**

Bard Funkhouser – CEO Capital Area Transportation Authority (“CATA”)  
Andrew Brieschcke – Deputy CEO CATA  
Steve Soliz – President, Local Union  
Roger Garza – Director Operations CATA  
Todd Brooks – Operations Manager CATA  
D. Hodges

## I. INTRODUCTION AND BACKGROUND

Capital Area Transportation Authority (hereinafter “CATA”) provides bus service to the following cities and townships: Lansing, East Lansing, Delhi Twp., Lansing Twp. and Meridian Twp. CATA also has a major service contract with Michigan State University and Ingham County. CATA’s funding is comprised of bus fares, a 3.007 millage and state and federal assistance. CATA’s employees are represented by the Amalgamated Transit Union, Local 1039 (hereinafter “Union” or “Local 1039”). Local 1039 is the exclusive representative “for all skilled laborers of the Authority, i.e., bus operators, mechanics, mechanic helpers and utility that are not excluded as supervisors by the provisions of the Labor Management Relations Act of 1947.”

The parties’ collective bargaining agreement expired on November 30, 2019. Despite extensive negotiations and mediation, the parties were unable to agree upon a successor contract. Consequently, on June 26, 2020 CATA filed a petition for fact finding.

Kenneth W. Zatkoff was appointed as Fact Finder by the Michigan Employment Relations Commission pursuant to Public Act 176 of 1939, as amended [MCL 423.1, *et seq.*]. A scheduling conference was conducted by phone on August 19, 2020 wherein all outstanding issues were identified and a hearing was scheduled for October 28 and 29, 2020. At the hearing, the parties submitted over 300 pages of joint exhibits. The combined exhibits of the parties exceeds a thousand pages of information. Comprehensive post-hearing briefs were submitted to the Fact Finder on December 18, 2020. The briefs, testimony and evidence have been given careful consideration.

## II. STATUTORY CRITERIA

Fact finding reports are governed by the Michigan Labor Mediation Act – PA 176 of 1939, as amended [MCL 423.1, *et seq*] and the Public Employment Relations Act (PA 336 of 1947, as amended [MCL 423.201, *et seq*]. Neither of these statutes provides guidance on the criteria or factors to be utilized by a fact finder in making a recommendation. However, many fact finders routinely find guidance in the statutory criteria set forth for Act 312 arbitrations.

Because CATA receives federal funds, it is subject to Section 13(c) of the Urban Mass Transportation Act (49 USC 5333(b)). Section 13(c) requires that CATA and the Union enter into short term (“bridge”) agreements on the same terms and conditions as the expired collective bargaining agreement during the pendency of negotiations, mediation and act finding. The current bridge agreement is scheduled to expire 2/28/2021. Pursuant to the dispute resolution procedures in the parties’ 13(c) Agreement, fact finders are required to take into consideration the following factors:

1. The stipulations of the parties;
2. The financial condition of the transit system, the ability of the recipient to administer and finance the existing system and the issues proposed and the interest and welfare of the public;
3. The comparison of the wages, hours, and terms and conditions of employment of the recipient’s employees with those of other public and private employees doing comparable work, giving consideration to factors peculiar to the community or areas or classifications involved;
4. The overall compensation presently received by the recipients, employees, including wages, hours, and terms and conditions of employment, and all medical, insurance, pension, and fringe benefits received;
5. Collective bargaining agreements between the parties;
6. The adverse consumer prices for goods and services; commonly known as the cost of living; and such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the

determination of wages, hours and conditions of employment through collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment.

### **III. STIPULATIONS AND PRELIMINARY RULINGS**

- The parties stipulate that they have reached tentative agreements on a number of items including some that were listed in the Fact Finding Petition.
- The parties stipulated to twelve (12) joint exhibits.
- The parties stipulated to the jurisdiction of the Fact Finder.
- The parties stipulate that with the exception of the issues before the Fact Finder, all other terms for a new collective bargaining agreement have been resolved.
- The parties stipulated to the comparable employers to be considered by the Fact Finder in this proceeding.

### **IV. COMPARABLES**

The following comparables have been stipulated to:

- Ann Arbor Transportation Authority (Ann Arbor)
- Mass Transportation Authority (Flint)
- Interurban Transit Partnership (Grand Rapids)
- Central County Transportation Authority (Kalamazoo)

### **V. ISSUES BEFORE THE FACT FINDER**

#### **1. FMLA**

##### **A. Update contractual language to incorporate amendments to FMLA Act.**

Both parties agree that the collective bargaining agreement needs to be updated to include 2008 amendments to the Family Medical Leave Act. These amendments address circumstances where a qualifying FMLA leave can be consolidated when spouses both work for the same employer. While the parties have agreed to amend the Contract, they disagree over the language to be incorporated into the Contract. The Employer has proposed language that the Union argues

is over broad and could be interpreted to consolidate leaves not contemplated by the 2008 amendments. The Union maintains its proposed language should be adopted because it closely follows the directive of the Department of Labor Wage and Hour Division's guidance. In particular, fact sheet #28L. (Employer Exhibit 30).

Fact sheet #28L provides that leave for spouses may be combined under the following circumstances:

- Birth of a son or daughter and bonding with the newborn child;
- The placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child; and
- The care of a parent with a serious health condition.

Eligible spouses who work for the same employer are also limited to a combined total of 26 work weeks of leave in a single twelve (12) month period to care for a covered service member with a serious injury or illness (commonly referred to as "military caregiver leave") if each spouse is a parent, spouse, son or daughter, or next of kin of the service member.

The Department of Labor's guidance goes on to identify which FMLA-qualifying leave reasons are not subject to the combined limitation. I find that the contractual language proposed by both parties captures the spirit and intent of the 2008 amendments to the Act. I also find that the Department of Labor's guidance would be controlling in the event either party sought to expand the scope of their proposed language beyond the parameters set by the D.O.L. I see no reason to split hairs over whose language should be incorporated into the Contract when the Department of Labor has already provided clear and concise language on this issue.

**RECOMMENDATION:** I recommend that language be incorporated into the collective bargaining agreement that mirrors to the fullest extent possible the language of the Department of Labor’s fact sheet #28L (Employer Exhibit 30).

**B. Paid time off to run concurrently with FMLA.**

CATA is proposing that the collective bargaining agreement be amended to require employees to use all available paid time off concurrently with FMLA leave. The Union opposes this change. Currently, employees have the discretion to utilize their paid time off concurrently with their FMLA leave. CATA maintains that its proposed change is consistent with the Act and will avoid situations that could result in unnecessary overtime. CATA further believes that its proposal is consistent with the collective bargaining agreements of the agreed upon comparable employers. In particular, Grand Rapids (“ITP”) has contract language that expressly requires employees to utilize all but five (5) days of their available paid time off concurrently with FMLA leave. Flint’s Mass Transportation Authority provides bargaining unit employees with a separate sick leave benefit that runs concurrently with their FMLA benefits. The Ann Arbor Transportation Authority contract has no language requiring the mandatory use of paid time off concurrently with FMLA leave. Likewise, Kalamazoo’s Central County Transportation Authority contract does not mandate the use of paid time off in connection with FMLA leave. Internally, CATA’s administrative employees “may” be required to utilize vacations, floating holidays and other paid time off benefits to cover leave time. (See Administrative Employee Handbook - Employer–Exhibit 3).

CATA’s motivation for the proposed change is to avoid unnecessary overtime and to earn back the public’s trust which has been lost by the excessive amounts of overtime paid in years past. Requiring employees to use available paid leave concurrently with FMLA accomplishes

two goals. First it reduces costs by only having to replace an employee once instead of once for unpaid FMLA and a second time for paid vacation. Second, it reduces the likelihood of unnecessary overtime. The Union argues that it is fundamentally unfair for an employee to be off for an FMLA-qualifying reason only to return to work and have no vacation or floating holidays available. In essence, the Employer seeks to punish employees for being sick or for taking time off to care for a loved one. Simply stated, FMLA is not a vacation.

While it may be reasonable to have employees utilize at least some portions of their paid time off concurrently with FMLA leave, I am unable to make that recommendation in this case. There is insufficient support for the Employer's proposal based upon the stipulated comparable employers. Likewise, there is no support internally. CATA's handbook for administrative employees does not mandate the use of available paid time off concurrently with FMLA leave. In fact, there is no evidence in the record to suggest that any non-bargaining unit employee has ever been required to use paid time off concurrently with FMLA.

**RECOMMENDATION:** Based upon the testimony, evidence, and relevant factors, I recommend the existing contract language be retained.

## **2. ATTENDANCE BONUS.**

Currently, the parties' collective bargaining agreement permits an employee to earn an attendance bonus under the following conditions:

- If an employee misses no shifts in a month - \$125.00 bonus for full-time and \$75.00 for part-time for that month.
- If an employee misses only one shift in a month - \$75.00 bonus for full-time and \$50.00 for part-time for that month.

- If an employee misses only two shifts in a month = \$50.00 bonus for full-time and \$25.00 for part-time for that month.
- If an employee has missed three or more regularly scheduled work shifts during any given month, the employee will earn no bonus for that month.
- Any employee who demonstrates perfect attendance for the contract year will earn an additional \$500.00 bonus for full-time and a \$300.00 bonus for part-time.

Additionally, any employee who is on approved vacation, paid funeral leave, union business, paid military leave, paid national or floating holidays, jury duty, FMLA leave (if not covered by disability benefits) or personal leave of absence shall have those days counted as days worked for purposes of bonus pay. Furthermore, if an employee is excused by management for additional funeral leave those days also count as days worked. Finally, the Contract provides that if an employee arranges to be absent or is otherwise absent for any portion of his regularly scheduled work shift and subsequently works eight (8) or more hours on that day, that employee will not be penalized for bonus pay eligibility.

CATA is proposing two (2) amendments to the collective bargaining agreement. First, CATA seeks to eliminate the attendance bonus for full and part-time employees who miss two (2) regularly scheduled work shifts during any given month. Attendance bonuses for missing one scheduled work shift during any given month and perfect attendance for the Contract year will remain intact. Second, CATA proposes to limit the types of absences that count toward the bonus to those where an employee gives advance notice of the need for time off (paid or otherwise) and is approved for time off prior to the activation of the board (work schedule) for that specific day.

The Union proposes to retain the current language with the exception of eliminating FMLA leave from the list of absences that count as days worked. The Union also seeks to add a new provision which would credit bargaining unit employees with an annual forty (40) hour sick bank to be used in increments of one (1) to eight (8) hours per day.

CATA asserts that, as a service provider, operator attendance is crucial. When employees miss scheduled work it not only impacts CATA's operations, it impacts employee morale by forcing people to cover someone else's work. Additionally, having to replace employees because of unscheduled absences disrupts the availability of manpower and inevitably creates overtime. CATA maintains that the attendance bonus program in its current form encourages absenteeism as demonstrated by Employer Exhibits 32 and 33. Operations Manager Todd Brooks testified that one operator had one hundred five (105) FMLA occurrences in 2019 and still received an attendance bonus of \$1,400.00. Another bus operator with three hundred ten (310) FMLA occurrences received a bonus of \$1,250.00. Mr. Brooks further testified that absence occurrences for bus operators continues to spiral upward year over year. In 2017 there were approximately 10,668 absence occurrences. In 2018 there were 11,691 absence occurrences and for the first 9 months of 2019, there were 8,313 absence occurrences. (See Employer Exhibit 32). Mr. Brooks testified that paying employees an attendance bonus for not showing up to work coupled with the disruption of manpower and resulting overtime contradicts CATA's mission to provide efficient and economical service to the riding public.

From a comparability standpoint, CATA is the only employer that provides an economic incentive to employees who fail to report for scheduled work. Grand Rapids (ITP) has no economic incentive for attendance. Flint's Mass Transportation Authority provides an economic incentive based on perfect attendance, i.e. no unscheduled absences whatsoever. The Ann Arbor

Transportation Authority has no contractual attendance incentive. Finally, Kalamazoo's Central County Transportation Authority provides a \$3,000 quarterly incentive that is divided among those employees who had no unscheduled absences in that quarter.

CATA believes its proposal will have a direct impact on its efforts to reduce overtime. Requiring employees to provide advance notice will afford CATA the ability to find non-overtime options to fill an open shift. CATA argues that by limiting the bonus to those with perfect attendance or a single missed shift in a month there will be greater incentive for employees to show up for the work they agreed to perform.

The Union notes that with the exception of vacation or absences with a doctor's note, FMLA absences account for the greatest number of days missed. For this reason, it proposes to delete FMLA leave from the list of absences that count toward perfect attendance. The Union believes that this change addresses the main issue raised by CATA. The Union further maintains that requiring approval of an absence prior to board activation could encourage CATA to deny employee's requests for time off in order to deny employees a perfect attendance bonus. The Union also maintains that there are numerous unforeseen circumstances where employees should not be penalized for missing work. Such as a car accident, sudden death of a family member or sudden Union business. The Union believes it is fundamentally unfair to penalize an employee for circumstances clearly beyond their control. The Union argues that eliminating FMLA leave from the list of absences that count towards the bonus will solve CATA's problem. The Union further argues that CATA has not established a compelling need to carve out any other types of absences from the perfect attendance bonus.

Both parties have proposed to eliminate FMLA leave from the list of absences that count for purposes of perfect attendance. I consider that deletion to have been stipulated to by the parties. As for the remainder of the parties' proposals, the testimony and evidence presented on this issue supports a recommendation that CATA's proposal be adopted. The proposed language is supported by the comparables and will more than likely improve operational efficiencies which will hopefully eliminate unnecessary overtime costs. At the end of the day this is a bonus for showing up to work as scheduled. Paying bonuses to employees who don't show up for work is not supported by the record.

**RECOMMENDATION:** I recommend the Employer's proposal be adopted.

**3. BUS ASSIGNMENTS.**

Article V, Section 2(c) of the parties' collective bargaining agreement provides in pertinent part as follows:

Bus assignments will be made daily at the beginning of each bid, full-time straight run, and will remain in effect for the day so that the same bus will be assigned to the operator before and after lunch relief...

CATA is proposing that the requirement to maintain the same bus for the entire day be deleted from the collective bargaining agreement. CATA's Director of Operations, Roger Garza, testified that keeping an operator in the same bus throughout the day creates significant operational challenges for the Employer. Specifically, it prohibits CATA from becoming creative and efficient when it comes to piecing together an operator's daily work. Furthermore, it limits CATA's ability to put out the best quality service to its passengers. From a manpower standpoint CATA has been required to create at least five (5) or six (6) runs solely for the purpose of providing lunch relief for other operators. But for the current restriction, those five (5) or six (6) operators could be assigned to more efficient routes that would improve service to

the riding public. Mr. Garza testified that requiring a driver to remain in the same bus before and after lunch results in lost productivity. An operator may take a 30 minute lunch and have to wait as much as an hour for their assigned bus to return. Not to mention lunch relief operators spending a significant amount of time waiting around and being non-productive.

Operations Manager, Todd Brooks, testified that eliminating bus assignments would not only allow CATA to provide more efficient service, it could lead to additional service for the public. Mr. Brooks stated that there is no reason for operators to retain the same bus throughout the day. Every operator is trained on all of CATA's equipment. Furthermore, operators start every shift within a different bus.

CATA maintains that the current process is costly and inefficient. Additionally, there is no support for retaining the same bus among the comparable employers. In fact, not a single comparable employer has agreed to anything similar. CATA believes that the elimination of this restriction will allow it to be more creative and to build better and more efficient routes. It would also free up additional drivers for additional routes.

The Local Union opposes any change to the collective bargaining agreement. Union President Steve Soliz testified that requiring bus operators to change buses in the middle of their day raises serious safety concerns. Mr. Soliz testified that different buses steer and break differently and that it is safest for an operator to be behind the wheel of the same bus for the entire day. Mr. Soliz further testified that if the disputed language is deleted from the collective bargaining agreement CATA might get "creative" with runs in a way that could adversely impact operators' current method of operation. Nevertheless, in response to CATA's demands, the Union is willing to eliminate bus assignments for an existing route (Route 1) and any future regional transportation service that CATA may develop.

Mr. Garza testified that requiring operators to maintain the same bus throughout the day is not industry practice. This testimony was unrefuted by the Union. Also unrefuted is the fact that there is no support for the current language among the agreed upon comparables. The Union's primary objection to the proposed language change is based on safety concerns which are not supported by the record. Testimony revealed that each operator is trained on every piece of CATA's equipment. Every bus undergoes a safety inspection every day before it leaves the bus terminal. Bus operators already drive a different bus each day. In fact, lunch relief operators might drive several different buses throughout a day. Finally, the Union's willingness to eliminate bus assignments for an existing route and for any future transportation service that CATA may develop undercuts the Union's safety argument. Likewise, there is no evidence to support the Union's apprehension that CATA's desire to be more creative and efficient will adversely impact operators.

**RECOMMENDATION:** Other than speculation, I find no evidence that the safety of operators will be jeopardized by the elimination of the bus assignment language. Therefore, considering all relevant factors, I recommend that CATA's proposal to eliminate bus assignments be adopted.

#### **4. PREMIUM PAY.**

The parties have reached an understanding/agreement on several outstanding premium pay issues. The Union's post-hearing brief reflects an agreement on the following:

- Employees assigned to work on Saturday and Sunday shall have two (2) consecutive days off – Union agrees.
- Reduce the number of overtime lists from twelve (12) to two (2) (part-time and full-time), with each list to be rotated one spot per day – Union agrees.

- Overtime scheduling – Union agrees.
- Require eight (8) hours rest period – Union agrees.

The Union also agrees to much of CATA’s overtime restrictions and limits including the following:

- Operators accepting overtime will complete both their bid runs and overtime assignments.
- Eight (8) hours off between days of work.
- Operators will not be assigned to protection on a day when the operator is scheduled for a bid run.
- Operators working protection will be available for overtime prior to the protection assignment.

The remaining issues in dispute are as follows:

**A. Overtime.**

The current collective bargaining agreement sets the standard work week for full-time employees at five (5) days within any seven (7) day period, Monday through Sunday. Bargaining unit employees are guaranteed eight (8) hours pay for each regularly scheduled work day and are paid overtime at the rate of time and one-half for all hours worked in excess of eight hours in any work day and for all hours over forty (40) in any work week. Additionally, employees are paid time and one-half for work performed on the sixth (6<sup>th</sup>) day and double time for work performed on the seventh (7<sup>th</sup>) day.

As part of its ongoing effort to control overtime costs, CATA is proposing to eliminate overtime premiums for working more than eight (8) hours in a day and for working on the sixth (6<sup>th</sup>) and/or seventh (7<sup>th</sup>) day of a work week. Instead, CATA proposes a conversion to the more

traditional FLSA standard formula of paying time and one-half for all hours worked over forty (40) hours in a seven (7) day work week. CATA also proposes that the following types of paid days off during a work week be considered as eight (8) hours worked for purposes of overtime: approved vacation, floating holidays, national holidays, jury duty and paid military leave.

The record suggests that there have been instances where employees have received time and one-half and/or double time on a sixth (6<sup>th</sup>) or seventh (7<sup>th</sup>) day of the work week even though they received less than forty (40) hours compensation during their regularly scheduled five (5) days. During the course of the hearing there was much debate about how overtime has been or should be paid. CATA seeks to streamline the process by paying time and one-half for all hours worked after forty (40) in a work week. Additionally, certain compensated days off during the work week would count as eight (8) hours worked for purposes of the forty (40) hour threshold. CATA maintains that not only is its proposal supported by the comparables, internally its unrepresented staff already receives overtime compensation based on a forty (40) hour standard. CATA maintains that the proposed changes are necessary to control overtime expenses and to address the public's negative perception of CATA regarding overtime cost.

The Union is opposed to any change in the long-standing overtime provisions set forth in the collective bargaining agreement. It maintains that there is insufficient evidence to conclude CATA's proposed changes will make a difference in its overtime cost. Nevertheless, in an attempt to resolve some of the confusion, the Union proposes that seventh (7<sup>th</sup>) day overtime be added to the sixth (6<sup>th</sup>) day provisions of Article IV, Section 3, to make clear that an employee who is absent during the work week is not eligible for seventh (7<sup>th</sup>) day overtime. The Union's proposed language would also prevent employees from being off on unpaid leave (such as FMLA leave) and receiving double time for working on the seventh (7<sup>th</sup>) day of a week.

In a further attempt to clarify the language, the Union proposes that the current language be amended to provide that the following absences be considered as days worked for purposes of overtime: jury duty, floating holidays, paid national holidays, paid sick leave, vacation, union business, and funeral leave. CATA is opposed to paid sick leave, union business or funeral leave as those paid days off normally don't become known until after the board is activated and will more than likely result in having to replace an operator on overtime.

It is clear that the obligation to pay time and one-half after eight (8) hours in any work day has existed in the collective bargaining agreement for quite some time. I find no justification in the record or among the comparables to change the status quo.

**RECOMMENDATION:** I recommend that the current language requiring time and one-half after eight (8) hours in any work day and for all hours over forty (40) in any work week be maintained.

With regard to sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) day overtime and which days should be considered as days worked for purposes of overtime, both parties acknowledge that an employee who has an uncompensated day off during their normal work week should not be entitled to overtime premiums on the sixth (6<sup>th</sup>) or seventh (7<sup>th</sup>) day of the week until after they have accomplished a fifth (5<sup>th</sup>) day worked. In that regard, I recommend that the parties consider the following language:

All work performed on the sixth (6<sup>th</sup>) day worked within a work week shall be paid at one and one-half (1-½ times the applicable hourly rate. All work performed on the seventh (7<sup>th</sup>) day worked within a work week shall be paid at two (2) times the applicable hourly rate. The following compensable days shall be considered days worked for purposes of this provision: approved vacation, floating holidays, national holidays, jury duty and paid military leave. Paid

sick leave, union business or funeral leave shall be considered as days worked provided the absence is finalized before activation of the board for each operational day.

**5. EXTRA WORK DISTRIBUTION.**

The parties are in dispute over two (2) issues. First is a safe driving limit. The Employer is proposing a safe driving limit equal to thirteen (13) hours pay. The Union proposes a fourteen (14) hour limit. The second issue is spread time (the total amount of time allowed between when an operator starts his day and ends his day). CATA is proposing a spread time of eighteen (18) hours. The Union proposes a spread time of sixteen (16) hours.

Pursuant to a Memorandum of Agreement, the maximum work time for an operator in a single day is sixteen (16) hours. Spread time is currently set at twenty (20) hours. (See Employer Exhibit 37 and Union Exhibit 43). During the course of the hearing, Union President, Steve Soliz, testified that for some time now the Employer has limited safe driving to thirteen (13) hours pay. The Union seeks an increase to fourteen (14) hours. This difference will have an impact on available overtime assignments. According to the Union, the shorter the safe driving limit, the less overtime opportunities for an operator. This in turn results in more operators being assigned shorter pieces of overtime. Additionally, the shorter safe driving limit will exacerbate CATA's manpower issue by forcing part-time operators to work overtime. The Union maintains that a slightly longer limit will create more volunteers for overtime and will distribute the overtime work among those who want it rather than forcing work on those who don't.

CATA maintains that the current thirteen (13) hour limit satisfies the operational needs of the Employer and does not deprive employees of overtime. CATA maintains that on average the work going to overtime is generally around five (5) hours in length. This extra time, when added to an operator's normal eight (8) hour work day equals thirteen (13) hours. CATA believes that

increasing the daily limit to fourteen (14) hours will only result in the payment of an additional hour of overtime which is exactly what CATA is trying to avoid.

As for spread time, CATA argues that the Union's proposal to limit spread time to sixteen (16) hours is too great of a reduction from the current twenty (20) hour limit. Capping the spread at sixteen (16) hours becomes highly problematic given that the extra work will likely involve a second split(s) of some sort between the operator's original assignment and the newly acquired piece of work. CATA maintains that a reduction to eighteen (18) hours will satisfy as operational needs and will benefit the operators.

The Union states that its proposed spread time of sixteen (16) hours is the equivalent of a double shift. It maintains that anything more than sixteen (16) hours is unreasonable. The Union believes that long spread times are extremely disruptive to an operator's quality of life. CATA's proposal of eighteen (18) hours falls short of addressing that issue.

**RECOMMENDATION:** I recommend that the Employer's proposal for a thirteen (13) hour pay limit and eighteen (18) hour spread time be adopted. This recommendation is supported by the testimony, exhibits, the agreed upon comparable employers and relevant factors.

**6. EXTRA BOARD.**

**A. AM/PM Extra Board.**

The parties' dispute with regard to the extra board falls into two general categories. First is the issue of whether or not CATA is able to bundle work for distribution to operators assigned to the extra board. The second issue deals with whether or not CATA must dedicate a specific percentage of Monday through Friday assignments to the extra board when MSU is not in session. CATA seeks to bundle work and is opposed to any restrictions on Monday through Friday assignments. CATA maintains that its proposals will result in a far more efficient

operation and will curb its overtime expenses. The Union strongly disagrees. It argues that many of the changes proposed by the Employer will substantially impact the operators' seniority rights and their overall quality of life. For this reason the Union is proposing that during periods when MSU is not in service, sixty (60) percent of the extra board assignments must be Monday through Friday in order to afford bargaining unit employees some semblance of a normal life by having weekends off. The Union maintains that assigning sixty (60%) percent of the extra board to Monday through Friday poses no problem for the Employer because of the larger number of staff assigned to the extra board when MSU is not in session.

CATA argues that the influx of additional drivers to the extra board is tempered by the number of employees who take vacations when MSU is not in session. Additionally, there are significantly more absences during the summer months when MSU is not in session. Testimony during the hearing revealed that CATA has already tried what the Union is proposing and it "failed miserably". By way of further response, CATA points out that the Union's proposal finds no support among the agreed upon comparable employers.

**RECOMMENDATION:** Considering all relevant factors, I find no support in the record or among the comparables for the Union's proposal. I recommend the following language proposed by the Employer be adopted.

**B. AM/PM EXTRA BOARD.**

During the summer months when CATA is not operating full Spartan service, the extra board will operate as an AM/PM extra board. At such time, the extra board will be split into two segments, defined as an "AM extra board" and a "PM extra board". Operators will have the opportunity to bid on both segments during the bid(s) for summer work but will only be awarded "AM" or "PM".

**B. Bundling of Work.**

The remaining issue between the parties concerns how the AM/PM extra board will operate. CATA maintains that its current work distribution practices are inefficient and creates unnecessary overtime. It seeks to modify the collective bargaining agreement to allow it to bundle smaller pieces of work to create a combined run of eight (8) hours or more. This would allow CATA to be significantly more efficient in the manner by which extra work is distributed to the bargaining unit. It will also result in less overtime expense. In support of this objective, CATA has proposed the implementation of twelve (12) new conditions for the operation of the extra board. The Union maintains that many of these conditions, if implemented, would give CATA unprecedented discretion to change the manner in which extra board work is created and assigned. Something the Union states it could never agree to. The Union further asserts that CATA's proposed changes will impact overtime opportunities; violate operator seniority, and have a significant impact on an operator's quality of life.

During the course of the hearing, the Union submitted, for the first time, new/revised proposals related to the extra board. The Employer objected to the lack of notice or the opportunity for the parties to meet and discuss the revised proposal prior to the commencement of this hearing. It is noted, however, that the Union's new/revised proposal was an attempt to move the parties closer together and not farther apart on the issues.

Both parties have detailed proposals addressing the operation of the extra board. Much of the Employer's proposal centers around its ability to bundle pieces of work to build more efficient loads and avoid overtime costs. The Union opposes the combining of work primarily "because it has no idea what those pieces of work will look like and the work could substantially change the operators' work lives. Thus, it does not wish to agree to any proposal involving run

grouping. Additionally, such grouping might run contrary to other provisions in the collective bargaining agreement.

I find no support in the record or among the comparable employers for the Union's opposition to run grouping. Grouping smaller pieces of work together to make a full day's work for an operator simply makes sense. Furthermore, allowing CATA to group pieces of work together will hopefully result in more efficient operation with less overtime. How the grouping is to be accomplished, I leave to the parties.

**RECOMMENDATION:** I recommend that the parties' language be amended to permit CATA to bundle work for distribution to operators assigned to the extra board. I further recommend that the parties agree on how the extra board will operate based upon this recommendation.

7. **VACATION PAY.**

Currently, vacation benefits are provided to bargaining unit employees based upon 1/52 of each employee's total straight time wages, overtime wages and vacation pay combined for the year ending on the anniversary date in which the employee qualifies for vacation. CATA argues that this process greatly inflates the vacation pay to bargaining unit employees. CATA proposes to amend the contract to be consistent with all of the agreed upon comparable employers. Specifically, bargaining unit employees should receive vacation pay based on forty (40) hours pay at their regular hourly rate. CATA also proposes to modify when vacations are paid. Currently, benefits are paid during the pay period following an individual's anniversary date. CATA proposes that vacation payments occur during the pay period in which the vacation occurs. Not only is this in line with the comparable employers, it will alleviate any cash flow issues caused by issuing checks that are in the thousands.

The Union is opposes any change to the parties' long-standing vacation provision. Reducing the vacation calculation to eight (8) hours a day will result in a significant reduction to employee compensation. The Union argues that there is no basis for eliminating this long-standing benefit. The parties have made significant operational changes which in the future should temper the amount of overtime bargaining unit employees receive. This in turn will result in reduced vacation benefits. The vacation language was negotiated and agreed to by the parties long ago. The Union maintains that there is no justification for the Employer's proposed change.

**RECOMMENDATION:** Considering the relevant factors and the record, I recommend that the current contract language be retained.

**8. INSURANCE.**

**A. Retiree Healthcare Benefits.**

CATA is proposing to eliminate retiree healthcare benefits for employees hired after December 1, 2019. The Union is willing to acknowledge the termination of retiree health insurance coverage for individuals hired after the ratification date if the Employer agrees to contribute Two Hundred Fifty (\$250) Dollars or five (5%) percent of employee's pay to a healthcare savings plan. CATA has rejected this offer. CATA has outstanding liability for other post-employment benefits ("OPEB") in excess of Forty Million (\$40,000,000) Dollars. As part of a corrective action plan CATA has committed to retire this debt by closing retiree health insurance to employees hired after December 1, 2019. The Union opposes this measure unless some sort of healthcare savings plan is implemented for employees hired after ratification.

**RECOMMENDATION:** I recommend that the Employer's proposal be adopted with the following modifications:

(D) Employees hired after the date of ratification are not eligible for retiree healthcare benefits under the CATA Plan.

**B. Dental Caps.**

The Union proposes the following: increase the dental maximum from \$1,000 to \$2,000; increase orthodontia lifetime benefit from \$1,200 to \$2,500; increase the lifetime maximum benefit from \$1,200 to \$2,500; and remove the dependent age limit of nineteen (19) years. The Union relies on the dental benefits provided by the comparable employers in support of its position. CATA opposes any change in existing dental benefits primarily because of increased costs. Additionally, the Union's demands are not supported by the comparable employers.

**RECOMMENDATION:** Based upon the testimony, evidence and relevant factors, I recommend that the current contractual language be retained.

**C. Employee Participation Fees**

Bargaining unit employees pay a weekly participation fee toward health insurance benefits. The parties have reached agreement with regard to employee participation fees for the 2021 – 2022 and 2022 - 2023 plan years. The 2023 – 2024 plan year is too far out for the parties to accurately establish what the weekly participation fee will be. CATA is proposing that in 2022 the parties meet to negotiate the participation fee for the 2023-2024 plan year. The Union is unwilling to agree as it presently proposes a two (2) year agreement. CATA is proposing a three (3) year agreement.

**RECOMMENDATION:** I recommend that the parties reopen negotiations in 2022 for the establishment of insurance participation fees covering the 2023-2024 plan year.

**D. ACA Reopener.**

Consistent with the recommendation set forth above, I recommend that the following language proposed by the Employer be adopted:

The parties agree that this Agreement may be reopened for the purposes of negotiating alternative insurance coverage (including plans or plan design) and premium contributions if utilization results in rate increases that impact the affordability of the current plans under the Affordable Care Act or compliance with Michigan's Public Act 152 of 2011.

**9. WAGES.**

CATA is proposing a three (3%) percent wage increase (1.5% utility) for 2021, 2022, and 2023. This represents an increase from the wage increases in the parties' previous agreement and in fact is the largest increase offered since approximately 2007. CATA is also proposing a ratification bonus of \$1,500 for full-time and \$750 for part-time employees. Additional bonuses of \$1,000 Dollars full-time and \$500 part-time are offered effective July 1, 2021 and July 1, 2022.

The Union proposes a two (2) year agreement (expiring 11/30/22) with four (4%) percent increases on 12/1/19, 12/1/20 and 12/1/22. The Union also proposes a bonus of \$2,500 full-time/\$1,250 part-time upon ratification and subsequent bonuses of \$1,000 full-time/\$500 part-time on July 1, 2021 and July 1, 2022.

CATA points out that its rates of pay are the highest among the agreed upon comparable transit authorities. The only exception appears to be in the mechanic position at Flint's Mass Transit Authority and some pre-2013 red-circled employees (the number of which are unknown) at the Ann Arbor Transit Authority. The top hourly wage proposal of CATA for operators among the comparables reflects the following:

<b><u>2020 CATA Proposal</u></b> \$27.78	<b><u>2021 CATA Proposal</u></b> \$28.61	<b><u>2022 CATA Proposal</u></b> \$29.47
<b><u>ITP</u></b> \$21.26	<b><u>ITP</u></b> No data	<b><u>ITP</u></b> No data
<b><u>Ann Arbor Post 2013</u></b> \$26.60	<b><u>Ann Arbor Post 2013</u></b> \$27.75	<b><u>Ann Arbor Post 2013</u></b> No data
<b><u>Kalamazoo</u></b> \$21.54	<b><u>Kalamazoo</u></b> \$22.19	<b><u>Kalamazoo</u></b> \$22.86
<b><u>Flint</u></b> \$22.18	<b><u>Flint</u></b> \$22.18	<b><u>Flint</u></b> \$22.74

CATA points out that wage increases for bargaining unit employees during the last Agreement outpaced increases in the Consumer Price Index. CATA maintains that its wage and bonus proposals are supported by the comparables. Furthermore, it asserts that the Union's reliance on Ann Arbor's pre-2013 wage rates to justify its wage demand is not supported by the record.

The Union does not believe that focusing on Ann Arbor's pre-2013 wage rates is inappropriate. The Union maintains that looking at Ann Arbor's pre-2013 wage rates is necessary to establish a true historical comparison among the comparable employers. In doing so, the Union concludes that on a going forward basis through 11/30/2022 a 4.17% increase in December 2020 and a 4.50% increase in December 2021 is warranted. The Union's proposal is for only 4%. As for bonuses, the Union points out that Section 13(c) of the Urban Mass Transportation Act requires CATA to provide "signing bonuses to bargaining unit employees in an amount equal to each employee's economic loss as a result of Act 54, including: (1) increased health insurance costs; (2) total wage losses as a result of denied step increases; and (3) wage losses had the negotiated wage been effective on the date of expiration. The Union

acknowledges the parties are in agreement with regard to bonuses on 7/1/2021 and 7/1/2022 of \$1,000 full-time/\$500 part-time, thus, the only issue before the Fact Finder is the bonus to be paid upon ratification. The Union maintains that the record supports a bonus upon ratification in the amount of \$2,500 full-time, \$1,250 part-time.

**RECOMMENDATION:** Based upon the proofs submitted into evidence and having considered all relevant factors, I recommend that CATA's proposal for a three (3) year contract with a 3% wage increase each year (1.5% utility) be adopted.

With regard to the bonus upon ratification, I recommend that the parties agree to a compromise bonus of \$2,000 full-time and \$1,000 part-time. The record reflects that the parties are in agreement with additional bonuses of \$1,000 for full-time and \$500 for part-time on July 1, 2021 and on July 1, 2022.

**10. ZIPPER CLAUSE.**

CATA proposes a "zipper clause" to the collective bargaining agreement confirming that any successor agreement will supersede any past practice not incorporated into the parties' agreement or reduced to writing. CATA notes that zipper clauses are not uncommon in collective bargaining agreements. As such, it is proposing a zipper clause that is almost identical to clauses contained in Grand Rapids and Ann Arbor Agreements. The language proposed by CATA has already been agreed to by the Union with other employers. CATA has offered the Union an opportunity to incorporate any and all past practices into this new agreement. The Union has steadfastly refused CATA's offer and has provided no counter-offer to its proposal.

The Union maintains that CATA's proposed zipper clause is extremely broad and would have a chilling effect on interim negotiations should circumstances change in the work place. The Union maintains that it is impossible to identify all past practices that are not specifically

covered in the collective bargaining agreement, reduce them to writing and then bargained over them. The Union argues that granting a zipper clause would only open the door for CATA to unilaterally change practices and leave the Union with no recourse. Furthermore, the Union maintains that CATA's proposal lacks sufficient support among the comparables.

**RECOMMENDATION:** Based upon the record and relevant factors, I recommend that the status quo be maintained.

**11. DURATION.**

CATA proposes a three (3) year contract expiring November 30, 2023. The Union proposes a two (2) year contract expiring on November 30, 2022. The record reflects that CATA and the Union have historically entered into collective bargaining agreements of five (5) years duration. The ongoing negotiations in this matter coupled with COVID-19 have already put the parties one year into a proposed three (3) year deal. The Union's proposal would almost immediately put the parties back into negotiations. CATA maintains that its proposal would create stability, and afford it the opportunity to fully implement many of the operational changes incorporated into this new agreement.

The Union maintains that a two (2) year agreement is more appropriate under the circumstances. The Union notes that we are in a time of economic uncertainty with the COVID pandemic, its impact on economic markets and more importantly bus ridership. Furthermore, the number of work assignment changes incorporated into this agreement are going to significantly change how bus operators perform their daily duties. The full impact of those changes are yet to be known. It will most assuredly be necessary for the parties to make adjustments for the benefit of all concerned. For these reasons, a shorter duration is justified.

**RECOMMENDATION:** Based upon the testimony, evidence and all applicable factors, I recommend that CATA's proposal for a three (3) year agreement be adopted.

### **SUMMARY OF RECOMMENDATIONS**

#### **1. FMLA.**

##### **A. Update contractual language to incorporate amendments to FMLA Act.**

I recommend that language be incorporated into the collective bargaining agreement that mirrors to the fullest extent possible the language of the Department of Labor's fact sheet #28L (Employer Exhibit 30).

##### **B. Paid time off to run concurrently with FMLA.**

Existing language to be retained.

#### **2. ATTENDANCE BONUS.**

Employer's proposal to be adopted.

#### **3. BUS ASSIGNMENTS.**

CATA's proposal to eliminate bus assignments to be adopted.

#### **4. PREMIUM PAY.**

Current language requiring time and one-half after eight (8) hours in any work day and for all hours over forty (4) in any work week be maintained.

I recommend that the parties consider the following language:

All work performed on the sixth (6<sup>th</sup>) day worked within a work week shall be paid at one and one-half (1-½) times the applicable hourly rate. All work performed on the seventh (7<sup>th</sup>) day worked within a work week shall be paid at two (2) times the applicable hourly rate. The following compensable days shall be considered days worked for purposes of this provision: approved vacation, floating holidays, national holidays, jury duty and paid military leave. Paid sick leave, union business or funeral leave shall be considered as days worked provided the absence is finalized before activation of the board for each operational day.

#### **5. EXTRA WORK DISTRIBUTION.**

Employer's proposal for a thirteen (13) hour pay limit and eighteen (18) hour spread time be adopted.

#### **6. EXTRA BOARD.**

A. I recommend the following language proposed by the Employer be adopted:

##### **AM/PM Extra Board.**

During the summer months when CATA is not operating full Spartan service, the extra board will operate as an AM/PM extra

board. At such time, the extra board will be split into two segments, defined as an “AM extra board” and a “PM extra board”. Operators will have the opportunity to bid on both segments during the bid(s) for summer work but will only be awarded “AM” or “PM”.

**B. Bundling of Work.**

I recommend that the parties’ language be amended to permit CATA to bundle work for distribution to operators assigned to the extra board. I further recommend that the parties agree on how the extra board will operate based upon this recommendation.

**7. VACATION PAY.**

Current contract language be retained.

**8. INSURANCE.**

**A. Retiree Healthcare Benefits.**

Employer’s proposal as modified below be adopted:

(D) Employees hired after the date of ratification are not eligible for retiree healthcare benefits under the CATA Plan.

**B. Dental Caps.**

Current contract language be retained

**C. Employee Participation Fees.**

Parties to reopen negotiations in 2022 for the establishment of insurance participation fees covering the 2023-2024 plan year.

**D. ACA Reopener.**

Recommend that the following language proposed by the Employer be adopted:

The parties agree that this Agreement may be reopened for the purposes of negotiating alternative insurance coverage (including plans or plan design) and premium contributions if utilization results in rate increases that impact the affordability of the current plans under the Affordable Care Act or compliance with Michigan’s Public Act 152 of 2011.

**9. WAGES.**

Three (3) year contract with a 3% wage increase each year (1.5% utility) be adopted.

Recommend that the parties agree to a compromise bonus of \$2,000 full-time and \$1,000 part-time.

**10. ZIPPER CLAUSE.**

Status quo be maintained.

**11. DURATION.**

Three (3) year agreement be adopted.

Dated: February 12, 2021



KENNETH W. ZATKOFF