1998

MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

FACT FINDING PURSUANT TO PUBLIC ACT 176 OF 1939, AS AMENDED

In the Matter of The Fact Finding Between:

ARENAC COUNTY ROAD COMMISSION

Employer,

-and- MERC Fact Finding Case No. L01 K-3018

INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, LOCAL 214

Union. /

APPEARANCES

For the Employer:
Darrel D. Jacobs, Esq.

For the Union:
Les Barrett
Business Representative

A Fact Finding hearing concerning the contract dispute between the parties was held on June 16, 2003, at the offices of the Arenac County Road Commission, before Fact Finder Martin L. Kotch.

INTRODUCTION

The parties have addressed a number of issues in their presentations to the Fact Finder. There was some divergence in the numbering and identification of these issues at the hearing and in the written submissions. In several instances, issues treated as separate by one party were combined by the other. I have, therefore, employed my own identification of the issues, following as closely as possible those used by the parties.

The parties have agreed on four comparable counties: Iosco, Alcona, Benzie, and Crawford. Each has proposed others, but these four would appear to be sufficient for purposes of analysis.

ISSUE I STEWARDS – ARTICLE 7

The Employer has proposed language which would restrict the Stewards' Union activities in various ways. Thus, in the Employer's proposal, their regular job duties must be completed before requesting time off to attend to Union matters. Additionally, grievances are to be submitted at the end of the work day, and grievance meetings would commence no later than one-half hour prior to the end of the scheduled workday.

Use of the Employer's telephone, copier or fax machine is to be restricted to the last half-hour of the work day if the employee can be spared from work and has received prior approval. The Union is to reimburse the Employer for all expenses

The Employer has argued that Stewards have used excessive time in processing grievances. Other than this assertion, however, the Employer has given no indication of the nature of such excessive time.

The Union likewise has proposed new language: "Stewards shall be permitted to use the Employer's telephone, copier, or fax machines with prior approval of their Supervisor." The Union argues that use of the Employer's equipment has been a long-standing practice, so long as prior approval had been obtained. Moreover, the Employer's proposal is impractical, since the driving time from Standish to Omer and back would take more than

the half-hour allotted. No comparable community has language similar to the proposed language in its contract

RECOMMENDATION: In the absence of any proofs supporting its allegation, the Employer has failed to make a persuasive case for its proposed language. The Union's proposal is merely an incorporation of current practice. The limitation on the time for presentation of the grievances and the time allotted for discussion wholly undermines the agreement for "facilitating the peaceful adjustment of all grievances . . ." as well as the intrinsic meaning of the Recognition Clause.

It is recommended that the Union's proposed language be adopted.

ISSUE II GRIEVANCE PROCEDURE – ARTICLE 10

The second issue concerns the grievance procedure, Article 10. The Employer asserts that the current contract contains no language providing for an oral stage in the grievance procedure. It proposes language (10.2) which would require "Any employee who believes his rights under the contract have been violated, must initially take the matter up with the Manager at the end of the employees workday." The new language further provides that If no resolution is reached at this stage, a written grievance will be presented to management, which will then meet with the grievant one-half hour before the end of the workday on a day chosen by management.

The Union proposes an addition to 10.1, permitting grievances to be filed by an employee, a group of employees or the Union. The Union's proposal seeks to insure that the Union be able to file grievances on a class basis.

RECOMMENDATION: Contrary to the Employer's assertion, the current contract does indeed appear to contain an oral stage. The first step in the current contract calls for a conference between the employee and/or his Steward and management. The Employer's proposal does not add an oral stage, but rather has the effect of eliminating the Steward from the grievance procedure. Thus, with respect to an oral stage, it's proposal is

superfluous. Moreover, wholly apart from considerations of possible statutory protections, the Employer has provided no reason why the Steward should be removed from the process. Additionally, the limitation of discussion to one-half hour unreasonably constrains the oral stage and makes more likely to resort to more written grievance. The Employer's proposed removal of the Steward from the grievance procedure is made with no justification whatsoever. It appears to violate the very essence of the Union's representative role.

There should be no question that the Union has the right to address, and grieve, alleged contract violations on behalf of one or several members of the bargaining unit, or the unit as a whole, without, in the last case, the need for an individual member to come forward alleging an individual grievance toward him or her.

It is recommended that the Union's proposed language be adopted.

ISSUE III ARBITRATION – Article 11

The third issue involves the question of payment of Stewards and witnesses for attendance at arbitration hearings. The past practice of the parties has been that the Employer paid the Steward and the grievant for such attendance. The Employer now proposes in, 11.5, that no expenses for Stewards or any other Road Commission employees be borne by the Employer. In its turn, the Union proposes contract language calling for the grievant and the Steward to be paid for their appearance at arbitration hearings. At the hearing on this matter, the Employer indicated it would accept payment for the grievant, leaving only the Steward at issue.

RECOMMENDATION: To the extent that comparables deal contractually with his issue, they support the position of the Union. Moreover, in arbitral practice, in addition to counsel, the grievant would be entitled to have the Steward present. The Recognition clause of the collective bargaining agreement implicitly agrees to the presence of the Steward/employee as part of the arbitration procedure. The combination of the

Recognition, Grievance and Arbitration clauses strongly support the notion that the Employer should pay for its Steward/employee, for performing arbitration-related functions.

It is recommended that the Union's proposed language be adopted.

ISSUE IV ABSENCE – ARTICLE 12

The fourth issue (Article 12.1) concerns personal leave without pay. There is, appended to the current contract, a Letter of Understanding. The Employer proposes to delete that letter, and add new language. The Union has proposed language which would in essence incorporate the provisions of the Letter.

The Employer's proposal is targeted at, in its words, "a limited number of employees," who have been taking one or two days off, without pay, in order to preserve their sick leave and vacation leave. It proposes that employees who have vacation time remaining, but wish to leave those days in the bank and instead take unpaid leave, reimburse the Employer $75 per day for the cost of benefits.

The Union points to the small number of sick days accruable in comparison with those in the comparable communities – the difference runs in the order of twice as many. Present language permits the employee to use vacation time as an option. Nowhere, in any of the comparable communities, is there any provision for a benefits "payback."

The Employer has indicated that it's proposal is designed to avoid the use of disciplinary action against those who "abuse" the use of unpaid leave. The Union has taken the position that it is unfair to impose such stringent restrictions on the entire unit because of the alleged misuse by a few. It strongly urges that the Employer utilize discipline for such misuse.

RECOMMENDATION: In the absence of any demonstration of widespread or substantial abuse of unpaid leave, and the unprecedented imposition, relative to comparable communities, of a payback for benefits, the Employer has not made its case. Indeed, the Union notes, a payback provision is not found in any of the 83 counties in Michigan.

It is recommended that the Union's proposed language be adopted.

ISSUE V VACATIONS – ARTICLE 22

The Union has proposed that vacation allowances be increased by two days for the first two levels and one day for the next two levels. The Employer has agreed to increase the first two levels by two days as requested by the Union, but not the second two levels. Again, the Employer seeks a requirement of mandatory usage of vacation time during the waiting period for short-term disability; the Union proposes language making such use voluntary.

RECOMMENDATION: A comparison with the agreed-upon comparable communities clearly demonstrates that the Arenac County Road commission falls far short in terms of the allotment of vacation days. The Union's proposal, for an increase of one day at the second two levels, would place its vacation benefit in closer alignment with the comparable communities. As to the voluntary *versus* mandatory use of vacation days after exhaustion of sick leave time, the number of days likely to be at issue is likely to be small. There has been presented no substantial reason why illness must be accompanied by loss of vacation. Moreover, the infrequent number of times this issue will arise likewise militates against a mandatory usage of vacation time.

It is recommended that the Union's proposed language be adopted.

ISSUE VI INSURANCE – ARTICLE 23

The parties have reached a tentative agreement with respect to health insurance except for the following:

1. The Union proposes a drug rider of $5 co-pay for generic drugs and $10 brand prescriptions. The Employer proposes a $10 generic drug co-pay and a $20 brand

prescription.

2. The Union proposes a $10 doctor's office co-pay. The Employer proposes a $15 doctor's office co-pay.
3. The Union proposes dental and optical coverage equal to that provided management employees. The Employer proposes no dental/optical paid for by Employer.

The Employer notes that the employees pay nothing toward their health insurance benefits. Such payment is a common practice. Moreover, Blue Cross/Blue Shield has indicated increases in the neighborhood of 20% annually for the next several years. As to dental/optical, the Employer is willing to implement a plan that is self-funded by the employees. It argues that in light of non-contribution by the employees, it cannot justify creating another non-contributory plan.

The Union notes that the current drug rider is $2. The Employer's proposed increase would be two and one-half times the present rate for generic, and five time that rate for a brand name drug. Of the four comparable communities utilized here, the drug riders are as follows: $5 - $5, $5 - $10, $10 - $10, $10 - $20. As to doctor's office co-pay, all other employees of this Employer pay $10, as do *all* comparable communities. In addition, three of four comparable communities absorb the cost of the health plan.

As to dental and optical, all mutually agreed-upon comparable communities provide such a plan to their employees.

RECOMMENDATION: The move from traditional to PPO Blue Cross will effect a significant savings to the Employer. The co-pay sought by the Employer is a substantial increase over the present contract, and larger than that paid in comparable communities, as is the proposed doctor's office co-pay. The Employer has failed to make a persuasive case as to these items. These higher amounts would accrue savings to the Employer on top of the savings realized by adopting a PPO plan. In light of programs in comparable communities, these higher co-pays would seem to be difficult to justify.

The Dental/Vision proposal by the Union similarly follows plans in comparable communities. It is here, however, that the balance is closer. Comparability does not mean absolute identity. The overall financial condition of the Employer must play a role, as must the benefits accruing to the parties in other parts of the contract. Elsewhere, the Union has achieved substantial gains. As to the instant issue, the Employer will realize savings by moving to the PPO. The Union will realize savings by the lower co-pay. The implementation of a Dental/Vision plan, wholly funded by the Employer, would serve to reduce the savings generated by the move to the PPO. Given the overall financial picture, the benefits achieved by the Union elsewhere, and with health costs inevitably rising, the justification for the imposition of such a new cost to the Employer at this time seems lacking.

It is recommended that the Union's proposed language concerning drug riders and office visits be adopted. It is recommended that the Employer's language concerning a Dental/Vision plan be adopted.

ISSUE VII JOB CLASSIFICATIONS – ARTICLE 28

The parties have agreed to delete the permanent classification of "working foreman," and utilize the position as a temporary one. The Union proposes a pay rate for the position of 40¢ above that of the Heavy Equipment Operator. The Employer proposes a rate of 40¢ above that received by the temporary foreman for his or her regular classification.

The Union objects that the Employer's proposal would disrupt the relationship between job pay and work performed. Each person performing the same job should be paid the same rate of pay. The working foreman earned a premium over the Heavy Equipment Operator scale; its proposal simply increases that premium. The Employer's proposal, says the Union, would have the effect of having an employee taking on additional responsibilities and being paid less than those he would be supervising. Payment for the job would depend on the regular classification of the person doing the temporary work of foreman, and would therefore differ from employee to employee.

The Employer responds that it has placed a uniform value for the premium to be paid a working foreman – 40¢. Each employee in the position would receive that premium.

RECOMMENDATION: With the removal of the permanence attached to the classification, there would seem to be no compelling reason to anchor the rate of pay to that of the Heavy Equipment Operator. Various people may be assigned; employees may desire the assignment or not. The additional duties are uniformly valued at 40¢, whoever is performing them. Following the Union's logic, some employees would receive a much greater bonus for performing these duties than others. That is not uniform, which is a goal set by the Union.

It is recommended that the Employer's proposed language be adopted.

ISSUE VIII NIGHT PATROL – ARTICLE 29

The Employer seeks to include new language with respect to the Night Patrol position:

"Whenever the Night Patrolman or Alternate is not scheduled to work, and the Foreman determines it is necessary to call out truck drivers, he shall do so by seniority in accordance with the contract."

The Union argues that the proposed language is a naked attempt to deprive members of bargaining unit work. The Employer contends that its proposal is limited in scope, and avoids unnecessary duplication. Further, the Union argues that the Employer's proposal would take away the only opportunity for overtime that the Night Patrolman has.

RECOMMENDATION: Management is not outsourcing the work done by a unit member by its proposal. Given its inherent authority to order the work force, as well as explicit rights reserved under Article 4, it would appear that it already has the authority to employ the discretion provided for in its proposal. Current contract language provides for Night Patrol work *up to* seven days a week; reliance on a foreman for the weekend would therefore not be impermissible.

It is recommended that the Employer's proposed language be adopted.

RETROACTIVITY

The issues remaining to be addressed are all dependent, substantially or in whole, on the question of retroactivity. Because of this, they will be discussed jointly, with distinctions addressed where appropriate. They are:

1. Hourly Rates of Pay – Article 28
2. Pension – Article 31
3. Duration – Article 32

The hourly rates of pay have been agreed upon. The only question remaining is that of retroactivity. The same is true of the pension. The Employer has agreed to move from a B-2 to a B-3 under the MERS program. However, it wishes to implement this upgrade in the last, *i.e.*, 4th year of the new contract, and have it prospectively applied. The Union wishes it to be retroactive effective 2-10-2003, and to apply to employees who retire after that date. There are unit members who are eligible to retire, and who would benefit from the retroactivity of the upgrade.

The Employer argues that its 7.1% pay increase is the *quid pro quo* for its pension upgrade. The Union contends that its acceptance of a 0% increase in the last year of the contract is its contribution.

As to contract duration, the Union has proposed a four year agreement, commencing 2-10-2002. The Employer has agreed to a four year contract, but seeks it implementation from the date of ratification, thus creating a new anniversary date. The last year of that contract would have no wage increase, and would be the year in which the pension upgrade would take effect.

RECOMMENDATION: It is fair to say that retroactivity is the norm in resolution of a new contract. Fault for the delay in resolution, despite the urging of the Employer, cannot be laid at the door of only one party. Punishment for non-agreement in the form of no retroactivity is neither appropriate nor justified – *both* parties failed at reaching an agreement. Thus, as to contract duration, there would appear to be no reason not to

extend the contract back to the anniversary date, 2-10-2002, to run four years, until 2-09-2006.

The overall financial condition of the Employer and the balance of benefits achieved by the parties in this contract must be the foundation for determining the issue of retroactivity, given that, as indicated above, retroactivity is normally applied in situations such as these. As to wages, other than punishment, the Employer has put forward little in the way of justification for non-retroactivity. To be sure, it was denied certain savings because of the protracted nature of negotiations, and the failure to reach resolution. There was, however, similar denial to the Union at the same time. Double years of no wage increase would be a significant loss to the Union, and the justification for this has not been made manifest.

With respect to the pension, however, the Fact Finder finds the situation to be somewhat different. The Employer argues that there are several pieces to this "puzzle," and they are interdependent. The Employer "fronted" a large wage increase in the first year of the contract, with subsequent increases being calculated against that figure. The Union agreed to a 0% increase in the last year of the contract. The Employer agreed to upgrade to MERS B-3 in the last year of the contract. That large, early wage increase was made possible ,and justified, by the delay in the MERS B-3 upgrade, together with the 0% wage increase in the last contract year. Retroactivity would significantly disrupt this balance struck between wage increase and benefit upgrade.

The Employer has the better argument here. With pension retroactivity, along with wage retroactivity, the Union would immediately receive the high initial wage, with subsequent annual increases based on that figure, and an immediate pension benefit increase, with its "contribution" postponed until the final contract year. The Employer would bear all the burden for three years – an inequitable arrangement the Union the Union has failed to justify.

With respect to contract duration, it is recommended that the Union's proposed language be adopted.

With respect to wage retroactivity, it is recommended that the Union's proposed language be adopted.

With respect to the pension, it is recommended that the Employer's proposed language be adopted.

August 8, 2003

Martin L. Kotch
Fact Finder