

FACT-FINDING REPORT AND RECOMMENDATIONS

Michigan Employment Relations Commission Case No. L98 F-7023

In the matter of the fact-finding between

Medic I Ambulance

- and -

International Brotherhood of Teamsters, Local 214

DATE OF FACT-FINDING PETITION:	June 8, 1998
DATE OF PRE-HEARING CONFERENCE:	October 5, 1998
LOCATION OF PRE-HEARING CONFERENCE:	Paw Paw, Michigan
DATE OF HEARING:	November 23, 1998
LOCATION OF HEARING:	Benton Harbor, Michigan
DATE HEARING CLOSED:	November 23, 1998
FACT-FINDER:	<u>Richard N. Block</u>
APPEARANCES:	

For Medic I:

Mr. Thomas Fette, Taglia, Fette, Dumke, Passaro & Kahne
Mr. Jack Fisher, Jr., Executive Director
Mr. John Nolan, City of St. Joseph
Mr. Izzy DiMaggio, St. Joseph Charter Township

For Teamsters Local 214:

Mr. David Divilbiss, Business Agent
Ms. Cathy Kuplic
Mr. Jim Stine

GENERAL BACKGROUND

The employer in this case, Medic I Ambulance (hereinafter Medic I or the Employer) is a community-owned ambulance service established by 18 cities and townships in Berrien and Van Buren counties. Medic I is governed by a Board of Directors. There is a full-time executive director that reports to the Board.

In April, 1996, specified employees of Medic I chose Teamsters Local 214 (hereinafter the Union) as their representative for collective bargaining purposes. True bargaining commenced in the Spring of 1997, approximately one year after the employees had received their last wage increase (in March, 1996). The parties were unsuccessful in reaching a collective bargaining agreement, and the Union filed a request for fact-finding on June 8, 1998. The fact-finding petition listed five issues in dispute:

1. wages;
2. hours of work;
3. longevity;
4. wheelchair transports; and
5. out-of-area ambulance transfers.

In August, 1998, the fact-finding proceedings in this matter were suspended pending the result of a decertification election among the Medic I employees. In that election, the employees chose to retain representation by the Union, and the fact-finding proceedings recommenced in September, 1998.

A pre-hearing conference in this matter was held on October 8, 1998. The parties added no issues to those listed on the June 8, 1998 petition, nor were any issues deleted.

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DISCUSSION OF ISSUES AND RECOMMENDATIONS

ISSUE 1: WAGES

Positions of the Parties on Issue 1

Position of the Employer. The Employer proposes a 3% across the board wage increase at the initial signing of contract retroactive to the first day of the month of the signing with 3% increases on March 1, 1999 and March 1, 2000. The contract would expire on February 28, 2001. In support of its position, the Employer argues that Medic I employees are among the highest paid ambulance service employees in its comparison group. The Employer points out that in November, 1998 Medic I employees reached a top salary of \$35,865 after 7 years. As of November, 1998, the ambulance employees closest in salary to the employees of Medic I are the employees of Huron Valley Ambulance in Ann Arbor, where the top salary is \$34,746 after five years. Top salaries for other comparable ambulance services are \$33,248 after 10 years at Life EMS in Grand Rapids/Kalamazoo, \$30,030 at SMCAS in Niles, and \$30,772 at Life Care in Battle Creek (Er. Ex. 2). The Employer also points out Life Care is the closest in size to Medic I, and that Huron Valley Ambulance is larger than Medic I. Although the Employer concedes that

its starting salaries are lower than its comparison group, it also points out that about 2/3 of its employees are at the top of the pay range. It also notes that its pension benefits are generous relative to the comparables.

Position of the Union. The Union has made two proposals. Proposal 1 was a 3% increase retroactive to March 1, 1997, 3% retroactive to March 1, 1998, and 3% on March 1, 1999. Proposal 2 included 3% increases on July 1, 1997 and March 1, 1998, and 2% increases on March 1, 1999 and September 1, 1999. The Union argues that there is little difference between its proposals and the Employer's proposals in terms of the size of the percentage increase. The Union contends that it is entitled to retroactivity back to March, 1997 because it has been almost three years since the bargaining unit employees have had a wage increase and it is not to blame for the delay. Thus, an employer refusal to pay retroactive increases is punitive. The Union also points out that the top of the salary range for employees at Pro-Med in Muskegon is \$38,586 (Un. Ex. 1). Finally, the Union argues that the paramedics were promised parity between themselves and relevant police and firefighter units, and parity does not yet exist.

Fact-Finder Discussion on Issue 1

The main issue in dispute involves retroactivity. The parties are close in the percentage increases they propose - approximately 3%. The Employer proposes that this increase be effective at the first day of the month in which the new contract is signed, while the Union requests retroactivity back to March or July, 1997.

Although the Union points out that it was not responsible for the delay in the negotiations, there is nothing on the record that suggests that the Employer was responsible

either. A series of unavoidable events caused turnover in the business agents servicing the unit, with stability occurring in 1997. Thus, responsibility for the delay does not provide a rationale to recommend granting or denying retroactivity.

The most compelling evidence regarding wages is the salary level of the Medic I employees relative to the comparables presented by the Employer. The Employer's current top salary of \$35,865 is over \$1,000 greater than the next highest salary in the group of its comparables - Huron Valley Ambulance at \$34,746. The Employer also has a higher pension than Huron Valley. Thus, there is no evidence that the employees represented by the Union have been underpaid since their last increase in March, 1996, and there is no reason to believe that these differentials will not be maintained with the Employer's proposal. This evidence does not support retroactivity.

Although the top salary for the employees in this unit appears to be below the salary for employees at Pro-Med, under the employer's proposal, the top salary of the employees in the unit would be \$38,049 effective March 1, 1999. This would reduce the gap between the Medic I employees and the Pro-Med Employees to only \$537, assuming no increase for Pro-Med employees.

Finally, the Employer's proposal includes an additional 3% increase in March, 2000, raising the top salary in the unit to \$39,190. Thus, the employees in the bargaining unit have assurance of compensation levels through February, 2001. Presumably, with stability in representation by the Union, this additional year under the contract will permit the parties to commence bargaining sufficiently early in the final year of an agreement so that the delay in

negotiating this first contract, with the long time period with no wage increase, will not be repeated.

I do not find that the record regarding parity between police and fire is sufficient to permit considering this matter in my recommendation. The record on the parity promise with respect to wages is negligible. The only evidence regarding police and fire wages is in the area is Mr. Stine's testimony that it was his recollection Berrien County Sheriff's employees were paid from \$16 - \$19 per hour two years ago.

Accordingly, because there is no evidence that the Medic I employees have been underpaid since March, 1996, and because the record establishes that the Employer's proposal will make these employee well-paid relative to their counterparts in comparable ambulance services, I decline to recommend retroactive pay. I find the Employer's proposal reasonable, and that proposal will constitute the fact-finder's recommendation.

Fact-Finder Recommendation on Issue 1: Wages

The fact-finder makes the following recommendation to resolve Issue 1, Wages:

- (1) an increase of 3% retroactive to the first day of the month in which the Union ratifies the collective bargaining agreement;
- (2) an increase of 3% effective March 1, 1999;
- (3) an increase of 3% effective March 1, 2000, with the collective bargaining agreement to expire on February 28, 2001.

ISSUE 2: HOURS OF WORK

Positions of the Parties on Issue 2

Position of the Union. Currently, the employees at Medic I work on the Kelly system, a 9-day cycle that is structured as follows: 24 hours on, 24 hours off, 24 hours on, 24 hours off, 24 hours on, and 96 hours off. This system is associated with five ambulances available in the service area 24 hours per day. The Union is proposing that Employer be required to maintain its current staffing and equipment arrangement of 5 ambulances per shift, with 2 certified paramedics per ambulance, and with employees continuing to be assigned to shifts on a rotating basis. The Union's proposal would also require the continuation of the Kelly system unless the Employer provides 60 days notice.

The rationale for this Union position is availability of service. The Union points out that in 1996, the Employer proposed a change to 12-hour shifts, with 6 ambulances available during the day and evening, and 4 available during the early morning hours. The Union argues that this would not only reduce the availability of service during the early morning hours, but it would also require the employer to hire 6 additional employees. The Union also contends that because the Employer has stated that it has not plans to change the shift schedule, it should be willing to accept the Union's proposal.

Position of the Employer. The Employer argues that it is its inherent right to determine staffing and work schedules and to decide the appropriate level of service. The Employer also points out that, in December, 1997, the Union had agreed that the Employer had that right, with the difference in the two proposals being only the amount of notice the employer was required to give before changing the shifts - the Employer had proposed 60 days notice, the Union had

proposed 120 days notice. Although the Union later changed its position on this issue, this does indicate that the Union, at one point, acknowledged this Employer right. The Employer also notes that it has no plans to change the Kelly system, although it believes it should retain the right to study its service and to make appropriate changes.

Fact-Finder Discussion on Issue 2

This issue mainly revolves around how to best provide ambulance service to the citizens in the service area. The Union argues that the current Kelly system provides the best service at the lowest cost. Implicitly, the Employer agrees, pointing out that it has no plans to change. The Union has expressed concern that moving to 12-hours shifts, as has been discussed, will result in a reduction of service to rural areas in the early morning hours. Even if that is the case, it is the responsibility of the Employer to determine the level of service deemed adequate.

In general, the Employer is responsible for determining the level and quality of service to be provided. Such responsibility entails a right to determine, in good faith, when changes in hours of work are necessary, provided that appropriate notice is given to the Union.

There is no indication that Employer has abused its rights to set schedules. Moreover, if the Union is correct that the Kelly system provides the broadest coverage at the lowest cost, the Employer would have no reason to change. Even if the Employer should decide to change shifts, the sixty-day notice in its proposal is sufficient for employees to prepare for the change.

Fact-Finder Recommendation on Issue 2: Hours of Work

The Fact-Finder makes the following recommendation to resolve Issue 2, Hours of Work:

The parties shall adopt the Employer's proposal on Hours of Work, as follows:

'ARTICLE 15 - HOURS OF WORK

- A. The parties recognize, the pursuant to the management rights provision contained in Article _____, the Employer possesses the sole right to establish hours of work, available major equipment levels, operating schedules, etc. However, if the Employer contemplates altering existing hours of work, major equipment levels, operating schedules, etc., it shall first meet and confer with the Union in order to obtain Union input into the matter. The decision of the Employer shall be final.
- B. In the event the Employer determines to alter hours of work, equipment levels, operating schedules, etc., it shall not implement any changes without sixty (60) days advance written notice to the Union membership.

ISSUE 3: LONGEVITY

Positions of the Parties

Position of the Employer. The Employer opposes any payment for longevity. The Employer argues that longevity is an inducement to encourage employees to remain with the Employer, and such inducements are unnecessary for this unit. The Employer notes that long-term employment exists, as 26 employees are at the top of the scale.

Position of the Union. The Union proposes the following longevity payments: 5 years - 1.5%; 10 years - 3.0%; 15 years - 4.5%; 20 years 6.0%. The Union argues that longevity has been a traditional benefit paid to emergency service employees in this part of the state, and the

Union proposal falls within the middle ground of such payments. The Union also argues that longevity is a component of the parity promise made in 1981. Moreover, the Union points out, there are very few paramedics over fifty years of age due to the physical and mental stress; employees should be compensated for such conditions.

Fact-Finder Discussion on Issue 3

The Union argues that longevity was part of past considerations of parity, and that it should receive some longevity payment. The Employer argues that longevity is not warranted here, where there is little turnover in the unit and no need to create an inducement for employees to remain with the Employer.

Although there is little turnover in the unit, this does not mean that longevity pay is unwarranted. Longevity pay is justified by good service to the Employer. Moreover, as the absence of turnover minimizes Employer hiring costs, some of these savings can be shared with the employees. In addition, the record establishes that police in St. Joseph Charter Township receive longevity payments, and that other jurisdictions on the Medic I board pay longevity to police officers and firefighters. This indicates that there is precedent for such payments for public safety employees within the service area of Medic I.

Based on the foregoing, some longevity pay is warranted. I am, however, unwilling to recommend the Union's proposals because the Medic I employees are among the highest paid emergency service employees in the region. A reasonable longevity payment appears to be roughly the Union's proposed percentage of 1.5% for the least service group for those who have

been with the Employer 10 years or more (approximately \$500), and a slightly lower longevity payment for those employees who have been with the Employer less than 10 years.

Fact-Finder's Recommendation on Issue 3: Longevity.

The Fact-Finder recommends as follows with the respect to Issue 3, Longevity:

Employees who have 10 years or more of service with the Employer on the date of ratification of the agreement shall receive a longevity payment of \$500 in the first paycheck following ratification of the agreement.

Employees who have less than 10 years of service with the Employer on the date of ratification of the agreement shall receive a longevity payment of \$300 in the first paycheck following ratification of the agreement.

ISSUE 4: WHEELCHAIR TRANSPORTS

Positions of the Parties

Position of the Union. The Union has proposed contract language which would prohibit the Employer from using an ambulances to transport a wheelchair client and which would require the Employer to charge regular ambulance rates for all such patients transported by ambulance. The proposal is based on the Union's contention that using an ambulance for a wheelchair transport when the patient is not in crisis impairs the level of service provided. The Union notes that a noncrisis wheelchair transport by an ambulance makes an ambulance unavailable for true emergencies, resulting in a longer response time than otherwise. The Union also points out that it is unsafe to use an ambulance for a wheelchair transport because the wheelchair cannot be

properly secured, with the possibility that the transportee will tip over. The Union also notes that charging an ambulance fee for a wheelchair transport will increase the Employer's revenue stream.

Position of the Employer. The Employer has proposed language that would give it the right to assign vehicles for wheelchair transport. The Employer notes that it has the responsibility to make decisions regarding the level of service to provide. It points out that 62% of its work is wheelchair transport, and that use of an ambulance for wheelchair transport is an infrequent occurrence. The Employer notes that it currently has five wheelchair vans, and a sixth van will arrive in 1999.

Fact-Finder Discussion on Issue 4

The Employer is responsible for determining the level of service to be provided and the prices charged, and the Union's proposal would place a constraint on the Employer's flexibility to use its resources in the manner it deems necessary. Although the Union's concern about the level of service provided is commendable, the record suggests that the Employer rarely uses an ambulance to provide noncrisis wheelchair transport. There is also nothing on the record that suggests there is any systemic incentive for the employer to substitute an ambulance for a wheelchair van for noncrisis wheelchair transport. Moreover, the Employer's wheelchair van fleet will increase from 5 to 6 in 1999, further reducing the frequency of ambulance use for noncrisis wheelchair transport. Finally, the record does not demonstrate any disadvantage to the Union from Employer's occasional use of an ambulance to provide wheelchair transport.

Based on the foregoing, the recommendation of the fact-finder will be that the parties adopt the Employer's proposal.

Fact-Finder Recommendation on Issue 4: Wheelchair Transport

The fact-finder makes the following recommendation to resolve Issue 4, Hours of Work:

the parties shall adopt the Employer's proposal on Wheelchair Transport, as follows:

(t)he Employer reserves the right to assign vehicles, including backup crews, when transporting wheelchair patients.

ISSUE 5: OUT-OF-AREA TRANSFERS

Positions of the Parties

Position of the Employer. The Employer has proposed no contract language on nonemergency out-of-area transfers, contending that it should have the right to assign crews as needed. The Employer notes that the Union's proposal would prohibit it from using an ambulance assigned to a specific station for a nonemergency out-of-area transfer of more than 75 miles, and that its current policy is similar. Its current policy states that transfer beyond 75 miles will be done a back-up crew, where possible.

Position of the Union. The Union has proposed language that would prohibit the Employer from using ambulances assigned to stations for nonemergency transfers of more than seventy-five miles. The language would require the employer to use overtime employees for such work. The Union bases this proposal on the quality of the service to provided. When an ambulance assigned to a station is used for a nonemergency out-of-area transfer, that ambulance is not available to an emergency. This may result in a substantially increased response time as compared to the response time if back-crew is used for the transfer.

Fact-Finder Discussion on Issue 5

As in the matter of nonemergency wheelchair transports, the disagreement on this issue is over the Employer's interest in using its resources in the manner it deems necessary. The Employer has the responsibility for providing the service, and it should generally have the right to use its resources as it sees fit. While, as in the issue of wheelchair transports, the Union's concern about service is certainly commendable, decisions of this type are normally the responsibility of the Employer.

It is also important to note that the Employer's policy is similar to the Union's proposed language, indicating that it is the Employer's general practice to use a back-crew for a nonemergency out-of-area transfer of greater than 75 miles. Although the policy is not included in the agreement, it does suggest that using an assigned ambulance for nonemergency out-of-area transfer of greater than 75 miles is not a frequent occurrence. Moreover, as in the case of wheelchair transport, the Union has shown no detriment to employees that results from the absence of a contractual restriction on the use of assigned ambulance for out-of-area transfers.

For the foregoing reasons, the recommendation of the fact-finder will be the Employer's proposal.

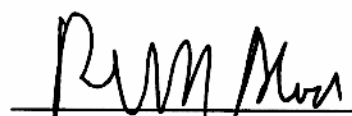
Fact-Finder Recommendation on Issue 5: Out-of-Area Transfers

The fact-finder recommends that the parties adopt the Employer's proposal of no language on out-of-area transfers. The fact-finder also recommends that the Employer retain its current policy on nonemergency out-of-area transfers which is as follows:

Transfer beyond the seventy-five (75) mile radius will be done by an extra crew, when possible.

December 21, 1998

Date

A handwritten signature in dark ink, appearing to read "R. N. Block", written over a horizontal line.

Richard N. Block

Fact-Finder

East Lansing, Michigan