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MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

FACT FINDING PURSUANT TO PUBLIC ACT 176 OF 1939, AS AMENDED

In the Matter of The Fact Finding Between:

LEELANAU COUNTY ROAD COMMISSION,

Employer,

-and-

MERC Fact Finding Case No. D00 C-5020

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 214,

Union. /

An evidentiary Fact Finding hearing concerning the contract dispute between the parties was held on August 22, 2002, at the offices if the Road Commission, before Fact Finder Martin L. Kotch. An Executive Session between the Fact Finder and representatives of the Union and the Employer was held on September 18, 2002 in Bloomfield Township, Michigan.

BACKGROUND

The collective bargaining agreement between the parties expired in August, 2001. The subsequent bargaining history between the parties reflects a pattern of near success, followed by total collapse. The parties met several times in September, 2001, engaging in extensive discussions covering all proposed issues. Initially, the parties were substantially far apart, both on wage and other economic demands of the Union , which the Employer calculated as imposing a 30% cost increase on it. The Employer was especially desirous of controlling the escalating cost of health care coverage.

On September 27, 2001, the parties reached a Tentative Agreement, resolving all issues. The parties' negotiation representatives agreed to strongly recommend adoption of this Agreement to their respective ratifying bodies. The Union membership overwhelmingly rejected the Agreement.

Following this, the Union requested mediation. After a single, lengthy session, the Mediator made a public recommendation. Each bargaining team agreed to recommend the Mediator's recommendation to unit members and the Commission respectively. The Union membership rejected this proposed agreement as well.

The Union has not communicated to the Commission the reasons for the rejection, and no new proposals were forthcoming from the Union since that rejection. On December 19, 2001, the Employer presented the Union its Final Offer of Settlement, which mirrored the Mediator's proposal. The Offer provided for retroactivity, if a contract was ratified before December 31,2001. After that date, the Employer's offer of retroactivity would be withdrawn. No response was made to this Final Offer.

On February 4, 2002, the Union initiated a petition for fact-finding. An evidentiary hearing was held on August 24, 2002, before Fact Finder Martin L. Kotch. An Executive Session between the Fact Finder and representatives of the Union and the Employer was held on September 18, 2002.

PRELIMINARY DISCUSSION

While not wholly unique, the circumstances of this fact-finding are more than somewhat unusual. There was both thorough collective bargaining, producing a tentative agreement, and a mediation, producing a public recommendation which each side brought back to its ratifying authority with a positive recommendation. The Employer has put forward its Final Offer, in essence the Mediator's recommendation, as its fact-finding position, with supporting authority. This Offer, in the form of the Mediator's recommendation, had been agreed to by the Union's bargaining team. It represents, urges the Employer, the give and take normal to any bargaining process. As a result, the Employer contends that the Fact Finder should rely on the Mediator's recommendation as the basis for the facts.

The Employer has taken the position that the Union has not bargained in good faith. Its negotiating team twice presented tentative agreements to the membership; twice they were rejected. At the fact-finding hearing, the Employer insisted that the Union had never explained why the proposed contract language was rejected, nor did it ever make meaningful counter-offers. As a result, argued the Employer, it was being forced to "bargain against itself" at fact-finding, and refused to do so.

The Employer places great emphasis on the fact that the Union's bargaining teams twice agreed to contracts. In essence, it agues, the "facts" to be found through the fact-finding process are already a matter of record; the tentative agreements, particularly the last, "mediated" agreement, represents the give and take of bargaining between the parties, and, as such, should be the template for the fact-finding process. A position by position review by a Fact Finder would distort the bargaining process, contends the Employer. It is the weaving together of the interests of both parties that is represented in a collective bargaining agreement. The burden should be upon the Union, it contends, to show why that mutually agreed-upon balance should now be upset by a Fact Finder's issue-by-issue review, based on new demands, most of which played no part in the previous bargaining.

The Union's position at fact-finding did not address the above position, which was forcefully argued at the hearing. Rather, orally and in its prepared written position, it focused on

comparables. It asserted that the Employer had at no time invoked "inability to pay" as a factor, and the Fact Finder could therefore look to hourly rates of pay in the two contiguous counties of Benzie and Grand Traverse, and the hourly rates in the "immediate job market;" the two contiguous counties plus Antrim and Kalkaska. In fact, discussion of comparisons at the hearing were restricted almost exclusively to Benzie and Grand Traverse counties.

The Fact Finder is substantially persuaded by the Employer's argument. In the absence of any tentative agreement, a Fact Finder weighs proofs and assesses comparable data in order to come to a recommendation regarded open issue. In the course of so doing, he or she may well reach a conclusion on a given issue *in relation to the conclusion reached on another issue*. That is, and this is the very meat and potatoes of collective bargaining, a preference for the position of one side on a given issue, *e.g.*, vacations, may depend on the conclusions reached with respect wages, or health care, or pensions. Issues cannot be looked at in isolation from one another; that is not the nature of collective bargaining – that is not how contracts are arrived at. And, that is how a Fact Finder must proceed as well. The fact-finding process does not impose upon the Fact Finder an "analytical amnesia" from one issue to another. The collective bargaining agreement must be viewed as an organic document, not a series of item-by-item agreements.

In consequence of the above, the burden must be on the Union to demonstrate what facts exist which would justify disturbing the "organic" balance previously arrived at. This is by no means to prejudge that it cannot do so; merely that it has the burden of doing so. It is not the function of the Fact Finder to write, or re-write, a contract for the parties. Rather, he or she is to make recommendations to MERC and the parties about the factual circumstances which underlie issues still in dispute. In this case it would be fatuous for the Fact Finder to conclude that the facts which supported a tentative agreement, or a Mediator's public recommendation, no longer exist, or do not have the force they previously had, *in the absence of a demonstration of this by the Union.*

DISCUSSION

Duration of Contract

The Fact Finder has been informed that the duration of the contract is no longer an issue.

Wages

The Union has proposed a $1.23, 3.5%, 3.5% wage package. The Employer has offered $1.00, 40 cents, 40 cents. The Union's proposal is well beyond the average comparable rate. The Employer's proposals are more than competitive with Benzie and Grand Traverse, and positions the County in a better than average ranking compared with other comparables proposed by the parties. The Employer's proposal is consistent with its economic ranking, based on a variety of measurements, and does much to correct past disparities. The Employer's position is well justified, both examined independently or in the context of the Mediator's recommendation.

Recommendation: The Employer's position be adopted.

Retroactivity

The Employer withdrew its offer of retroactivity following the Union's rejection of the Mediator's recommendation. At the fact-finding hearing, the Union made much the better argument. Here, it is the Union that adheres to the last agreement, the Mediator's recommendation. There is no reason given by the Employer for opposing retroactivity other then as a tactic designed for use at a strategic moment.

Recommendation: Retroactivity for the first year would be to 9/1/01, for the second year, 9/01/02, and for the third year, 9/01/02. Retroactivity would apply only to those employees currently on the payroll at the time of the effective date of the new collective bargaining agreement.

Shift Premium

The Employer has offered a change in language with respect to shift premium, which was recommended by the Mediator. The proposal is to pay 20 cents premium per hour to employees whose shift begins at 3 p.m. or later. It also deletes the night patrol language found on page 40. The Union seeks the same premium pay for any starting time other than the "normal" starting time.

The facts as developed at the hearing suggest that the Employer's proposal covers the

practical conditions relating to shifts. Additionally, that proposal exceeds the premium in Benzie County; there is none in Grand Traverse County.

Recommendation: Appendix B be modified; the language proposed by the Employer be adopted.

Out-of-Class Pay

The Employer proposes a change in contract language, essentially reducing the requirement of working out-of-class from 40 hours to 8 hours before receiving the 15 cents per hour adjustment. The Union proposes no waiting period whatsoever.

The Employer's proposal is somewhere in the median range of the comparables cited by the parties. As to the two most relied on by the Union, Grand Traverse is more generous, while Benzie has no comparable provision. It is significant that the Employer's proposal involves substantial movement from the prior contract language, and represents a compromise which the parties agreed to under the terms of the Mediator's recommendation.

Recommendation: The language proposed by the Employer be adopted.

Vacation Allotment

The Union relies on the present allotment vis-a-vis comparables, arguing that it substantially lags behind. It seeks 15 days after five years, and 20 days after 15 years. The Employer seeks the status quo. Leelanau provides similar vacation time to comparable counties, though it is clearly not in the higher rankings.

This is more weight to the Union's position here (other than retroactivity) than with any other remaining issue. Employees do lag somewhat behind in the list of comparables. However, the disparity, while palpable, is not dramatic. Viewing the contract proposals as a whole, the Union has not made out a case for changing this provision of the collective bargaining agreement. This appears to be one of those issues that played no great role in the process of bargaining; the Union presumably did not press this issue in order to obtain language in other parts of the collective bargaining agreement which was of greater importance to it. That was

certainly the case in this fact-finding process; little, if any, attention was paid to this issue in the course of the fact-finding hearing.

Recommendation: Given the absence of a showing of significance of this issue which would override the acceptance of the status quo in the tentative agreements, the position of the Employer should be upheld.

Safety Equipment/Apparel

The Union raises this issue in terms of the provision of steel toed safety boots for employees working in the garage. This is another issue not strongly pressed by the Union at the hearing. The contract contains no provision with respect to the issuance of safety apparel. Five of the comparables, including Benzie County, likewise have no such provision. The Union takes the position that despite the absence of any contractual provision, it assumes that the Employer complies with state law, which requires employees working in the garage to have safety boots. The Union argues that employees work in the garage without such boots, and seeks a mandate in the contract for the issuance of the boots.

As noted above, several comparable counties have no safety apparel provision in their contracts. It is probably safe to assume, as does the Union with respect to this Employer, that all these counties comply with the law without the necessity of a contractual provision. The Union bargaining representatives twice accepted a tentative contract which did not contain the provision sought here. If the Employer has indeed, over the length of the past collective bargaining agreement, and throughout the bargaining on the present, unachieved contract, failed to provide legally required safety equipment, direct appeal under MIOSHA would seem to have been an appropriate remedy. In the absence of recourse to administrative or judicial remedies, the Union's claim appears weak.

The Fact Finder cannot assume illegal conduct on the part of the Employer. Given the Union's quiescence on this issue over such a long period of time, the Fact Finder must assume that the Employer does, in fact, comply with the law.

Recommendation: The position of the Employer be adopted.

Out of Class Pay Qualifier

The Employer's position has changed from the prior contract. The current language requires 40 hours of service; its present position, made part of the tentative agreements, is 8 hours. This is a substantial difference from the status quo, and the Union has not demonstrated the inadequacy of this proposal, nor support for its own position of immediate pay. Benzie, the County most frequently referred to by the Union, has no such provision.

Recommendation: The position of the Employer be adopted.

Co-pays - Pension - Medical - Group Insurance - Dental

The Union has conflated the remaining issues into one heading. This is appropriate, since these issues are inextricably intertwined with one another, and, of course, with wages.

Pension – The Union argues that Antrim, Kalkaska and Grand Traverse, but not Benzie, have better pensions and no co-pays.

Health Insurance – Antrim, Benzie and Kalkaska have fully funded health insurance. (At the hearing, it was determined that Benzie now has a co-pay). There is a wide spread with respect to the amount of drug co-pay, with newer contracts having the employees assuming noticeable higher drug co-pays.

Dental Insurance – The Union contends that the co-pay provided by the Employer puts its employee contribution at the highest level among the comparable counties.

Finding the *facts* with respect to the categories including in this heading is a task comparable, if not exceeding, that faced by Hercules in cleaning the Augean stables. The number and variety of health and dental plans currently included in the parties' contract, included in the contracts of the comparables, and available in the marketplace is staggering. No detailed comparative information was made available to the Fact Finder. For this, in one sense, he is grateful, since the size of the position notebooks would have required a Hercules to lift them if that information had been included.

The Employer has expressed concern over rising health and dental costs, a phenomenon which, by itself, needs no evidentiary support. This is the stuff of newspaper headlines, and

Congressional debate, all, it must be said, without any visible effect in terms of curtailing the rising costs. The exchanges at the hearing made it clear that, while everyone was looking for the "best" possible solution, no one knew what that looked like.

From the Employer's perspective, the Union wishes to keep its "Cadillac" of health coverage, without being willing to contribute toward the rising cost of that coverage. The Union points to lower co-pays and drug payments in the plans of others, without any detailed comparison of coverage; *i.e.*, without a plan by plan cost-benefit analysis. Essentially, the Union position is that the Employer pay more for the same excellent coverage, and the employees less.

Given the position taken by the Fact Finder with respect to the Union's burden, it must be concluded that the Union has failed to meet that burden. That is, the Union has not demonstrated in a sufficient manner circumstances which would overcome the presumption that facts, including comparisons with comparable counties, which sustained the two prior tentative agreements were no longer operative.

Having said this, however, it bears repeating that the multiple categories in this section are intertwined. The hearing generated substantial discussion concerning possible plan variations; the Employer indicated that Blue Cross costs were high, and that alternative coverage under a different plan might well produce equivalent benefit coverage at a lower cost. In addition, a higher, rather than status quo or lower drug co-pay might generate, according to the Employer, a savings sufficiently large to have some of those savings be applied to reduction of pension contribution.

It is clear to this Fact Finder that insufficient cooperative efforts have been made to determine what the options are in the health insurance market. While the Union has not made the case for altering the status quo, it was clear from the hearing that *both sides* in fact wanted a change to a more cost effective plan which would retain first-class coverage.

Recommendation: The position of the Employer be adopted. In addition, however, it is strongly recommended that the parties appoint a joint committee to explore the options available in the health insurance market, seeking continued excellent coverage *along with* savings which could be passed on in the form of, *e.g.*, relief from pension contributions, better dental coverage

and/or lower employee dental costs, or even an increase in the wage package.

October 21, 2002

Martin L. Kotch
Fact Finder