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# FACT FINDING REPORT

## MICHIGAN EMPLOYMENT RELATIONS COMMISSION

March 6, 2002

SAGINAW COUNTY COMMUNITY
MENTAL HEALTH AUTHORITY
(The Authority)

-and-

MERC Case No. L01E-3017

MICHIGAN NURSES ASSOCIATION
(MNA)

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Saginaw County had a Department of Mental Health for some years. It created a separate Saginaw County Community Mental Health Authority (hereinafter, the Authority) in 1997. The Authority is a completely independent public employer no longer associated with the County. It provides mental health services to county residents. It employs a relatively small number of professional nurses who are represented by the Michigan Nurses Association (hereinafter MNA).

The first collective bargaining agreement (CBA) was between Saginaw County and MNA for the period 1990-94. Another CBA followed for the period 1995-98 with the Authority assuming the obligations found in this CBA in 1996-97. However, the Authority and MNA then proceeded to negotiate their own CBA for the period 1996-99. And that CBA was later extended until September 30, 2000. The parties engaged in negotiations for a new CBA between September 2000 and August 2001 but were unsuccessful. The Authority asked MERC to appoint a fact-finder and MERC did so.

The parties reached tentative agreement on many matters. There remain, however, a considerable number of open issues. In order to expedite the handling of this fact-finding case, the parties agreed that there would be no formal hearing. Instead, they provided lengthy submissions

containing their arguments and various supporting materials and exhibits. The Authority was represented by Robert A. Kendrick, Attorney (Braun Kendrick & Finkbeiner); MNA was represented by Anita J. Szczepanski, Attorney (MNA).

Article 18 - Wages

The Authority has proposed:

- a wage freeze from Sept. 3, 2000 until Oct. 1, 2001,

- effective, first full pay period after Oct. 1, 2000, a 1% increase

- effective, first full pay period after Oct. 1, 2001, a 4% increase.

MNA has proposed, for the same periods, increases of 3%, 5%, and 6%. But its demands are largely a response to what it believes was intrasigence on the Authority's part with respect to various wage-related questions.

The parties' briefs were revealing. In particular, MNA states that it "would be willing to consider these [Authority] percentages and work very hard to accommodate the Employer's financial needs if the Employer would withdraw the portion of its proposal regarding incentive plans and wage re-openers". Because I too have serious doubts about these very same proposals, because the average hourly wage rate for the Authority's registered nurses was, as of September 2000, roughly comparable to such rates for registered nurses in Central Michigan[1], and because the Authority faces financial difficulties based on much lower than average capitation fees received from Medicaid services, my recommendation is that the Authority's wage offer be adopted.

There are, as noted in the previous paragraph, other wage issues as well. First, the Authority urges that a contract provision be added to allow management -

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[1] See page 5 of the MNA brief, comparing a $15.77 to $18.99 per hour rate range for Authority nurses with a $16.48 average per hour for Central Michigan nurses.

> ...to develop, change or delete any incentive plan(s) to increase any wages, for any employees ...and to pay additional monies pursuant to any such incentive plan(s), provided no employee is paid less than the minimum wage rates contained in this [A]greement.

MNA objects to such an arrangement.

I recommend that the Authority withdraw this proposal. An "incentive plan" would become a fundamental part of the wage structure. As such, it would be wrong to permit unilateral implementation of this wage supplement. Incentive plans can be helpful in encouraging greater employee effort and in rewarding skill and creativity. But given MNA's understandable concern with wage equity and wage administration, an incentive plan should be initiated only through mutual agreement. There is presently no such mutual agreement.

Second, the Authority urges that it be given the option "not to implement" the 4% increase on October 1, 2002, and to "re-open" the CBA on such wages and benefits "as determined by the Employer". MNA objects.

I recommend that the Authority withdraw this proposal. It poses a number of difficulties. To begin with, it gives only the Authority - not MNA - the option to "re-open". Without the 4% increase proposed by the Authority for the final year, the recommended wage package would be inadequate. The package would not, over a three-year period, provide nurses with protection of their real, inflation-adjusted wages. At the very least, their wages should at the end of the CBA be roughly equal to what their wages were at the start of the CBA.

Finally, with respect to longevity pay, the Authority has proposed a new Article 30. Because it continues in effect the $70 per year longevity bonus for nurses with five or more years of continuous service, because it draws a legitimate distinction between full-time and part-time employees, and because it provides other sensible rules of administration for the bonus, I recommend that Article 30 be adopted.

## Article 19 - Hours of Work

The present CBA says a nurse's hours are "from 8:00 AM to 5:00 PM" with an unpaid one-hour lunch and two 15-minute breaks. It also says that management "has the right to reassign work schedules based on service schedules". The Authority proposes only a change in hours to "a nine hour day" with the customary unpaid lunch hour and with the word "paid" being added to the 15-minute break. MNA, however, insists that the description of employee hours remain "from 8:00 AM to 5:00 PM" and that the Authority be required to "bargain the hours for the RNs in Special Hours/Clinics" at such time as management's "service schedules" call for "work schedules" other than 8:00 AM to 5:00 PM.

The differences between the parties are quite narrow. MNA acknowledges the Authority's "need for flexibility of hours" and management's "right to make...changes" in hours because of the importance of projected "evening clinics". It believes, however, that the Authority should "bargain" over nurses' hours when they are assigned to evening work. It asks in effect that some such bargaining obligation be written into Article 19.

Given MNA's concession with respect to management's "right to make...changes" in nurses' hours and given the likelihood of more evening clinics, the Authority's proposal seems reasonable and I recommend its adoption. Also, in view of the fact that evening hours are a relatively new phenomenon, I recommend that Article 19 provide for the Authority to consult with MNA as the need for new hours arises in order to make the changes more understandable and more palatable to the nurses involved. This is not an obligation to bargain but rather an informational device to insure the nurse's voice can be heard on such matters.

## Article 29 - Safety & Health

Only MNA has made a proposal regarding Article 29. It seeks the creation of a "Safety Committee" to hold "special conferences" for the purpose of developing "safety procedures". Or, in the alternative, it urges that the Authority "allow one nurse a seat on the already existing Safety Committee which is currently made up of only management members". The Authority replies that it is

"willing to consider any proposals..." from MNA "during the term of the Agreement on safety procedures" but it objects to "special conferences".

The simplest and fairest way of resolving the parties' differences is to place a MNA representative on the existing Safety Committee with the understanding that she will be free to make safety proposals which, if acceptable to the committee, will be given full consideration by the Authority. I recommend such minor language changes.

Article 26 - Health & Insurance

For the most part, MNA has no objection to the Authority's proposed language changes on health care and insurance. It raises four distinct objections to the Authority's proposal.

First, the final paragraph of 26.1, presently states that the insurance benefits in this section "shall not be modified" by the Authority "without first presenting any proposed changes in coverage or carriers to the [MNA] for the purpose of bargaining". It states further that the Authority shall then, if requested, engage in "good faith bargaining" to resolve any disagreement and "should not unilaterally implement any changes...unless there is an agreement or a bona fide impasse reached on the issues". MNA urges that this paragraph be retained. The Authority asks that it be eliminated with the following sentence being substituted in its place: "Benefits will be discussed with the Union before any changes are made to hospitalization/ medical benefits". Its object is to be able to "shop" its health care coverage to different insurers in an attempt to find a lower cost for comparable coverage. It believes that can be accomplished more effectively without bargaining with MNA.

Once again, the differences between the parties are not as substantial as they would have me believe. The fact is that, under the first paragraph of 26.1, management has the right to "provide comparable coverage" for the health benefits presently received by nurses. That means it is free to contract with an insurance carrier to reduce its costs provided of course that "comparability" is maintained. But the final paragraph creates a second condition, namely,

that the introduction of "comparable coverage" be preceded by notice to MNA and "bargaining" if requested. That probably would extend the time for effectuating the change. But if the "bargaining" is unsuccessful and ends in a "bona fide impasse", the Authority is free to "provide comparable coverage" unilaterally through an insurer. Thus, this dispute is really about how the Authority goes about achieving its goal. Absent any proof that "bargaining" would materially affect the Authority's ability to make such a change, I see little reason for eliminating the final paragraph. I recommend that this paragraph be retained and that the proposed "Benefits will be discussed..." language be withdrawn by the Authority.[2]

Second, 26.9 deals with cost sharing. The Authority proposes beginning with the policy year June 2001, a prescription co-pay provision requiring a co-pay of $10 for generic drugs and $20 for name brand drugs. Those apparently represent an increase over what the nurses presently pay. But MNA finds the higher amounts "acceptable...only if the [Authority] does not insist on the elimination of the right to bargain changes in health insurance". Given my recommendation under 26.1, approving of a continuation of the "right to bargain", I recommend that the $10-$20 co-pays be accepted.

Third, 26.9 also provides for cost sharing, specifically for nurses to pay 5% or 10%, depending on the health plan chosen, of the Authority's premium cost. The Authority proposes to leave that formula in place and to add another formula which would require nurses to pay further premium costs in the event the year-to-year increase in those costs exceeds 15%. For instance, for the health plan year beginning June 1, 2001, any increase in premium cost beyond this 15% year-to-year increase would be borne by the nurses. And that would apply as well to the following two year-to-year periods. MNA resists this change.

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[2] These same observations apply to Dental Insurance, 26.3, except of course that the Authority here too should be allowed to provide "comparable coverage" after notice and "bargaining".

The impact of this proposal on nurses is pure speculation. It is true that health care premiums have been rising substantially in recent years. It is also true that nurses presently share the burden of those rising premiums through their current 5% or 10% contributions on actual premiums paid. The problem might become severe but the Authority has not alleged that it has, as yet, experienced year-to-year increases of more than 15%. Should that happen, should this obligation become truly burdensome, the Authority should have the right to re-open the CBA on this one narrow point and attempt to negotiate a solution with MNA. Should the parties at such time be unable to agree, this limited question should be subject to interest arbitration at the request of the Authority. I recommend no change in the present cost-sharing arrangement for premiums but I also recommend new contract language to deal with the contingency discussed above. And, in all other respects, I recommend adoption of the language proposed by the Authority.

Fourth, 26.2 provides for life and accidental death insurance in certain amounts for "each employee". The Authority proposes that this benefit be limited to "full-time employees", that it no longer be provided to "part-time employees". MNA disagrees.

Collective bargaining agreements almost always distinguish between full-time and part-time employees. The latter ordinarily receive the same hourly rate but lesser fringe benefits. It makes sense to limit this kind of insurance to full-time employees. I recommend adoption of the Authority's proposal.

## Article 2- Management Rights

Article 2 is a fairly typical "Management Rights" clause. It states that the "management" of all "phases and details" of the Authority's business "shall remain vested" in the Authority subject only to "the rights" of nurses or MNA "under the contract". The Authority proposes a detailed clause granting management all "rights and abilities...not specifically provided to the Union in this Agreement..." and spelling out eleven specific examples of such "rights and abilities". MNA resists this proposal and suggests language that is essentially a restatement of the present "Management

Rights" clause. It takes particular exception to the Authority's reference to such matters as subcontracting, supervision performing bargaining unit work, and changes in work rules.

It should be stressed that a "Management Rights" clause, however phrased, does not ordinarily grant anything to management that it would not have had in the absence of such a clause. If management violates the CBA, the "Management Rights" clause is irrelevant. If Management does not violate the CBA, the "Management Rights" clause is also irrelevant. Such clauses are typically a mere affirmation of the broad range of rights management possesses subject only to the CBA.

The Authority's proposal goes well beyond the typical clause. It seeks to establish rights with respect to substantive subjects which may or may not be covered, expressly or by implication, by the CBA. For instance, whether management has the right to subcontract existing work in any and all circumstances or whether management has the right to assign bargaining unit work to supervision in any and all circumstances are questions to be resolved through the grievance procedure and arbitration if necessary. These are significant matters which cannot properly be resolved through a "Management Rights" clause. Because the existing clause grants management all rights other than those restricted by the CBA, there is no sound basis for embracing the Authority's proposal. I recommend that the Authority withdraw such proposal and that the parties continue with their present "Management Rights" language.

Article 7 - Non-Discrimination

Article 7.1 involves the Authority's commitment "not to discriminate against any employee because of religion, race, color, national origin, age...as defined by law, membership in or activity on behalf of the [MNA]..." The Authority proposes the deletion of this provision. It argues that because of a recent Michigan court decision, an arbitrator's ruling denying a nurse's Article 7.1. grievance does not

preclude the same nurse from filing a civil rights lawsuit.[3] It urges that because an arbitrator's ruling would not be "final and binding" in this situation, it is unfair to expose the Authority to the possibility of a nurse obtaining "two bites of the apple". MNA insists that the non-discrimination" clause be retained.

Nothing in the record suggests that the Authority has experienced this dual exposure - first arbitration and then litigation. There are, moreover, several reasons for nurses to choose arbitration of discrimination claims. It is quicker and far cheaper. Nurses should not be denied the opportunity to avail themselves of such an expeditious procedure. Had the non-discrimination clause been a substantial burden to the Authority in the past, perhaps an appropriate effort should be made to address the problem. But there is no evidence of such a burden. The fact is that the presence of such a non-discrimination clause is almost universal in CBAs notwithstanding the possibility of an unsuccessful grievant taking his case to the courts. I recommend that the Authority withdraw its proposal.

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My recommendations are stated in the above opinion. In all other respects, the parties appear to be in agreement.

Richard Mittenthal
Fact Finder

[3] The court decision emphasized that the arbitration award would have precluded a lawsuit had the CBA expressly waived the employee's right to file a lawsuit in these circumstances.