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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

2nd JUDICIAL CIRCUIT COURT,
Employer

MERC# G-93-J-3013

ARTHUR A. BUSCH
FACTFINDER

-and-

TEAMSTERS LOCAL 214,
Union,

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FLINT REGIONAL OFFICE

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FACTFINDER'S RECOMMENDATIONS

Date of Hearing: September 27, 1994

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I. FACTUAL BACKGROUND

The Teamsters, Local 212 (hereinafter "Union") filed a petition for fact-finding on or about May 27, 1994. The Employer filed an answer on June 27, 1994. At issue were wages (including classification adjustments) and insurance issues related to health coverage. This dispute involves the 2nd Judicial Circuit Court and the labor union which represents certain workers in the Friend of the Court Office.

The parties had the benefit of mediation on February 7, 1994. However, efforts to mediate the differences between the parties were unsuccessful.

At issue are matters subject to negotiation as a result of a re-opener clause in the labor contract, Article 28, which was effective February 1, 1994 and expires on December 31, 1995.

The factfinder was appointed by the Michigan Employment Relations Commission on June 28, 1994. All parties agreed to conduct a fact-finding hearing on August 26, 1994. The hearing was adjourned at the request of the parties on August 26, 1994 and continued until September 27, 1994.

The specific sections of the labor agreement at issue are:

Article 9	Wages
Article 14	Insurance Program

The re-opener clause of the labor agreement provides each party with the right to raise two (2) non-economic issues. No such issues have been placed on the table by either side during the negotiations.

Prior to the fact-finding hearing the parties reached agreement as to matters in dispute relating to job classification issues. Both parties requested that the factfinder not take testimony or other evidence as to this issue. The parties advised the factfinder that they had reached agreement as to this matter for most positions in dispute and felt fact-finding was not necessary as to the remaining matters as they related to job classification issues. Consequently, the Union withdrew its request for fact-finding as to classification issues.

II. COMPARABLES

The parties stipulated, for the purpose of the fact-finding hearing, that the counties of Calhoun, Jackson, Monroe, Muskegon and Saginaw may be used as comparable counties to Berrien County.

The collective bargaining agreement for the comparable counties were admitted as Exhibits 3, 25, 26 and 27.

III. ISSUES

A. HEALTH INSURANCE

1. BACKGROUND

The health insurance plan for those employees covered in this bargaining unit is found in Exhibit 24, of the collective bargaining agreement. The employer has an administrative services contract with Blue Cross/Blue Shield of Michigan. The current plan design has a 10% employee co-pay (90/10 plan) and has deductibles of \$150.00 for an individual or \$300.00 for a family per calendar year. Employees currently contribute \$10.00 per pay on a pre-tax basis (\$260.00 annually) toward the insurance premiums under an Internal Revenue Code Section 125 premium conversion plan.

The parties each submitted summaries of comparable county's plan designs and that of Berrien County. Exhibits 23 and 36, submitted by the employer, summarizes the relevant portions of coverage in the health insurance plans of the six (6) counties (including Berrien). Exhibit 15 and 34 are the union's attempt to summarize the same information.

2. EMPLOYER'S POSITION

- a. Maintain current coverage, programs and benefits;
- b. Increase employee contribution from flat \$10.00 per employee to a sliding scale of \$15.00 for a single coverage or \$15.00 for double coverage and \$20.00 for family coverage..

3. UNION'S POSITION

1. Maintain current employee contribution rate;
2. Add \$3.00 prescription drug card to benefits;
3. Add \$300.00 per year dental/vision plan coverage on a reimbursement basis to the employee.

4. FINDINGS OF FACT AND RECOMMENDATIONS

The factfinder agrees with the employer that the only thing that is clear from examining the health insurance plans of six (6) counties is that each plan is unique. Some counties have 90/10 major medical plans, some have 80/20 plans. Five (5) counties all have different deductible levels. Employee contributions range from \$0 to \$52.90 per month.

a. Employee Contribution to Health Insurance Plan

As to this issue, the union has asked to maintain the current "co-pay" plan which requires that each employee contribute \$10.00 per pay period toward the cost of the health insurance coverage, irrespective of class of coverage (i.e. single, two person, or family). The employer proposes to increase this premium co-pay for employees who require coverage for either two (2) persons or family to \$15.00 per pay and \$20.00 per pay respectively. Under the employer's proposal those employees who currently require single coverage would not experience an increase in their contribution rate.

During the fact-finding hearing the employer stated that ability to pay is not at issue.

In support of its position, the employer essentially advances two arguments:

- A.) That health insurance costs have substantially increased during the past ten (10) years;
- B.) That the comparable counties have a "co-pay" structure in three (3) tiers.

It is incongruous for the Employer to stipulate that ability to pay is not to be at issue for the factfinder and simultaneously advance a concessionary "co-pay" proposal based primarily on the assertion that over a ten (10) year period health insurance costs have tripled.

The factfinder is not persuaded by the employer's argument for its proposal to create a three (3) tier "co-pay" structure. There has been no evidence provided that the comparative counties have experienced similar cost increases. Nor was any evidence proffered that particular classes of employee (i.e. single, family) groupings were experiencing health insurance rates for family coverage than for single coverage.

Lastly, a careful examination of the comparable county's reveal two significant facts:

- 1.) All counties except Jackson and Saginaw require their employees to pay less than Berrien County.
- 2.) Only Jackson County has a three (3) tier "co-pay" structure.

RECOMMENDATION

Accordingly, the factfinder recommends that the present health insurance employee contribution levels be maintained at the current \$10.00 per pay period toward the cost of the health insurance coverage, irrespective of class of coverage (i.e. single, two person, or family).

B. Dental and Vision Coverage

The Union has proposed that the Employer add a self insured dental/optical program to the Employers package of benefits. This proposal would provide employees reimbursement for up to \$300.00 annually for dental and/or vision expenses.

The factfinder finds that no other union in Berrien County has been successful in negotiating dental coverage. The record reveals that the Police Officers Labor Council, who represents some Sheriff Department employees, have obtained some limited dental reimbursement in an Act 312 award. However, the "marketplace" basis for the arbitration award cannot be inferred by the factfinder as advocated by the Union. There is no evidence on the record to support the conclusion that the Act 312 arbitrator used the same comparables stipulated to by the parties in the present case. This factfinder feels compelled to respect the stipulation of the Union and Employer to use those five (5) counties as comparable employers for which to measure the reasonableness of each party's bargaining position.

In this regard, the factfinder finds that the following comparable counties have dental insurance in some form:

SAGINAW

CALHOUN

JACKSON

MUSKEGON

MONROE

These five (5) comparable counties have differing dental plans. In Muskegon County, they have a monthly employee contribution toward their dental plan. In Jackson County, there is no employee contribution for dental coverage but that coverage is limited to \$400.00 per year per family. Further, in Monroe County there is no weekly or monthly employee contribution for such benefits but limit coverage to 75% of dental expenses. Calhoun County has such a plan but has a lesser major medical plan (80%/20%).

The employer has offered to purchase a group dental insurance policy and deduct premiums from the paychecks of participants (with an IRC Section 125 tax deferment), as long as the participants paid the entire amount of the premium.

The factfinder accepts the position of the Union that all comparable Employers have some form of dental coverage and all but one have some form of vision coverage. However one (1) comparable employer has substantially higher employee contributions to health insurance. (See Jackson County). In Muskegon County the employee health contribution is similar to that of Berrien County but have a \$31.00 per month employee contribution to dental coverage.

As to optical coverage, three (3) of five (5) comparable counties, Muskegon, Saginaw and Monroe counties do not have vision coverage for employees hired after 1977. Further, Jackson County has vision coverage only in a pool with dental and wellness plans.

RECOMMENDATION

The factfinder recommends that the Employer provide a dental plan for employees in the covered bargaining unit. This recommendation is solely based upon the fact that all of the comparable counties have such plans. The factfinder also recommends that the Employer consider a plan such as that provided by Muskegon County where the employee pays a portion of the premium and the level of benefits are capped.

The factfinder does not recommend optical coverage as proposed by the union as such coverage is not supported by the evidence adduced at the hearing. There was not a compelling case made by the union for optical benefits.

C. Prescription Drug Card

The union has proposed to convert from a program of reimbursing prescription drugs through the Master Medical Coverage to a prescription drug card which provides for an employee co-pay of \$3.00 at the time prescriptive drugs are purchased. The employer describes this proposal as, "one of form over substance."

All five (5) comparable counties have prescription card riders. The Employer acknowledges that its current benefits are not much different than prescription benefits for the comparative counties. These five (5) comparative counties vary in co-pay from \$2.00 to \$5.00. for their prescription card coverage. The average co-pay in the five (5) counties is \$3.60.

RECOMMENDATIONS

The factfinder finds that the unions demand for a \$3.00 prescription drug card is reasonable. The factfinder is not convinced that this proposed change in prescription drug benefits is burdensome financially or administratively for the employer. Therefore, it is recommended that the Employer accept the union's proposal with respect to this issue.

B. WAGES

ABILITY TO PAY

At the commencement of the fact-finding hearing the representatives for the Employer and the Union indicated that the ability of the Employer to pay was not at issue in the hearing. The Employer called John M. Henry, Berrien County Coordinator/Personnel Director whose testimony seemed to raise the issue of the Employer's financial health.

There was evidence presented that the Employer cannot afford the union's proposals. The factfinder was presented with evidence that the employer's economic situation is sound and prudently managed. Testimony at the hearing revealed that revenues for the Employer were up 3.5% in 1994. The Employer's pension fund is 126% funded. The county appears to have a fund balance in its 1994 "Contingency Fund" of \$330,000.00.

Berrien County has a \$28 million dollar general fund budget which by law is required to be balanced each year.

The Employer has taken on several discretionary capital improvement projects which involve computer enhancement and building maintenance. The computer project will cost the County \$2-3 million over a three year period.

The factfinder recognizes that the Employer is not an unlimited source of revenue. However, the testimony of Mr. Henry, adequately summarizes the situation at hand when he testified that the "County is not pleading lack of ability to pay. Rather we have competing priorities in the budget."

In conclusion the Employer has not established that General Fund expenses are increasing at a rate that exceeds the growth in revenue.

RETROACTIVE ADJUSTMENT OF WAGE INCREASE

The union has proposed that any wage settlement be retroactive to January 1, 1994. The employer has taken the position that any wage settlement negotiated would be retroactive only to the first of the month in which a tentative agreement is reached.

The evidence presented at the fact-finding hearing reveals that both parties have been bargaining in "good faith" since negotiations commenced pursuant to Article 28, of the labor agreement relating to the reopener clause. Furthermore, the parties have sought the assistance of MERC through both mediation and fact-finding. Such assistance has been provided as promptly as possible and always subject to the scheduling concerns of both parties.

The factfinder believes that both parties have not tried to use any dilatory tactics to keep an agreement from being reached. The issues upon which the parties disagree are significant and substantial matters of great complexity.

A review of the comparable counties shows that three (3) of the five (5) did in fact grant retroactive pay increases. (See Muskegon, Saginaw and Jackson Counties Collective Bargaining Agreements)

The Employer has argued that it has in the past not offered retroactively for pay increases for other bargaining units in the County. In the two circumstances cited by the employer, one month was lost in each situation. In the instance of the Sheriff's Department unit, retroactive pay increases were granted by an arbitrator.

Lastly, the Employer argues that not granting a retroactive pay increase is a past practice dating back four (4) years.

RECOMMENDATION

Any pay increase granted by the Employer should be retroactive to January 1, 1994. The basis for this recommendation is that three of the five (5) comparable counties granted retroactive pay increases when negotiations were prolonged beyond the expiration date of the previous contract.

Second, the parties have tried in good faith to reach an agreement and should not be "punished" for delays related to the scheduling of mediation, fact-finding or negotiation dates. Lastly, the Employer did not establish a past practice of not granting a retroactive pay increase. A past practice is a practice that recurs over a substantial period of time. The

record does not reflect evidence sufficient to establish a recurring situation or practice. Further, four (4) years in the context of collective bargaining agreements, which typically have a duration of two (2) to four (4) years, does not constitute a substantial period of time sufficient to establish a past practice.

1994 WAGE ADJUSTMENT

The testimony of Shelley Smith, Berrien County Labor Relations Representative was that the Employer's wage proposal costs \$2,495.00 for 1994 and that the union's proposal was \$40,325.00 for 1994. The total union demand would cost \$48,725.00 according to the employer's calculation.

POSITIONS OF THE PARTIES

UNION: The union seeks a 6% across-the-board increase for all employees for 1994 (3% payable January 1, 1994 and 3% payable July 1, 1994). In addition, the union seeks a 5% additional increase for 1995.

EMPLOYER: For 1994, a 2% increase for individuals at or above the maximum step of the salary schedule. Individuals still on the salary schedule would receive a 5% increase when they move to the next step on that schedule. The Employer proposed a wage reopener for 1995.

DISCUSSION

Although the union had originally asked for fifteen (15) classifications to be reviewed by the factfinder, the union requested, at fact-finding, that this issue not be decided by the factfinder. Therefore, this factfinder has been asked only to recommend appropriate salary increases in general for this unit.

The factfinder finds it a curiosity as to how employees who work at the top step or above in the same position are paid different rates of pay. According to the employer's witness Shelly Smith, such a situation exists in the county's compensation structure. However, contrary to the union's request that the factfinder look closely at the method of wage adjustment as it "exacerbates" an inequitable compensation scheme, the factfinder is constrained by the stipulation of the parties as to issues of classification. This issue simply put is not properly before the factfinder to issue recommendations. For what its worth however, the employer and the union ought to mutually study the step system and especially those at the maximum level to iron out the individual circumstances where pay is different for people doing the same work. In today's litigious society it is not hard to imagine a circumstance where the employer would face civil liability for this incongruous situation.

Much of the evidence presented to the factfinder goes to the differences in pay for various positions between the comparable counties. If presented in the context of a classification dispute this factfinder would find much of the evidence presented compelling in support of individual wage adjustments. But as stated previously the factfinder was not asked by the parties to evaluate individual classification matters.

The factfinder is persuaded by the Employer's argument that Berrien County "consistently" pays more than all comparable counties at the maximum level of experience. The union in its post-hearing brief also agreed at Page eleven (11) that "The record shows that Berrien County is not out-of-line with its marketplace, when you factor in longevity and COLA adjustments available to the comparable employers.

The record reveals that the so-called step increase for Berrien County at 5% are above all other comparable counties except Jackson:

CALHOUN	Unknown
SAGINAW	4%
MONROE	4.5%
MUSKEGON	4.2% - 4.5%
JACKSON	5.8% for 18 months or 39% per year

The evidence presented shows that such step increases paid solely on the basis of length of service are the highest in Berrien County.

Furthermore, at the maximum level of experience Berrien County consistently pays more than all comparable counties at Evidence presented at the hearing also established that Berrien County wage ranges favorably compare to the five (5) comparable counties. The only area the factfinder finds Berrien County noticeably behind in pay is for starting salaries.

However, taken as a whole the factfinder is persuaded by the Employer's argument that the "middle or average" salary examined, that Berrien County salaries taken, as a whole compare favorably without glaring deficiencies to the salary levels of comparable counties.

The Union presented some evidence of the levels of increase for those at the maximum levels in the comparable counties. These are as follows:

CALHOUN COUNTY	3%
MUKSEGON COUNTY	3.5%
MONROE COUNTY	3%
JACKSON COUNTY	5%
SAGINAW COUNTY	5%

There was no cost of living evidence presented to the factfinder to consider.

Lastly, and perhaps most significantly, testimony was received from the Employers representative, Shelly Smith, who

stated that Berrien County nonunion employees received 5% increase for those on the step increase stage and up to 5% increase for those at the maximum step 7. However, no "across the-board" increase was granted. Union witness Tracy D. Manning also testified that the nonunion increase of 5% was effective January 1, 1994.

RECOMMENDATION

The Unions demand for an across the board wage hike would amount to a 11% wage increase (with steps) for 1994 and another 10% wage increase for 1995. This demand is excessive in relation to those given the five (5) comparable counties as well as the other union and nonunion employees of Berrien County.

It is ironic that the across the board wage increase sought by the union also rewards some employees in the same classification differently. For example, those on the steps would receive a 7% raise in 1994 while those at the maximum level would receive only 2% raise. The inequitable treatment by the Employer of those at the maximum step is the basis for the Union's argument to have an across the board wage increase.

The basis for the factfinder's recommendation is:

1. Berrien County's wage levels are in line with all four comparable counties;

2. The recommendation reflects comparable increases to those the county has granted to its other unions and nonunion employees;
3. The unions wage demand was in excess of the market.

1994

It is recommended that the Employer grant the Union a 5% increase in 1994 for individuals at or above the maximum step of the salary schedule. Individuals still on the salary schedule would receive a 5% increase when they move to the next step on that schedule. This recommended wage increase should be retroactive to January 1, 1994. The 5% increase for 1994 for individuals at or above the maximum step of the salary schedule will be payable 2.5% on January 1, 1994 and 2.5% on July 1, 1994.

1995

The factfinder has not been persuaded by an argument made by the Employer that a wage reopener be recommended for 1995. In fact, no argument was made to support this demand at all. The factfinder agrees with the union position that a wage reopener for 1995 would be a complete and total waste of taxpayers money to enter into another round of bargaining concerning these issues when it is already November 1994. Such a recommendation would lead to inevitable delay and would be unfair to the County's employees.

Therefore, it is recommended that a 4% increase be granted to those individuals at or above the maximum step of the salary schedule starting on January 1, 1995. Individuals still on the salary schedule would receive a 5% increase when they move to the next step on that schedule. The effective date of increase should be January 1, 1995.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'Arthur A. Busch', written in black ink on a white background.

ARTHUR A. BUSCH (P-33872)

DATED: December 7, 1994