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STATE OF MICHIGAN
STATUTORY FACT FINDING TRIBUNAL
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding Between:

FIFTH DISTRICT COURT
INDEPENDENT UNION,
Petitioner

Case # L-98 L-7013

and

FACT FINDER: Stanley T. Dobry

JUDGES OF THE FIFTH DISTRICT COURT,
Employer
_____ /

REPORT AND RECOMMENDATION
OF THE FACT FINDER

I. APPEARANCES

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Fifth District Court

II. BACKGROUND

The Fifth District Court is a statutory Court established by the Legislature. MCL 600.8115. It has five (5) judges and is a district of the first class. MCL 600.8115. As a district of the first class, the district funding unit or district control unit is Berrien County. MCL 600.8104(1)(a). The employees in the Fifth District Court are employees of the Court.¹ The relationship between the Court and the County is defined in Michigan Supreme Court Administrative Order No. 1998-5.

This case grows out of a dispute between the Fifth District Court and Berrien County, Michigan ("the Court" or "the Employer") and the Fifth District Court Independent Union ("F.D.C.I.U.," "bargaining unit", or "the Union") involving negotiation of a successor agreement. The prior collective bargaining agreement effective January 1, to December 31, 1998.

On March 17, 1999, the Union filed a Petition for Fact Finding. On April 1, 1999, the Employer filed an Answer to this Petition. On April 27, 1999, the Michigan Employment Relations Commission appointed Stanley T. Dobry as Fact Finder under the terms of the Michigan Compiled Laws.

¹ Judicial Attorneys Association v. State of Michigan, 459 Mich 291; 586 NW2d 849 (1998).

Upon mutual agreement, two days of hearing were held on June 24 and August 18, 1999, at the Employer's offices in the City of St. Joseph, Michigan. In attendance were representatives of the bargaining unit and the employer.

Post hearing briefs were exchanged through the fact finder.

As a personal note, I appreciate each party's efforts in preparing and presenting their case. Obviously, this was an expensive, labor intensive and time consuming effort. I have written this opinion to propose a reasonable solution to an intractable controversy.

III. MEDIATION AND TENTATIVE AGREEMENTS

Prior to invoking fact finding, the parties engaged in some formal negotiation sessions. However, it is fair to describe those efforts as largely unproductive, at least on these interrelated issues: Wages, Across the Board Step Increases, and Duration.

Nevertheless, the parties' tentative agreements are incorporated herein by reference as though set forth in full.

IV. ISSUES

In its Petition, the Union stated that the one major issue outstanding was the employer's continued refusal, year after year, to grant across the board increases to the pay schedule. The Union submits that this is the only issue for the Fact Finder.

At the hearing, the Fact Finder suggested that duration of the Contract was also an issue which he would consider.

V. FACTS, ANALYSIS AND DISCUSSION

The facts produced at the hearing establish that salaries of the employees in the Union are roughly comparable to the salaries of employees in similar bargaining units in the court system in Berrien County, are comparable to the salaries in the comparable district courts in other counties and are comparable to the salaries in the private sector in Southwestern Michigan.

There are 3 classifications of employees in the Bargaining Unit:

- District Court Clerk II (Grade 4)
- Assistant Supervisor (Grade 5)
- Rehabilitation Services Coordinator (Grade 5)

The employer describes the District Court Clerk II classification as originally an entry level classification, which requires minimal skills or experience.

The 1998 salary table for Clerk II consisted of 8 Steps, with 5% increases between Steps, ranging from \$18,595.00 to \$26,181.00 as follows:

Step Hourly Annual Pay²

1	1 8 , 5 9 5
2	1 9 , 5 2 2
3	2 0 , 4 9 8
4	2 1 , 5 2 3
5	2 2 , 6 1 6
6	2 3 , 7 4 7
7	2 4 , 9 3 4
8	2 6 , 1 8 1

The 1998 salary table for Assistant Supervisor/Rehabilitation Services Coordinator consisted of 6 Steps, with 5% increases between Steps, ranging from \$22,668.00 to \$28,930.00 as follows:

Step Hourly Annual Pay³

1	2 2 , 6 6 8
2	2 3 , 8 0 2
3	2 4 , 9 9 1
4	2 6 , 2 4 0
5	2 7 , 5 5 2
6	2 8 , 9 3 0

These salaries are based on a 37½ hour work week. Generally, an employee who performs satisfactorily moves to the next higher Step annually on his or her anniversary date.

Historically, the parties have negotiated salary increases by agreeing to drop the lowest Step and to add a new Step at the top.

² Based on 37.5 hours. Most other courts pay for 40 hours as the standard work week. This should not be confused with actual annual earnings.

³ Based on 37.5 hours. Most other courts pay for 40 hours as the standard work week. This should not be confused with actual annual earnings.

This process is unique to Berrien County amongst the comparable bargaining units. Virtually all of the settlements reported in Union Exhibit 1 involved across the Board percentage wage increases.

The effect of reorienting the wage schedule, eliminating the bottom step and compressing some of the step increases has had a peculiar effect.

To begin with, the wage increases were effectively subsidized by the step increases that were originally part and parcel of the contractual rates that were in place when they were hired. This creates a perverse effect, in that persons in the middle of the salary schedules are not receiving the benefit of negotiated wage increases. For example, as Union Exhibit 1, pages 3 and 4, indicates, on January 1, 1998:

" +0% a-t-b [Added to Base]; there was again a one year contract settlement that basically followed the same pattern as in the prior year(s); i.e. the old step '1' was dropped and a new minimum step was added at the top of the scale; the 1998 5% higher salary range for a District Court Clerk was \$18,595 at Step1 through \$26,181 at Step 8, as compared to the 1997 range of \$17,707 at Step 1 and \$24,934 at Step 8; the only persons receiving an increase on 1/1/98, however, were those at Step 1 and at Step 8 who got their 5% increases on 1/1/98; those in intermediate steps, were raised on their anniversary date to that 'new' step which provided a wage increase but that 'new' 5% higher paying step was the same step at which they had been in prior years; for example, JE was hired on 3/26/90 - JE had received 5% step increases since 1/1/94 but as of 1/1/99 she was still at lower Step 3 then paying \$20,498 per annum (presumably, even without a new contract settlement, she moved to Step 4 at \$21,423 per annum on her 3/29/99 anniversary date); JE was at Step 3 on 11/5/97 (at \$19,522 per annum), and at Step 3 on 11/13/96 (at \$18,494 per annum). JE, after 9 years of employment as of 1/1/99, was still only at Step 3 of

the pay scale, and 5 steps away from top Step 8, albeit her wages had increased some 56%, from \$13,177 per annum to \$20,598 on 1/1/99."

Nevertheless, the wages in Berrien County are not totally misaligned. Employer Exhibit 102 establishes:

1. The 1998 hourly wage of \$9.54 for a beginning Clerk II in the Fifth District Court is virtually equal to the \$9.60 average hourly wage in the comparable district courts, an average which is based, with one exception, on 1999 wage figures.
2. The 1998 hourly wage of \$13.43 for a Clerk II at the top Step in the Fifth District Court is 10.4% higher than the \$12.16 average hourly wage in the comparable district courts, an average which is based, with one exception, on 1999 wage figures. When the top Step 3% lump sum bonus proposed by the employer for 1999 is included, the hourly wage in the Fifth District Court increases to \$13.83 which is 13.7% higher than the average for the comparable district courts.
3. The 1998 hourly wage of \$11.62 for a beginning Assistant Supervisor/ Rehabilitation Services Coordinator in the Fifth District Court is 11.9% higher than the \$10.38 average hourly wage in the comparable district courts, an average which is based, with one exception, on 1999 wage figures.
4. The 1998 hourly wage of \$14.84 for an Assistant Supervisor/Rehabilitation Services Coordinator is 11.7% higher than the \$13.28 average hourly wage in the comparable district courts, an average which is based, with one exception, on 1999 wage figures. When the 3% lump sum bonus proposed by the employer for 1999 is included, the hourly wage for the Fifth District court increases to \$15.28 which is 15.1% higher than the average for comparable district courts.
5. The 1998 salary range for Clerk II in the Fifth District Court (\$18,595-\$26,181) is higher than the similar entry positions in the probate/juvenile court (\$18,002-\$24,125), the Friend of the Court (\$16,365-\$20,701) and the county clerk's office (\$16,088-\$20,357).
6. The 1998 wage range for Clerk II in the Fifth District Court (9.54-13.43) is in excess of the mean hourly wage (9.38) and the 25-75% hourly wage (7.74-10.63) for general clerks in the private sector in Southwestern Michigan.

The problem, of course, is that averages are not controlling on wage settlements. In fact, wages are better understood in terms of historical relationships. It is axiomatic that some bargaining units are paid more and some less. Relative position is an important analytical tool, and a measure of the reality of bargaining.

A more complete exposition of the wage changes follows:

MONROE -- 1ST DISTRICT COURT

	1988 Minimum	1988 Maximum	1999 Minimum	1999 Maximum
Deputy Clerk I	\$13,388	\$15,483	\$18,329	\$21,536
Dep. Clerk II	13,884	16,302	20,005	23,439
5 Steps/36 mos. No employee pension contribution				
Longevity to pre-1989 hires per a schedule				

BERRIEN COUNTY -- 5TH DISTRICT COURT

	1988 ⁴ Minimum	1988 Maximum	1998 ⁵ Minimum	1998 Maximum
Deputy Clerk I	\$10,040	\$14,156	Eliminated	1/1/95
Dep. Clerk II	11,799	17,245	\$18,595	\$26,181
Asst. Super	13,206	18,618	22,668	28,930
Was 11 Steps/11 yrs. Now 6 or 7 Steps/7 years.				
5% pension contribution. "Bonus" in lieu of longevity.				

BATTLE CREEK -- 10TH DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
Deputy Clerk	\$14,991	\$19,293	\$19,802	\$26,312
Specialists	15,530	20,629	20,821	27,605
Coordinators	19,000	20,307	25,389	34,054
8 Steps/48 mos.				

⁴ There is a discrepancy between the figures in the 1988 Court Employee Compensation Survey and the District Court Clerk Compensation Survey (Union Exhibit 1). The fact finder has treated the latter as correct.

⁵ No 1999 contract. Dispute is in this fact finding.

Defined employee contribution pension plan.

JACKSON -- 12TH DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
File Clerk	\$12,043	\$13,453	\$16,531	\$19,872
Clerk Typ II	12,569	14,007	Eliminated	
Deputy Clerk	14,213	17,279	20,555	24,710
Sr Deputy Clerk	15,205	18,801	Eliminated	
Was 4 Steps/36 mos. Now 6 Steps/60 mos.				
2.5% employee contribution to pension.				

OTTAWA -- 58TH DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
Deputy Clerk I	\$14,165	\$17,430	\$19,903	\$24,488 ⁶
Deputy Clerk II	16,349	20,446	22,976	28,734 ⁶
7 Steps/60 mos.				
2.0% employee contribution to pension.				

MUSKEGON -- 60TH DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
Clerk Typist	\$10,830	\$13,572	\$14,722	\$24,914
Court Clerk I	12,429	17,886	17,456	24,914
Court Clerk II	14,215	20,555	20,355	29,792
Assignment	15,533	22,566	22,389	32,778

1988 & 1998 also had COLA up to \$413.

Longevity Plan, up to \$600 at 25+ years service

Was 9 Steps/5 yrs. Now 13 Steps/5-12 yrs.

No employee contribution to pension.

⁶ Note: there is a discrepancy in the exhibits as this maximum.
Compare Union Exhibit 1 and 6, and the 1997 Court Employee Compensation Survey.

SAGINAW -- 70TH DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
Typ Clerk I/II	\$14,276	\$16,403	Eliminated	
Assignment Clk	14,986	17,265	\$19,839	\$24,225
Support Clerk	14,986	17,265	Eliminated	
Dis Ctrm Clerk	15,746	18,124	20,793	25,780
Typ Clerk III	15,746	18,124	20,793	25,780
Dis Ct Rcdr	16,504	19,288	21,876	27,272
Longevity Plan, \$70 per year; Max \$1,750 @ 25 yrs. 5 Steps/4 yrs. No employee contribution to pension.				

PORT HURON -- 72ND DISTRICT COURT

	1988 Minimum	1988 Maximum	1998 Minimum	1998 Maximum
Clerk Typ I	\$14,995	\$16,749	\$22,591	\$22,177
Clerk Typ II	15,828	17,740	23,610	26,432
Deputy Clerk	19,180	21,612	28,282	31,867
Lead Deputy Clk	None	None	20,793	25,780
Court Rptr	None	None	35,638	36,945
Dis Ct Rcdr	16,504	19,288	21,876	27,272
Longevity Plan, \$70 per year; Max \$1,750 @ 25 yrs. 5 Steps/3 yrs. 5% employee contribution to pension.				

The low wage rate of 1988 has gradually been corrected, but perversely as indicated above.

There has been improvement in the relative increase in maximum annual rates and percentage of increase.

Compared to the proffered comparables, the data shows:

B e r r i e n	5 1 %
P o r t H u r o n	4 2 %
O t t a w a	4 1 %
J a c k s o n	3 6 %
M o n r o e	3 5 %
M u s k e g o n	3 5 %
B a t t l e C r e e k	2 6 %
S a g i n a w	2 5 %

The Berrien County maximum Clerk pay rate for 1997 was 68th out of 123 reporting district court units, per the Survey of the State Court Administrative Office.

In effect, by dropping and adding steps, the parties have achieved a wage level which is comparable to, indeed generally higher than, that resulting from across the board increases.

This was a mutually bargained decision. It is not, however, something that should be continued in the future.

The Employer sees the data as indicating that for 1999, the top Steps of the salary tables for employees in this Bargaining Unit are "much higher than the comparables." It submits it "is, therefore, reasonable for the employer to offer a 3% lump sum payment upon ratification for those already at the top Step rather than an increase in the Step itself which would result in further disparity between employees at the top Steps in this Bargaining Unit and other comparable employees. However, the lump sum bonus would be used in calculating pension and other benefits."

The Fact finder disagrees.

I agree with the Union that the lack of across the board increases has resulted in high turnover in this Bargaining Unit.⁷

⁷ On the other hand, Employer Exhibit 107 shows that employees have not cited at exit interviews dissatisfaction with the salary structure. Nineteen employees left the Bargaining Unit between January 1, 1997 and July 15, 1999. Six of these did not successfully complete their probationary period. As the testimony indicated, this meant that they did not perform at an acceptable level during the first six months-

(Footnote Continued)

The Berrien County/Fifth District Court's practice of eliminating a bottom step and adding a new 5th top step gives enhanced wages to new hires and the persons at the top of the pay scale, but does nothing for people within the intermediate steps other than what they'd been promised when they were originally hired.

As of 7/22/99:

7. 8 of 32 employees had less than one year of seniority.
8. 13 of 32 employees were at the entry level step (Step 1) of the pay scale.

This is a function of the salary structure and administration. There is something awry about a personnel program that produces those extraordinary turn-over statistics. In particular, mid-level employees are not staying. Their compensation is being eroded by the effects of inflation.

How does one compare numbers shown in the following data:

9. Gross 1998 payroll of \$652,707.56 and 1998's budgeted payroll at \$671,676.13.
10. An increase of more than \$49,000 between 1998's gross payroll of \$652,707.56 and 1999's budgeted salary of \$702,089.96.

(Footnote Continued)

of employment. One employee retired after eighteen years of service. Two employees were promoted within the District Court. Three made lateral transfers within the Berrien County Trial Court or Berrien County. One was terminated and three quit for personal reasons, the testimony indicating that some of these were on the verge of being terminated. One accepted a promotion within the Berrien County Trial Court outside of the District Court. Only one employee left for the private sector.

Each across-the-board increase of 1% costs \$7,617.70. If there are no additional employees included in employer calculations, FDCIU should have been able to have had a total of about +6.5% in 1999 across-the-board increases. Thus,

11. If one compares the 7/22/99 seniority list with the 12/16/98 seniority list show that 8 months of step increases resulted in total of less than \$2,700 in new money, which, when divided among 32 people, results in less than \$100 per person.

FDCIU has repeatedly averred there is only one issue as to which they seek fact-finding assistance. That issue is whether or not the employer should continue the practice in which it has engaged since 12/31/93, of granting employees NO across-the-board wage increases at all.

Virtually all of public sector America has white collar pay plans that provide multiple-steps of pay in a single pay grade or job classification.

The step increases are not deemed COLA-type wage increases and they, over the years, do average themselves out, with promotions and retirements and gradual turn-over, so that, in general, there are some employees in the lower-paid entry level pay step, some at mid-level steps, and some at top steps (who are often given longevity payments that recognize their years of service). Most of public sector America gives across-the-board, annual COLA (Cost of Living)-type wage increases, even if it is not an automatic COLA allowance as in the 1970s. The increases are to

multi-step, multistage pay plans, generally in the +2%, +3% per year range in recent years.

It is the fact finder's personal experience that 3% annual wage increases are the rule, not the exception, in the public sector.

The parties have had a practice of having Steps in place. Presumably, they see value in retaining employees. Having employees stay on benefits the organization., First, there is no need to hire outsiders. As the exit interviews establish, not every person hired will work out as an employee. Second, there is no need to train new employees. Third, employees do get better from on-the-job training. Quality of service is something that is sometimes overlooked by public employers -- all employees are not fungible, like peas in a pod. Fourth, an institution's employees are its most important asset. Fifth, retaining employees helps underwrite a community of interest between the employees, the employer and the public. Sixth, while these were formerly entry level positions, the parties recognized that they weren't when they changed the classification to Clerk II. Seventh, these are delicate high stress jobs, which entail "negotiations" with members of the public, many of whom are not happy to be involved with the courts; thus, working on the phone or at the desk is not easy.

Most public sector employers do not treat a 5% annual step increase as being a COLA type wage increase, when the employee originally hired in, for example, he or

she was promised a pay scale that started at X amount, had 5% annual step increases, and would end up at Y amount. When hired, it appeared that he or she would be at the top of the pay scale in a certain number of years.

Although the 5th District Court is officially the Employer, the funding unit is the County. This is effectively a dual employer scenario, not unlike that entailed for county sheriff's bargaining units.

Consequently, internal comparison to pay increases in county units is appropriate. It is relevant and probative that the Berrien County Sheriff's Association just received pay increases of 4% (retroactive), 3%, and 3% for the years January 1, 1999 to December 31, 2001, respectively. In addition, they received increased dental benefits and a modest increase in their pension multiplier from 2.2 to 2.3%.

Parenthetically, the parties did not provide the fact finder with information concerning pay increases for District Court judges. However, this is an inherent internal comparable that should be a factor in establishing rates for this unit. After all, if fiscal austerity is called for in public employment, it ought to begin with leadership at the top.

I presume that this has not happened. Rather, judges have been given considerable wage increases, which are well deserved and are a matter of public record.

Moreover, inflation's impact upon those best able to afford it must be relatively discounted. The fact is that these bargaining unit members are spending their wages on necessities, not luxuries.

In that regard, it is well to note that 3% of an elephant is categorically not the same as 3% of a mouse.

This brings us to the issue of duration. The Employer submits that it is in a much better position to react quickly to budgetary adjustments if it has a one year contract. It is true that the parties had one year contracts in prior years.

However, these short term contracts are contrary to the recent trends in both the public and private sectors. The fact finder firmly believes that there should be a retroactive one year adjustment of wages and implementation of the tentative agreements, followed by a three year agreement.

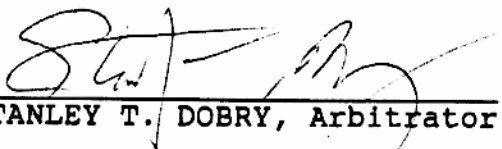
This should help stabilize the parties' labor relations.

VI. RECOMMENDATION

The fact finder recommends a four year agreement.

The fact-finder recommends that the employer grant an across-the-board wage increase to the salary schedule of +2% effective 1/1/99; +2% effective 1/1/00; +3% effective 1/1/01; and +3% effective 1/1/02.

Dated at Warren, Michigan this 11th day of January, 2000.


STANLEY T. DOBRY, Arbitrator