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Fact Finding Report: Conference of February 5, 1998 Hearing of December 16, 1998

Charlevoix 33rd Judicial Court

-and-

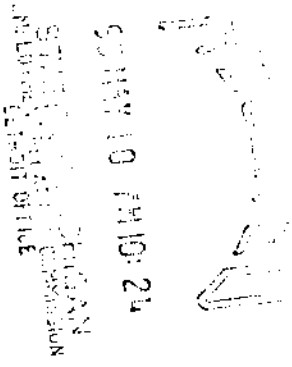
Teamsters Local 214

MERC Case No. G95 J-3017

Appearances

Conference Meeting of February 5, 1998

Employer	*Union*
Peter Patterson, Attorney George Ebenhoeh, Friend of the Court Investigator	Sheryl Langdon, Teamsters, 214 Michael D. Shell, Child Support Investigator



The fact finder was appointed to conduct a hearing in this matter on November 10, 1997. The first conference meeting between these parties was scheduled for December 11, 1997 but was postponed several times at the request of one or both parties. It was not until February 5, 1998 that the parties could be convened in conference as scheduled. That meeting took place in the offices of the Employer located in Charlevoix, Michigan at 301 State Street.

Discussion focused on the following issues, which had been addressed during mediation:

1. Recognition (Employer wanted an additional classification excluded from the unit)
2. Definitions at issue: Regular Full-Time, Temporary, Irregular and Management Rights
3. Union Security (Agency Shop, Union Membership, Dues Check-off, No Strike/No lockout)
4. Arbitration (Arbitration filing, Arbitrator selection, Fees and expenses of Arbitrator, power of the Arbitrator)
5. Just Cause and Discipline
6. Disciplinary Record

7. Medical Leave (length of time health insurance will be paid during leave)
8. Medical Dispute(language)
9. Promotions
10. New Classifications
11. Savings
12. Waiver
13. Wages
14. Benefits

At the conference session the initial list of items underwent some revision and clarification resulting in a new list that the parties were to work from. That list included the items below. At the time of the February 5, 1998 conference certain items appeared to have bilateral support. So the next session was scheduled around the revised list below.

1. Definitions of types of Employees
2. Standard of Employment/Just Cause or At-Will
3. Union Shop/Agency Shop/Management Rights
4. Article 6: 3 issues
5. Article 12: Leaves of absence/Health Insurance Continuance
6. Health Insurance
7. Medical Dispute Language (Need to verify/move language)
8. Article 8: Just Cause and Expungement of Record after one year
9. Promotion (contractually defined criteria)
10. Criteria for new classifications and how to resolve wage disputes for new classifications
11. Savings Clause
12. Waiver Language
13. Wages (3% in year 1, 3% in year 2 and 3% in year 3)
14. Holidays (Number appeared resolved but scheduling remained a problem)
15. Bereavement
16. Longevity
17 Retirement Plan
18. Educational reimbursement (consistent with current policy and practice)
19. Mileage (28 cents/ IRS rate vs County rate)
20 Section 17.3 of proposal applicable rate of pay

The fact finder at the time was of the opinion that the parties, given additional time, might further reduce the list of unresolved items between them. A hearing date was tentatively scheduled for May. The fact finder proposed that the parties meet and attempt to resolve six items in March, six in April and the remaining items would be submitted to fact finding in May, 1998. [1] The May meeting did not take place as scheduled nor was it possible to schedule a meeting for some time afterward. One of the attorneys was reported to have suffered an accident and to have undergone a prolonged period of convalescence.

[1] See Appendix 1

Subsequently, a firm date was set for December 11, 1998, but was subsequently changed to December 16, 1998.

On December 16, 1998, 401 days following the assignment of a hearing officer to this case, the parties were convened in actual hearing. In the interim period a great deal of communication was conducted by phone, fax and mail As in the case of the conference session, the hearing was conducted in the offices of the Employer located in the City of Charlevoix. In attendance were the following:

Hearing of December 16, 1998

Appearances

Employer	*Union*
Peter A. Patterson, Attorney	Joe Valenti, President Local 214
George Ebenhoeh, Friend of Court	Sheryl Langdon, Local 214
Jim Behling, Commissioner	Michael D. Shell, Child Support Investigator
Carl Price, Commissioner	

The hearing on December 16, 1998 provided a forum for statements by the parties and for the submission of proofs in support of their claims. Subsequently the parties were to submit briefs. This was done in the agreed upon time frame. This report is in response to those submitted proofs and written arguments.

Summary Statements

Employer's Summary Statement

The Friend of the Court, the Employer notes, is a small unit of seven (7) under the supervision of the Assistant Friend of the Court, the Friend of the Court and, ultimately, the Circuit Court Judge. Among the seven are three (3) case workers. Their duties include the review and enforcement of domestic relations orders, the monitoring of compliance, and the presentation of cases to the judge. Two clerks constitute the bookkeeping staff whose responsibility is to maintain records regarding transfers of children and records of spousal support payments. Two (2) secretaries are also a part of the staff. In addition the unit handles about $2.5 million per year in support payments.

The Employer denies the Union's claims that it is requesting only the benefits for these employees that other county employees receive. The Union, the Employer believes, would have these workers treated "substantially better than county employees." Bargaining unit employees, notes the Employer, are asking for a just cause standard of discipline and discharge whereas County employees are at-will

employees. (Policy 101) In addition, bargaining unit employees are requesting a grievance procedure, which ends in binding arbitration. Presently, the Employer continues, County employees do not have such benefits.

Additional benefits which other County employees do not have but which the Union proposes for members of the bargaining unit include:

1. $20,000 life insurance coverage.
2. Care for an ill child or member of household to be included among the reasons for disability leave.
3. Continuation of health insurance for the first six (6) months of an unpaid medical disability leave.
4. Continuation of health insurance for one month when on an unpaid leave of absence for non-medical reasons.
5. Minimum call in pay of 2 hours at premium pay

In addition to wanting benefits above those provided to County employees, the Employer continues, the Union seeks exemption from coverage under other County policies. It would, argues the Employer, incorporate certain County policies into a contract of definite duration. Bargaining unit employees, under the contract, would be exempt from changes in policies, which may occur from time to time over the life of the contract. The court would be restricted from modifying policies affecting these employees when it has the need to effectuate change in tandem with County policies.

Union's Summary Statement

The Union notes that the Court's employees are currently covered by, and comply with all Personnel Policies of Charlevoix County. The bargaining unit of approximately eight employees is represented by Teamsters State, County and Municipal Workers, Local 214. The unit was certified by the Michigan Employment Relations Commission on October 12, 1995. The parties have negotiated toward an initial collective bargaining agreement since that time.

With the exception of its request for, what it calls, the common "boilerplate" language contained in all public and private sector contracts, the Union continues, its demands, economic and otherwise, are no greater than those already enjoyed by all other Charlevoix County/Court employees by policy and/or practice. The Union adds that the parties were in agreement on economic issues (other than life insurance), subject to exact language, in as much as the Union had only asked for the current wages and benefits provided all other employees. Such issues are before the fact finder only because the Employer changed representatives (for the purpose of fact finding). The new representative, the Union notes, subsequently refused to respond to language reflecting current economic policy and usage. Further, the Union adds, the Employer has repeatedly refused to provide promised language for the Union's consideration prior to the hearing of December 16, 1998.

At the hearing on December 16, 1998, Local 214 submitted to the fact finder, a comprehensive document (see Union's exhibit) containing a list and details of the tentative agreements reached between the parties (see Document A, page 2), a list of all outstanding issues and the Union's position on each of those issues, and supporting documents. Only at the commencement of the hearing, did the Employer's representative provide the Union with proposals referencing wages and benefits to consider, the Union argues further. Furthermore, states the Union, what the Employer offers are "take-away" proposals. Since it had not seen these "take away" proposals prior to the December 16 hearing, the Union adds, it proposed, and the Employer agreed, that the hearing would be adjourned, and that the parties would submit briefs and statements of position on each issue for the fact finder to address.

Disputed Issues and Findings

The following are the responses to the issues which the parties proposed in writing and the arguments which they made through briefs and exhibits in support of their claims. The findings and/or recommendations of the fact finder follow the responses made by the parties. Twenty-three unresolved issues are addressed in this report. Some fifteen other issues are mentioned at the end of this report. The fact finder recommends resolving those issues under a past practices and existing policies clause. This clause can be negotiated by the parties and the terms agreed upon through memoranda of understanding. When this agreement expires, the parties may then incorporate their memoranda of understanding into a successor Agreement.

1. Duration: Employer's Response to the Issue

There is agreement to a three-year contract, the Employer notes. There is no agreement, however, as to the effective date of the contract. The Union proposes an effective date of January 1, 1998, except as to longevity, wages and pension. The Employer finds no rationale or evidence to support the Union's position. The court's position, the Employer continues, is that the effective date should be the date of ratification of the contract. It is now more than one year after the Union's proposed effective date. Wage increases, benefits and operational language have been implemented which, the Employer believes, will affect what is done in this matter.

Duration: Union's Response to Issue

The parties, the Union argues, verbally agreed to a three-year contract early in negotiations. It is the Union's amended position however, that since negotiations have been ongoing for almost four years, the Agreement should be extended an additional year—with an effective date of January 1, 1998 and an expiration date of December 31, 2001, except as it applies to the issue of longevity and wages or pension which are argued separately within this document.

Finding: The fact finder finds for the Union on the matter of Contract Duration and agrees that since negotiations have been ongoing for an extended period of time, thirteen hundred days, in fact, the Agreement should be extended an additional year with an effective date of January 1, 1998 and an expiration date of December 31, 2001, except as it applies to the issues of longevity and wages or pension which are argued separately within this document.

2. **Wages and Pension: Employer's Response to Issue**

The Union's position is that it will accept the same wage increases as County employees upon the implementation of the improved B-4 pension plan, the Employer states. In addition, notes the Employer, the Union suggests the addition of the F55 (15) rider while offering no evidence that the County was considering it or that it had been implemented for other County employees.

The court's position, continues the Employer, is that County employees received a 3% wage increase in January, 1996 (1/1/96) but received no increases in 1997 and 1998 as the *quid pro quo* for the pension plan improvement. Because the parties were in negotiations, the Employer, notes further, the court employees received increases in 1997 and 1998 according to established practice. The County has proposed the implementation of the B-4 pension plan for bargaining unit employees and a two-year wage freeze as the *quid pro quo*. This, the Employer argues, is the same as for County employees, except that the dates of implementation would necessarily be different because of the passing of time and the implementation of wage increases.

There appears to be agreement on this issue, states the Employer, but the Union has not responded to the court's proposal provided at the hearing.

On December 16, 1998, states the Employer, it proposed:

In the year of implementation of the MERS B-4 retirement plan and the next year, there shall be no wage increase. Thereafter, wage increases will be negotiated.

Wages and Pension: Union's Response to Issue

The Union argues that it has stated that it will agree to the same pension upgrade under the same wage time frame conditions granted all other County or Court employees. Further, argues the Union, it has stated that it will accept the same wage increases during the term of the Agreement as granted other

County or Court employees. The Union also denies Employer's claims that unit members received increases in 1997 and 1998.

On December 19, 1998, (sic)[2] argues the Union, the Employer presented the following language for the first time. Both proposals, the Union argues further, contain major, unacceptable changes from previous verbal agreement on these issues.

Employer Proposal as Reported by the Union:

Article 16.2 Retirement Plan: Effective on January 1 next following the date of ratification of this agreement, the retirement plan will be the MERS B-4 plan.

Appendix - Wages: In the year of implementation of the MERS B-4 retirement plan and the next year, there shall be no wage increase.

Thereafter, wage increases will be negotiated.

The Union interprets the Employer's language to mean that the Employer is proposing that bargaining unit employees not receive the MERS until at least January 1, 2000 which would be two years after it was given to all other employees. Further, the Employer appears to the Union to be proposing that bargaining unit employees be given a wage freeze for two additional years (minimally 2000 and 2001). These employees, argues the Union, have already suffered a two-year wage freeze, inasmuch as they have not received wage increases for either 1998 or 1999. To suggest that they endure a four-year wage freeze, for the same pension increase granted all other employees, argues the Union is grossly unfair. Further, the Employer proposes, the Union argues, that "thereafter" additional year's wages, during the life of this Agreement be "negotiated," thereby providing the opportunity for extended and possibly unending negotiations. The Employer, argues the Union, entirely omits reference to wages for years 1998 and 1999. It is therefore the Union's proposal that:

1. Effective January 1, 1998 employees take a wage freeze;
2. Effective January 1, 1999 employees be provided the MERS B-4 upgrade, and receive a 0% increase consistent with other County employees;
3. Effective January 1, 2000 and January 1, 2001 bargaining unit employees will be given the same wage and/or benefit adjustments given to other County employees.

[2] See Union Brief

Finding: The fact finder finds for the Union on the matter of wages and pension as specified in items 1-3 above.

3. Salaries for New Classifications: Employer's Response to Issue

The Union, argues the Employer, proposes that the pay rate for new or "significantly changed" positions be negotiated. If there is no agreement, the matter would then be submitted to the grievance process. The Employer assumes that the Union refers to the grievance procedure it has proposed, including binding arbitration. The Union offered no evidence in support of its position, the Employer notes.

The Employer's position, was submitted to the Union at the hearing, the Employer says, but the Union has not responded. (See Article 17.6). The only substantive difference, the Employer believes, is in the method of resolving impasse. The Union wants binding arbitration while the court wants the statutory dispute resolution process. Given the responsibility of an elected official to the electorate the Employer, states, it strongly opposes placing that responsibility in a non-elected person.

The Employer notes further, that the court and the funding unit are separate entities, subject to constitutional restraints requiring a separation of the judicial and executive branches. Submitting economic matters to binding arbitration, argues the Employer, directly affects the funding unit. Section 111 of the Supreme Court's Administrative Order No. 1998-5, a copy of which, the Employer notes, is enclosed. The Employer goes on to state that the Supreme Court's December, 1998 decision in *Judicial Attorneys Ass'n. et al. V. State of Michigan* held unconstitutional those portions of 1996 P.A. 374 which established the County, as an employer of court employees. The Employer appears to argue further, though with less clarity, that there is a decision by the State Supreme Court which establishes the method the court is required to follow in the event there is a dispute between it and the funding unit (County). The present statutory dispute resolution processes and the Administrative Order effectively preclude submitting budgetary matters to an arbitrator.

Salaries for New Classifications: Union's Response to Issue

During negotiations, the Union reports, the parties agreed to the Union's proposed concept on this issue. The Employer, the Union states, agreed to provide exact language for consideration prior to the hearing but failed to do so. The Union's position, therefore, remains as stated in its exhibit, and as follows:

> *If the Employer introduces a new classification or significantly changes the duties and responsibilities of an existing classification, he will notify the Union in writing. In the event the Union does not agree that the classification and rate are proper, it shall be subject to negotiations. Failure to reach agreement on the new or modified classification's rate of pay, shall make the matter subject to the Grievance Procedure.*

The Employer, the Union states further, presented language on this topic at the hearing on December 19, 1998, (sic) under a provision titled: Section 17.6 New Classifications or Positions. The submitted language, however, did not provide a vehicle for final resolution of any disputes between the parties, the Union notes, as it ends in "negotiations," which could be ongoing indefinitely. Given the fact that its own proposal provides the Grievance Procedure (with binding arbitration) as an end step for disputed rates unresolved by "negotiation," the Union requests that the fact finder adopt its proposal on salaries for new classifications.

Finding: The fact finder finds for the Employer on the matter of "new" positions and for the Union on the matter of "significantly changed" positions. The finding for the Employer is for reasons substantively different from those argued by the Employer. The finding for the Employer is an entitlement under the proposed management rights clause of the contract. Proposed language:

> *If the Employer significantly changes the duties and responsibilities of an existing classification, he will notify the Union in writing. In the event the Union does not agree that the classification and rate are proper, the matter shall be subject to negotiations. Failure to reach agreement on the modified classification's rate of pay, shall make the matter subject to the Grievance Procedure.*

4. Medical Disputes: Employer's Response to the Issue

The Union's proposed language, the Employer notes, would:

1. allow for verification of disability only when an employee is on leave ". . . for an extended period of time", and
2. limits verification to a "physician," and
3. places the cost of ultimate verification on the court. In addition, the Employer continued, the Union offered no evidence to support its position.

The court's position is that the Union's proposed language does not define "extended period of time". Subsequently, the Employer contends, administration of the language is made difficult, if not impossible. It increases the likelihood of disputes over whether verification must be provided. The court submitted a proposal, it notes, at the hearing (Article 12.10). The Union, the Employer contends, has not responded. The court's proposed language, it states, is more specific in that it refers to a "disability," which better defines the circumstances under which verification may be required. When the basis is frequent absences, the Employer notes, the language that it has proposed provides advance notice to the employee that such verification will be required.

If, for example, continues the Employer, an employee were absent allegedly because of a disability and the court had information which lead it to believe that the employee claimed disability, while actually participating in an athletic event, the court, under the Union's proposal, could not require verification unless the employee had been absent an extended period of time. Verification, the Employer argues, should not be limited by time but, rather, required by circumstances inconsistent with disability.

In conclusion, notes the Employer, the verification must be by a health care provider satisfactory to the court. Such verification need not be limited to a physician. By way of example, continues the Employer, verification by a psychologist as to an emotional condition may be satisfactory even though a psychologist is not a physician. The court, the Employer adds, should not have to obtain a second opinion when, for example, an employee's chiropractor predicates disability on a heart condition. Since a chiropractor is not qualified to diagnose a heart condition, argues the Employer, it should be the employee's responsibility to provide information through a proper source regarding inability to work or to return to work. Taxpayers, the Employer goes on, should not have to carry the cost of medical opinions when the employee's verification is not by a qualified person.

Medical Disputes: Union's Response to Issue

The Union notes that it has proposed the following language:

Employees who are on leave for illness or injury for an extended period of time may be required to present a medical certificate showing the nature of such illness or injury and the anticipated time offfrom the job. Should the Employer require a second opinion from a physician, the Employer shall pay the costfor such second opinion. In all situations where an employee 's physical or mental condition raises the question as to the employee 's capability to perform his/her job, the Employer may require a medical or psychological examination at the Employer's expense, and, because is found,

the employee may be required to remain on sick leave or leaves of absence, as outlined in the Agreement.

The Employer, the Union argues, has never presented any counter proposals to the above proposal. It is the Union's position that the Employer has the right to assure the validity of a medically related leave, but that the Employer should pay the cost of any required second opinions.

The Union requests that the fact finder adopt the Union's proposal on Medical Disputes.

Finding: The fact finder finds for the Employer on the matter of a required second opinion in those instances where the Employer has reason to believe that the first opinion has been rendered by medical authorities or psychological authorities whose certifications are judged to be inappropriate for the reported ailment causing the absence from work. In such cases either the Union or the Employee must pay for the second opinion. This finding is intended to modify the Union's proposed language which otherwise shall stand and read:

Employees who are on leave for illness or injury for an extended period of time may be required to present a medical certificate showing the nature of such illness or injury and the anticipated time off from the job. Should the Employer require a second opinion from a physician, the Employer shall pay the cost for such second opinion. The Employer shall have no obligation to pay the cost for a second opinion in those cases where there is reason to believe that the first opinion was not made by competent or qualified authority. In such cases, the Union or the employee shall pay for a required second opinion. In all situations where an employee's physical or mental condition raises the question as to the employee's capability to perform his/her job, the Employer may require a medical or psychological examination at the Employer's expense, and, may, if cause is established by such examination, ~~the employee may be required~~ require the employee to remain on sick leave or leaves of absence, as outlined in the Agreement.

5. Definitions: Employer's Response to the Issue

As to "regular full time," the Union's definition refers to "official" workweek, the Employer notes. And, as to "regular part time," the Union includes any less than full time requirements of the position. Thirty-nine hours/week would, by the Union's definition, be part time, comments the Employer.

The Union's definition of "temporary" employees does not define a temporary employee, adds the Employer. It merely uses the term and then proceeds to restrict employment on a temporary basis. The court's definitions of regular full time and part time employees are consistent with County policy 201, as

required by the Supreme Court Administrative Order. Because there is no County policy, which includes the definition of "temporary" employee, argues the Employer, the court has proposed a definition linked to the particular need for less than indefinite employment, although the person(s) may be employed up to 40 hours per week.

By way of example, notes the Employer, a bargaining unit employee may be disabled, thereby requiring the use of a temporary employee. A period of disability may vary, depending on the reason, and certainly may extend beyond ninety (90) days. The temporary nature of the employment is defined by the fact that the disabled employee will return to work, says the Employer, not by the duration of the disability. By way of further example, the court may have a project, the duration of which may vary, which cannot be done by bargaining unit employees, either because of qualifications or because of the demands of their regular duties. When the project is completed, the temporary employment will conclude. Again, the duration of a project depends upon the nature of the project. Because the project may take more than ninety (90) days does not alter the fact that it is temporary.

Finally, the Employer argues, should the Union believe that a "temporary" employee has been employed under circumstances, which establish a community of interest with unit employees, the PERA provides MERC as the proper forum for adjudicating the dispute. Under the Union's proposal, the issue would go to an arbitrator, which is contrary to law the Employer concludes.

The Employer formally proposed the following definitions on December 16, 1998:

Section 1.2 Definitions

1. REGULAR FULL-TIME employees are those who are regularly scheduled to work the county's full-time schedule.
2. PART-TIME employees are those who are regularly scheduled to work less than 30 hours per week.
3. TEMPORARY employees are those who work either a full time or part time schedule but who are hired for a particular project or for a specific period of time.
4. JUDGE or COURT means the Circuit Court Judge or his/her designee

Definitions: Union's Response to the Issue

The Union proposed the following Definitions: *The terms "employee" and "employees" when used in the Agreement shall refer to and include only those regular full-time and regular part-time employees who are employed by the*

Employer in the collective bargaining unit. For purposes of this Agreement, the following definitions are applicable:

1. Regular Full-time Employee: A regular full-time employee is an employee who is working the official workweek on a regular schedule.

2. Regular Part-time Employee: A regular part-time employee is an employee who is working less than the full-time requirements required of that position.

3. Temporary Employee: The Employer may hire temporary employees, and these employees will not be covered by the terms of the contract. However, they shall not be used in such manner as to replace, displace, or reduce the non-overtime hours of bargaining unit employees, or in such manner as to have temporary employees performing work regularly and normally performed by bargaining unit employees, on a continuing basis. If a temporary employee is retained beyond a ninety-day period, they shall have attained seniority, unless the ninety (90) days is extended by mutual agreement of the Employer and the Union.

Although the Employer, the Union states, verbally recognized the MERC certification of this unit (absent a dispute over a new classification which has been presented to MERC for resolution), he (the Employer) had until the date of hearing on December 19, 1998, (sic) but refused to identify by definition, what constitutes full time, part-time and temporary employees. It is the Union's position that language identifying those employees be incorporated into the document. Such language is common in most collective bargaining agreements, notes the Union, as it helps to identify which employees are eligible for benefits, and to guarantee the agreed upon use of temporary employees.

At the hearing on December 19, 1998 (sic) the Employer presented the following proposal for the first time, argues the Union:

Employer Proposal: Section 1.2 Definitions

1. *Regular Full-time employees are those who are regularly scheduled to work the County's full-time schedule*

2. *Part-time employees are those who are regularly scheduled to work less than 30 hours per week.*

3. *Temporary employees are those who work either a full time or part time schedule but who are hired for a particular project or for a specific period of time.*

4. *Judge or Court means the Circuit Court Judge or his her designee.*

Number one of the Employer's proposal, the Union notes, ties the Court's bargaining unit employees' work schedule to that of the County. While it is the Union's understanding, it continues, that employees in this bargaining unit currently work 37 hours per week, as do County employees, it is the Union's position that the referenced work schedule should be that of the Employer (Court), not the County, and for that reason the Union requests that its definition of Full-time employees be adopted.

The Union has no objection to the Employer's definition of part-time employees in #2 of his proposal, other than pointing out that it should be referenced as "Regular Part-time employees," consistent with both parties' proposal referencing "regular full-time employees."

The Employer's definition of temporary employees in #3 is not acceptable to the Union as it does not provide any time limits on the use of part-time employees, nor does it preclude the Employer from using temporary employees to replace, displace or reduce the hours of bargaining unit employees. Absent the Union's proposed time limits and bargaining unit protections, argues the Union, the current bargaining unit employees could be replaced by temporary employees.

The Union goes on to argue that it has no objection to including a definition of the Judge or Court (see Employer #4), but does object to including "his/her designee." Specific provisions of the Agreement require action by the Judge, not a designee. By incorporating this blanket "designee" inclusion into the definition of Court or Judge, it would have the effect of expanding the negotiated meaning or restriction, on who is to take action in other areas of the Agreement.

Given the above, the Union requests that its proposal on definitions (with the possible exception of an amended Employer's #2) be adopted by the fact finder.

Finding: The fact finder believes that an amended Employer proposal offers the best resolution of this issue and makes the following recommendations on the matter of definitions:

1. ***Regular Full-time employees are those who are regularly scheduled to work the County's full-time schedule which shall continue to be***

37 hours a week with up to forty hours a week compensated at the straight time rate.

2. ***Part-time employees are those who are regularly scheduled to work less than 30 hours per week and for a time frame of fewer than one hundred days.***

3. ***Temporary employees are those who work either a full time or part time schedule but who are hired for a particular project or for a specific period of time. Temporary employees may not be used to replace, displace or reduce the hours of bargaining unit employees***

4. ***Judge or Court means the Circuit Court Judge or his/her designee.***

6. Recognition Clause: Employer's Response to the Issue

This issue, argues the Employer, involves the placement of the assistant Friend of the Court (FOC) in the bargaining unit. The Union has filed a Unit Clarification (UC) petition and the matter will be heard by the MERC on March 16, 1999 and subsequently decided. As mentioned above, unit composition is a MERC matter, not a contract matter.

Recognition Clause: Union's Response to the Issue

Sometime after Local 214 was certified, notes the Union, the Employer created the new position of Assistant Friend of the Court. The Employer contended that this position should be excluded from the bargaining unit, continues the Union, and added to the exclusionary provision in the recognition clause, which reads:

The Employer hereby agrees to recognize Teamsters State, County and Municipal Workers Local 214 as the exclusive bargaining representative, as defined in Act No 379, State of Michigan, Public Acts of 1965, as amended, for all employees employed by the Employer in the following described unit as certified by MERC Case No. R95 6-102, for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment: All 33rd Judicial Circuit Court employees, EXCLUDING Court Administrator and the Friend of the Court.

It is the Union's position that the new position is an eligible bargaining unit position. The parties, the Union reports, agreed to submit the question to MERC in the form of a Unit Clarification Petition, which the Union did file. Based upon the parties' agreement to resolve the status of the Assistant Friend of the Court through a MERC Unit Clarification hearing, it is the Union's position that this issue has been resolved, and therefore that the above

language be adopted and incorporated into the document, subject to possible future amendment by MERC's ruling.

Finding: The fact finder agrees with the parties that the matter of whether the Assistant Friend of the Court should be a member of the unit will best be resolved through the unit clarification process under the MERC ALJ forum.

7. No strike-No lockout: Employer's Response to the Issue

The Union, the Employer argues, recognizes the legal prohibition on strikes by public employees but wants a contractual restriction on the court's use of a lockout. As with other issues, it presented no evidence to support its position. The court's position is that issues of strike or lockout are matters of public policy, as stated in the Public Employment Relations Act, "PERA," which directly addresses each. MCL §423.202 specifically prohibits strikes by a "public employee." It specifically limits its prohibition of lockout to ". . . a public school employer. . ." It, therefore, establishes public policy which a court is bound to honor. The legislature has determined the parameters of the use of strike and lockout and the court will abide by those parameters.

No strike-No lockout: Union's Response to the Issue

The Employer, the Union reports, took the position that it was illegal to strike, and, as such did not need to be referenced in the contract. The Employer refused, the Union continues, to acknowledge any Employer obligation not to lock out his employees. The Union goes on to state its willingness, at the Employer's insistence, to agree that the contract be void of any reference to a "No Strike" provision. But the Union argues that it believes that it needs the protection of standard boilerplate language assuring no lockout of bargaining unit employees. Given the above, the Union requests that its proposal above on "No Lockout" be adopted by the fact finder.

Finding: The fact finder finds for the Union but amends the language as follows:

The Court/County agrees not to lock out its employees and the Union agrees that neither it nor any of its members will encourage or engage in a strike or walk out.

8. Management Rights Clause: Employer's Response to the Issue

The Union, argues the Employer, claims that the parties have "TA'd" the language it sets out in this issue. The court denies that the language presented

by the Union has been TA'd. The Union's position is refuted by its own "List of Tentative Agreements," the Employer argues, which does not include sections 2.1 or 2.2 and is also refuted by the "Agreement" in its notebook which does not show any TA except as to 2.3, which the court acknowledges.

The Employer goes on to cite other areas of disagreement. It argues that:

1. The Union proposal does not include the right of the court to fulfill its responsibilities as to matters not included in the contract without further bargaining. Without language, which it has proposed, the Employer argues, the court may face demands to bargain during the contract, even though the issues could and should have been negotiated at this time. The court recognizes its obligation to bargain but argues that it wants closure on that obligation when agreement is reached. It opposes continual bargaining.

2. The Union's proposal, the Employer continues, does not include the right to subcontract out any portion of the work, as proposed by the court.

   The court argues further that it notes this as a job security issue and that a limitation on its right to decide who will perform its work, where it will be performed and at what cost, is a goal of the Union. However, the court, as a taxpayer funded and an elected entity, has a responsibility to the taxpayers to use public funds wisely and efficiently, it continues. It believes that the latter outweighs the former. Further, argues the Employer, this flexibility is required by the Supreme Court Administrative Order because County policies do not restrict the ability to subcontract work, either by having it performed by subcontractors on site or by sending the work out. County employees do not have this protection. The Union, while claiming that it seeks for its members only the same policies which apply to county employees, in this regard, seeks greater rights, with no justification other than it now represents bargaining unit employees. Whether employees are represented by an exclusive bargaining representative, in and of itself, is no reason to modify policies.

   The Union proposal, the Employer argues, not only does not eliminate past practices as part of the contract, by referring to ". . . all other rights and prerogatives, including those exercised unilaterally in the past . . ." but seems to include such practices. A contract should include all of the terms and conditions, which bind the parties, states the Employer. Incorporating or allowing alleged "past practice" to be incorporated into a contract as part of the contract leads to uncertainty, notes the Employer. The Employer questions whether "past practices" rise to the level of binding employment conditions and notes that

". . . an administrator not steeped in the history of the bargaining unit will have no clue as to what is a practice, let alone whether a practice is binding on the court." Without expressed "no past practice" language, neither Union members, representatives or management representatives can rely on the written contract as the final agreement and they should all be able to do so, concludes the Employer.

The Employer's proposal as to article 2.2 initially was an incorporation of the county policy. Its final proposal follows:

Management Rights Clause: Employer's Response to the Issue

The Court retains exclusively and may exercise during the term of this agreement, without bargaining with the Union, all customary and normal functions of management including, but not limited to, the right to hire, recall, transfer and promote employees, to reprimand, demote, suspend, discipline and discharge employees, to lay off employees, to establish, change or delete rules, to maintain discipline and efficiency of employees, to determine the work which will be performed, performance standards, both qualitative and quantitative, the place where work will be performed, the location of operations, the schedules, methods, means and processes of the services it performs, the materials to be used, the right to contract out or in all or any portion of the work, the right to introduce and implement new or different methods, processes, equipment and facilities and to change existing methods, processes, equipment and facilities, the right to relocate or transfer work and/or equipment to other locations, and the right to close all or part of its facilities. The Union may grieve when action taken by the Court under this section is contrary to the express limitations of such rights. The Union waives its right to bargain regarding any mandatory subject of bargaining during this Agreement. There are no understandings, agreements or practices that are binding on the Court other than the written agreements set forth in this Agreement. No further understanding, agreement or practice is or shall be deemed to be a part of this agreement or binding on the Court unless it is in writing and signed by both the Court and the Union.

Management Rights: Union's Response to the Issue

The Union offered language on management rights, which it believes the Employer at some point appeared to accept. That language read:

Section 1. Employer Rights. *The Employer retains the sole right to manage its affairs, including but not limited to, the right to plan, direct, and control its operation; to determine the location of its*

facilities; to decide the working hours; to decide the types of services it shall provide, including the scheduling and means of providing such services, to study and or introduce new or improved methods or facilities; to maintain order and efficiency in its departments and operations; to promulgate work rules unilaterally or in conjunction with consent of the Union; to hire, lay off, assign, transfer and promote employees; and to determine the starting and quitting time, work schedules, and the number of hours to be worked; the number and complexion of the work force, and to determine the qualifications of its employees and standards of workmanship, and all other rights and prerogatives, including those exercised unilaterally in the past, subject only to clear and express restrictions governing the exercise of these rights as are expressly provided for in this Agreement.

During the course of negotiations, the Union reports, the parties verbally agreed to the Union's proposal above. The Union however, indicated that it was unwilling to officially sign off on the language until the Employer agreed to Union Security language. That never happened. There was never a signed TA on the issue, the Union states. On the date of the hearing December 19, 1998, (sic), the Union reports, the Employer submitted a proposal on this issue which is inconsistent with the above language. The Union submits that its proposed language adequately recites the Employer's rights retained by the Court, and illustrates a typical management rights provision applicable to this type of bargaining unit.

Finding: The fact finder proposes the following language based on the Employer's proposed language:

The Court retains exclusively and may exercise during the term of this agreement, without bargaining with the Union, all customary and normal functions of management including, but not limited to, the right to hire, recall, transfer and promote employees, to reprimand, demote, suspend, discipline and discharge employees, to lay off employees, to establish, change or delete rules, to maintain discipline and efficiency of employees, to determine the work which will be performed, performance standards, both qualitative and quantitative, the place where work will be performed, the location of operations, the schedules, methods, means and processes of the services it performs, the materials to be used, the right to contract out ~~or in~~ reasonable ~~all or any~~ portions of the work for reasonable periods of time, the right to introduce and implement new or different methods, processes, equipment and facilities and to change existing methods, processes, equipment and facilities, the right, for good and sufficient reason, to relocate or transfer work and/or equipment to other locations, and the

right, for good and sufficient reason, to close all or part of its facilities. The Union may grieve when action taken by the Court under this section is contrary to the express limitations of such rights. ~~The Union waives its right to bargain regarding any mandatory subject of bargaining during this Agreement.~~ There are no understandings, agreements or practices that are binding on the Court other than the written agreements set forth in this Agreement. No further understanding, agreement or practice is or shall be deemed to be a part of this agreement or binding on the Court unless it is in writing and signed by both the Court and the Union.

9. Union Security - Employer's Response to the Issue

The Union, the Employer argues, proposes what it characterizes as "boilerplate" Union security language and bases its claim on the alleged fact that there is not one public employer in this state, which has denied the Union boilerplate language. The Union does not, however, produce any evidence to support its claim nor has it produced any of the "boilerplate" language for review and comparison to its present demand.

The Union's proposal, continues the Employer, requires that the court provide the deduction service "without charge to the employees or the Union." Further, the Union proposes that the court deduct dues or service fees even without a properly signed authorization ". . . pursuant to law." The Union cites no law in support of its position that deductions without authorization may be made pursuant to law. Finally, the Union proposal makes no accommodation for "core dues" to be paid by those who object to full dues. The Employer's position is that it doubts whether the court should spend taxpayers' money to provide a service to a Union representing its employees. Certainly, the Employer continues, such service is outside the scope of the normal function of a court. It is the court's position that dues collection is the responsibility of the party benefited by the dues, in this case, the Union. The court not only receives no benefit by collecting the Union's dues and assessments, but also incurs costs in so doing. Such costs, the Employer believes, should be borne by the Union.

Union Security: the Union's Response to the Issue

Section 1. Agency Shop

As a condition of continued employment all employees included in the collective bargaining unit set forth herein, thirty-one (31) days after the start of employment with the Employer, shall either become members of the Union and pay to the Union the dues and initiation

fees uniformly required of all Union members, or pay to the Union a service fee equivalent to the periodic dues uniformly required of Union members.

Section 2. Union Membership

Membership in the Union is not compulsory and is a matter separate, distinct and apart from an employee's obligation to share equally the cost of administering and negotiating this Agreement. All employees have the right to join, not join, maintain or drop their membership in the Union as they see fit. The Union recognizes, however, that it is required under this Agreement to represent all employees included within the collective bargaining unit without regard to whether the employee is a member of the Union.

Section 3. Dues Check-off

During the life of this Agreement, the Employer agrees to deduct Union membership dues and initiation fees or the service fee equivalent from each employee's pay, provided the employee has filed with the Employer a proper dues check-off authorization form as supplied by the Union.

Dues and initiation fees will be authorized, levied and certified by the Secretary-Treasurer in accordance with the Constitution and By-laws of the Union. Each employee hereby authorizes the Union and the Employer, without recourse, to rely upon and to honor certificates furnished by the Secretary-Treasurer of the Local Union regarding the amounts to be deducted and the legality of the deducting such Union dues, service fees, and/or initiation fees. The Employer agrees to provide this check-off service without charge to the employees or the Union.

Upon receiving a properly executed check-off authorization form, the Employer shall deduct dues, initiation or service fees, as applicable, from that employee's pay. The Employer shall return all check-off authorization forms to the Union that have not been properly signed by the employee.

Should an employee, for any reason, fail to sign a dues or service fee check-off authorization form, the Union may, at its sole discretion, request that all dues or service fees owed under the Agreement be deducted by the Employer pursuant to law and without a properly signed authorization.

Deduction of dues, initiation and service fees for any calendar month, shall be made from the first pay period of that month, provided the employee has sufficient net earnings to cover the dues and/or initiation fees. Any change in the amount of deduction for an individual must be submitted in writing to the Personnel Office by the Union. Deductions for any calendar month shall be remitted to the designated Secretary-Treasurer of the Local Union not later than the fifteenth (15th) day of each month.

In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction does not conform with the Union's Constitution or By-laws, refunds owed to employees shall be made by the Union.

The Union shall notify the Employer in writing of the proper amount of dues, initiation and service fees, and any subsequent changes in such amounts.

The Employer's liability under the terms of this Article shall be limited to the deduction of dues, initiation or service fees and remittance of those deductions to the Union. The Union agrees to hold the Employer harmless for any and all claims arising out of its agreement to deduct dues, initiation or service fees.

Finding: The fact finder finds for the Union on the matters of Agency Shop, Union Membership and Dues Check-off but remands the specific language and time frames to the parties for final resolution. Suggested modifications follow.

Section 1. Agency Shop

As a condition of continued employment all employees included in the collective bargaining unit set forth herein, ~~thirty-one (31)~~ ninety (90) days after the start of employment with the Employer, shall either become members of the Union and pay to the Union the dues and initiation fees uniformly required of all Union members, or pay to the Union a service fee equivalent to the periodic dues uniformly required of Union members.

Section 2. Union Membership

Membership in the Union is not compulsory and is a matter separate, distinct and apart from an employee's obligation to share equally the cost of administering and negotiating this Agreement. All employees have the right to join, not join, maintain or drop their membership in the Union as they see fit. The Union recognizes, however, that it is

required under this Agreement to represent all employees included within the collective bargaining unit without regard to whether the employee is a member of the Union.

Section 3. Dues Check-off

During the life of this Agreement, the Employer agrees to deduct Union membership dues and initiation fees or the service fee equivalent from each employee's pay, provided the employee has filed with the Employer a proper dues check-off authorization form as supplied by the Union.

Dues and initiation fees will be authorized, levied and certified by the Secretary-Treasurer in accordance with the Constitution and By-laws of the Union. Each employee hereby authorizes the Union and the Employer, without recourse, to rely upon and to honor certificates furnished by the Secretary-Treasurer of the Local Union regarding the amounts to be deducted and the legality of the deducting such Union dues, service fees, and/or initiation fees. The Employer agrees to provide this check-off service without charge to the employees or the Union.

Upon receiving a properly executed check-off authorization form, the Employer shall deduct dues, initiation or service fees, as applicable, from that employee's pay. The Employer shall return all check-off authorization forms to the Union that have not been properly signed by the employee.

Should an employee, for any reason, fail to sign a dues or service fee check-off authorization form, the Union may, at its sole discretion, request that all dues or service fees owed under the Agreement be deducted by the Employer pursuant to law and without a properly signed authorization.

Deduction of dues, initiation and service fees for any calendar month, shall be made from the first pay period of that month, provided the employee has sufficient net earnings to cover the dues and/or initiation fees. Any change in the amount of deduction for an individual must be submitted in writing to the Personnel Office by the Union. Deductions for any calendar month shall be remitted to the designated Secretary-Treasurer of the Local Union not later than the fifteenth (15th) day of each month.

In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction does

not conform with the Union's Constitution or By-laws, refunds owed to employees shall be made by the Union.

The Union shall notify the Employer in writing of the proper amount of dues, initiation and service fees, and any subsequent changes in such amounts.

~~The Employer's liability under the terms of this Article shall be limited to the deduction of dues, initiation or service fees and remittance of those deductions to the Union.~~ The Union agrees to hold the Employer harmless for any and all claims arising out of its agreement to deduct dues, initiation or service fees.

10. Seniority: Employer's Response to the Issue

The Employer argues that it has no difficulty with the Union's proposal insofar as it pertains to loss of seniority or benefits. Seniority, it notes, is a matter of concern primarily within the bargaining unit and benefits are related to the employment relationship, which is not affected by an employee engaging in bargaining.

The Judge, the Employer states, will be the final authority for filling vacancies under this article. The Judge will consider seniority and his decision shall not be arbitrary or capricious.

Unless the position for which an applicant is selected is a lower level or grade, as determined in the sole discretion of the Judge, (s)he will be placed on the salary grid as determined in the sole discretion of the Judge but will not suffer any reduction in pay level.

Seniority: Union Response (See Specific References)

Finding: The fact finder recommends adoption of the Union's proposal on seniority and notes references to seniority in several clauses. He remands the seniority items to the parties for the purpose of bringing specific clauses into accord with this overall agreement

11. Grievance procedure - Binding Arbitration and Just Cause: Employer's Response to the Issue

The Union, argues the Employer, bases its position only on its claim that binding arbitration is ". . . common practice in this state . . ." It provided no evidence to support its claim. The Employer's position is that the Circuit Court Judge is elected by the citizens of Charlevoix County and is both responsible and accountable to them. Ceding that

responsibility to a non-elected person is an inappropriate delegation of his responsibility. While the issue of whether a Circuit Court Judge has the authority to delegate such responsibility to someone else has not, been tested, the Employer continues, a judge is certainly vulnerable to criticism from the community for ceding his responsibility to an outside arbitrator. While he may also be open to criticism for the personnel decisions he makes, that's what he was elected to do and he is accountable at the polls. An arbitrator will certainly render a decision, but not necessarily one which is better than the Judge's, continues the Employer.. There is reason to believe, the Employer continues further, that an arbitrator's decision will not be as good, given his or her unfamiliarity with the community, the history, and the operation of a Circuit Court or a FOC operation.

In addition to his or her lack of familiarity, the Employer continues, an arbitrator has limited responsibility for a decision in a single case and no accountability to the electorate. The arbitrator renders a decision and leaves the community, having no further responsibility, even short term, notes the Employer. In contrast, as noted above, a judge is elected by the citizenry of the county and is both responsible to them for the overall operation of the Court and is accountable to them at election time. If the judge makes personnel decisions, which are unacceptable to the electorate, his continuation on the bench is in their hands.

The Union offered no evidence, argues the Employer, that the alleged comparable courts are, in fact, comparable to the Charlevoix Circuit Court or, more specifically, to the FOC operation of the Court. Even if they were comparable, argues the Employer, the inclusion of binding arbitration in their contracts may only evidence their judgment at that time under unknown circumstances and an inability to subsequently remove such language. It is not nor should it be an example to follow, concludes the Employer. The Union's characterization of the grievance process being ". . . some kind of charade . . ." borders on defamation and, at best, is an unsubstantiated and unwarranted criticism of the Judge's ability to re-examine a decision challenged through the grievance process. There is not only no reason to assume that the judge will not listen carefully to the Union or a grievant's position, such an assumption is contrary to the essence of the judicial function, which is to listen carefully to competing arguments and to make a decision. Certainly, continues the Employer, the Union has offered no evidence that the Judge is, or has been, unwilling or incapable of re-examining any decision based upon facts and argument.

The Union's position appears to the Employer to be based simply on the claim that other courts have agreed to a "just cause" standard for discipline or discharge in collective bargaining agreements. In support of its claims, argues the Employer, the Union offered two contracts, one from Traverse City and a second from Antrim county. The Employer further notes that neither one of these contracts was included with the documents supplied at the hearing.

The Union, the Employer argues, presented no demonstrated need for any change from the present "at will" relationship applicable to county employees. It made no claim, and offered no evidence, of either discipline or termination of any bargaining unit employee, let alone discipline or termination perceived by bargaining unit employees as without "just cause" or even as "arbitrary and capricious."

The Employer goes on to make reference to Toussaint, in 1979, namely that employees are "at will" unless there is an express agreement to the contrary.

The Circuit Court, the Employer argues further, has a unique place in our society. Its employees are not "production or maintenance" people. Court employees, the Employer points out, are responsible for carrying out the orders of the court which includes substantial contact with the public. Further, notes the Employer, this is a small unit. The Judge needs and is entitled to maximum flexibility and minimum hindrance in creating and maintaining an effective group of employees who work well together on a daily basis, who work well with the public and who effectively carry out his orders. Because of the close interpersonal relationships in a small unit, there is less room for tolerance of friction within the unit or with the public. Discipline or discharge may well be appropriate under circumstances which would not rise to the "just cause" standard and, were there a "just cause" standard, the Court would be subject to significant disruption were there litigation.

The Supreme Court Administrative Order No. 1998-5, part VI, "Consistency with Funding Unit Personnel Policies" provides, in part, that, to the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. (Underline supplied) The Union has demonstrated no reason for adopting a "just cause" standard. The court is bound to follow the Supreme Court's Administrative Order. Because the local funding unit, i.e. the county, written personnel policies provide for an "at will" employment relationship, the court must adopt the same policy.

Grievance Procedure, Binding Arbitration and Just Cause: Union's Response to the Issue

The Union states that the parties agreed to a Grievance Procedure but that the dispute, lies with the Employer's position that the judge be the final step in the Grievance Procedure. The Union argues that this amounts to the Employer making the initial decision and then making the final decision after some kind of charade takes place between the two steps.

It is a common practice, notes the Union, that an arbitrator be selected by the parties to render the final decision on any valid grievances not resolved by the parties. The Union then proposed language on the filing for arbitration, selection of the arbitrator, fees and expenses of the arbitrator, and power of the arbitrator arguing further that what it proposes is standard language in this state. That language is set forth below:

Section 1 Filing for Arbitration

If the grievance is not settled in Step 3 of the Grievance Procedure, the Union may submit the matter to arbitration within sixty (60) days of the Employer's Step 3 answer, unless extended by mutual agreement of the parties. Each grievance submitted to arbitration shall be submitted to the Federal Mediation and Conciliation Service (FMCS) in accordance with its voluntary rules and procedures.

Section 2 Selection of an Arbitrator

The Union and the Employer shall, by mutual agreement, select one (1) arbitrator to hear and decide the grievance. If the parties are unable to agree on an arbitrator, the arbitrator shall be selected from a panel of arbitrators from the state of Michigan whose names shall be obtained through FMCS, and by each party alternately striking a name with the remaining name to serve as the arbitrator.

Section 3 Fees and Expenses of Arbitrator

Full fees and expenses of the arbitrator shall be paid equally by both parties. However, if either party cancels the arbitration, that party shall be responsible for the cancellation fees as charged by the arbitrator. The grievant (or a representative of the grievant), and the Steward shall be allowed to attend the arbitration without loss of pay. In the case of a class action grievance, the Steward shall be recognized as the grievant. Each party shall compensate its own witnesses.

Section 4 Power of the Arbitrator

The arbitrator shall have no power or authority to alter, amend, add to or subtract from the express terms of this Agreement or make any recommendation with respect thereto. It shall be the obligation of the arbitrator to make an effort to provide the parties with a decision within twenty-one (21) days following the conclusion of the hearing, except in discharge cases which shall be within fourteen (14) days following the conclusion of the hearing.

Section 5 Appeal from Arbitration

There shall be no appeal from the arbitrator's decision, and it shall be binding on the Employer, the Union, and the grievant(s).

Finding: The fact finder finds for the Union on the substance of the language set forth above.

12. Compensatory Time: Employer Response to the Issue

The parties are in agreement as to the basic concept pertaining to this issue insofar as they have agreed that if non-exempt employees work overtime and if they are to be granted compensatory time, it will be at the rate of 1/hours/hour of overtime and that if exempt employees work overtime, they may be paid at the rate of 1 hour/hour of overtime. FOC employees presently have a regular workweek of 371/2 hours. By law, overtime is hours over 40. Therefore hours between 371/2 and 40 are not overtime and will be compensated for, either in pay or compensatory time off, at the rate of 1 hour/hour.

The remaining issues pertain to who decides whether the employee will be paid or provided compensatory time and when it will be paid or taken, as applicable.

The Union, notes the Employer, proposes mandatory compensatory time and that non-exempt employees be paid for unused compensatory time at termination of employment. The Employer's position as to non-exempt employees, is that the court is bound by GAG No. 5249, a copy of which is provided with this brief, and requires that, because compensatory time is in lieu of overtime required by law, it must be taken in the same pay period in which the overtime occurs. It may not be "banked." Consequently, a payout upon termination is illegal. Further, with a payout upon termination, the time would be "banked" at one payrate but, assuming increases in pay over time, would be paid out at the higher rate, thereby increasing the cost to the county.

Because this bargaining unit is small, whether compensation for overtime will be in the form of pay or compensatory time raises an important scheduling issue for the FOC. Further, there are budget considerations. Depending upon operational needs and budget constraints, on some occasions overtime pay may better serve the court's needs than compensatory time off while on other occasions, compensatory time off may better serve the court. Consequently, it is important that the court retain the right to determine which form of overtime compensation will be used.

As to exempt employees, the court agrees with the Union's proposal of no payout. However, the scheduling and budget issues are the same as with exempt employees

The Employer's proposal (article 11.5), to which the Union has not responded, provides that the form of payment be in the sole discretion of the judge. As to nonexempt employees, state law determines when the overtime payment or compensatory time, as applicable, must be paid.

Compensatory Time: Union's Response to the Issue

This issue, according to the Union was T/Ad subject to language, at some point during the negotiations.

The Union proposes the following language to be included in the contract.

Compensatory Time

FLSA covered employees to be granted comp time at one and one-half (1 A) hours for every overtime hour worked (to be cashed out upon termination); FLSA exempt employees to be granted comp time at one (1) hour for every overtime hour worked (no cash out value).

Finding: the fact finder recommends the following: FLSA covered employees to be granted comp time at one and one-half (1 A) hours for every overtime hour worked. FLSA exempt employees to be granted comp time at one (1) hour for every overtime hour worked. Because compensatory time is in lieu of overtime required by law, it must be taken in the same pay period in which the overtime occurs. It may not be "banked."

13. Longevity: Employer's Response to the Issue

The Employer perceives the Union's position wanting only the same terms and conditions for bargaining unit employees as are provided to County employees. The Union, the Employer comments, does not use this rationale with respect to arbitration where it perceives that the terms and conditions of employment of County employees are not up to its desires.

The Employer offers the bargaining unit the same terms and conditions of employment as are provided to County employees, in toto, including but not limited to the employment relationship, dispute resolution as it believes is required by the Supreme Court Administrative Order.

Longevity: Union's Response to the Issue

The Union argues that on January 1, 1996, the County provided all County employees with an additional 4% on their longevity payment at fifteen (15) years of service. The County refused to adjust the longevity of bargaining unit employees, claiming that they were in negotiations and that it would be made part of the negotiating process.

It is the Union's position that bargaining unit employees should enjoy the same longevity payment increase as provided to all other County employees retroactive to the same date (January 1, 1996), that this benefit was increased to all other County employees.

Finding: The fact finder finds for the Union on the matter of longevity, namely that bargaining unit employees should enjoy the same longevity payment increase as provided to all other County employees retroactive to the same date (January 1, 1996), that this benefit was increased for all other County employees.

14. Vacation Pay: Employer's Response to the Issue

The Employer notes that Section 1 of the Union's proposal is consistent with its own proposal (Article 15) with the exception that the Union's proposal incorporates the concept of "hours worked." The Union's proposal does not address the issue of the amount of vacation pay and incorporates into scheduling the issues of seniority and employee desire.

Section 4 of the Union's proposal, notes the Employer does not include the elements of request and approval by the personnel committee for carryover of unused vacation time. The Union has not

included a supporting rationale in its exhibit, continues the Employer. Vacation pay, says the Employer, should be defined in terms of the number of hours the employee otherwise would have worked and should be limited to regular straight time pay. The Employer concludes with the argument that no employee should receive more pay when on vacation than when working.

Vacation Pay: Union Response to the Issue

Throughout negotiations the Union, argues, it has agreed to the current vacation accrual now provided members of this bargaining unit. The current policy, says the Union, does not speak to issues such as scheduling, carryover, or identifying what is considered hours of work for purposes of vacation accrual.

The Union proposed the following language:

Section 1

All regular full-time employees shall receive paid vacations in accordance with the schedule herein. Paid sick leave, holidays, or other paid leave shall be considered hours worked for purposes of this Article.

Union reports the following as TA'd Section 2 Vacation Accrual

An employee's vacation eligibility year shall be defined as the twelve (12) month period immediately preceding the employee's anniversary date of hire, and in yearly periods thereafter, and such vacation shall be accrued on a bi-weekly basis in accordance with the following schedule:

Length of Service	*Vacation Available*
012 months	O days
after 12 months	5 days
after 24 months	10 days
after 60 months	15 days
after 120 months	20 days
after 132 months	1 additional day for each year of service up to a maximum of 30 days per year

Finding: The fact finder finds for the Employer on the issue of Vacation Pay and recommends that vacation pay policies which applied to members of this unit prior to mandatory collective

bargaining be applied to this unit under the agreement except as such policies may already have been tentatively altered by negotiated agreement.

15. Life Insurance: Employer Response to the Issue

The Union demands life insurance in the amount of $20,000 with AD&D for each bargaining unit employee. It offered no evidence as to the cost and it does not claim that this is a benefit provided to county employees, which they have been denied. It offers no rationale other than that the Union wants it, not even that employees of other courts are provided with this benefit.

Life Insurance: Union Response to the Issue

During the course of negotiations, the Union argues, the Employer stated that employees of the bargaining unit were covered by a $10,000 life insurance policy through the MERS pension program. This was determined to be inaccurate. However, the Employer refused to propose any life insurance.

The following is the Union's proposal for life insurance coverage for the employees.

The Employer will provide and pay for a $20,000 life insurance policy for each member of the bargaining unit which shall include an accidental death and dismemberment rider.

Finding: The fact finder recommends a continuation of existing policies and practices on the matter of life insurance.

17. Health Care Carrier: Employer's Response to the Issue

The court's proposal, article 16. 1, to which the Union did not respond, notes the Employer, incorporates the agreement of the parties. However, it must be noted that resolution 95052, which the Union included with its documents, expressly provides that the reference to "Blue Cross" pertains only to the present carrier and does not limit the county in the selection of a carrier. Because of its responsibilities to the taxpayers, the Employer argues, it is important that the carrier not be fixed so that it may be changed when, in the judgment of the county, such change is appropriate. The court's proposal is consistent with the Supreme Court Administrative Order.

Health Care Carrier: Union's Response to the Issue

The Employer shall continue to provide the current fully paid family health care and dental insurance coverage to all full time employees (insert exact coverage provisions).

Finding: The fact finder finds for the Employer. Selection of an insurance carrier or other vendor is a right covered under the proposed Management Rights clause of the Agreement. (The fact finder is mindful of the fact that this provision is neither expressly included in the proposed Management Rights clause but notes that it is not expressly yielded elsewhere in the Agreement. Selection of the carrier is one of the "customary" functions of management.) The Union's proposal, the fact finder notes, is a maintenance of conditions response. (Maintenance of existing policies and practices are addressed elsewhere in this report.)

18. Health and Dental: Employer's Response to the Issue

The Union, the Employer states, correctly presents the parties' agreement that bargaining unit employees be provided the same coverage as county employees. Its proposed language specifies "Blue Cross and Blue Shield coverage . . ." and includes specific eligibility criteria without reference to the specific policy criteria, which control eligibility, which are mentioned in county policy.

The Employer's proposal of 12/19/98 reads:

"The Court will continue present health and dental insurance as under County policy through the expiration of this agreement."

Health and Dental: Union's Response to the Issue

During the course of negotiations the Union agreed to the current coverage and benefit levels relevant to the current health insurance and dental insurance coverage now enjoyed by all County employees. The Employer, the Union reports, refused to respond to the Union's position, and never submitted a counter proposal.

Therefore, the Union's position remains as follows: The fully paid current health care and dental insurance benefit coverages referenced below be incorporated into the Agreement. "Blue Cross and Blue Shield coverage is for family, dependents including wife or husband and their dependent children, unmarried under the age of 19. Family continuation after the age of 19 is permissible with the employee paying the premium."

"Some benefit programs require contributions from employees, but most are fully paid by the Employer. The benefit package for regular full-time employees represents an additional cost to the Employer of approximately 35 percent of wages." (This is the exact language taken from the current policy.)

Finding: The fact finder finds for the Union and recommends that the following language shall become a part of the contract, "~~Blue Cross and Blue Shield~~ Health care coverage is for family, dependents including wife or husband and their dependent children, unmarried under the age of 19. Family continuation after the age of 19 is permissible with the employee paying the premium."

"Some benefit programs require contributions from employees, but most are fully paid by the Employer."

Finding 2 on the matter is for the Employer and recognizes the Employer's right to select the carrier for health care and/or dental insurance.

19. Retiree Health Insurance: Employer's Response to the Issue

The Union's position, the Employer states, is that the retiree health insurance policy that is applicable to county employees be "reinstated" to court employees. In proposing this benefit, except for the use of "reinstated," the parties agree, says the Employer.

The Employer notes that the Union filed an unfair labor practice charge against the county alleging that this benefit had been unlawfully denied the bargaining unit. The charge was dismissed because the policy applies only to county employees. Bargaining unit members were found not to be county employees. Bargaining unit employees were never covered by this policy and, consequently, there is nothing to reinstate argues the Employer.

Nonetheless, the court's proposal as to article 16.3 provides this benefit to the bargaining unit until the expiration of the contract.

Retiree Health Insurance: Union Response to the Issue

The Union argues that shortly after the employees in this bargaining unit voted to Unionize, the County passed a resolution restricting the retiree's health insurance coverage previously provided to these employees. The benefit was to accrue to non-Union employees only, the Union argued. In an unfair labor practice charge filed by the

Union in regard to this discriminatory action, the ALJ denied the charge, claiming that the Employer (Judge) had not taken the action, despite the Union's contention that the County was acting as an appointed agent of the Judge, and that the County's action affected these bargaining unit employees.

Throughout the course of negotiations, argues the Union, the Employer has taken the position that the issue of reinstatement of this benefit was subject to negotiations. It remains the Union's proposal that all current bargaining unit employees shall be provided the same retiree health insurance benefit coverage currently enjoyed by all current County and non-Union Court employees, and as previously provided members of the bargaining unit.

At the hearing on December 16, 1998, the Employer presented the Union with the following new proposal: "The Court will provide health insurance to employees who retire after the date of ratification of this agreement in accordance with County policies. This benefit expires on the expiration date of this agreement."

Finding: The fact finder proposes a modification based on the Employer's proposal. The new contract shall contain language which reads: The Court will provide health insurance to employees who were members of this unit on October 12, 1995 upon their retirement and following ratification of this agreement. Such retirement benefits shall be awarded in accordance with County policies.

20. Personal Leave: Employer's Response to the Issue

Fact finder's recommendation based on Employer's proposed language.

Section 12.9 - Paid Personal Leave.

Upon completion of 180 calendar days of service as a full time employee, employees ~~who are not exempt from applicable wage and hour laws,~~ are entitled to two (2) paid personal days which must be scheduled with the prior approval of his/her department head and which must be taken before December 31st each year. It is not the intent of this article to reduce any entitlement to personal leave or any other form of leave to which any employee is presently entitled.

21. **Leaves of absence:**

Fact finder's recommendation: ***Leaves of absence policies under which the employees in this unit were previously covered shall remain in effect until such time as they may be altered under the terms of this agreement or a successor agreement or by policies which are subsequently incorporated by reference into this agreement.***

22. Worker's Compensation Insurance

Fact finder's recommendation based on Union proposal

The Employer provides a comprehensive Worker's Compensation insurance program at no cost to employees. This program covers any injury or Illness sustained in the course of employment that requires medical, surgical, or hospital treatment. Subject to applicable legal requirements, Worker's Compensation insurance shall continue to provide benefits after a short waiting period or, if the employee is hospitalized, immediately.

Any employee who sustains a work-related injury or illness should inform his or her supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible.

23. **Sick Leave**: Fact finder's recommendation is based on language in the Union's proposal. ***The current sick leave accrual policy contained in the Personnel Policy Handbook dated 9/1/91 shall be incorporated into the Agreement, with the addition of incorporating language recognizing the current practice of allowing the employees to use sick time to care for a sick child.***

Items to be Covered under Existing Policies and Past Practices

Recommendation

It appears to the fact finder that negotiations on certain unsettled items which were tentatively agreed to must still be resolved. Negotiations are a part of the system of checks and balances that provide the work force with oversight mechanisms over those who govern, supervise and manage their work lives. As the Employer has argued, it does

make the management function more difficult. The upside in favor of the process is that it provides aggrieved workers with an orderly way to address their grievances and obligates workers, supervisors and managers to address little problems before they emerge as big problems.

The following issues remain open for subsequent negotiations that may remain ongoing over the life of this agreement. This provision is not intended to void or nullify any tentative agreements or understandings which may exist between the parties but to allow the parties to reach closure on any understandings that were tentatively agreed to. In the event that agreement cannot be reached, on an issue, existing policy and practices governing such issue shall continue in effect. Such existing polices or practices shall be subject to the grievance procedure in the event that disputes arise as to their application or interpretation. If the issues below are not covered by existing policies or practices, they are to be removed from any further consideration over the life of this Agreement.

Bereavement Leave

The Union proposes the standard bereavement leave of three days to attend and/or make arrangements for the funeral of those family members identified herein.

The following is the current policy that the Union wants included in the Agreement.

Bereavement Leave

If an employee wishes to take time off due to the death of an immediate family member, the employee should notify his or her supervisor immediately.

Up to three day of paid bereavement leave will be provided to eligible employees in the following classification(s):Regular full-time employees

Bereavement pay is calculated based on the base pay rate at the time of absence and will be charged against sick leave.

Approval of bereavement leave will occur in the absence of unusual operating requirements. Any employee may, with the Department Head's approval, use any available paid leave to additional time off as necessary.

The Employer defines "immediate family" as the employee's current spouse, parent, child, sibling; the employee's spouse's parent, child, or sibling; the employee's child's spouse; grandparents or grandchildren.

The Employer will grant one (1) day bereavement leave for the death of a relative NOT in the immediate family. This is to also be charged against sick leave.

Sick Leave Benefit

The Employer provides paid sick leave benefits to all eligible employees for periods of temporary absence due to illnesses or injuries. Eligible employee classifications:

Regular full-time employees

Eligible employees will accrue sick leave benefits at the rate of 13 days per year (1.08 days per month).

An eligible employee may use sick leave benefits for an absence due to illness, injury, or medical appointments sustained by that employee, or for the illness of a sick child.

Employees who are unable to report to work due to an illness or injury should notify their Department Head before the scheduled start of their workday. The Department Head should also be contacted each additional day of absence. If an employee is absent for three or more consecutive days due to illness or injury, a physician's statement must be provided verifying the nature of the disability and its beginning and expected ending dates. Such verification my be requested for other sick leave absences as well and may be the basis for payment authorization of sick leave benefits. Before returning to work from a sick leave absence of three calendar days or more, an employee must provide a physician's verification that he or she may safely return to work.

Sick leave benefits will be calculated based on the employee's base pay rate at the time of absence and will not include any special forms of compensation, such as incentives, commissions, bonuses, or shift differentials. As an additional condition of eligibility for sick leave benefits, an employee must apply for any other available compensation and benefits, such as state disability insurance. Sick leave benefits will be used to supplement any state disability insurance or worker's

compensation benefits that an employee is eligible to receive. The combination of any such disability payments and sick leave benefits cannot exceed the employee's normal earnings.

Unused sick leave benefits will be allowed to accumulate until the employee has accrued a total of 65 calendar days (455 hours) worth of sick leave benefits. Further accrual of sick leave benefits will be suspended until the employee has reduced the balance below this limit. Because sick leave benefits are intended to provide income protection in the event of an actual illness or injury, unused sick leave benefits cannot be used for any other paid or unpaid absence but will be paid off at the rate of 25% at time of termination.

Waiver

Enclosed is the language of the Waiver Clause, which was agreed to. It is the Union's position that this clause be made part of the collective bargaining agreement:

TA'd The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement and with respect to any subject or matter which was the subject of negotiations, but as to which no agreement was reached.

Leaves of Absence

The Union proposes language covering two situations:

Continuation of Health Insurance

Health insurances shall be continued for one (1) month following the month during which unpaid leave begins, unless the leave is for medical reasons which, in that case, shall be continued for six (6) months following the month during which unpaid leave begins. Leaves in excess of this time shall require the employee to reimburse the Employer to continue such medical coverage under the group.

Non-Duty Disability Leave

Leaves requested due to illness or medical disability (including maternity) must be accompanied by a medical doctor's certificate that the employee is unable to work and the reason therefore. Employees returning to work must present a doctor's statement indicating the employee's ability to return to the job.

On-Call for Probation Officers

The Union agreed to incorporate the current practice, of one hour for one hour comp time when an employee is placed on call. It is further my understanding that the employee must use this time up by the following pay period.

Mileage

The Union proposes that the current practice for mileage reimbursement attached hereto, which is 30 cents per mile for field work and 28 cents per mile for regular travel, be incorporated into this Agreement.

Call-In Pay

The majority of all contracts serviced by this Local Union over the last thirty (30) years require a minimum of two (2) hours' pay at the appropriate premium rate when called in to work after the regular workday or workweek. It helps compensate for the inconvenience and travel time that it causes the employee.

We propose the following language be incorporated into the Agreement:

If an employee is called back to work after his regular work schedule, he will be guaranteed a minimum two (2) hours at time and one-half (1 A) his hourly rate of pay or the appropriate premium rate called for in the Agreement.

Vacancy, Temporary Transfer & Promotion

Section 17.2 Appointment to Fill Vacancy

The Judge will exercise final appointing authority for promotions of employees under this article and shall not be arbitrary or capricious. Present established job requirements shall be used as the criteria, as well as any standard examinations utilized for selection. The following factors shall be considered in determining the selection:

A. Knowledge, training and ability to do the work.

B. Attendance records and performance evaluations.

C. Physical qualifications (where applicable).

D. Where general qualifications are relatively equal, seniority will be considered. Results of any examination taken for the purpose of filling a vacancy shall be available.

Section 17.3 Applicable Rate of Pay

An employee who is given a promotion will be placed on the salary grid at the earliest step of the new classification, which will result in an increase in pay.

Benefit Coverage at Termination

During the course of negotiations it was understood that the following benefits would continue in full force and effect at their current level outlined in the revised Personnel Policy Handbook of 9/1/9 1. These are the issues and attached hereto is a copy of the current level of each issue. Benefit Conversion at Termination* Credit Union* Meal Allowance (Language attached hereto) Severance Pay* Short-term Disability* Tax Sheltered Annuities* Travel Allowance* Emergency Closing (Language attached hereto)

Therefore, we are requesting that these conditions and/or benefits be recognized by the Agreement either by incorporating them into the Agreement or by an attached memorandum of understanding.

Emergency Closings

Emergency conditions, such as severe weather, fire, flood, or tornado, can disrupt County operations and interfere with work schedules, as well as endanger employees' well being. These extreme circumstances may require the closing of the work facility. In the event that such an emergency occurs during non-working hours, local radio/TV stations will be asked to broadcast a closing notification.

When operations are required to close, the time off from scheduled work will be paid. In cases where a closing is not authorized, employees who fail to report for work will not be paid for the time off.

However, employees may request available paid leave time, such as unused vacation or personal days.

Any building closings will be initiated by the Board Chairman and, in his absence, the Vice-Chairman.

We are requesting that this language be incorporated into the Agreement.

Meal Allowance

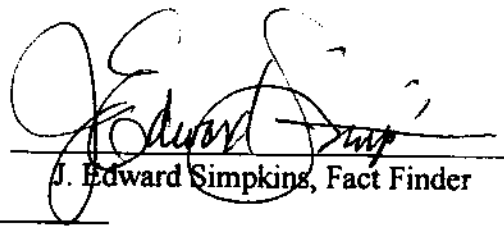
The Union agreed to incorporate the current practice. Attached hereto is the current meal allowance. We are requesting that this issue, at its current level, be incorporated into the contract.

Events and Time Lapses

Since this case required a great deal of time the fact finder has noted the key events and time lapses for his personal review and for the review of the parties.

Event	*Date*	*Date 2*	*Total Days Elapsed*
Certification of Unit	10/12/95	5/6/99[3]	1302 (43 mos)
Fact Finder Appointed	11/10/97	5/6/99	549 (18 mos)
Hearing Convened	12/16/98	5/6/99	141 (5 mos)
Brief Preparation	12/16/98	2/1/99[4]	42 (1.5 mos)
Report Preparation	2/1/99	5/6/99[5]	94 (3.1 mos)

Roughly three quarters of the time (11/10/97-12/16/98) was spent in getting the parties together (73%). Nine per cent (9%) of the time was spent in the preparation of briefs (12/16/98-2/1/99). Given time lapses in mailing and receipt of briefs, about fifteen per cent (15%) of the time (2/1/99-5/6/99) was spent in the study of the record and exhibits and in drafting the report.



J. Edward Simpkins, Fact Finder May 6, 1999

[3] Award Completed
[4] Briefs mailed to Fact Finder
[5] Fact Finding Report Completed