STATE OF MICHIGAN
CIVIL SERVICE COMMISSION
IMPASSE PANEL PROCEEDINGS

November 2013

COALITION OF THE STATE EMPLOYEE UNIONS,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND UAW LOCAL 6000;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517M;

AFSCME COUNCIL 25;

MICHIGAN STATE EMPLOYEES ASSOCIATION;

MICHIGAN CORRECTIONS ORGANIZATION, SEIU LOCAL 526M;

Labor Organizations,

-and-

THE OFFICE OF THE STATE EMPLOYER,

Employer.
____/

The Employment Relations Board in its capacity as Impasse Panel:

Susan H. Zurvalec, Chair
William J. Braman, Member
Marie L. Waalkes, Member

BRIEF OF THE COALITION OF STATE EMPLOYEE UNIONS

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INTRODUCTION

The Coalition represents over thirty thousand employees in the classified civil service who have dedicated their professional careers to serving the State of Michigan and its citizens. For the past several years, these employees have taken the bitter fiscal medicine of concessions to help Michigan in its fight against an ailing economy. Two years ago, these employees agreed to contracts which, through health insurance changes alone, are saving the State approximately $50 million per year. But conversely, this has been a cost-shift onto each employee in the State Health Plan, with family coverage, over $2,000 per year just in premiums. It was these health insurance concessions, with wage adjustments saving the State even more money, that prompted the employees to agree to the current contracts for a two-year period: Just as the State's economy was expected to improve, and did improve, so too could the employees' personal and family finances improve, in the next round of collective bargaining.

Yet the recent negotiations have broken from this common-sense principle.

Simply put, the Office of State Employer has advanced proposals on wages and health insurance which would perpetuate austerity for the working families who helped make Michigan's economic recovery possible. These proposals defy explanation. The improving economy makes them flatly untenable. For instance, while the State is now receiving hundreds of millions of dollars more in revenue than anticipated, the Employer has proposed *further cost shifts* in health insurance onto the employees. For another instance, despite the employees' wages having fallen behind the rate of inflation, the Employer has proposed a two-year contract with sub-inflation rate wage increases which, with upped insurance costs, would *exacerbate* the declining incomes of these working families. The Employer offers no justification for this punitive economic package, and for good reason: there is none.

Ultimately the State's draconian proposals are self-defeating. They would only exacerbate the well-documented under-compensation of State employees as compared to their private sector counterparts. While State employees historically have enjoyed superior benefits but lower wages, their overall compensation lags significantly behind the private sector, and that gap continues to increase. The State's proposals to cut health care benefits even further will exacerbate the "compensation penalty" suffered by State employees, to the detriment of the parties' mutual interest in attracting qualified and competent employees.

The imposition of additional hardship on employees and the creation of additional barriers to attracting quality workers is completely unnecessary. As our affidavits and the fiscal reports show, the State continues to generate hundreds of millions of dollars of revenue beyond earlier projections. The employees who sacrificed for the State should begin to share in some of the additional revenue, not sacrifice further, and the Coalition's proposals correlate with an incremental improvement in employment terms toward pre-austerity levels. This is a measured approach to labor relations indicated by the impasse criteria, which expressly include such factors as the financial condition and ability of the state, economic indicators and forecasts, and the total compensation presently received by employees.

In short, we urge this Panel not only to consider the data, research, and other empirical evidence supporting the Coalition's proposals in favor of the employees, but also to weigh this basic tenet: Michigan should not leave its dedicated workforce behind in its path to economic recovery.

IMPASSE PANEL CRITERIA

The relevant criteria are set forth in Rule 6-9.4(b):

"The parties shall address, and the impasse panel shall consider, the following criteria, if relevant:

(1) Stipulations and agreements.

(2) The interests and welfare of the public.

(3) The financial condition and ability of the state.

(4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.

(5) Appropriate economic indicators and forecasts.

(6) Total compensation, including fringe benefits, presently received by employees.

(7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment."

LIST OF THE COALITION ISSUES

ECONOMIC PACKAGE – Wages and Insurance

Both sides seek changes.

OVERTIME – Compensatory Time

OSE seeks change.
Coalition maintains *status quo*.

UNION DUES AND FEES – Letter of Understanding

Both sides seek changes prompted by statutory amendments.

These issues are presented jointly by the Coalition of State Employee Unions in order to facilitate the evidentiary record for the Impasse Panel, to reduce potential duplication in proofs and arguments, and to expedite the impasse proceedings as a whole.

Each constituent Union of the Coalition reserves the right to present additional evidence and reasons in support of their own proposals, which in some instances may overlap with or relate to some of the Coalition issues above. A constituent Union exercising this right will present such additional evidence and reasons in its own distinct brief to the Impasse Panel.

FACTUAL STATEMENT

I. THE STATE OF MICHIGAN'S IMPROVING REVENUES

After a decade of economic decline, with a precipitous drop in the auto industry's fortunes near the end of that decade, the State of Michigan has started to reverse course – showing a steady improvement in its revenues. This calendar year has even shown greater improvement than anticipated.

Background: the Consensus View

At the outset of this year, the Consensus Revenue Estimating Conference convened pursuant to its obligations under the Michigan Management and Budget Act. The Conference, or "CREC," – which consists of the House Fiscal Agency director, the State treasurer, and the State budget director as the three voting members – issues a ***consensus forecast*** in January and May of each year. In January of this year, the House Fiscal Agency initially projected the state's revenues for FY 2012-13 to be $19.9 billion inclusive of both general fund and school aid fund revenues. *[Exhibit 1: CREC Overview, House Fiscal Agency 1/29/13, p 2]*. Although this revenue total appeared to be a slight dip from the previous fiscal year *[Id (-1.1% change from FY2011-12)]*, the revenue numbers began an upward climb in the following months. In May 2013, at the next Conference, an agreement on a new economic forecast was reached: the total state revenue was projected to be $20.4 billion. This new projection showed an increase of 2.4% (from -1.1% to +1.3%), or $482.6 million (from -$223.9 million to +$258.7 million), over the earlier projection. *[Exhibit 2: Consensus Revenue Agreement Executive Summary 5/15/13, Table 2]*.

The state revenues continued their ascent. Four months later, in September 2013, the revenue numbers for this fiscal year were found to have improved yet again. As the Senate Fiscal Agency reported: "Through September, year-to-date General Fund collections are $219.4 million higher, School Aid Fund collections $164.8 million higher, and other funds collectively $10.3 million greater than the level expected based on the May 2013 consensus revenue estimates." *[Exhibit 3: Monthly Revenue Report SFA September 2013, p 1]*. The estimated total state revenue was revised upward to $20.66 billion. *[Id, p 2]*.

These revenue numbers are consistent with the improving economy of the nation as a whole. The Consensus Revenue Agreement in May noted the improving economic figures across the country and across the relevant metrics – such as real gross domestic product, wage and salary employment, housing starts, light vehicle sales, and others – not just in calendar year 2013 but also in the following two years, 2014 and 2015. *[Exhibit 2: Consensus Revenue Agreement Executive Summary 5/15/13, Table 1]*. More recently, by report dated September 25, 2013, the Senate Fiscal Agency observed that a key economic indicator – Personal Income Growth – has seen two years of improvement in Michigan which has matched, if not exceeded, the national average. In the Agency's words:

> Michigan personal income is now growing closer to the national average. In 2010, total personal income increased 3.1%, compared with the U.S. average of 3.9%, ranking Michigan 34th. However, in 2011, Michigan personal income increased 5.6%, above the national average of 5.2%, and ranking Michigan 15th. In 2012, Michigan personal income grew 3.5%, equal to the national average and ranking Michigan 23rd.

[Exhibit 4: SFA State Budget Overview, 9/25/2013, p 8]. Personal Income Growth serves as a key predictor of revenues, as well as economic health in general, because it shows both the available tax base and the likelihood of increased consumer spending. *[Exhibit 5: SFA Economic*

Outlook 5/13/13, p 10].

Current and Projected Revenues

Because Michigan's revenues have continued to grow beyond earlier projections, the Coalition has retained an expert witness, Mitchell E. Bean, to assess the data and furnish this Impasse Panel with an analysis relevant to its consideration of the State's "financial condition and ability" – *see* Rule 6-9.4(b)(3) ["The parties shall address, and the impasse panel shall consider . . . [t]he financial condition and ability of the state"].

Mr. Bean is a renowned economic expert on the State's budget, having directed the House Fiscal Agency for over a decade, and having been involved in budget-setting for the state government for close to two decades. *[Exhibit 6: Mitchell Bean Affidavit, ¶¶ 5-9]*. As is clear from Mr. Bean's Affidavit, the State of Michigan finally enjoys not only the prospect, but the current reality, of an improving economy and growing revenues as measured by objective indicators. As Mr. Bean explains, Michigan's annual budget is "heavily dependent" on the condition of Michigan's economy, and consequently "in order to reliably predict the budget, an understanding of projected economic conditions is necessary." *[Id, ¶ 11]*. His review of the data shows not only that Michigan's economic condition is improving and will continue to improve, but more specifically shows that "the state economy should continue to grow, continue to create jobs, and the state tax base should continue to expand through 2015." *[Id, ¶¶ 12-13]*.

Two key indicators guide Mr. Bean's analysis from the outset: Personal Income Growth, and Auto Industry performance. The Consensus Revenue Estimating Conference likewise uses these indicators. *[See, e.g., Exhibit 4: SFA State Budget Overview, 9/25/2013]*.

Personal Income Growth is one of the most important statistics considered by economists when they forecast state revenue. As Mr. Bean explains, Michigan's largest revenue sources are the personal income tax, and the sales and use taxes. "A good rule-of-thumb is that every 1% increase in personal income leads to a 0.85% increase in state revenues." *[Exhibit 6: Bean Affidavit, ¶ 15]*. Independent analysts agree in their forecast of improved Personal Income Growth in Michigan. As Mr. Bean points out, both Moody's Analytics (Moody's) and the Research Seminar in Quantitative Economics (RSQE) forecast stronger personal income growth through year 2015. This positive forecast has immediate significance: "The importance of stronger personal income growth is that not only are we starting at a higher level of revenue collections ($380 to $400 million in 2014) but the rate of growth will be stronger as well." *[Id]*.

The auto industry is also having a favorable impact on the state budget. As Mr. Bean notes, leading analysts such as J.D. Power and LMC Automotive reported that August sales this year were expected to reach "their highest sales volume in seven years" and that consumer spending on new vehicles was expected to reach "$36 billion – the highest monthly level on record." *[Exhibit 6: Bean Affidavit, ¶ 17, citing reports)]*. The latest numbers have outperformed earlier projections. The May consensus estimated light vehicle sales at 15.3 million for 2013 and 15.7 million for 2014, but the three-month moving average through August 2013 was 15.9 million, and the Seasonally Adjusted Annual Rate for August was 16.1 million. In the September update of the RSQE, sales have been estimated to be 16.0 million and 16.2 million respectively in year 2014 and year 2015. This is significant because it means "sales are returning to the long term equilibrium levels of about 16 million per year that we experienced for the nine year period prior to the great recession." *[Id]*.

Yet another important metric is Baseline Revenue Growth. The Consensus Revenue

Estimating Conference uses this metric, as required by statute, to estimate the impact of the economy on state revenues. "Percent growth in baseline is the best way to look at the impact of a growing or a declining economy on state revenues." *[Id, ¶ 19]*. As Mr. Bean further explains, baseline growth varied from 5.5% to 8.3% during the economic recovery from 1993 to 2000. But it varied from -12.4% to 3.8% during the great recession of 2001 to 2010. The most recent growth trends show that "the state economy is in recovery and we can expect stronger growth." *[Id]*.

Finally, one key factor in the state budget is the recent history of general fund "budget lapses" – the amount of resources appropriated to a Department but not fully spent by the Department. Budget lapses are not only a reflection of departmental efficiency, but "an important source of resources at year-end." *[Exhibit 6: Bean Affidavit, ¶ 21]*. The most recent ten-year average general fund lapse has been $105 million. For instance, in FY 2011, the budget lapse was $158 million; in FY 2012, the budget lapse was $94.9. As Mr. Bean has utilized them in his analysis, they provide a potential source of one-time expenditures such as deposits to the Rainy Day Fund – technically the Countercyclical Budget and Economic Stabilization Fund, MCL 18.1351. *[Id, ¶ 22]*.

Based on all these factors, and the recent general fund and school aid fund balance sheets from the House Fiscal Agency, Mr. Bean reached a revised revenue forecast for the conclusion of this fiscal year and for the next two fiscal years. He posits that this fiscal year will see total revenue in the amount of $23.9 billion; that fiscal year 2014 will see revenue in the amount of $24.6 billion; and that fiscal year 2015 will see revenue in the amount of $24.9 billion. *[Exhibit 6: Bean Affidavit, ¶¶ 23-25, and Slide 15]*. These estimates "do not assume percentage growth rates that are stronger than current consensus growth rates." *[Id, ¶ 24]*. In short, using the same growth rates applied by the consensus, Michigan should see revenues for this fiscal year in the amount of $23.9 billion rather than the most recent but earlier forecast of $20.9 billion. There should be over $1.5 billion as the estimated year-end balance, with one-time payment resources available in the amount of $1.3 billion for Rainy Day Fund deposits or other one-time spending. *[Id, ¶¶ 24-25, Slides 15-16]*. In addition, there will be increased ongoing revenue available for wage and salary increased and other spending needs of about $638 million. These estimates do not include Medicaid Expansion savings available for other spending needs and savings of approximately $200 million. *[Id, ¶¶ 24, 28, Slide 26]*.

Projections in Perspective

These estimates, however, are considered too conservative by Mr. Bean, especially into the next two fiscal years. The estimates do not account for the $200 million of cost savings associated with expanded Medicaid. *[Exhibit 6: Bean Affidavit, ¶ 24]*. They do not account for an additional estimated $2 billion of federal funds. *[Id]*. In fact, based on the improving metrics found in this fiscal year, Mr. Bean believes that revenue growth rates will be revised upward in January 2014 by the Consensus Revenue Estimating Conference. *[Id]*.

Mr. Bean is not the only prognosticator of favorable state revenues. The current administration takes an even more favorable view. On September 4, 2013, at a public economic roundtable, Lieutenant Governor Brian Calley stated that "the state is on the verge of the greatest comeback that the nation has ever seen with the way things have been going." *[See www.mlive.com/business/midmichigan/index.ssf/2013/09/lt_gov_brian_calley_michigan_i.html]* On October 10, 2013, the administration posted on the State website *[http://www.michigan.gov/som/0,4669,7-192-29943-314178--,00.html]* a so-called infographic which touts "why Michigan is the comeback state" for such reasons as higher employment levels, higher income levels, and higher pay levels: "**average private sector pay is up, too**." [1]

The economic case, however, should not be overstated. The truth about Michigan's economic picture is somewhere in the proverbial middle: the Michigan economy is more robust than portrayed by the earlier forecasts of the Consensus Revenue Estimating Conference, yet it would be hyperbolic to describe Michigan's economy as "on the verge of the greatest comeback ever." As Mr. Bean's more moderate analysis shows, Michigan's economic growth is strong; its current revenues are even stronger than anticipated; and its revenues should continue to be strong through the next two years.

II. THE SUBSTANTIAL CONCESSIONS TAKEN BY THE EMPLOYEES.

As the Impasse Panel recognized in 2007, in the previous few years employees had alredy "faced and accepted" a "series of painful concessions." *[IP 2007-01, p. 5; IP 2007-02, p. 6; IP 2007-03, p. 7]*. Since 2007, that trend has only continued. In 2007, 2010, and again in 2011, employees accepted significant health care concessions, which have substantially increased their out-of-pocket costs and depressed their wages. Against this backdrop of painful concessions on fringe benefits, employees have received virtually no real increase in wages; in fact, without even factoring in employees' increased health care costs, their base wages have failed to keep up with inflation.

[1] We note the absence of an equal enthusiasm for public sector pay.

A. The Coalition Employees Have Taken Numerous Concessions In Health Care.

In 2007, the Coalition Unions agreed to three-year collective bargaining agreements with significant health care concessions, including a doubling of their premium share from 5% to 10%; increased co-pays for office and emergency room visits and prescription drugs; and a doubling of deductibles. As a result of these concessions, the average state employee's monthly premium for a family jumped from $67.80 in fiscal year 2007, to $142.37 in fiscal year 2009. *[Exhibit 7: House Fiscal Agency 2008 report, p. 15]*. By contrast, the State saved an estimated $300 million over that same period, paying ***less*** in total healthcare costs, on average, in 2010 than it did in 2008, a remarkable fact given the national trend of skyrocketing healthcare costs. *[Id.]*.

In 2010, the Coalition Unions accepted even more health care concessions, along with a wage freeze for one year. Under a concessionary addendum to the 2007 agreements, the Unions agreed to a new two-tier health plan, saving the State approximately $10.8 million in premium costs alone. *[Exhibit 8: Synnomon Harrell Affidavit ¶5]*. Under the new two-tier plan, employees hired on or after April 1, 2010 were placed in a new State Health Plan ("NSHP") (or new HMO), with a higher share of the premium paid by the employee, higher co-pays, deductibles, and out-of-pocket maximum, and a new 10% co-insurance on most services. *[Coalition Unions' 2010 Addenda to 2007 Collective Bargaining Agreements]*. More specifically, the Unions agreed that new hires would pay 20% of the premium for the NSHP, compared with 10% paid at that time by existing employees in the SHP; an office co-pay of $20, up from $15 paid by employees in the SHP; deductibles of $400 for an individual and $800 for a family, compared with $300 and $600 for individuals and families, respectively, paid by employees in the SHP; an emergency room co-pay of $200 if not admitted, compared with $50 paid by existing employees in the SHP; and higher prescription drug co-pays. The Unions also agreed to a higher out-of-pocket maximum for new hires – $1,500 for an individual and $3,000 for a family, versus the $1,000 and $2,000 paid by existing employees in the SHP. And, the NSHP added a 10% co-insurance after the deductible on most services,[2] which was not paid by existing employees in the SHP.[3] *[Id.]*.

In the parties' most recent two-year collective bargaining agreements, approved in 2011 and with economic provisions effective October 1, 2012, employees agreed to yet more significant concessions in health care. Employees enrolled in the SHP agreed to double their share of the health insurance premium, moving from 10% to 20%.[4] *[Coalition Unions' 2011 CBAs; e.g., MCO Article 30 Sec. A]*. An employee enrolled in the SHP with single coverage, who was paying a bi-weekly premium of $27.60 in 2011 is, as of October 1, 2013, paying $59.62. *[Exhibit 8: Harrell Affidavit ¶7]*. Similarly, the bi-weekly premium for an employee plus child(ren) has risen from $48.58 in 2011 to $104.94 today, and an employee plus spouse has gone from paying $55.21 every two weeks in 2011 to $119.25 today. *[Id.]*. Finally, an

[2] The co-insurance rose to 20% for a private-duty nurse or acupuncture.

[3] The Unions accepted similar concessions for employees with HMO coverage, adding a second-tier new hire HMO ("NHMO") with a 10% higher premium share (95% versus 85%), higher prescription drug co-pays (TK), double the amount for office visit co-pays ($10 versus $20), and quadruple the emergency room visit co-pay ($50 versus $200).

[4] In addition to agreeing to concessions on the premium share, the UAW – which represents approximately half of the exclusively-represented workforce – also agreed to concessions on prescription drugs. Prior to the 2011 agreement, UAW-represented employees enrolled in the SHP had a two-tier co-pay for prescription drugs. Under the 2011 agreement, the UAW agreed to a three-tier plan.

employee with full family coverage paid $76.19 in bi-weekly premiums in 2011, and as of October 1, 2013 is paying a whopping $164.56. *[Id.]*. Employees hired before April 1, 2010 and enrolled in HMOs also agreed to triple their premium share, moving from 5% to, theoretically, 15%. *[2011 Agreements]*. Moreover, because the 15% premium share was based on an agreement to cap the State's portion of the HMO premium at 85% of the cost of the SHP, in reality some employees with HMO coverage are paying more than 15% of the premium for their plan – more than three times what they were paying before the 2011 agreements. *[Exhibit 8: Harrell Affidavit ¶8]*. These changes in premium share alone have saved the state approximately $18 million in the SHP, and approximately $20 million in the HMOs. *[Id. ¶9]*.

During the 2011 negotiations, the Coalition Unions also uncovered very substantial savings for the State in its prescription drug plan. The Unions noticed that the State had not rebid its prescription plan in several years, and strongly urged the State to do so. *[Id. ¶10]*. After negotiations concluded, the State took the Unions' advice and rebid the plan, switching from Blue Cross to MedImpact. *[Id.]*. Under the new prescription drug plan, which took effect January 1, 2013, the State has already saved approximately $6.8 million for prescription drug costs among the Coalition Unions' bargaining units. *[Id.]*. The State is projecting that it will save approximately $59.5 million per year over three years among active state employees, and a total statewide savings among active and retired employees of $125.7 million. *[Id. ¶11]*. Although the State realized these significant savings as a result of the Unions' independent analysis and sharp thinking, the State has not passed any savings on to employees; rather, as explained below, the State is now seeking yet more health care concessions from employees, including increasing their prescription drug co-pays.

Other Concessions

Far from being limited to health care, employees have also accepted, or had imposed on them, many more concessions over the last decade. For example, in fiscal years 2003-04 and 2004-05, the Unions agreed to a banked leave time ("BLT") program, which saved the state an estimated $243.8 million over those two years. *[Exhibit 7: House Fiscal Agency 2008 report, p. 14]*. Under the BLT program, employees worked a regular 40-hour week, but were only paid for 38 hours in FY 2003-04, and 38.4 hours in FY 2004-05. *[Id.]*. The unpaid hours were then placed in a bank, for employees to use as additional leave time not counting toward their annual leave cap. *[Id.]*. And, at the same time the Unions agreed to the BLT program, they also agreed to additional unit-specific concessions, which saved the State another $19.4 million. *[Id.]*.

Similarly, in the 2007 agreements, the Unions agreed to eliminate sick leave from the definition of time worked for purposes of calculating overtime, and in the 2011 agreements the Unions agreed to similarly eliminate annual leave from the overtime calculation – provisions that had been in their contracts going back to the 1980s. And, in fiscal year 2003-04 and again in fiscal year 2008-09, employees received 40 hours and six days, respectively, of unpaid temporary layoff time or furlough days, saving the state millions of additional dollars. *[Ballard & Funari, The Retrenchment of the State Employee Workforce in Michigan, p. 4 (Aug. 2009)]*.[5]

B. The Coalition Employees' Take-Home Pay Has Further Decreased Over The Past Several Years.

Because employees have received little increase in their wages, at the same time that they absorbed concessions, their actual take-home pay has dropped. In 2007, the Coalition Unions

[5] Available at: http://www.miafscme.org/PDF%20Files/stateemployeesstudy.pdf

agreed to no wage increase for fiscal year 2008-09; a 1% base wage increase in fiscal year 2009-10; and a 3% base wage increase in fiscal year 2010-11.[6] Subsequently, in the 2010 concessionary addenda, the Unions agreed to no wage increase for fiscal year 2011-12. *[Coalition Unions' 2010 Addenda to 2007 Collective Bargaining Agreements]*. Then, in the most recent round of negotiations in 2011, the Unions agreed to a 1% base wage increase and a 1% lump-sum payment for fiscal year 2012-13, and a 1% lump-sum payment for fiscal year 2013-14.[7]

Even with the modest wage increases contained in the 2007 agreement, as a result of the BLT program and temporary layoff or furlough day concessions described above, between fiscal year 2002-03 and fiscal year 2008-09, employees' wages were *reduced* by about 1.6%. *[Ballard & Funari, p. 5]*. As a result of the concessions, employees' wages over those years were "slightly smaller than the overall change in the cost of living." *[Id.]*. That trend has continued into the current contract. Not even taking into account the employee-shouldered costs of health care, state workers would need a 5.9% annual raise over the next two years simply to allow their wages to keep up with inflation. *[Exhibit 9: Mikulan Affidavit, ¶ 22]*. In fiscal year 2013, the average hourly wage for employees in the Coalition Unions' bargaining units was $23.33, but if

[6] *AFSCME 2007 CBA, Article 22, Section A; MCO 2007 CBA, Article 27, Section A; MSEA 2007 CBA, Article 43, Section A; SEIU Local 517M HSS Unit 2007 CBA, Article 22, Section 1(A); SEIU Local 517M S&E Unit 2007 CBA, Article 25, Section A; SEIU Local 517M Tech Unit CBA, Article 24, Section 1; UAW 2007 CBA, Article 43, Section A.*

[7] *AFSCME 2011 CBA, Article 22, Section A; MCO 2011 CBA, Article 27, Section A; MSEA 2011 CBA, Article 43, Section A; SEIU Local 517M HSS Unit 2011 CBA, Article 22, Section 1(A); SEIU Local 517M S&E Unit 2011 CBA, Article 25, Section A; SEIU Local 517M Tech Unit CBA, Article 24, Section 1; UAW 2011 CBA, Article 43, Section A.*

wages had kept up with inflation it would be $24.68 – over $1.50 per hour more than what the average employee currently receives. *[Id.]*.

Even more disturbing than the fact that employees' wages have failed to keep up with inflation, when taking increased health care costs into account, workers' take-home pay is now *less* than what it was in 2008. In fiscal year 2008, the average bargaining unit worker's wage rate was $22.77, but her net pay after subtracting health care costs was $22.36 per hour – a difference of only $0.41. *[Id. ¶ 24]*. Fast forward to fiscal year 2013, and the average bargaining unit worker's wage rate has increased slightly to $23.33 per hour (again, below inflation), but her net take home pay has *decreased* to $21.28 per hour – over $1 *less* than that same worker was making per hour in 2008. *[Id.]*. She makes about $2,250 less per year. *[Id.]*. These numbers illustrate starkly the very substantial impact that health care concessions have had on bargaining unit employees' compensation over the last several years.

In contrast to employees' flat wages and decreased take-home pay, due to concessions the State has been paying less and less in compensation. Between fiscal year 2011 and fiscal year 2013, the State has saved over $50 million in health care costs among bargaining unit employees. *[Id.]*. The UAW's benefits expert, who has participated in a number of State employer negotiations, estimates that the combined health care savings to the State since 2010 derived from negotiated concessions or efficiencies exceeds $55 million. *[Exhibit 8: Harrell Affidavit,* ¶*12*]. This savings is almost entirely the result of the concessions taken by employees, as the average cost per worker has dropped significantly, while the number of employees in the bargaining units has remained relatively stable – 32,753 employees in 2011 versus 32,167 in 2013. *[Id.]*. Moreover, that number does not include the savings realized from the prescription drug re-bid, discussed previously, and it is only the savings attributable to the Coalition Unions' bargaining units and does not include savings realized by applying the concessions taken by represented employees to non-represented workers.

In addition to the huge cost savings that the State has realized in health care, total employee compensation costs have also grown at a rate lower than inflation over the past decade. In 2002, the total compensation for the entire State workforce (including employees represented by the Coalition Unions and non-exclusively represented employees) was approximately $3.74 billion. *[Exhibit 9: Mikulan Affidavit, ¶32]*. Had total compensation cost kept up with inflation, the total state workforce compensation cost would have been approximately $4.77 billion by 2012. *[Id.]* However, in reality, in 2012 the total state workforce compensation cost was approximately $4.34 billion – about $400 million below inflation. *[Id.]*.

III. THE COALITION UNION BARGAINING UNITS

The Coalition Unions serve as the exclusive representatives for approximately 33,400 workers in nine different bargaining units. *[State of Michigan, Civil Service Commission, Biweekly Workforce Report, Bargaining Unit Analysis By Department, October 12, 2013]*. Employees in these units perform a wide variety of jobs, but the common denominator across all bargaining units is that represented employees in the classified service provide critical services to Michigan's citizens. They protect us from criminals. They make sure that our roadways and bridges are well-designed and safe to travel upon. They ensure that the food we buy is safe to eat. They protect our abundant and beautiful natural resources. And, they provide protection and care to Michigan's children, elderly, infirm, and indigent. Without the skill, expertise, and service provided by these employees, Michigan simply could not function.

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and UAW Local 6000 represent approximately 17,200 employees in the Human Services and Administrative Support Units. *[Id.]*. Employees in the **Human Services Unit** work primarily in the Departments of Human Services, Corrections, and Community Health, in jobs that require technical and specialized duties. *[Id.]*. They are social workers, registered nurses, physicians, dentists, psychologists, and parole and probation agents, to name but a few of the classifications in this Unit. Human Services Unit employees administer social service programs for the State's most vulnerable populations, including children and adults in protective services, children in foster care, and indigent and disabled Michiganders. Employees in this Unit also work with criminal offenders in correctional facilities, individuals institutionalized in psychiatric hospitals, and patients in veterans' hospitals. Nearly all positions in this Unit require at least a Bachelor's Degree, and many require a Master's Degree or even a doctorate. In addition, many positions in this unit require special licensing or registration with the State or professional organizations.

Employees in the **Administrative Services Unit** represented by the UAW work in nearly every department of the state. They primarily perform a variety of clerical and administrative duties. This Unit also includes several non-clerical classifications, including emergency dispatchers at the State Police and frontline workers in Secretary of State ("SOS") offices. Administrative Services Unit employees therefore work in both traditional office environments and in non-office settings.

The Service Employees International Union, Local 517M ("SEIU") represents approximately 3,700 employees in three bargaining units. *[Id.]*. Employees in the **Human**

Services Support Unit, like those in the Human Services Unit, deliver vital support to the State's indigent and disabled citizens. Human Services Support employees help to administer unemployment, workers' compensation, and disability programs, and they assist individuals with job training and placement through Michigan Works offices.

Employees in the **Scientific and Engineering Unit** represented by the SEIU are highly educated professionals working in the fields of transportation, food safety, disease control, environmental protection and stewardship, and criminal justice. Positions in this Unit include forensic scientists who analyze crime scene evidence and provide expert testimony in criminal trials; transportation engineers who handle the design, traffic flow, and bridge inspection duties on Michigan's roads; and food inspectors who protect the State's food supply by inspecting processing facilities and grocery stores. Other classifications in this unit include physicists, foresters, geologists, statisticians, pharmacists, and other professions.

Employees in the **Technical Workers Unit** represented by the SEIU provide technical, skilled service to the State, often in supporting roles to the professionals in the Scientific and Engineering Unit and/or the Human Services Unit. Positions in this unit include dental hygienists and x-ray technicians, transportation technicians, pharmacy technicians, and laboratory assistants.

AFSCME Council 25 represents approximately 1,700 employees in the **Institutional Unit**. Employees in this unit work in inherently difficult situations, including mental and correctional institutions. Classifications in the Institutional Unit include licensed practical nurses who work in prisons and psychiatric hospitals; youth specialists who are responsible for twenty-four hour per day/seven day per week care for minors housed in the State's juvenile justice facilities; and resident care aides at the Michigan School for the Deaf.

The Michigan State Employees Association ("MSEA") represents approximately 4,100 employees in the Labor and Trade Unit and the Safety and Regulatory Unit. *[Id.]*. Employees in the **Labor and Trades Unit** provide integral support to keep the State's infrastructure up and running. Labor and Trades Unit employees include the auto mechanics who maintain the State's fleet; transportation workers who fill potholes and plow snow from our roadways; drivers and storekeepers who move the State's freight and mail; and employees who repair Michigan's communication and computer systems.

Employees in the **Safety and Regulatory Unit** represented by MSEA provide inspections of repairs and construction to ensure the safety of buildings in which Michiganders live and work. These employees ensure that gas pumps are pumping the correct quantity and quality, that buses are safe for our children to ride, and that trucks traveling our roadways are safe to operate. Employees in the Safety and Regulatory Unit also protect forests and campgrounds, perform waterway and forest patrols, and ensure that wildlife is cared for – all vital services that keep Michigan a prime destination for tourism and a livable home for the State's citizens.

The Michigan Corrections Organization, SEIU Local 526M ("MCO") represents approximately 6,700 employees in the **Security Unit**. *[Id.]*. This unit consists primarily of Corrections Officers and Resident Unit Officers, as well as a smaller number of employees in classifications including Corrections Medical Aide, Corrections Transportation Officer, and Forensic Security Aide. These classifications are responsible for the operation and supervision of virtually all aspects of correctional institutions, including prisoner movement within the institution, prison activities, protection of prisoner and staff safety, and maintenance of security and order throughout the prison. Security Unit employees work in direct contact with prisoners, in highly stressful situations where disabling or life threatening injury is always a possibility.

DISCUSSION OF THE COALITION ISSUES

I. HEALTH CARE AND WAGES

A. The Coalition's Economic Proposal Is Reasonable Under Defined Impasse Criteria.

1. The Coalition's economic proposal is reasonable in light of the state's ability to pay and the substantial concessions accepted over the last decade.

The Unions are proposing a two-year agreement, with base wage increases of 3% in fiscal year 2015 and fiscal year 2016. The Unions' health care proposal largely maintains current language, with a few modest exceptions that are aimed to start to help employees heal from the severe health care concessions of the last several contracts, and to start to introduce some parity in the "legacy" and new hire plans. The Unions are also proposing current language on overtime compensation.

The Unions' proposed changes in health care are:

- Freezing employees' share of the premium at current rates in all plans;
- Moving all employees in the SHP and the NSHP into a single prescription drug plan, with co-pays at the current SHP levels;
- Reducing the co-pay for emergency room visit if not admitted from $200 to $100 for employees in the NSHP and NHMO, while increasing it from $50 to $100 for employees in the "legacy" SHP and HMO;

- Removing language that caps the State's share of the HMO/NHMO premium at 85% of the cost of the SHP/NSHP;
- Adding autism benefits at 100% coverage;[8]
- Increasing the annual maximum in the group dental plan from $1,500 to $1,750 on October 1, 2014, and then to $2,000 on October 1, 2015;
- Increasing the lifetime orthodontics limit in the group dental plan from $1,500 to $2,250 on October 1, 2014, then to $2,500 on October 1, 2015; and
- Adding coverage for implants to the group dental plan.[9]

The Unions submit that their overall proposal is reasonable in light of the State's financial condition; the painful concessions already taken by employees in the last decade and the deleterious impact those concessions have had on employees' take home pay; and, as explained in more detail below, the proposal is reasonable in light of the greater compensation currently received by comparable private sector workers and state employees in other Great Lakes states. The Unions are seeking a modest wage increase designed to stop the long downward slide in employees' compensation, and apart from the small changes in health care detailed above, the rest of their economic proposal is current language.

Moreover, the Unions' proposed improvements in health care could easily be offset by a plan to realize additional savings through new health care programs. As noted above, during the 2011 negotiations, the Unions identified for the State substantial savings that it could realize by rebidding the prescription drug program, and now the State is estimated to save $125.7 million

[8] OSE first proposed adding autism benefits, and the Unions agree that they should be included. However, as discussed below, OSE proposes to add these benefits subject to the plan deductible and 10% co-insurance, while the Unions argue they should receive 100% coverage.

[9] OSE first proposed adding coverage for implants to the group dental plan, and the Unions agree. Accordingly, both parties' impasse positions include new coverage for implants.

over 2013 through 2015 (including non-represented employees and retirees who were affected). *[Exhibit 8: Harrell Affidavit ¶11]*.

In addition, in 2011, the Unions proposed new Letters of Understanding on a Joint Health Care Committee and the New Solutions Committee, both of which are joint labor-management committees designed to find cost savings in health care and operations, respectively. These measures demonstrate the Unions' commitment to helping the State realize cost savings through innovation, increased efficiency, and collaboration rather than simply shifting costs onto employees. Continuing the Unions' efforts, their current economic proposal includes a new Letter of Understanding, under which the parties would agree to collaborate to find new and less costly health programs, including voluntary wellness programs, physical therapy programs, cardiac care programs, hospice programs, or "other programs designed to contain costs while maintaining high quality health care." *[CBA's, fn 6, New Health LOU]*. The Coalition Unions – all of which are affiliated with AFSCME, SEIU, or UAW, some of the largest labor unions in the United States – have substantial experience working with diverse employers to contain health care costs without shifting the burden onto employees or sacrificing quality care. For example, the UAW has worked with Ford, General Motors and Chrysler on to add voluntary wellness programs through two companies, StayWell and Health Solutions, and to streamline physical therapy programs through a company called TheraMatrix. *[Exhibit 8: Harrell Affidavit ¶17]*. Because the Coalition Unions have seen firsthand the positive outcomes that these programs can have, both from a financial and an employee health standpoint, they – without any prompting or request from the State – invited these companies to give presentations to their bargaining committees and OSE. *[Harrell Affidavit ¶18]*. The Coalition Unions estimate that adopting

StayWell's voluntary wellness program could save the state over $6 million over the first three years of the program, and that moving to the TheraMatrix program could save the state approximately $18 million per year. *[Harrell Affidavit ¶18]*. Despite these estimates, and the Governor's repeated statements that he wants employees to "bring . . . ideas to the table"[10] and "continue working collaboratively" with Unions to "move Michigan forward,"[11] OSE has inexplicably rejected the Unions' proposal, and is seeking once again to shift costs onto employees instead of capitalizing on the Unions' knowledge and willingness to collaborate on finding real, long-term health care savings.

The Unions' economic proposal does not bring employees' wages up to the level of inflation, nor does it fully recover the drop in take-home pay that employees' have faced over the last five years. Similarly, because the Unions' health care proposal largely maintains the status quo, employees' share of health care costs will continue to depress their take home pay, and will offset some of the wage increase that the Unions are seeking. In sum, the Coalition's economic proposal is a modest attempt to halt some of the past decade's downward slide in employees' compensation, in line with the State's rosier financial picture. And, in order to lessen some of the cost of the proposal to the State, the Unions are ready, willing, and able – in fact, eager and begging – to work collaboratively with the State to contain health care costs through new programs and innovation.

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[10] *Letter to all state employees from Governor Rick Snyder, Feb. 25, 2011.*

[11] *Press Release, Governor Rick Snyder, State, Employee Unions Successfully Complete Bargaining Process, Dec. 15, 2011.* Similarly, in an interview with MSNBC News in November 2011, in response to questions about state employee unions and collective bargaining the Governor stated "our philosophy in Michigan is, let's find the common ground and work together." *Transcript, Interview with Governor Rick Snyder, MSNBC News, Nov. 9, 2011.*

2. Employees' total compensation lags behind comparable Michigan private sector employees and State employees in most of the other Great Lakes States.

As explained above, the Coalition Unions' economic proposal is a very modest attempt to stop the slide in employees' compensation over the last decade, and is more than reasonable in light of the State's improved financial condition. Moreover, as explained below, the Coalition Unions' proposal is also a modest attempt to keep employees' compensation from sliding further behind their counterparts in Michigan's private sector, and their counterparts in the other Great Lakes states. The question of comparability to private sector and other governmental employees is one of the factors to be considered by the Impasse Panel. *[Rule 6.9.4(b)(4)]*

At present, as shown below, employees' total compensation package is far below that received by comparable private sector employees in Michigan, and below that received by similar workers in most of the other Great Lakes states. The Coalition's modest proposal is therefore reasonable in light of the relevant comparables. By contrast, OSE's draconian proposal would place Michigan employees even further behind the private sector and their counterparts in other states.

a. **Comparable Michigan Private Sector Employees.**

If the only information one had regarding employees' wages came from conservative think tanks and politicians with an austerity agenda, one would think that State employees are a lazy, ineffective, and outrageously overpaid group draining Michigan's economy. However, the reality is far different. The Coalition's expert, Rutgers University Labor and Employment Relations Professor Jeffrey H. Keefe, has done a significant amount of empirical research to determine whether there is any factual basis for the conventional wisdom that state employees are overcompensated as compared to their private sector counterparts. As detailed in Professor Keefe's affidavit, and discussed below, his research demonstrates that Michigan state employees lag significantly behind their private sector counterparts in total compensation.

Professor Keefe previously published a study in 2011, examining Michigan state employees' total compensation as compared to comparable private sector employees, and he has updated that research using the most recent data available. *[Keefe Affidavit ¶¶ 8, 13-15 & Exhibits B, C]*. Professor Keefe has concluded that, after controlling for a host of factors relevant to compensation, specifically education (the single biggest factor in compensation), experience, organizational size, gender, race, ethnicity, citizenship, and disability, Michigan state employees earn less in total annual or hourly compensation than they would earn in the private sector. *[Id. ¶¶ 15-16 & Exhibit D]*. Total compensation takes into account all components of labor cost to the employer, including paid time off, overtime, bonuses, fringe benefits, and, of course, wages. *[Id. ¶¶ 11-12]*. This is key to making any meaningful comparison between the public and private sectors, because state workers tend to earn lower wages, but receive more of their total compensation in nonwage fringe benefits, particularly healthcare and retirement. *[Id.]*. It is also extremely important because research indicates that workers often make the choice to forego the higher wages they could earn in the private sector in exchange for receiving fringe benefits that, at least historically, have been richer. *[Id. ¶ 11]*. Professor Keefe has concluded that State workers earn, on average, 15.5% less annual pay, and, once benefits are taken into account, 9.7% less in total annual compensation than their private sector counterparts. *[Id. ¶ 15 & Exhibit D]*. On an hourly basis, controlling for differences in work schedules in the state workforce and the private sector, Professor Keefe concludes that state workers earn 9.0% less in total compensation per hour than comparable workers in the private sector. *[Id.]*. Moreover, these percentages show a growing gap between Michigan's state employees and comparable private sector workers in the State since Professor Keefe's 2011 study. *[Id.]*.

Professor Keefe's 2011 study comparing Michigan state employees' compensation to the private sector, as well as a national study he published in 2012 comparing public and private sector compensation, and studies he completed in 2011 comparing other states' employees to the private sector, all also reached the conclusion that public employees receive less total compensation than their private sector counterparts. *[Id. ¶ 16]*. Professor Keefe's research is also consistent with an empirical study published by Michigan State University's Professor Charles H. Ballard and Nicole Funari in 2009, which concluded that Michigan state employees received less pay, on average, for every level of education. *[Id., citing Ballard & Funari, The Retrenchment of the State Employee Workforce in Michigan (Michigan State University Department of Economics 2009)]*. All of these studies employ research methodology accepted by labor economists, and control for relevant demographic and other factors that affect compensation. By contrast, a compensation survey conducted for OSE in 2011, and provided to the Coalition Unions in response to their request for any compensation studies relied upon by the State, does not adequately or appropriately compare state and private sector compensation. *[Id. ¶ 17]*. First, this study does not adequately account for the highly different occupations and employment structure in the State and the private sector. *[Id.]*. Professor Keefe calculates that occupations in the state have a "dissimilarity index" of .55, meaning that either 55% of the State's employees, or 55% of private sector employees would have to change occupations to have a comparable employment structure. *[Id.]*. Second, the jobs that do tend to match up in the

State and private sector tend to be the lowest skilled jobs, which are among the few occupations which tend to be higher compensation in State employment – due to the fact that the State has a more equitable compensation structure across the full range of occupations than private sector. *[Id.]*. Accordingly, OSE's survey does not offer a meaningful, apples to apples comparison of State employment and Michigan's private sector.

b. Comparable Employees In Most Of The Other Great Lakes States.

Professor Keefe has also performed an evaluation of Michigan state workers' total compensation as compared to the total compensation of state workers in Illinois, Indiana, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. *[Id. ¶¶ 22-24 & Exhibit D]*. Professor Keefe concludes that Michigan workers' compensation is slightly higher than workers in Indiana, Ohio, and Wisconsin, but slightly lower than that received by workers in the other four Great Lakes states. *[Id.]*. Accordingly, Michigan is in the middle of the pack among the Great Lakes states. *[Id.]*.

B. OSE's Economic Proposal Is Draconian.

In 2011, when employees' accepted the substantial concessions outlined above, Governor Snyder told employees that he would not ask them for more cuts. *[Egan, Snyder, Unions Look to Better Future, Detroit Free Press, Dec. 16, 2011, at A1]*.[12] Yet, in spite of the State's much-

[12] After the 2011 agreements were ratified, the media quoted the Governor as stating that "It's important that we treat our employees . . . well," and reported that "Snyder has told state employees that he won't ask them for more cuts." *[Egan, Detroit Free Press, Dec. 16, 2011]*. Likewise, even before bargaining opened in 2011, in an open letter to all state workers announcing the need for concessions, the Governor promised, "We will do our absolute best to ensure that you will not have to look over your shoulder every few months and wonder what cut is going to come next." *[Luke, Gov. Rick Snyder Says State Employee Sacrifice Coming, Bridge*

improved financial condition and ability to pay for an economic package far in excess of the Coalition's modest proposal, OSE seeks substantially increased employee health care costs and more cuts to overtime, and is only offering a tiny wage increase that does not even begin to make up for the decrease in employees' take home pay over the last five years, or their decade of flat wages as compared to the rate of inflation. Thus, under OSE's compensation proposal, employees' take-home pay would be even further depressed as compared to what they were making in 2008. [*Exhibit 9: Mikulan Affidavit,* ¶*24*] And, Professor Keefe estimates that under OSE's proposal, employees compensation would fall even further behind their counterparts in Michgan's private sector. *[Keefe Affidavit ¶ 18, 20-21]*. Furthermore, OSE inexplicably has rejected the Coalition's attempts to work together to uncover health care savings that do not merely shift additional, unnecessary pain onto employees.

1. OSE's wage and insurance proposal effectively seeks deeper concessions in spite of current savings.

OSE proposes a 2% wage increase in fiscal year 2015, and a 1% wage increase in fiscal year 2016. With respect to health care, OSE proposes ending the SHP and HMO, and moving all employees into the NSHP or the NHMO, with increased co-pays, deductibles, and out-of-pocket maximums in the "new" plans. Before addressing the changes in plan design that OSE seeks, the cessation of the SHP and HMO alone would deleteriously impact employees currently enrolled in the SHP, because the NSHP has a 10% co-insurance on most services that is not present in the SHP. In addition, the NSHP and the NHMO have higher prescription drug co-pays than the SHP and HMO, and although OSE does not propose raising these co-pays in the new plans,

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employees currently enrolled in the "legacy" plans would face higher costs simply by virtue of being placed in the new plans.[13] And, similarly, employees in the SHP and HMO would face a four-times higher emergency room co-pay in the new plans.

Turing to OSE's plan design proposals for the NSHP and NHMO, because the SHP and HMO have lower co-pays, deductibles, and out-of-pocket maximums, the increases that OSE is proposing in those areas will hit employees hired before April 1, 2010 particularly hard. However, under OSE's proposal *all* employees will face health care concessions. Specifically, with respect to the NSHP, OSE proposes:

- Raising the office visit and urgent care co-pay to $25 and the specialist visit co-pay to $35 (currently all office visit co-pays are $15 in the SHP, and $20 in the NSHP);
- Raising the deductible to $500 for an individual and $1,000 for a family (the current SHP deductible is $300/$600, and the NSHP deductible is $400/$800);
- Raising the out-of-network co-insurance for specialists to 30% (currently 10% in the SHP and 20% in the NSHP);
- Raising the out-of-pocket maximum to $2,000 for an individual and $4,000 for a family on October 1, 2014, and then again to $2,500/$5,000 on October 1, 2015 (currently $1,000/$2,000 in the SHP, and $1,500/$3,000 in the NSHP); and
- Adding autism benefits, subject to deductibles and co-insurance.

On the HMO side, OSE proposes:

- Raising the office visit co-pay to $25 (currently $10 in the HMO and $20 in the NHMO);
- Adding a new deductible of $150 for an individual and $300 for a family (currently neither plan has a deductible); and

[13] Currently, prescription drug co-pays in the SHP are $10/$20/$40 at retail and $20/$40/$80 mail order; in the HMO they are $5/$10 at retail and $10/$20 mail order. Under OSE's proposal everyone would pay the current NSHP and NHMO co-pays, which are $10/$30/$60 at retail and $20/$60/$120 mail order.

- Adding a new out-of-pocket maximum of $2,500 for an individual and $5,000 for a family (currently neither plan has an out-of-pocket maximum).

To illustrate just how concessionary OSE's health care proposal is, the Coalition has worked up some hypotheticals on how employees with moderate to heavier health care needs could be affected by the Employer's proposal. For example:

- Ann, age 45, is an employee with twelve years of service,[14] currently enrolled in the SHP with coverage for her husband, Michael, age 42. The chart below illustrates their annual health care costs with some hypothetical health issues, under both the Unions' proposal and OSE's proposal:

	Union Proposal (current SHP)	OSE Proposal (NSHP with plan design changes)
Ann and Michael receive annual physicals	**$0**	**$0**
Michael visits a specialist three times to find out whether he'll need knee surgery	**$45** (3 x $15 co-pay)	**$105** (3 x $35 co-pay)
Michael fills a preferred brand prescription twice at retail	**$40** (2 x $20 co-pay)	**$60** (2 x $30 co-pay)
Ann has outpatient surgery that costs $2,500	**$300** (to meet deductible)	**$700** ($500 to meet deductible, plus 10% co-insurance of $200)
Michael has outpatient surgery that costs $16,300	**$300** (to meet deductible)	**$2,080** ($500 to meet deductible, plus 10% co-insurance of $1,580)
Michael visits his primary care doctor six times	**$90** (6 x $15 co-pay)	**$150** (6 x $15 co-pay)
Ann's out-of-pocket costs:	**$775**	**$3,095**

[14] The average state employee is 44.9 years of age, and has 12.5 years of service with the State. *[Civil Service Commission, Annual Workforce Report, Third Quarter, FY 2012-13]*.

Ann's paycheck deductions for premium:	**$3,100.56** ($258.38/month)	**$2,746.08** ($228.84/month)
Ann's total cost for premiums and expenses:	**$3,875.56**	**$5,841.08**
Ann's 2014 accumulation to the out-of-pocket maximum	**$735**	**$3,035**

- Fred, age 55, is a twenty year state employee, enrolled in the SHP with coverage for his wife, Linda, age 54:

	Union Proposal (current SHP)	OSE Proposal (NSHP with plan design changes)
Fred and Linda receive annual physicals	**$0**	**$0**
Fred visits a specialist three times to find out whether he'll need back surgery	**$45** (3 x $15 co-pay)	**$105** (3 x $35 co-pay)
Fred fills a preferred brand prescription three times at retail	**$60** (3 x $20 co-pay)	**$90** (3 x $30 co-pay)
Linda fills three generic prescriptions for the year by mail, and two preferred brand prescriptions at retail	**$280** (3 x $20 co-pay x 4 times, plus 2 x $20 co-pay)	**$300** (3 x $20 co-pay x 4 times, plus 2 x $30 co-pay)
Fred has outpatient surgery that costs $26,500	**$300** (to meet deductible)	**$3,100** ($500 to meet deductible, then 10% co-insurance of $2,600)
Linda visits her regular doctor eight times	**$120** (8 x $15 co-pay)	**$200** (8 x $25 co-pay)
Fred visits a specialist once for post-surgical follow-up, and visits his regular doctor two times	**$45** (3 x $15 co-pay)	**$85** (1 x $35 co-pay, plus 2 x $25 co-pay)
Fred's out of pocket costs	**$850**	**$3,880**
Fred's paycheck deductions for premium:	**$3,100.56** ($258.38/month)	**$2,746.08** ($228.84/month)

Fred's total cost for premiums and expenses:	**$3,950.56**	**$6,626.08**
Fred's 2014 accumulation to out-of-pocket maximum	**$510**	**$3,490**

- Stan, age 35, is a six year state employee. He is enrolled in the SHP, with family coverage for his wife Nicole, age 30, and their two children, Jennifer, age 5, and William, a newborn:

	Union Proposal (current SHP)	OSE Proposal (NSHP with plan design changes)
Stan and Nicole receive annual physicals	**$0**	**$0**
Stan visits a specialist three times	**$45** (3 x $15 co-pay)	**$105** (3 x $35 co-pay)
Nicole has five pre-natal visits while pregnant with William	**$75** (5 x $15 co-pay)	**$125** (5 x $35 co-pay)
Nicole gives birth to William earlier than expected, and her labor and delivery costs are $22,000	**$300** (to meet deductible)	**$2,650** ($500 to meet deductible, then 10% co-insurance of $2,150)
William spends six weeks in neo-natal ICU, at a cost of $840,000	**$300** (to meet deductible)	**$1,120**[15] ($500 to meet deductible, then 10% co-insurance of $83,950, limited by out-of-pocket maximum of $4,000)
Jennifer has two well-child check-ups	**$0**	**$0**
William has two pediatric specialist visits	**$30** (2 x $15 each)	**$0** (2 x $35 each, but out-of-pocket maximum already reached)
Stan has to pay out of his pocket	**$750**	**$4,000**[16]

[15] $2,120 in fiscal year 2016, because the out-of-pocket maximum would be $5,000.
[16] $5,000 in fiscal year 2016, because the out-of-pocket maximum would be $5,000.

Stan's paycheck deductions for premium:	**$4,278.60** ($356.55/month)	**$3,789.72** ($315.81/month)
Stan's total cost for premiums and expenses:	**$5,028.60**	**$7,789.72**
Stan's 2014 accumulation to out-of-pocket maximum	**$750**	**$4,000**

As these hypotheticals demonstrate, employees currently enrolled in the SHP – those hired more than three-and-a-half years ago – with moderate to heavy health care needs will face dramatically increased costs under OSE's proposal.

In addition to proposing changes in plan offerings and plan design that will drastically increase employees' costs, OSE also proposes removing language in the current collective bargaining agreements that allow the Coalition Unions to essentially veto any changes in which HMO plans are offered to employees. This proposal is extremely significant to the Unions, because current contract language gives them a measure of control over the quality of health plans offered to the employees that they represent. *[See, e.g., MCO CBA, Art. 30, Sec. C]*. Under current language, OSE cannot unilaterally remove high-quality HMOs like Health Alliance Plan or Blue Care Network, and replace them with cheaper but inferior plans. Under OSE's proposal, it would be permitted to discontinue offering plans that employees are happy with and have been enrolled in for many years, without any input from employees' representatives. OSE's proposal in this regard is deeply troubling, and undoubtedly concessionary.

Finally, OSE's health care proposal contains a new "voluntary wellness awareness plan," with a penalty for employees who decline to "volunteer" to participate. As presented to the

Coalition Unions across the table, the plan would require employees to visit their primary care physician and complete biometric screenings within the first ninety days of each plan year, fill out a form and return it to Blue Cross Blue Shield (for the NSHP) or the appropriate NHMO plan, and attend any follow-up screenings if recommended by the employee's primary care physician. *[OSE's September 11, 2013 proposal, Attachment #1]*. An employee declining to participate would have to pay an additional $10 towards their premium per bi-weekly pay period, beginning October 1, 2015.

The Coalition Unions are not averse to instituting a wellness program, as their proposed LOU on new health programs makes clear. However, the Unions are interested in real wellness programs that maximize employee participation and genuinely reduce long-term health care costs by improving employees' health. In contrast to those goals, the Unions submit that OSE's proposal on wellness, like the rest of its health care proposal, is just another concessionary cost-shifting measure. First, research demonstrates that participation in wellness programs is more successful when workers are incentivized to participate rather than penalized for non-participation. *[Exhibit 8: Harrell Affidavit ¶20]*. Accordingly, the Unions' proposed LOU on wellness and other programs would allow employees to share in cost savings realized by instituting these programs, rather than charging them extra costs for declining to participate. Second, a real wellness program – like the ones offered by StayWell, Health Solutions, or any number of other vendors that the Unions would be willing to explore with the State – is considerably more of a long-term, holistic program than the "visit your doctor and fill out a form" plan offered by OSE. *[Id. ¶21]*. The Unions believe, based on independent research and their experience with wellness programs with other bargaining units that they represent, that the meager wellness plan proposed by OSE will do little to actually make employees healthier, and therefore little to reduce overall health care costs – thus failing to meet the twin goals of any legitimate wellness program. *[Id.]*.

2. OSE's Alleged Need For Health Care Concessions Is Unsupported By Relevant Data.

Across the table with the Coalition Unions, OSE attempted to justify its health care proposal by claiming that it will face a deficit in the State Sponsored Group Insurance Fund (SSGIF) by the end of fiscal year 2015 unless it gets an additional $60 million in concessions from the Unions. However, OSE has refused to provide the Coalition – despite repeated information requests – with utilization and other data for the SHP/NSHP, which is necessary for the Unions to assess OSE's claims on health care, and its overall economic proposal. *[Exhibit 8: Harrell Affidavit]*. Furthermore, what little information that OSE has provided relative to its position strongly suggests that the State is significantly overstating the projected deficit in the SSGIF. First and foremost, the OSE projected deficit rests on questionable assumptions. For example, future prescription drug cost increases predicted by OSE rely on trend assumptions that are overstated compared to actual trend. *[Exhibit 11: James Shake Affidavit ¶5]* Second, the State is assuming significant premium increases, but experts are predicting that due to the Affordable Care Act, the rate of increase in overall health care costs will be lower in the years ahead. *[Exhibit 8: Harrell Affidavit ¶15; Exhibit 10: Jeffrey H. Keefe Affidavit ¶ 19]*.

Given OSE's failure to provide the Unions with necessary and relevant information to assess its economic proposal; the serious flaws in the health care projections that it is willing to provide; the concessions of the last several years; and the State's improved financial condition, the Unions strongly believe that they should not be required to take yet more concessions in health care. OSE must be required to provide accurate and reliable data to back up its claim that it needs, yet again, to shift significant health care costs onto employees.

The failure to provide requested information is troubling. What is more, OSE's impasse position includes several items that were *never* proposed to the Unions across the bargaining table. This, after OSE's overall health care proposal barely changed at all during the course of bargaining – in contrast to the Coalition, which has shown considerable movement between their first economic proposal and their impasse position. As such, the Coalition disputes that OSE has exhibited good faith in these negotiations, and questions whether the parties are actually at impasse.

Two examples will illustrate the negotiation behavior displayed over the past several weeks.

First, prior to submitting its impasse position to Civil Service, OSE never proposed deleting the contract language that allows the Unions to participate in the decision of what HMOs will be offered. As discussed above, this deletion represents a serious concession, and it is outrageous that OSE would include it in its impasse position without making the proposal across the table. In addition, although OSE did propose increasing the out-of-pocket maximum to $2500 for an individual and $5000 for a family, it never proposed the grow-in to the new maximum contained in its impasse position. Similarly, although OSE proposed a wellness program with a penalty for non-participation, the penalty proposed across the table was consistently a 5% increase in the non-participating employee's premium share. In contrast, OSE's impasse position is for a $10 increase in the non-participating employee's bi-weekly premium deduction. By failing to bring these proposals to the Union before placing them in its impasse position, OSE has acted in bad faith.

Second, OSE only made essentially two proposals on health care across the table, which differed from each other only slightly. OSE made its initial proposal on September 11, 2013, which, with the exception of the three new proposals identified above, is identical to its impasse position. On October 9, 2013, OSE made a second proposal on health care, which altered the original proposal by reducing the office visit and urgent care co-pay in the NSHP and NHMO to $20, and the specialist co-pay to $30 (compared with $25 and $35 in its September 11 proposal and its impasse position), and reducing the out-of-pocket maximum to $2,500 and $5,000 (compared with the maximum allowable under the Affordable Care Act in its September 11 proposal). In other words, the only changes in its initial position that OSE ever offered across the table were a $5 reduction in office, urgent care and specialist co-pays, and a reduction in the out-of-pocket maximum – and, both of these were an increase over current language. The Unions therefore submit that OSE has refused to bargain in good faith on health care specifically, and its overall total compensation proposals more generally.

In contrast to OSE, the Coalition Unions have not included any proposals in their impasse positions that were not made across the table, and they have shown significant movement throughout the bargaining process on both wages and health care. The Unions' initial economic proposal, made on September 19, 2013, included, among other things, a three-year agreement with a 5% base wage increase in each year; the elimination of the NSHP and NHMO and moving all employees into the "legacy" plans; lower employee bi-weekly premiums for workers currently in the SHP; going to a two-tier prescription drug plan with lower co-pays; a 5%

premium reduction for participation in a wellness program; and improvements in both dental and vision coverage. Over the last month-and-a-half, the Unions offered a number of proposals that incrementally backed off of both its wage and benefit proposals, ending up at their current proposal for a two-year agreement with 3% base wage increases and largely currently language on health insurances – a dramatic shift from their initial economic position.

Given OSE's outrageous inclusion of new proposals in its impasse position and the lack of any meaningful movement in its health care proposal, OSE has engaged in bad faith on economic bargaining. Further, because of OSE's bad faith and its failure to provide necessary and relevant information related to its health care proposal, the Coalition submits that the parties are not, and in fact cannot be, at impasse. Impasse is defined as "that point at which the parties have exhausted the prospects of concluding agreement and further discussions would be fruitless." *OSE & MSEA*, Nos. ULP 82-49-45, 82-53-49 (Bureau of Labor Relations 1982). *Accord AMF Bowling Co, Inc.*, 314 NLRB 969, 978 (1994) (defining impasse as "the point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile," and "[b]oth parties must believe that they are at the end of their rope"); *Detroit Public Schools*, 25 MPER ¶ 77 (2012) (defining impasse as "the point at which the parties' positions have solidified and further bargaining would be useless"). In determining whether an impasse has been reached, both the National Labor Relations Board and the Michigan Employment Relations Commission take into account bargaining history, good faith of the parties, length of negotiations, the importance of the issues as to which there is disagreement, and the contemporaneous understanding of the parties as to the state of negotiations. *Taft Broadcasting Co*, 163 NLRB 475, 478 (1969); *Detroit Public Schools*, 25 MPER ¶ 77 (2012). Under that standard, the parties are not at impasse, and, accordingly, the Impasse Panel should order us back to the table to continue bargaining.

II. OVERTIME

The Coalition asks simply to preserve the *status quo* on overtime. By contrast, hoping to change current language, the OSE seeks overtime-provision concessions – by removing compensatory time from the calculation of overtime. The baseline for analysis between these competing positions was set forth in IP 2000-05:

> At impasse, when one party requests a significant change to current language to which the other party objects, the proponent of change should present concrete evidence of the need for the change, such as inefficiencies in operations, inequitable treatment, hardship, or other convincing justifications for the change.

By way of further background, we note that the OSE seeks this concession even as the Coalition and its constituent employees have made massive concessions in several economic areas over the past several years (*see* Factual Statement II, above). So cost-savings alone cannot be a legitimate basis for the OSE's proposal. Yet OSE likewise cannot show inefficiencies in operations, inequitable treatment, or hardship as the grounds for its overtime proposal.

Unlike base hourly wages which are fixed, the overall cost of overtime pay is always *in the control of the employer* during the life of a contract. For instance, an employer can avoid overtime costs by hiring, training, and allocating its employees in efficient distribution across the employer's facilities. Indeed, overtime results when the employer chooses – for financial reasons – not to hire new employees, but rather to increase the proportionate workload on current employees. To lower overtime costs simply by lowering overtime pay calculations would exacerbate the problem. And that is all that OSE has proposed to do here – by removing compensatory time from the calculation of overtime.

From an employee's perspective, overtime costs are the compensation earned when work hours exceed the normal standards and cut into family and rest time. Researchers have described these personal costs as sacrifices which "can translate into increased risk for accidents and injuries, greater chronic fatigue, stress, and related diseases; reduced parenting and family time; and diminished quality of goods and services – a serious public concern particularly in the health care sector." *[Golden and Jorgensen, Time After Time: Mandatory Overtime in the U.S. Economy, at p. 1 (2002)]*[17] Multiple studies bolster these conclusions. *[Id. at p. 3 (citing research)]*

We ask the Panel to consider the sacrifices made by employees when they work overtime, while the OSE asks the Panel literally to *devalue* that time through reduced compensation for their efforts.

III. UNION DUES AND FEES

Michigan's passage of "right to work" laws has put the Union Security provisions of the Unions' collective bargaining agreements into active negotiations. While these negotiations have been underway, suit has been filed to challenge the applicability of the "right to work" laws to employees in the classified civil service. *See International Union, UAW et al v Yaw*, COA Case No 314781 (challenging applicability of Public Act 349 of 2012 app. lv. pending MSC No.). Most recently, the challenge has been rebuffed by a split decision at the court of appeals, and an application for leave to appeal to the Michigan Supreme Court is now pending.

[17] Available at: http://www.epi.org/publication/briefingpapers_bp120/

Through these negotiations, however, the Unions and the OSE have reached an agreement on a replacement article governing Union dues and fees: the new article makes dues and fees voluntary. But the parties have agreed further to acknowledge the pending litigation in a Letter of Understanding. The disagreement arises over a distinct sub-issue in the Letter of Understanding: What language should be included in the collective bargaining agreements if pending litigation successfully challenges the applicability of the "right to work" law to civil service employees?

OSE has proposed a Letter of Understanding with a re-opener clause – that is, a clause which would open up *new* bargaining on Union security and dues provisions if the legal challenge succeeds in preventing the application of the "right to work" law to employees in civil service.

The Unions have each proposed a Letter of Understanding which would restore the parties to the *status quo ante* if the legal challenge succeeds in preventing the application of the "right to work" law to employees in civil service. In other words, the parties would return to the Articles which presently constitute the Union Security provisions in their respective agreements.

The Unions' proposal should be adopted, for two basic reasons.

First, the impetus for changing the Union Security provisions has been the change in the statutory framework – not any problem, defect, or other issue arising from the current language itself. OSE has not suggested, or identified, any problems in the Union Security provisions to date. To the Unions' knowledge, there are no such problems. The current language is clear and has been in force for many years. *See* Elkouri, *How Arbitration Works*, at 1440 (6th ed) (noting that interest arbitrators "seriously" consider "what the parties have agreed upon in their past collective bargaining . . ."). In fact, these provisions have been in the collective bargaining agreements for at least fifteen years. If legal challenge to Public Act 349 is successful, that is, if Public Act 349 is deemed inapplicable to employees in the classified civil service, then the existing Union Security articles would be enforceable as they have been. There would no longer be a need or impetus to replace them.

Second, a negotiation re-opener is normally utilized only if the contract is of substantial duration. Elkouri, *How Arbitration Works,* at 1426 (6th ed) (explaining factors considered in interest arbitrations; re-openers are considered for long-term contracts). That is not this case. Here, the duration of the new collective bargaining agreements will be only two years. A re-opener makes little sense. In the event that OSE does identify a problem or ambiguity in the current Union Security language, it will have an opportunity to propose new language within two years. The *status quo ante* should be maintained – if the legal challenge is successful – until the OSE identifies any problems, and proposes solutions to such identified problems. To engage in a second round of negotiations on this *one* article, which has otherwise gone undisputed, would be unnecessary and wasteful of the parties' resources.[18]

In short, the Unions' proposal on the Letter of Understanding should be adopted because it comports with factors normally taken into consideration for employment conditions – clear language, history of the parties' agreements, efficiency, and reduction of unnecessary

[18] Any such negotiations would be complicated and potentially subject to more litigation, under the OSE's proposal, by the fact that the new *status quo* would be the Union dues and fees provision comporting with "right to work." In effect, OSE would be insisting at the bargaining table on what the Michigan judiciary had declared was unlawful – the applicability of a statute (PA 349) affecting employment terms within the plenary authority of the Civil Service Commission.

proceedings or potential disputes in regards to the article. *See* Impasse Rule 6-9.4(b)(7); Elkouri, *How Arbitration Works*, at 1440.

CONCLUSION

For all the reasons set forth above, the Coalition of State Employee Unions respectfully requests that its proposals on health care, wages, overtime, and Union dues and fees be adopted by the Impasse Panel.

SACHS WALDMAN PC

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