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STATE OF MICHIGAN
 BEFORE THE DEPARTMENT OF LABOR
 EMPLOYMENT RELATIONS COMMISSION

BERRIEN COUNTY ROAD COMMISSION

-and-

Case No. G84 C-370

TEAMSTERS LOCAL 214

FACT FINDING REPORT

Appearances:

Berrien County Road Commission --

Mr. Michael Ward, Attorney
 Mr. Robert Billington

Teamsters Local 214 --

Mr. Joseph Valenti
 Mr. William Leidy

Michigan State University
 LABOR AND INDUSTRIAL
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I. REPORT OF FACT FINDER

This Fact Finder has now had an opportunity to extensively review the proofs submitted by the Employer and the Collective Bargaining Representative, and has had an opportunity to review data published concerning Berrien County in a variety of references including, but not limited to, newspapers, magazines, and reports of the Census Bureau.

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 STATE OF MICHIGAN
 DEPARTMENT OF LABOR
 EMPLOYMENT RELATIONS COMMISSION

Berrien County Road Commission

Berrien County is located in the western part of the State and is one of the most economically depressed areas in the State of Michigan. One of its major cities has received statewide publicity on its status at the present time as an industrial wasteland. Another of its major cities has substantial amounts of vacant industrial space, some of it destined for the wrecker's ball, some of it depressed as to value.

The economic situation in Berrien County can be best described as difficult, if not depressed. Berrien County has one of the highest unemployment rates in the State. Berrien County has not, of recent years, attracted any substantial amount of new industry but, on the whole, has lost industry and jobs.

A public sector labor dispute is likely, if publicised, to decrease the opportunities for attracting new industry and new jobs and, therefore, all parties should use every effort to avoid the likelihood that the dispute involved in this issue ripen into a confrontation of major proportions.

The dispute between the parties has three major points to it, each of which can be treated as free-standing or related to the others, each of which presents a narrow area of confrontation with different points of view expressed in different language by the parties. They are (1) wages and retroactivity, (2) health care costs, and (3) long-term disability policies.

This Fact Finder chooses to address them in the order set forth above and describes the positions of the parties as follows.

The Collective Bargaining Representative, Teamsters Local 214, is seeking wage increases approximating 15% over three years. These, it says, are necessary not only to recoup for losses due to increases in the cost-of-living but also to bring the wages of employees of the Berrien County Road Commission closer to those enjoyed by employees of other road commissions which it believes to be comparable. It seeks a retroactivity for its wage demand to July 1, 1984.

The Employer responds that market wages in the area are substantially lower than throughout the State and that it need not look at wages paid by road commissions elsewhere in the State because it gets substantial number of applicants every time it advertises at wage rates which the Employer feels are closer to the market as it appears to them in Berrien County. The Employer opposes wage increases that are retroactive, claiming in support of that position that retroactivity is not required because if the Union had been diligent in pursuing negotiations, the employees would have been paid substantially all of the sums that they were entitled to under any negotiated wage increase.

The Employer also claims that in connection with health care costs, it has been called upon to expend, for the last year of the last contract and for the first year of the existing contract, 23 cents an hour or more to supplement health care expenses that have already been budgeted because it accepted the Union's demand that a specific health care provider be engaged and that that provider could not provide the level of services or the demanded services for the premium charged and, therefore, the Employer, in order to maintain labor peace, had to go to another carrier at a substantially higher cost.

The Union concedes that it did suggest the carrier, that it thought the carrier could deliver, but that the selection of the carrier was the result of the collective bargaining process and the agreement of the parties and it should not be saddled with the whole burden and expense connected with the carrier's failure in its obligation to provide health care services.

At one point during the negotiation, the parties appeared very close to solution of the problem. However, the Employer was unable or unwilling to ratify a contract settlement that the Union had pre-ratified and the Union was unable or unwilling to ratify an Employer proposal that had been made by its Engineer Manager and Attorney, which the majority of the members of the Union thought were too low and represented an actual diminution of wages.

During the course of the proceedings, the Union has indicated a willingness to drop the demand for retroactivity prior to July 1, 1985, as an indication of good faith and its willingness to assume part of the economic burden resulting from the failure of the health care provider to provide services within the budgeted number of dollars, resulting in a change of carriers. It is the view of this Fact Finder that this step is a progressive step and should be explored by the parties as the first step in resolving the wage problem.

The second issue confronting the parties has to do with health care costs. It is the proposal of the Employer that the members of the collective bargaining unit bear all or part of increased costs of health care occurring after July 1, 1985. The Employer offers no factual support for the proposition; it offers the resolution adopted by the Road Commission, in essence saying that's the way it should be; it does not show that the Road Commission was in anyway inconvenienced or imposed upon as a result of any increases in health care costs, nor does it show that the Road Commission is unable to meet reasonable increases in health care costs.

Of all the comparable units that were pointed out to this Fact Finder, only one suggested the possibility of a sharing of health care costs and, in that case, there are substantially

different features to the collective bargaining agreement and if the Employer wants to adopt that as a comparable, it might look very carefully at the wage scales and other benefits paid in that area and look at other areas of the contract before insisting upon taking the segment most favorable to the Employer and leaving all those segments more favorable to the employees out of the relationship of comparability.

All of the other Berrien County employees have fully paid health care and no compelling reason is presented to this Fact Finder why the Road Commission employees should be denied equality of treatment with their fellow employees based upon findings as to health care cost sharing, which are unilaterally adopted by the Road Commission and for which they point to Kalamazoo County as a comparable when wages paid in Berrien County are substantially lower and other contract features, including longevity, are not available.

The third area in which the parties find themselves in dispute is somewhat more complex. Berrien County has a long-term disability program under which the employees are granted a reduced wage for the hours not worked due to illness or injury incurred off the job and not related to employment under certain circumstances. The structure of the program charges the first eight hours of loss to the employee and subsequent hours of loss to the Employer until a total of 56 hours are lost by the Employer, at which time a long-term disability program cuts in which pays wages at a \$150 a week for up to 26 weeks.

The Berrien County Road Commission has no sick bank feature and the program in place provides a modified sick bank plus some insulation from the ravages of disease and injury on the family's budget. The Employer proposes that after the first eight hours, the employee be compensated at the rate of six hours' pay for eight hours loss until 56 hours have been paid under the six hour formula, at which time the long-term disability program would cut in.

The reasons assigned by the Employer are basically that no employee takes just the first day off but rather takes two days off, the first day and an additional day so that 50% of the wages for the day that had to be lost are recovered out of the second day lost; in other words, one days' pay is received for the two days lost.

The Employer seeks to cure this disciplinary problem by a major contract revision which comes very close to amputating a foot in order to solve a problem related to an ingrown toenail. A review of the contract introduced in evidence by the parties discloses that the Employer is not inhibited from taking appropriate disciplinary action in the event an employee abuses his right to be compensated for necessary time off under the

contract. Dishonesty in the work place is a disciplinary problem and should be treated as a disciplinary problem. No evidence was adduced on behalf of the Employer to show that any significant investigation was ever conducted to establish whether employees took unnecessary time off in order to adopt a two for one approach or theory.

The fact that this Fact Finder criticizes this lack of investigation, does not diminish the economic impact of the problem if, in fact, there is a problem and this Fact Finder will, later in this Report, suggest the trial of an economic solution on a temporary basis for the balance of this contract only to resolve the problem.

II. RECOMMENDATIONS AND REASONING

A. Wages

This Fact Finder thinks that the Union's proposal to absorb the costs of increased health care benefits by foregoing a first year wage increase is reasonable and practical and based upon information made available to this Fact Finder with regard to 1984-1985 health care rates and proposed rates for 1985-1986, this Fact Finder believes that there is a fair and reasonable offset and that no wage increase should be awarded for 1984-1985.

This Fact Finder has reviewed cost-of-living data submitted by the parties and has taken into consideration the fact that the Employer only suffered an increase in cost of 23 cents an hour for health care over a period of some two years or more in which it assumed the health care burden which was not carried by the suggested carrier in an appropriate fashion and the other factors relating to wages in the area, including wage increases accorded to other County employees, and recommends that wages for 1985-1986 be increased by 35 cents an hour, retroactive to July 1, 1985, and that such wage increase be continued through June 30, 1986, as being fair and reasonable and well within the Road Commission's ability to pay.

It should be noted in this regard that based upon review of the data submitted by the parties and stipulated to by the parties as to increases of revenues from road and gasoline taxes, the proposed sums under this contract are well within the Road Commission's ability to pay and in percentages substantially below the revenue increases. This, in spite of the fact that we are operating in a very depressed county.

This Fact Finder recommends that in the third year of the contract, beginning July 1, 1986, direct wages be increased by 35 cents an hour for the same reason and under the same reasoning as

an increase was recommended under the preceding paragraph with the following added comments. Projected rates of increase in the cost-of-living, depending on the sources examined, have ranged between 2.5% and 4% for the past several years. Based upon the end wages predicted within this range and based upon the historic increases in the revenues of the Road Commission and the present predilection of the State Legislature as expressed in its public views not to reduce the gasoline and road taxes, it is likely that revenues will be maintained in at least the same level as currently, and probably increase over the remaining portion of the contract.

It is to be noted in this regard that in the third year of this contract, this Fact Finder is going to make a recommendation concerning a further increase in wages, predicated upon utilization of the long-term disability provision of the agreement. Therefore, no one would be justified in assuming that 35 cents represents the sum total of the bargain.

B. Health Care Insurance

No convincing evidence or argument was presented to this Fact Finder which would justify a recommendation that the employees be required to share in the cost of health care insurance so long as the carrier of choice of the Employer is in place. It is this Fact Finder's view that the Employer has recouped any economic loss due to any increases which have occurred to-date as the result of the employees give up of wage increases under the first year of the contract. This step is progressive, shows a willingness of the employees to meet the Employer on a common ground of interest, and that the unilateral modification of wages, hours, and working conditions is not to be encouraged but to be discouraged. It is the perception of this Fact Finder that the unilateral adoption of a resolution changing the conditions of employment of the employees without discussion is not consistent with the stated public policy of this State and the fact that the Employer desires to make this change provides insufficient support for this Fact Finder to recommend it. Accordingly, it is the recommendation of this Fact Finder that the Employer continue to bear 100% of the expense of the existing health care package for the employees represented by this collective bargaining representative.

C. Long-Term Disability

In connection with the long-term disability program of the parties, it seems to this Fact Finder that this unusual system that the parties have adopted in dealing with long-term disability may very well be on the cutting edge of progressive change to bridge the gap between the Employer's interest in

having the employees adequately protected from disasterous illness or accidental injury and the Employer's concern about the economics of the situation.

This Fact Finder cannot approve of nor can he recommend any program that mandates a permanent contract change in order to resolve a disciplinary problem relating to honesty or integrity of applicants for wages for hours not worked. This Fact Finder believes that should be handled through the disciplinary process. However, it is possible that employing theories of the carrot and the stick, an employer can reserve the right to investigate and discipline for dishonesty while offering a carrot to those who would deal with the situation fairly. To that end, it is suggested that the parties adopt, on an experimental basis, for the third year of this contract only, a provision in the contract substantially as follows:

Any employee who loses eight hours or less of work due to off the job illness or injury shall be paid a bonus at the end of the contract year (in the first pay period of the following contract year) of five cents per hour for every hour worked during the year.

The net affect of such a provision, given an average wage of some \$8 and change per hour of the covered employees, would be that an employee who works 2,080 hours or more during the year would recover upwards of \$100 by way of a bonus or premium in an extra check for not abusing sick leave privileges and the Employer would have the benefit of not having an abuse of sick leave with unreasonable and unnecessary absenteeism and the costs attendant thereon, which would be a minimum of \$68 a day in the third year of the contract. Therefore, both parties would benefit by the adoption of this program.

III. COMMENTARY

This Fact Finder previously noted that there had been no decreases in revenues and, in fact, increases for the past several years to the Road Commission. This Fact Finder has discussed his concern with the overall economic conditions in southwestern Michigan with various officials of the State and has expressed his concern to the professional representatives of the parties over the possibility that this type of confrontation can only make it more difficult for Berrien County to attract industry and jobs. Given the fact that the revenues of the Road Commission largely are independent of any taxes which are assessed specifically and directly upon residents or businesses in Berrien County, and better roads and better physical facilities, a more efficient physical infrastructure, can be

attractive to business and should be attractive to business, it pays the parties and will pay the citizens and residents of Berrien County large dividends if the parties will abandon their unyielding ways and make an effort to meet each other on respectable common ground to resolve this problem.

This Fact Finder, having had the opportunity to meet with the professional representatives of the Employer and the employees, is impressed with their professional integrity, their willingness to explore new ideas, their self assurance, and their concerns about the welfare of all who might be affected by this contract. However, they are acting as agents and not as principals and it is important that the principals review their positions and become as flexible as possible, as reasonable in viewing the other side's problems and positions as they would want the other side to be in reviewing theirs, and to abandon the theory that each side must make sure that it leaves nothing of value off the table. Both sides, in order to compromise this situation, will have to leave something of value on the table, out of concern for the residents and taxpayers of Berrien County.

Respectfully submitted,



WALTER S. NUSSBAUM

WSN/vam

Dated: November 4, 1985