STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

COORDINATED COMPENSATION PANEL

Coordinated Compensation Proposal

for

Fiscal Year 2022 (10/1/21–9/30/22)

Recommendations for Nonexclusively Represented Employees in the State Classified Service for the Fiscal Year Beginning October 1, 2021

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Introduction

Rule 1-15.4(c) states that the Employment Relations Board shall serve as the coordinated compensation panel (the Panel). Rule 5-1.3 charges the panel as follows:

> The coordinated compensation panel shall send a recommended coordinated compensation plan for all nonexclusively represented classified employees to the civil service commission. The panel shall consider negotiated collective bargaining agreements, any impasse panel recommendations, and any recommendations of the employer or employees.

Regulation 6.06 establishes a process for employee participation and guidelines for the Panel in making its recommendations. Under the regulation, participants in the coordinated compensation plan process include the Office of the State Employer (OSE) and organizations granted limited-recognition rights under rule 6-8.3. The following limited-recognition organizations participated in this year's process:

- Association of State Employees in Management (ASEM)
- Michigan Association of Governmental Employees (MAGE)
- Michigan State Police Command Officers Association (MSPCOA)

Nonexclusively represented employees (NEREs) who are not members of limited-recognition organizations may also participate upon leave granted by the Panel. No employees requested to participate this year.

The Panel held a hearing on November 2, 2020 by teleconference. The Panel was reconvened on November 23, 2020, to address the potential economic impact of the worsening COVID-19 pandemic. All parties were allowed to make presentations and respond to proposals of other parties. Having reviewed the parties' arguments and submissions, the Panel offers the following summary and recommendations to the commission.

Economic Overview

Consistent with regulation 6.06, which calls for the Panel to consider "the current and forecasted financial condition of the State" in making its recommendations, the Panel received evidence on fiscal year (FY) 2022 revenue forecasts and budget projections as part of the OSE's presentation. Staff of the Department of Treasury and State Budget Office stated that:

- The COVID-19 pandemic has made this year's forecasts the most uncertain experienced by the state's economists.
- Over 1,000,000 private payroll jobs were lost from February 2020 through April 2020, and over 700,000 jobs were recovered from May through October 2020.
- As of October 2020, the unemployment rate had recovered more quickly than forecast in August 2020, which expected an annualized unemployment rate for calendar year 2020 to be 11.7%. The unemployment rate for October was down to 5.5%. Even if no more jobs were added through the end of calendar year 2020, the annualized rate for the year is expected to be about 9.5%.
- To offset expected state-revenue loss caused by the pandemic, several one-time actions were used to offset FY 2020 shortfalls, including retaining an expected budget surplus of $800 million in the FY 2020 budget, reducing state funding for education and local governments by $550 million, reducing state department budgets by $200 million, lapsing non-critical work projects and moving certain restricted funds to the General Fund totaling $250 million, and $600 million in other miscellaneous savings and reduced investments.
- Despite withdrawing $350 million from the rainy-day fund to help stabilize the FY 2020 budget, the rainy-day fund balance is expected to remain at about $900 million during FY 2021.
- State-revenue losses due to the pandemic have been less than initially expected. Because of expiring federal aid, however, revenue for the FY 2022 General Fund and School Aid fund budgets is expected to be lower than pre-pandemic January 2020 estimates by $1.1 billion and $500 million, respectively. Income tax withholding and sales taxes collections through October 2020 have been better than initially expected at the May consensus forecast, resulting in revenue for the General Fund and School

Aid Fund for FY 2022 being revised upward by about $243 million and $133 million, respectively.

- In addition to ongoing costs attributable to the coronavirus recovery, pending costs of other criminal-justice reforms, a Flint water settlement, and higher Medicaid costs are expected to put pressure on the FY 2022 budget.
- Despite the recent increase in COVID-19 cases, hospitalizations, and deaths, economic conditions through October 2020 are in line with the latest consensus forecast in August. The August forecast did not assume return to full economic activity in the near term. Economic activity was expected to remain slow in the first quarter of FY 2021.
- The worsening of the COVID-19 pandemic during October and November 2020 will require identification and appropriation of funds for expanded state response activities after expiration of federal relief funds expire on December 30, 2020, but these costs are expected to be fairly limited and not fundamentally change the FY 2022 budget outlook.
- The latest economic forecast does not expect any federal stimulus. A new round of federal stimulus, if it occurs, and the recent vaccine developments could provide an economic and a revenue boost to the state, but these are not necessary to meet the forecast economic conditions.

MAGE argued that despite the pandemic, state revenue collections in August 2020 were above the prior August's collections. Although adjusted personal income is estimated to decline by 1.6% in 2020, it is expected to grow by 1.3 in 2021 and 2.6% in 2022.

Proposals and Positions

I. Wages

A. OSE Proposal

The OSE recommends a base-wage increase of 2% effective October 1, 2021, and a 1% base-wage increase effective the first full pay period in April 2022. This proposal is consistent with tentative agreements for FY 2022 wages negotiated in seven collective bargaining agreements recently entered with exclusive representatives. The OSE points out "the historic primacy of equity in CCP considerations," as stated by the Panel in its FY 2011 recommendation, is of major significance in recommending NERE pay increases equal to those of exclusively represented employees. After NEREs were denied a pay increase received by exclusively represented employees in FY 2012, many NEREs continue to feel that equity was not achieved even with subsequent attempts to bring NEREs' pay into parity with other employees.

The OSE estimates that the proposed 2% increase for NEREs would cost $39.5 million and the 1% increase would cost $10 million, respectively. These estimated base-wage increases collectively would therefore cost $49.5 million, including associated increases to taxes, retirement contributions, and other payroll charges.

B. ASEM Proposal

ASEM concurs with the OSE's proposal for FY 2022. ASEM further argues that state employees, including NEREs, are not the cause of any financial problems faced by the state. These employees are responsible in large part to implement and manage public programs created by elected officials. NERE managers and supervisors make decisions affecting program policy, significant numbers of citizens, and manage large budgets. Retirements and inability to backfill these positions because of budget constraints requires these managers to maintain quality of services with fewer staff, which they have done through innovation and creativity. ASEM does not expect NEREs to experience inequitable treatment like that occurring in prior years.

C. MAGE Proposal

MAGE concurs with the OSE's proposal for FY 2022. MAGE further notes the morale problems that persisted among NEREs when they did not receive equivalent pay increases as those negotiated for exclusively represented employees a decade ago. MAGE argues that with the ongoing pandemic, many NEREs working in prisons and in healthcare are being asked to work more overtime than usual, exhaust their sick leave balances when required to quarantine, and being reassigned to other facilities because of short staffing. NEREs in the Unemployment Insurance Agency handling the landslide of unemployment filings remain overburdened and overwhelmed.

D. MSPCOA Response

The MSPCOA concurs with the OSE's proposal for FY 2022.

Panel Recommendation

During the current round of bargaining, the OSE has reached voluntary agreements in seven union contracts with 2% and 1% general-wage increases in October 2021 and April 2022, respectively. The Panel has previously recognized the importance of equitable treatment of NEREs, in addition to other factors listed in regulation 6.06. Further, sound management practice reinforces such need. The Panel is, however, cognizant of the continued effect that the COVID-19 pandemic has had on the national economy generally, and the Michigan economy in particular and the ongoing uncertainty that complicate making a recommendation at this time for FY 2022.

Since the first Panel hearing, the COVID-19 pandemic has worsened. Additional information provided by Treasury and the State Budget Office indicated much remains unknown about the economic effects that the increase in COVID-19 cases, hospitalizations, and deaths will have on the FY 2022 budget, and that no specific revenue or budgetary changes have been forecast from its previous estimates based on the recent increases.

The Panel is hesitant to recommend voluntary general-wage increases for NEREs during economic uncertainty of the magnitude currently facing the state and when many workers in the private sector have been laid off. Unlike the situation under the seven union contracts, the state is not contractually obligated to provide any such increases for NEREs.

However, the Panel accepts the conservative nature of the revenue and budget forecasts for FY 2022 and the lack of any proposed increase to employee benefits for the NEREs. Moreover, the Panel has given heavy weight to the fact that the OSE, representing the state as the employer, has incorporated such increases as part of the planning for the projected FY 2022 budget.

The Panel is further assured by the many opportunities that will still remain for the reevaluation of any pay increases over the coming year as more information becomes available about the status of the current pandemic and the state's economy. The commission has the authority to reject any Panel-recommended increases for NEREs for any reason at its December 16, 2020 meeting. The legislature similarly may reject or reduce any increases in compensation transmitted in the governor's budget for FY 2022 for all classified employees by a two-thirds' majority vote in each house within 60 days of transmission in spring 2021. Finally, if the governor declares a budgetary emergency, the commission has the authority to issue rules of general applicability to amend the compensation plan, including reducing compensation for all classified employees.

Accordingly, the Panel **recommends** adopting the OSE's proposal for a base-wage increase of 2%, effective October 1, 2021, and a 1% base-wage increase, effective the first full pay period in April 2022.

Recommendation of Panel Member Whitbeck

Panel Member Whitbeck does not join the recommendation as to this item for the reasons stated in his dissent, which appears below as § III.

II. Miscellaneous

A. Professional Development Fund Contribution

1. OSE Proposal

The OSE recommends continuing the NERE Professional Development Fund and adding $200,000 of funding in FY 2022. NEREs requested almost $200,000 in reimbursements during the past fiscal year. ASEM agrees with the OSE's proposed increase to the fund.

2. MAGE Proposal

MAGE requests adding $250,000 to the fund as has been done in the past.

3. OSE Response

The OSE asserts that while $250,000 was added for FYs 2016, 2017, and 2018, before FY 2016 and after FY 2018 $200,000 was annually added to the fund. At no time has a request for reimbursement from the fund been denied for insufficient funds. Even with the increased annual maximum of $1,700 available to NEREs since mid-2019, there was carryover into FY 2021. The OSE expects $200,000 will be enough for FY 2022.

Panel Recommendation

Based on the OSE's information that the professional development fund has carried a surplus each of the past several years in which $200,000 was added, again adding $200,000 to the fund should be adequate to cover eligible expenses. The Panel therefore **recommends** adopting the OSE's proposal.

B. Parking Refunds

1. ASEM Proposal

In a request submitted for the first time for the reconvened Panel hearing, ASEM requests that the OSE ask the DTMB to refund parking fees paid while many state employees were working from home.

2. Panel Recommendation

ASEM's request was not received until after the deadline for participant's position statements and is therefore untimely. The Panel therefore **recommends** denying the request.

III. Dissent to the Panel's Recommendation on Wages

A. Introduction

I respectfully dissent. I base my dissent, importantly but not exclusively, on the letter of November 25, 2020, from Governor Whitmer to the members of the legislative Quadrant. In that letter, of which we can properly take notice, Governor Whitmer referred to the "most urgent public health emergency our state has faced in our lifetimes" and went on to say that:

> "As you know, Michigan is still facing a [budget] shortfall *of up to $1billion next year* [FY 2022] so it is incumbent upon all of us to avoid the temptation to spend limited dollars on non-critical projects." (Emphasis supplied).

In essence, I understand the Governor to be saying that, *in certain circumstances*, state government leaders must face the reality of large projected budget deficits and, *in those circumstances*, such leaders must expend those limited dollars that are available only on those projects, programs, and systems that are *critical.* The question before us then, is whether increasing the compensation for non-exclusively represented employees in FY 2022 is critical—when we are, as Governor Whitmer pointed out, facing a budget shortfall of up to $1 billion.

I recognize that unionized employees will, under previously negotiated contracts, receive base-wage increases of 2% effective October 1, 2021, and 1% effective the first full pay period in April, 2022. However, I cannot conclude that, *under the current circumstances that the Governor outlined*, we can regard counterpart 2% and 1% increases for non-exclusively represented employees as a *critical* expenditure of our limited dollars. Certainly, primarily for reasons of equity, such an expenditure is tempting. But this expenditure is not critical, *again under the current circumstances of a renewed epidemic of COVID 19*.

I generally regard simple—and often simplistic—maxims concerning human behavior not to be terribly helpful when considering specific problems. But, under the circumstances before us, there is one maxim that has considerable utility: when one is already in a hole, it is best to stop digging. According to the Governor of the State of Michigan, we are in a budget hole of up to $1 billion for FY 2022 during the most urgent public health of our lifetimes. Depending upon the status of the budget preparations for FY 2022, the proposed $49.5 million compensation increase for the non-exclusively represented employees is already included within that hole or will add to it. Either way, that proposed increase will contribute to that budget hole.

Under these circumstances, I cannot agree that—even when considerations of equity are taken into account—the current and forecasted financial condition of the state allows us to dig that budget hole any deeper. I therefore dissent and recommend that the Commission freeze the compensation for the non-exclusively represented employees at current levels through September 30, 2022.

B. The FY 2022 Budget Shortfall

In the welter of documents, charts, graphs, position papers, talking points, and testimony that the Office of the State Employer (OSE) has provided to us, one number is of overriding importance: the projected budget shortfall for FY 2022. Simply put, if revenue levels were to remain fairly positive for that fiscal year, then there would be no budget shortfall. Indeed, there might even be a budget surplus, (although such surpluses in my experience rarely outpace the government's ability to spend them). But, conversely, if revenue levels drop, then we can expect there to be a budget shortfall, again the proverbial "hole in the budget." Such a projected budget shortfall in my opinion—and apparently in the opinion of the Governor—must trigger an evaluation of the circumstances under which we consider, and resist, the temptation to expend limited dollars for non-critical purposes.

The information that OSE and its witnesses presented uniformly projected a budget shortfall for FY 2022, although not in the magnitude that the Governor outlined. These materials were also studded with caveats concerning some basic assumptions and inferences:

- The November 2, 2020 revenue and budget presentation, based on preliminary estimates, showed that the state faces a budget shortfall of roughly $500 million to $750 million in FY 2022 in the General Fund and the School Aid Fund. The State Budget Office did equivocate somewhat, saying that there may be mitigating factors that might reduce the budget shortfall, including a "bounce" from FY 2021 to FY 2022 as the "economy recovers" and if a new federal stimulus is enacted.

- The State Budget Office through its Deputy State Budget Director Kyle Jen testified at the November 2, 2020 hearing that, "But we do project a shortfall for FY 2022 in a range of $500 million to $750 million between the general fund and the school aid fund. There are some positive upside factors that we anticipate could help us resolve that shortfall. As Eric [Bussis] mentioned, the current revenue estimates do not account for any additional federal stimulus that could be enacted in the coming months. So that would increase revenues. Additionally, whatever portion of that federal stimulus would be direct aid to states, you know, would reduce that shortfall on a one-for-one basis."

- The November 20, 2020 OSE response to this Panel's questions took the position that the budget shortfall for FY 2022 would be significant but manageable using the Rainy Day Fund, potential budget reductions and any aid the state would receive from the federal government.

- The State Budget Office again through its Deputy State Budget Director Kyle Jen testified at the November 23, 2020 hearing that, "As I indicated in our written response, we are currently forecasting a budget shortfall in the range 250 million and $750 million between the general fund and the school aid fund." Mr. Jen contemporaneously testified that:

  > "I mean, there is certainly still a very large amount of uncertainty as we look ahead through the remainder of the fiscal year 2021 and look at the budget outlook for fiscal year 2022. I mean, certainly as we stand here in November, this is the most uncertain outlook I've ever faced in my career working on the state budget as we're starting the process of preparing the executive budget for release in February. So uncertainty in terms of the path of COVID, in terms of the path of the national [and] the state economy, in terms of the path of state revenue, in terms of what happens with potential additional federal stimulus funds. Both in terms of the direct impact that could have on the state budget with any flexible aid that we could use on a one for one basis to replace state revenues. The indirect impact it would then have on state revenues, and the timing of when that could occur. Along with a high level of uncertainty around the state's Medicaid program, which is the biggest variable in terms of our level of baseline spending in terms of how long higher caseloads and costs will occur in the program. And then how long we will continue to receive the enhanced higher federal match rate that we're

receiving now that reduced the amount of general fund we have to put into our Medicaid budget. This was one of the pieces that was enacted by Congress earlier this year."

- But then in Governor Whitmer's November 25, 2020 letter, exactly two days after our re-opened hearing at which we attempted to ascertain with some degree of precision the effect of the surge in COVID 19 cases, the Governor cut through the fog and clarified the situation enormously. She stated, simply and directly, that Michigan is facing a budget shortfall *of up to $1billion* in FY 2022.

So, despite the fact the projections of any kind—particularly those that look well beyond the immediate future—are inherently speculative, we have one projection from the most important person of all, the Governor of the State of Michigan. This projection is reasonably precise. Governor Whitmer estimated a budget shortfall of up to $1 billion for FY 2022. Under these circumstances, I cannot find a path of reasoning that would lead me to recommend that the Commission adopt an estimated base-wage increase for FY 2022 for non-exclusively represented employees of $49.5 million.

C. The COVID 19 Surge

The Panel did not directly receive evidence concerning the current COVID 19 surge. However, there are publicly reported statements from upper level officials of state government concerning that surge and we can properly take notice of those public statements. Specifically:

- On November 12, 2020, MIRS quoted Michigan Chief Medical Executive Dr. Joneigh S. Khaldun as saying that with more than 10% of COVID 19 tests coming back positive, it means that "this virus is out of control." In the same story, Governor Whitmer was quoted as saying that this is "the worst week of COVID we've ever had." The story went on to report that:
  - The seven-day average for deaths of 35 was *seven times* the amount it was back in June, 2020;
  - The single day report of 6,473 cases on the Tuesday of that week *was the most reported on a single day*; and
  - The cumulative number of deaths in Michigan was *7,811*.

- On November 19, 2020, MIRS quoted Governor Whitmer as also saying COVID 19 was "out of control."
- On November 22, 2020, The Detroit News quoted Governor Whitmer as saying, "The situation has never been more dire. We are at the precipice, and need to take some action."
- On the same day, The Detroit News quoted Beaumont Health CEO John Fox as saying, "The Health care system can capsize if you don't keep it under control."
- On the same day, The Detroit News quoted Michigan Chief Medical Executive Dr. Joneigh S. Khaldun as saying that the state's contact tracing system is "strained" right now due to the sheer volume of cases.

I am not an epidemiologist and the panel received no direct epidemiological testimony. But as a layman, I think I can understand terms like "out of control" and "dire." These terms describe, simply and directly, the situation we are currently facing. I do not believe the Commission can or should shy away from this reality.

Thus, phrasing it differently and thereby perhaps over-simplifying, the extent to which the state government orders "remediation efforts" in response to COVID-19—a euphemism that Mr. Bussis employed, apparently referring to more, and more extensive, lockdowns—is the extent to which governmental revenues will decrease as the economy contracts. And the extent to which governmental revenues decrease over the coming months is the extent to which budget shortfalls for FY 2022 will increase. This is the blunt—and the present—reality.

D. "Equity"

In its November 20, 2020 response to the Panel's questions for the re-opened hearing, the OSE stated that, "Even if there wasn't reason to be hopeful, the OSE's position would remain the same for FY 2022 *based on the importance of treating NERE's and represented employees equitably in compensation determinations."* (Emphasis supplied). In other words, despite the COVID-19 surge and despite the projections of a FY 2022 budget shortfall, it was apparently the OSE's position that equitable treatment of 15,432 non-exclusively represented employees—whose estimated individual total payroll charges for FY 2020 on average was $143,003.71—should take priority over other considerations. (In fairness, I note that the Acting Director of OSE, Cheryl Schmittdiel, did acknowledge that there are other considerations that the Panel must take into account. She listed "rates of pay stability, continuity and stability of state government other appropriate considerations.")

Now, OSE did not have the advantage of Governor Whitmer's November 25, 2020 upward projected budget shortfall for FY 2022 of up to $1 billion. But OSE—and for that matter Treasury and the State Budget Office—had to be aware of the Governor's statements that the COVID-19 surge is "out of control" and that the situation is "dire." Under such circumstances and given the fact that despite the COVID-19 pandemic, not a single state employee has been laid off, I cannot agree that "equity" can or should be given priority over the "current and forecasted financial condition of the state." Indeed, I suggest to the Commission that if there was ever a time for prudence that time is now. If there ever was a time to limit the temptation to fund non-critical projects thereby avoiding the risk of contributing to a budget shortfall in FY 2022, that time is now.

E. Conclusion

According, again, to the Governor of the State of Michigan, we are in a budget hole for FY 2022 of up to $1 billion. And, as of yet, we do not know what the future may hold with respect to the impact of the COVID-19 surge on state revenues. And, I suggest, the Commission must also recognize that any compensation increase for FY 2022 for the non-exclusively represented employees, like those for unionized employees, will be embedded in the state's compensation system for that fiscal year and for every fiscal year thereafter, in perpetuity. I therefore dissent and recommend that the Commission freeze the compensation for the non-exclusively represented employees at current levels through the end of FY 2022.