

1804

**STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:)	
)	
Fact Finding)	
)	
between)	Michigan Employment Relations
)	Commission
Hiawatha Behavioral)	
Health)	
)	Case No. L98 H5003
)	
and)	
)	
UAW Local Unions 2253)	
and 3803)	

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE
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FILED

REPORT OF THE FACT FINDER
RAYMOND J. BURATTO

REPRESENTING THE PARTIES:

For the Employer:

Bonnie G. Toskey, Attorney
Lisa Hickson, Senior Executive Officer
Angela Carr, Human Resources Manager
Jay Martin, Board Member, Hiawatha Behavioral Health
Patrick Rodman, Vice Chair, Hiawatha Behavioral Health

For the Union:

Michael L. Fayette, Attorney
Gary Martin, International UAW
Rob Naugle, International UAW

PRE-HEARING ACTIVITIES

By petition dated July 8, 1999 the International UAW, Local Unions 2253 and 3803 requested Fact-Finding for a unit of eighty-five employees, including Non-professional positions "Partial Day Aides, Residential Aides, Partial Day Aide/Clerks, ACT Program Aides, ACT Program Clerks, Billing Clerks, Assistant Home Managers and Custodians, but excluding Classifications in Unit I and II, the Director, Assistant Director, Office Manager, Clinical Coordinator, Accountant, Secretary/Receptionist, Recipient Rights, Emergency Services Workers (average 1 week/month), and all other employees." Also represented were Unit I Professionals " all Registered Nurses, Clinical Therapists, Case Service Managers, and Assertive Community Treatment (ACT) Nurse/Case Manager, but excluding classifications in Units II and III, the Director, Assistant Director, Office Manager. Clinical Coordinator, Accountant Secretary/Receptionist, Recipient Rights Officer, Emergency Services Workers (average 1 week/month), and all other employees."

On August 5, 1999 the Commission notified the parties and appointed Raymond J. Buratto, Esq., as its Fact Finder, to conduct a hearing pursuant to Section 25 of Act 176, Public Acts of 1939, as amended and the Commission's Regulations, and to issue a report on the matters in dispute between the parties.

ACTIVITIES SUBSEQUENT TO THE APPOINTMENT OF THE FACT-FINDER

Upon initial telephone contact with the parties, the Fact Finder was advised of additional meetings scheduled between the parties to attempt to resolve the dispute. Following several

unsuccessful attempts at resolution and an intervening unfair labor practice charge, the Fact Finder was advised by the parties that a hearing would be needed. It was subsequently held in the offices of the Mackinac County at St. Ignace, Michigan on Tuesday, February 1, 2000. Representing the Employer (hereinafter referred to as "the Employer" or "HBH" (Hiawatha Behavioral Health)) were attorney Bonnie G. Toskey and Lisa Hickson, finance officer, Angela Carr, Human Resources manager, and Jay Martin, HMH Board member and chair of the personnel committee. The union was represented by Michael L. Fayette, attorney, Gary Quick and Rob Naugle, both of the International UAW. At the close of the hearing the parties agreed to the submission of post-hearing briefs by February 28, 2000, which date was later extended by mutual agreement of the attorneys. Briefs were mailed on March 17, 2000.

The recently expired contract was effective from October 1, 1998 to and including September 30, 2001. Only the wage provisions of the contract were subject to the Fact Finding.

WAGES

The only issue presented by this Fact Finding for resolution is employee wages.

The Union argues for a three year agreement with a 3.3% increase in each of the three years, with full retroactivity. The Employer's proposal is a "one percent (1%) base wage increase paired with a 1% decrease in the employee's 2% pension contribution for a combined net increase of 2%." The Employer also notes the [s]ome employees received a much higher increase under the Employer's proposal as a result of individual adjustments made to achieve parity in placement on the wage scale." (Employer's Brief, pp. 3-4)

Each party vehemently argues its position, supplementing the record with voluminous exhibits including wage and benefit comparisons, salary surveys, cost-of-living data, and minutes of various board meetings. In the end, this Report and Recommendation is as much a product of notions of common sense and fairness and particular attention to the statute and regulations as it is of the parties' copious exhibits.

The Employer notes the wage rates contained in its offer were the product of a joint labor management "Wage Study" group comprised of four (4) union leaders from the two local unions which met and conferred with the Employer's Personnel Director and Controller to "review extensive information from the three counties comprising the Hiawatha Community Mental Health Board, and from the other mental health authorities in the Upper Peninsula, as well as other area public employers, including health departments. Working via consensus, the work study group arrived at agreement on minimum and maximum wage rates." The Employer contends its wage rate proposals were based on the findings of the Work Study group. It should be noted for reference that the efforts of the Work Study group established wage rate ranges for the UAW represented professionals and paraprofessionals and non-represented positions as well.

The Employer notes that adjustments were made in employee pension contributions, to-wit, those made by employees of the former Eastern Upper Peninsula Community Mental Health Board were reduced from 2% to 1%, but those made by the employees of the former Schoolcraft unit were increased from 0% to 1%. This was done to create uniformity of pension fund contributions among employees of the merged unit. A wage rate proposal was offered to the UAW bargainers on April 29, 1999 offering retroactivity to October 1, 1998, conditioned upon

an agreement being reached by June 30, 1999. Obviously that date passed without an accord being reached.

During the course of bargaining the Union expressed concern over the perceived inequities created by the merger and the Employer responded by making wage adjustments at a cost of approximately \$60,000.00.

Urging adherence to the Act 312 factors to be considered in a comparison of wages, hours and conditions of employment, the Employer focuses on the criterion of provision of "similar services" from "other employees generally" in "comparable communities" and cites Eastern Upper Peninsula and Northern Lower Peninsula governmental employers and several community mental health organizations. HBH Exhibits 5F-L are offered to support this argument.

Further citing Act 312 criteria, HBH uses population and state equalized value (SEV) to support its argument that "the counties served by Hiawatha are fairly unique among the 83 Michigan counties", and accuses the Union of arguing that "wages paid by this Employer should be held to some statewide or nationwide standard."

Additional sections of the Employer's Post Hearing Brief to the Fact Finder are dedicated to discussing the financial impact of any wage increase on the employer's retirement fund contribution obligation, the "comparability" of the impact of its wage offer vis-a-vis the wages paid for similar positions in comparable communities. The Employer argues that "the wages paid similar mental health agencies employees performing similar work in other counties that have essentially the same demand for services can provide a useful benchmark as to wage

levels", and concludes that HBH's "wage offer exceeds the averages of the comparables in almost every instance".

Next, the Employer argues that the Fact Finder should be persuaded by the level of overall compensation paid, noting that Hiawatha spends significantly more on employees' health insurance and retirement contributions than do its proffered comparables. Paid time off received by the UAW-represented employees is competitive with the comparable entities.

The Employer also attempts to make its case by establishing that HBH employees compare favorably with comparable employment in the counties comprising the HBH and its ability to attract, employ and retain qualified employees. In this regard, HBH asserts that number of responses received to its ads for employment in the subject units is proof that its wage and fringe benefit package is attractive to prospective employees.

Finally, the Employer concludes by noting

[c]onsistent with its goal to remain competitive and successful in this managed care environment but yet pay fair and reasonable wages and benefits, Hiawatha has invested an enormous amount of resources and effort in achieving exactly that; i.e a wage scale for both professional and paraprofessional employees that provides for a base wage increase, continuation of excellent retirement, continuation of excellent health and welfare benefits for the employee and family, as well as an extremely generous complement of paid time off benefits.

In support of its proposed wage increase, the union suggests HBH is in its best financial condition in some time and currently enjoys annual revenues of \$12 million. The union discounts the employer's concerns over the possible privatization of community mental health services, at least through the term of this collective bargaining agreement, citing the statement of Michigan

Community Mental Health Director James Haveman in February, 2000 to a Senate sub-committee.

Union Exhibits 1A-1I were included with the Brief and offered to support the contention that HBH revenues were at a high level as the Employer has implemented many cost saving efficiencies. Union Exhibit 2 entitled "Parity Scale Proposal for Non-Union" purports to substantiate increases for non-union employees of the employer totally 3.3% of current payroll. The UAW concedes that its members, through bargaining, conceded a number of paid days off, between five and eleven per employee, arguing this was a reduction of 3.1% in overall compensation. Reference is also made to the Association of Community Mental Health Board's salary surveys noting an average compensation increase of 3.31% for fiscal 97-98 and 3.30% for fiscal 98-99 was enjoyed by employees of the 41 other Michigan mental health boards responding to the survey.

Further arguments presented by the UAW included the failure of the last contract to keep pace with the cost of living; the employer's cash position and ability to absorb an increase; that HMHB already enjoys a competitive advantage regarding fringe benefits; and that in some instances the Employer's list of comparables is flawed.

RECOMMENDATION

I am aware that the Employer has recently granted a three percent (3%) increase to non-bargaining unit employees, allegedly based on the work of the Wage Study group. Unfortunately no mention was made of any adjustment of these employees pension contributions as was offered by the employer in part to support its denial of a three percent increase to the

UAW represented employees. This internal comparable is significant.

The record indicates a one percent (1%) "increase" in compensation has been enjoyed by the employees of the former Eastern Upper Peninsula unit whose pension contribution was reduced from 2% to 1%. Conversely, the second group, employees of the former Schoolcraft unit, having once paid zero pension contributions are now being asked for a 1% contribution so that parity between the groups is now attained. Thus while one group "gains" the other loses the same percentage of income.

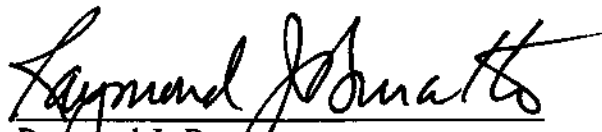
The parties have also argued that certain employees' wages were adjusted, in the interest of fairness, following the work of the Wage Study group. That adjustment cost the employer some \$60,000.

I am persuaded by the positions of the parties, the record as a whole, and the guiding principles of Act 312, which while not dispositive of the issues certainly provide a framework for decision-making, that the bargaining unit employees of HBH should be afforded the same considerations afforded the non represented employees of the county. Thus I am recommending an across-the-board three percent (3%) wage increase, consistent with the increases granted the non represented employees. However, in consideration of the seemingly dilatory tactics in the face of the employer's offer of full retroactivity if its offer were accepted by June 30, 1999, I would recommend retroactivity only to that date. To do otherwise is to encourage the parties adopt a "chilling" effect, whereby they choose not to accept a negotiated settlement based on the work of a joint labor management committee, and opt instead to place their fate in fact finding in the hopes of garnering sympathy for their entire position.

Clearly the cost of living rate has outpaced what the employees gained in the last collectively bargained agreement, which culminated in fact finding on the issue of wages, at least for the then EUP employees. While certain members of this bargaining unit received a reduction in their pension contribution, others received an equal and opposite increase in their contribution. All employees were in some way impacted by a reduction in overall compensation by a reduction in the number of paid days off. A number of employees received "adjustments" based on notions of equity, which were neither detailed in testimony nor in post-hearing submissions. The record establishes the adjustments were worth \$60,000.00. It is sufficient for the purposes of this Fact Finding that the parties did agree to correct injustices, whether perceived or real.

CONCLUSION:

The above Report and Recommendation represents the findings of fact and recommendations arrived at following the hearing conducted by the Fact Finder. All submissions of the parties, whether or not cited, were reviewed and considered in the preparation of this Report and Recommendation.


Raymond J. Buratto

Dated: June 16, 2000
Rochester Hills, Michigan

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