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In the Matter of Statutory Factfinding between:

ALCONA COUNTY ROAD COMMISSION,
Employer

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 214,
Union.

MERC Case No. L01 D-3009

FACTFINDER'S OPINION AND RECOMMENDATIONS

Place of hearing: Lincoln, Michigan.

Date of Hearing: August 1, 2002.

Appearances:

For the Employer: Michael R. Kluck
Kluck & Associates

For the Union: Les Barrett
Business Representative

Also present: Jesse Campbell (Assistant Steward); Bob Denick (Local Business Representative); Richard Karsen, Sr. (Co. Road Commissioner); Randy Smith (Steward); Ron Young (Engineer-Manager, Road Commission).

Date of this report: August 16, 2002

The parties have bargained intensively since late October 2001. On December 17, 2001, the Teamsters, Local 214, citing an unresolved labor dispute, filed a petition for factfinding with the Michigan Employment Relations Commission. On January 2, 2002, the Employer answered the petition for factfinding. Thereafter, the Commission, by its Chair, Maris Stella Swift, appointed me as factfinder pursuant to 1939 P.A. 176. The purpose of Section 10 of the statute is for a neutral, uninvolved labor relations professional to render an opinion and make specific recommendations to the parties—and to make such recommendations known to the public–in the expectation that such opinion and recommendations will hasten settlement of the pending labor dispute.

One other preliminary matter deserves comment. Throughout the hearing in this matter, the parties each referred to their hand-picked group of comparable communities. Some of those communities overlapped. But for the most part, the parties' representatives worked from two distinctly different lists of communities, which each deemed to be comparable to the Alcona County Road Commission. Because this factor is crucial in terms of recommending economic terms of employment, I will summarize my thinking and my reference points on comparable communities.

The Union separated contiguous communities from comparable communities, and determined that several were both contiguous and comparable (Oscoda and Montmorency). Arenac, Benzie, and Lake County Road Commission are also considered comparable, in the Union's book.

The Employer relied on a combination of mileage subject to maintenance; population, total personal income in the county; employment characteristics, and other factors to select Arenac, Benzie, Crawford and Oscoda County Road Commissions as comparables

I have reviewed the data submitted by both sides. The communities most nearly comparable in demographics, road mileage to be maintained, and community characteristics are Arenac, Benzie, and Oscoda. These three county road commissions will be used as comparables, when the evidence and presentations at hearing suggest that "comparable communities" are the appropriate reference point for the factfinder's recommendation.

RECOGNITION CLAUSE.

The Union proposes a change, instilling the word "work" into the recognition clause, thus presumably protecting members of the unit from incursion of others into their work.

The Employer would opt for the status quo. The contract now says that, "The recognition clause shall be construed to apply to employees and not to work."

The extent of the legal recognition contained in MERC's certification includes, explicitly, the right to represent employees in certain classifications. Implicitly, the certification includes the right of the Union to protect the work assigned to those classifications.

The Employer's bid to continue the contractual status quo seems to me inappropriate, in view of the long-standing history of what rights the Union gains through its legal certification as the bargaining representative. Realistically, the recognition clause cannot bestow fewer rights than the Union enjoys through its legally sanctioned status.

RECOMMENDATION (RECOGNITION CLAUSE):

Thus, as a solution to this dilemma I recommend that the parties adopt language that recognizes that the Union, without any doubt, has the right as the certified bargaining representative to represent employees in certain classifications and also has jurisdiction to bargain with respect to the work performed in those classifications. The language best suited to this result would be along the following lines:

> All permanent hourly rated employees, excluding engineering personnel, office clerks, foremen and supervisors.
>
> This recognition clause shall be construed to apply to all represented employees and to bargaining unit work, to the extent provided by law.

LENGTH OF CONTRACT.

The Union proposes an effective date of July 1, 2001, with the contract to run for 4 years. The Employer proposes an effective date at the time of ratification and acceptance by both parties.

RECOMMENDATION (LENGTH OF CONTRACT):

Although the parties' collective bargaining agreement in many essential parts has been extended and re-extended since the date of its natural termination on June 30, 2001, there has not been a wage increase nor have there been improvements in other benefits, pending acceptance of a new collective bargaining agreement. My recommendation is that the new contract should be written to be effective July 1, 2002.

One does not wish to penalize the Union for forcing a hard bargain. On the other hand, one does not wish to penalize the Employer, either, for having taken action to protect benefits during the long hiatus between the natural termination of the last contract on June 30, 2001, and the present time. During the year's hiatus since the end of the 1997-2001 contract, the Employer has made contributions to the employee's health / dental/ optical program which have outweighed the amount of any wage increase suggested for the year 2001-2002.

The balance of the equities, it seems to me, would require that we leave the last year in the status it now is, without wage increases, and with continuation health /dental /optical care at the increased premiums levels already experienced. Thus, I recommend the Employer's proposal on the subject of "length of contract," with the modification that the new contract be effective not on date of signing, but retroactively to July 1, 2002.

HOURS OF WORK.

There is no more traditional subject of bargaining. However, the record indicates that the manner in which the parties have handled the subject of summer work schedules is anything but traditional. Our record indicates that - Manager Ron Young, from time to time during the summer months, makes a proposal to the employees by which the hours of work would temporarily be fixed at four 10-hour workdays. The employees take a vote to determine whether to accept this work schedule. If they do, then the schedule is instituted. If they don't approve it, then the 10-hour workday work schedule is not instituted.

The Union proposes a formal contractual statement that the 10-hour workday schedule shall be in force every summer, for the duration of the summer, "to start and end at a fixed time each year" (such as Memorial Day and Labor Day).

Management responds that 10-hour workdays are a good idea for brief periods of the year in which the Road Commission may have special projects or high-priority contract work. The Employer argues that, "The employer should be allowed to determine on an annualized basis whether a 4 day/ 10 hour schedule is operationally justified." Thus, management would like to retain the flexibility is has by being the party to call for a 10-hour workday schedule.

RECOMMENDATION (HOURS OF WORK):

Both parties proclaim the usefulness of the 10-hour workday schedule, but for different reasons. One solution that appears workable to me would be to leave discretion in the hands of the Employer about *when* 10-hour workdays are initiated, but to require the Employer *to maintain* the 10-hour workday schedule for a period of at least 4 weeks (giving predictability to the employees). Thus, I call on the parties to draft language of their own design incorporating these elements:

(i) Each summer, by notice given in May, the Employer may at its discretion call for 10-hour workdays.

(ii) If the Employer designates 10-hour workdays, it shall designate the day of start, and such date shall be at least two weeks from the date of notice.

(iii) The Employer, once having designated 10-hour workdays, shall maintain such schedule in effect for a period of not less than 4 weeks.

(iv) If the Employer wishes to have the employees work a 10-hour workday schedule for longer than 4 weeks, it shall so state in the initial notice of the 10-hour workday schedule; or it shall notify the employees of the extension of that schedule not less than 2 weeks before the end of the first announced 10-hour workday period. Employer can institute only one extension, for a period it pre-determines and gives proper notice of.

HOSPITALIZATION INSURANCE (DRUG RIDER).

The Employer's proposal does a good job of dealing with a bad situation of the galloping horseman of health care premiums. The Union advises that it can live with the Employer's proposal provided only that the Employer reimburse its members their drug prescription costs down to $2.00 per drug prescription.

The Employer replies that the Union-proposed pay-down (or co-pay) on prescription drugs destroys the economic viability of its proposal. In other words, the current and expected increase of premiums ($129.69 for a family coverage in 2001; $769.54 increase for family coverage in 2001; and $899.23 increase for family coverage in 2002, per E'er. Exh. 24) would be dwarfed by the requirement for the Employer to reimburse all bargaining unit members for their family's drug costs. For example, the total cost difference for the unit in 2002 between a traditional Blue Cross-Blue Shield plan with $2.00 drug rider and the Community Blue plan with $10/ 20 drug rider is $53,500. For contract year 2004, the estimated cost difference would be almost $71,000 for this bargaining unit. [See E'er. Exh. 26]

A study of the data submitted convince me that the Employer's plan is generous in benefits and conservative in costs (as these times go). Of course, users of prescription drugs on a maintenance or continuous basis may get less of a deal than others. Thus, it leaves a gap so far as some employee and family needs for coverage on prescription medication.

RECOMMENDATION (DRUG RIDER):

I have reviewed the approach used by comparable communities Benzie and Oscoda County Road Commissions. In both these comparable communities, the parties have agreed to plans in which the employers provide health insurance with prescription drug costs, and employees pay a co-pay of $5 /$10

per prescription. This is, I believe, an equitable approach to resolving the issue here at the Alcona County Road Commission.

DENTAL OPTICAL PLAN.

The Employer currently contributes $39.05 /week /employee toward dental & optical coverage. The Employer proposes improvements in its contribution rate of $10.00 in 2002; and $11.00 in 2003.

The Union acknowledges that even the current dental /optical plan "provides excellent benefits that are not equaled by other programs on the market." But the Union also cites several county road commissions' benefit plans that include fully paid dental /optical benefits. As an alternative, the Union suggests that more liberal cost-sharing provisions should apply. The Union suggests cost-sharing these premium costs with the Employer as follows:

Date	Employer Contrib.	Employee Contrib.
4/1/02	$16.00	$7.20
4/1/03	18.00	7.30
4/1/04	20.00	8.70
4/1/05	24.00	9.70

RECOMMENDATION:

I have reviewed the data on this subject. I find that the Union's proposal to share the premium costs of dental / optical coverage has merit. I adopt it with some modifications, as follows:

Date	Employer Contrib.	Employee Contrib.
On 7/1/02	$11.50	10.50
On 7/1/03	13.00	11.50
On 7/1/04	15.00	13.00

It is my further recommendation that if the premium costs in the future are less than shown above, the Employee contribution should go correspondingly down. If the premium costs are higher than shown above, the Employee contribution should rise to the level of the Employer contribution; thereafter, if premium costs are still uncovered, the employees and the Employer to split equally any amounts needed to meet the actual premium costs.

RETIREMENT.

The Alcona County Road Commission now has a defined contribution plan, which requires an on-going contribution of 4% on all income earned by bargaining unit employees with this Employer. The Plan assumes no employee contribution; full vesting occurs after 10 years; and, an employee is eligible for pension on the basis of 25 years of service [or age 55]. In addition, the Employer maintains a Plan 457 [the governmental employee's equivalent of a

401(K) plan]. This Plan is funded largely through employee contributions plus an Employer match of 5% of employee contributions.

The Employer proposes increasing the retirement package by 1% additional contribution to the defined contribution plan.

The Union proposes switching to a defined benefit plan as currently offered by Michigan Employees Retirement System (MERS). The funding for the necessary 18.9% of wages, which would be required for an initial contribution, is anticipated by the Union to come from various sources:

Contributions the Employer makes currently	4.0 %
Matching contribution for deferred compensation	5.0
Saving from going to Community Blue health ins.	3.4
Savings from changing the drug rider premium	6.4
Total available funding (per Union)	18.8%

The Employer replies with three points. (i) Not all the dollars which the Union says are available are in fact available, i.e., because MERS regulations prohibit transfer of certain kinds of resources. (ii) Even if the dollars needed currently to meet entry-level requirements to a MERS defined benefit plan were available this year, there is reason to believe that future pension contributions could not be met in the same way. Some of the above allocations in the Union's picture are one-time savings. And, with respect to health care, the dollars needed to maintain current coverages will, by all predictions, continue to escalate.

(iii) The Employer does not meet the threshold level of cash required to make this pension plan conversion. The Employer cites an opinion letter from a MERS analyst saying that, "Where prior service is recognized by an employer, assets equal to at least fifty percent (50%) of the prior service liability shall be transferred to MERS as a condition precedent." The start-up cost under the MERS analyst's opinion letter would be approximately $1.02 m. The assets on hand in the Employer's current pension vehicle are $675,000. These facts, in themselves, make the Union proposal prohibitive, says the Employer.

RECOMMENDATION (RETIREMENT).

I recommend that the parties adopt the Employer's proposal for reasons of fiscal prudence.

DISCHARGE AND SUSPENSION.

The Employer takes the initiative on this article to set aside the current "warning notice" and "request for investigation" clauses in the most recent contract. [Article XVIII].

The Union defends the status quo on the basis that the current language provides employees, usually, with a notice of infraction before further discipline is imposed. Likewise, the "request for investigation" gives an employee an

opportunity to meaningfully participate in the process before any formal disciplinary decision is made.

RECOMMENDATION (DISCHARGE AND DISCIPLINE).

The protections that are contained in the current language—both "warning notice" and "request for investigation"—are largely illusory protections. The language allows the Employer to avoid the "warning notice" in serious cases, those that by definition are likely to be a matter for serious suspension time or discharge.

With regard to the "request for investigation" clause, the employee's best protections are:

(1) The fact that everybody in this era knows that the employer must have a verified picture of the individual employee's wrong-doing before taking action, and

(2) The employee has available immediately on the premises the assistance of a qualified steward and, ultimately, the availability of forceful representation by the Union's Business Representative, and

(3) If discipline has not been fairly imposed, the individual employee has a potential right to have his case heard by an outside, independent arbitrator.

These protections are all in the contract. Adding the concept of a warning for some cases but not for others poses more problems than it solves. Adding the requirement of a "request for investigation" is superfluous because labor

relations managers and Road Commission managers certainly know that they have to conduct a thorough investigation, and turn up convincing evidence, before going to final discipline. Generally speaking, as part of that investigation, the Manager will ask to speak with the individual employee, and to find out what's his side of the story, before taking any action. Thus, all said, there is little reason to have these clauses in the contract, and there are some reasons not to have them in the contract.

I recommend that the parties adopt the Employer's proposal on the subject of discipline and discharge.

JOB OPENINGS.

The Employer initiates this proposal to provide job continuity for mechanics. The Employer says that it needs to do something to keep trained workers on the job. The Employer's proposal is to provide contractually that any new Mechanic (whether newly hired or promoted from the unit) must stay in the Mechanic classification for a period of 5 years, before bidding into any other classification of the Alcona County Road Commission.

The Union is generally accepting of this proposal. However, the Union would apply the proposal to new hires only; and the Union would make the 5 years' continuous employment applicable only within the term of the collective bargaining agreement. Thus, under the Union's view, a new hire Mechanic with hire-in date of October 1, 2003, would be obligated to stay in his classification

only until the expiration of this contract on June 30, 2005, a period of 21 months.

RECOMMENDATION (JOB OPENINGS):

The concept of protecting the time investment required to train and maintain the skills of a Mechanic is quite reasonable. It follows that the reasonableness of the idea should be applied, across the board to new hires and promoted employees, alike. It also follows that the idea should apply notwithstanding the termination of the collective bargaining agreement. The general rule is that all conditions of employment remain in effect until the parties reach impasse or agree to a new set of terms and conditions of employment. The fact that the undertaking by the new Mechanic was (hypothetically) made 21 months before the termination of the collective bargaining agreement does not make it any less a condition of employment for that Mechanic; nor does the end of the contract defeat the reasonableness of the condition of employment here. Thus, I recommend the adoption of the Employer's proposal.

USE OF UNPAID LEAVE.

The Union initiates a proposal for change from the status quo, which is that employees are not permitted to take off for personal reasons. The Union proposes the use of up to 40 hours/ year of unpaid personal leave time.

The Employer would stay with the current policy of permitting no time for personal reasons. Presumably, the policy requires employees with short-duration needs for personal leave to utilize vacation time or sick leave time, as the case may be.

The current policy is unrealistically stiff. It has the unintended effect of pushing employees to make the occasional personal leave detail fit the box of either a vacation leave or a sick leave. There are many occurrences known to man (and to woman) that require small segments of leave time and do not fit the usual understanding of vacation time or sick leave. The Union proposal, on the other hand, allows a more-than-ample allowance for such personal leave purposes.

RECOMMENDATION (USE OF UNPAID LEAVE):

A compromise solution that recognizes both employee and Employer interests is to allow employees, with advance notice when possible, to take up to 16 hours per year on unpaid leave for personal business. The parties may wish to consider the possibility of an incentive to reduce the use of such time. For instance, the parties could agree that each employee would receive once annually, the straight-time pay equivalent of his or her unused personal leave time.

WAGES.

The traditional factors by which factfinders make wage recommendations include most prominently wages paid to comparable workers in other jurisdictions; wages paid to other workers performing similar jobs for the same Employer; and changes in the cost of living. There was no significant evidence on internal comparables related to wages. The evidence of cost of living was the subject of one exhibit by the Employer in which it showed an increase for all cities (Urban Wage Earner) from 7/2001 to 6/2002 of 1.2% The previous full year's increase was 2.6%. Neither the Employer nor anyone else offered any predictions on what these cost of living figures will do in the next 3 years.

The key to selecting and recommending an appropriate wage increase is the data from the external comparables. As noted at the beginning of this report, I have decided to use Arenac, Benzie, and Oscoda County Road Commissions as the most appropriate comparables. Utilizing the data provided to me by the parties, I have prepared the following several table:

BASE LINE DATA	H.T.D.	H.E.O.	Mech.
Alcona 2000 Wages	12.94	13.19	13.29
Comparables for 2000			
Oscoda	13.37	13.45	13.58
Benzie	12.99	13.29	13.36
Arenac	12.78	13.15	13.15
Ave. of Comparables	13.05	13.30	13.36
Difference betw/ Alcona 2000 wages and comparables.	-1%	-1%	-1%
UNION PROPOSALS:			
Alcona wages w/ proposed 75 ¢ increase 7/01	13.69	13.94	14.04
Comparables for 2001			
Oscoda	13.57	13.65	13.78
Benzie	13.38	13.69	13.76
Arenac	13.16	13.54	13.54
Ave. of Comparables for 2001	13.37	13.63	13.69
Difference betw/ Alcona 2001 wages w/ 75 ¢ increase and comparables.	+ 2.3%	+2.2%	+2.5%
Alcona wages w/ proposed 75 ¢ increase 7/01 + proposed 75 ¢ increase on 7/02	14.44	14.69	14.79
Comparables for 2002			
Oscoda	13.82	13.90	14.03
Benzie	13.68	13.99	14.06
Arenac	N/A	N/A	N/A

	H.T.D.	H.E.O.	Mech.
Ave. of Comparables for 2002	13.75	13.95	14.05
Difference betw/ Alcona w/ proposed increases and Comparables.	+4.8%	+5.0%	+5.0%
Alcona wages w/ 3 proposed 75 ¢ increases	15.19	15.44	15.54
Comparables for 2003			
Oscoda	14.12	14.20	14.33
Benzie	13.98	14.29	14.36
Arenac	N/A	N/A	N/A
Ave. of Comparables For 2003	14.05	14.25	14.35
Difference betw/ Alcona w/ proposed increases and comparables.	+7.5%	+7.7%	+7.7%

[Calculations for 2004 are omitted due to insufficient comparable data.]

EMPLOYER PROPOSALS:

Alcona Wages w/ signing increase of 25 ¢ & 7/02 increase of 25 ¢	13.44	13.69	13.79
Ave. of Comparables for 2002	13.75	13.95	14.05
Difference betw/ Alcona w/ proposed increases and comparables	-2.3%	-1.9%	-1.9%

	H.T.D.	H.E.O.	Mech
Alcona Wages w/ signing increase & 7/02 & 7/03 increases of 25 ¢	13.69	13.94	14.04
Ave. of Comparables For 2003	14.05	14.25	14.35
Difference betw/ Alcona w/ proposed increases and comparables.	-2.6%	-2.2 %	-2.2%

FACTFINDER'S RECOMMENDATIONS (WAGES):

Signing increase of 25 ¢			
7/2002 increase of 45 ¢	13.64	13.89	13.99
7/2003 increase of 45 ¢	14.09	14.34	14.44
7/2004 increase of 45 ¢	14.54	14.79	14.89
Ave. of Comparables for 2003	14.05	14.25	14.35
Difference betw/ Alcona *projected 2003 wages* and comps.	+0.3%	+0.6%	+0.6%

These recommendations for increase are considerably more than the Employer has indicated initial willingness to pay. But these figures also take account of the heavy health care premiums already borne by the Employer. These figures are also substantially less than the Union has demanded. But they achieve parity with the most nearly comparable road commissions. In fact, they will put Alcona's truck drivers, equipment operators, mechanics and other staff slightly above the comparables.

CONCLUSIONS.

The theory of factfinding, in a nutshell, is that by making the facts of a labor dispute known to the *relevant* public, the factfinder can bring the persuasive force of an outside neutral's opinion to bear on the positions of the parties. Through his opinion, the factfinder may entreat the parties "to be reasonable." Through his assessment of the arguments and his sifting of their facts, he may persuade both parties to accept a compromise on some important issues, or he may persuade one party to accede to the other party's position. All of these are within the province of the factfinder. But his conclusions are merely recommendations—to be reviewed by the public and the parties alike. The parties may adopt his thinking in their own subsequent bargaining. They are not compelled to do so.

My above recommendations are meant to provide a balanced approach to the renewal of the parties' collective bargaining expectations. If one party chooses to insist on all of the factfinder's recommendations that came out in its favor, and to reject all those that did not come out in its favor, then obviously the benefit of a balanced approach will be lost for both. Some acceptance of the "losses," if they are perceived that way, will be necessary to achieve an equitable contract. It is anticipated that through minimal additional bargaining, the parties will find solutions which approximate those outlined above.

Benjamin A. Kerner
Factfinder

Dated: August 16, 2002
Detroit, Michigan.