STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

MACOMB COMMUNITY COLLEGE

-and- **MERC CASE NO. D01 D-0603**

MICHIGAN AFSCME COUNCIL 25

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

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EMPLOYER: PAUL H. COUGHENOUR, ATTORNEY

PETITION DATA:

PETITION FILED:	JULY 30, 2002
CASE HEARD:	FEBRUARY 4, MARCH 13, APRIL 23 AND MAY 16, 2003
RECOMMENDATION DATE:	AUGUST 21, 2003

FACT FINDER RECOMMENDATION:

MEDICAL CARE BENEFIT

THE FIXED CONTRIBUTION SOUGHT BY THE EMPLOYER IS RECOMMENDED EFFECTIVE THE DATE OF THIS REPORT. THE EMPLOYEE PERCENTAGE PAYMENT FOR FUTURE PREMIUM INCREASES OF TWENTY-FIVE (25%) PERCENT IS RECOMMENDED BEGINNING CALENDAR YEAR 2004. THE EMPLOYER PROPOSAL FOR HAP IS RECOMMENDED.

SELECTION

THE UNION PROPOSAL THAT THE STATUS QUO BE MAINTAINED IS RECOMMENDED.

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FACT FINDER'S REPORT AND RECOMMENDATIONS

BACKGROUND

Two major issues are involved in this Fact Finding.

The first relates to Medical Care Benefits. The Employer proposes:

* * *

> "For calendar year 2002, the College's contribution toward the premium for coverage selected under the MVF-1 or Community Blue PPO options shall be an amount equal to the premium cost of Community Blue PPO (with a $10.00 Generic/$20.00 Brand name co-pay Preferred prescription rider) for the coverage selected minus $371.76 for single coverage, $780.98 for two-party coverage, or $873.75 for family coverage. The employee shall pay the balance of the premium through payroll deduction. In each succeeding year, the College's contribution toward the premium for coverage selected under the MVF-1 or Community Blue PPO options shall equal its contribution for the preceding year plus an amount equal to sixty-five percent of any premium increase for Community Blue PPO (with a $10.00 Generic/$20.00 Brand name co-pay Preferred prescription rider). The employee shall pay the balance of the premium through payroll deduction."

* * *

The Union's Proposal is as follows:

"1. Immediately after the conclusion of an open enrollment period following ratification of this collective bargaining agreement, AFSCME-represented employees covered by the Blue Cross/Blue Shield Community Blue PPO C-3X will be responsible for 25% of the premium increase for the balance of that year and for 25% of future premium increases;

2. The Employer's share of premium contribution for all other Blue Cross policies would be capped by its share of the Blue Cross/Blue Shield Community Blue PPO C-3X premium as discussed above;

3. The available Blue Cross coverages would be the existing three traditional MVP plans and the same three Blue Cross/ Blue Shield Community Blue PPO plans proposed by the Employer;

4. The Employer will continue to provide HAP insurance at no cost to AFSCME Local 2172-represented employees; and

5. Employees will receive $2,200 for opting out of coverage."

The second issue relates to the selection procedure for bargaining unit positions. The Employer proposes:

> "Selection for all classifications shall be based on qualifications, experience and ability of all bidders."

The Union requests that the status quo be continued:

"Article IX Classification/Reclassification

* * *

E. <u>Selection</u>

1. Selection for Classification 6 shall be based on qualifications, experience, and the ability of the top seven (7) seniority bidders.
2. Selection for Classification 5 shall be based on qualifications and experience of the top six (6) seniority bidders.

3. Selection for Classification 4 shall be based on qualifications, experience and ability of the top five (5) seniority bidders.
4. The College will provide notification to employees not selected for levels 6, 5, and 4 prior to (or concurrent with) notification to selected candidates.
5. Selection for Classifications 1 through 3 shall be based on the top seniority bidder providing she has the qualifications and experience."

* * *

The parties were unable to resolve their differences and Hearings were convened before the Undersigned on February 4, March 13, April 23 and May 16, 2003. At the conclusion of the Hearings, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered.

Given the voluminous record in this case, it is impractical to reference all of the testimony and exhibits which were presented by the Parties. The Fact Finder has attempted to carefully review the testimony and exhibits which the Parties have submitted in support of their respective views in this matter.

MEDICAL CARE BENEFITS

The Employer explains its Proposal:

> "Under this proposal, the College in 2002 would contribute an amount toward health insurance which equals the premium cost of the Community Blue PPO with a $10.00 Generic/$20.00 Brand name prescription drug rider, *minus* a fixed contribution for single, two-party and family coverage. The 'benchmark' contribution – that is, the amount established by deducting from the applicable 2002 insurance premium a specified, fixed contribution – would then establish a baseline for the future. Specifically, *in each succeeding year*, the College's contribution toward the premium for MVF-1 or Community Blue PPO would equal its contribution for the preceding year, *plus* an amount equal to sixty-five (65%)

percent of any premium increase for Community Blue PPO ($10.00/$20.00).

This method of determining the College's contribution each year toward health insurance premiums basically ensures that the Health Alliance Plan ('HAP') insurance benefit will be fully paid by the College. Specifically, so long as the cost of HAP coverage is less than the amount the College contributes to Community Blue PPO, HAP will not require *any* employee contribution. Section A.4 of proposed Article XV provides:

> The Board's contribution toward the premium for coverage selected under HAP shall equal the premium cost of the coverage selected unless the premium cost exceeds an amount equal to the Board's contribution for the coverage selected under MVF-1 or Community Blue PPO, as provided in subsection 3 above. If the premium cost of HAP exceeds an amount equal to the Board's contribution for the coverage selected under MVF-1 or Community Blue PPO, the Board's contribution toward the premium for coverage selected under HAP shall equal its contribution for the coverage selected under MVF-1 or Community Blue PPO, as provided in subsection 3, and the employee shall pay the balance of the premium through payroll deduction.

Accordingly, under subsection 4 of proposed Article XV, employees would not be required to pay for HAP insurance coverage unless its premium cost exceeded an amount defined as 'an amount equal to the Board's contribution for the coverage selected under MVF-1 or Community Blue PPO.'

The use of this benchmark approach has been negotiated by the College with *every* one of its other collective bargaining units, and is also applied to non-bargaining unit personnel. In each case, the College's percentage of future premium increases, when added to its contribution for the preceding year, determines its contribution in each succeeding year.

The primary variable, however, has been the percentage split of premium increases between the College and employees in

> each succeeding year, after the benchmark is established. As addressed in greater detail *infra*, three bargaining units have agreed to pay 50%, or one-half, of future premium increases, which is also the percentage required of NBU personnel; two units, including an AFSCME unit, have agreed to a 60%/40% split; and one unit, the Macomb County Community College Operational Personnel Association (MCCCOPA'), agreed to a split of 65%/35% with the College.
>
> The College's proposal to Local 2172 gave it the benefit of these negotiations with other bargaining units. Specifically, the College proposed the standard benchmark formula, with Local 2172 members sharing only 35% of future premium increases in each succeeding year. Local 2172 has also received the benefit of negotiations with other bargaining units which resulted in a dramatic increase in 'opt out' payments, from \$900.00 to \$2,200.00 annually. Perhaps most significantly, the College has ***not*** asked Local 2172 members to pay a percentage of future premium increases for HAP coverage, *even though two other bargaining units*, ... contribute to increases in HAP premiums."
> (Emphasis in original.)

The Employer stresses that the fixed contribution it seeks from this Unit is not a unique formula:

> "The same basic premium sharing formula has been incorporated into every other contract maintained between Macomb Community College and its several bargaining units."

In regard to the other bargaining units, it is noted:

> "Each agreement is structured in basically the same way. The College's responsibility to fund health insurance in the proposal's first effective year is limited to an amount established by the premium cost of Community Blue PPO with the \$10.00 Generic/\$20.00 Brand Name co-pay preferred prescription drug rider, minus a fixed contribution for single, two-party and family coverage. In each succeeding year, the College pays an amount equal to its contribution for the preceding year, plus the agreed upon cost sharing of the succeeding year's premium increases for Community Blue PPO (\$10.00/\$20.00).

> *An employee's fixed contribution is basically the same in each collective bargaining unit.* Generally, the amount paid by the College is reduced by $371.76 for single party coverage, $780.98 for two-party coverage, and $873.75 for family coverage."

The one variation which does exist is the percentage of future premium increases:

> "In summary, the College has agreed to the following percentage contribution rates:
>
> | | |
> |---|---|
> | 1. Macomb Community College Faculty Organization | *50%-50%* |
> | 2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Local 2411, Macomb College Association of Administrative Personnel: | *50%-50%* |
> | 3. Police Officers Labor Council (Non-Supervisory Officers) | *50%-50%* |
> | 4. Police Officers Labor Council (Command Officers): | *60%-40%* |
> | 5. American Federation of State, County and Municipal Employees, Local 1917: | *60%-40%* |
> | 6. Macomb County Community College Operational Personnel Association: | *65%-35%* |
> | 7. Non-Bargaining Unit Administrative employees: | *50%-50%"* |

While the Employer concedes that its proposal does not guarantee a fully paid HAP insurance coverage, it does maintain that "any scenario by which a premium contribution is required is exceedingly far fetched":

> " ... Health Alliance Plan is the largest and most fundamentally sound HMO in the State of Michigan. As such, there is no objective basis to believe that sudden and enormous health insurance premium increases can be expected from Health Alliance Plan. Rather, it is reasonable to assume that the historical rate of increases will continue, leaving HAP as a viable and cost effective alternative to Community Blue PPO."

The Employer stresses that the HAP premium would have to "skyrocket" in order for the employees herein to be required to contribute to HAP premiums:

> " ... As such, any Local 2172 member that needs health insurance and cannot afford to pay for it can have HAP insurance provided at College expense. For this reason, it is reasonable to expect that Local 2172 members who wish to continue receiving Community Blue PPO health insurance do so on the same basic terms and conditions as other College employees."

In that regard, it is reiterated that HAP is financially sound and it is a high quality alternative to the more expensive Community Blue PPO. Insofar as its demand from this Unit is concerned, the Employer says it "is well within the parameters established in national surveys." It points to the 2001 Employer Health Benefits survey by the Kaiser Family Foundation and the Health Research and Educational Trust and asserts its proposal is favorable to unit employees:

> "The Kaiser/HRET 2002 Summary of Findings, which updates the data from the 2001 Kaiser/HRET survey, confirms the reasonableness of the College's proposal. As reflected in the 2002 summary, the average annual premium cost for PPO family coverage was $8,037.00, while the annual employee contribution for PPO family coverage was $2,152.00. By comparison, the College's proposal seeks an annual contribution in 2002 for PPO family coverage of only $873.75, or $1,278.25 *less* than the national average in 2002.
>
> As to single coverage, the 2002 Summary of Findings estimates premium costs at $3,119.00, while the annual employee contribution for single coverage was placed at $432.00. By comparison, the contribution sought by the College for single coverage in 2002 is only $371.76, or $60.24 *less* than the average annual premium contribution reflected in the 2002 data." (Emphasis in original.)

It is also noted:

> " ... the College provides health insurance via Community Blue PPO without deductibles or co-pays, resulting in more expensive health insurance premiums compared to what employers pay on average nationally."

In addition, a "fully paid HMO insurance through Health Alliance Plan" makes "the employee contributions sought under the College's proposal for 2003 fair and reasonable."

As to the Prescription Drug Co-Pay aspect of its proposal, the Employer says it "is certainly reasonable, given the national averages." On the matter of percentage contribution relative to future premium increases, it is urged that "the College's request that Local 2172 members pay 35% of future premium increases is clearly reasonable."

The Union begins by noting that unit employees "may now select from among three Blue Cross/Blue Shield MVF-1 traditional plans, two Blue Cross/Blue Shield Preferred Provider Organization ("PPO") plans, two Blue Cross/Blue Shield Community Blue PPO plans, and the Health Alliance Plan ("HAP"). In regard to the Employer proposal, the Union points out:

> " ... the Employer proposes to continue offering the Blue Cross/Blue Shield MVF and the HAP policies, **but eliminates all Blue Cross/Blue Shield PPO's except for the Community Blue PPO's.**
>
> Additionally, the Employer proposes that each Local 2172-represented employee pay contributions **retroactive** to January 1, 2002 in the amounts set forth in the chart that appears in Employer Exhibit C (8), last page. For 2002, these employee contributions would range retroactively from $371.76 (for a single person Blue Cross/Blue Shield Community Blue C-1X policy) to $5,414.55 (for family coverage Blue Cross/Blue Shield MVF-1 with a $1.25 Rx co-pay).
>
> Although termed a '65/35' proposal, the Employer's proposal demands far more than the '65/35' label implies. The **Employer's proposal also includes a 'fixed employee contribution'** pegged to the Blue Cross/Blue Shield Community Blue PPO C-3X plan (also known as the C-1X). For single family coverage, the fixed employee contribution in 2002 would be is $371.76 for the BC/BS Community Blue PPO C-3X. For the same plan's two-person coverage, the fixed employee contribution would be $780.98. For the same plan's family coverage, the fixed contribution would be $873.75. If employees sign up for any other Blue Cross plans in 2002, their employee contribution would range

from $684.60 to $5,414.55.

On top of these fixed employee contributions, in each year that follows, the Employer proposes that the employees pay 35% of all premium increases for the Blue Cross/Blue Shield Community Blue PPO C-3X, if they sign up for that particular coverage. As in 2002, **if they sign up for any other Blue Cross coverage, the employee contribution would be far, far greater**. Under the Employer's proposal, it would only contribute 65% of the increase in the Community Blue 3X plan – which is the cheapest Blue Cross plan. If employees sign up for any Blue Cross coverage other than the Community Blue PPO C-3X, the Employer's contribution would be **limited** to the contribution that it would make for the Blue Cross/Blue Shield Community Blue PPO C-3X. The entire balance of the premium would be the clerical's responsibility.

The Employer's proposal also asks that Local 2172 employees pay **retroactively** to January 1, 2003. These employee contributions, under the Employer's medical benefit proposal, range from $620.15 to $5991.52 in 2003.

In the first year of the contract only, the Employer would provide the HAP coverage at no charge to the employee. However, **from that point forward, employees would have to contribute to the HAP coverage** on the same basis they must contribute for the Blue Cross coverages. In other words, the Employer's share of the contribution for HAP coverage is capped by the amount that the Employer will contribute for the Blue Cross plans. If the HAP premiums exceed the amount that Employer will contribute for those coverages, the Employee will be liable for the balance of the HAP premium cost as well."
(Emphasis in original.)

In connection with the above, the Union contends the Employer has the burden of proof. It is emphasized the Employer has not claimed an inability to pay. The Union does not regard the Employer as having presented reasonable comparables:

" ... neither the Hewitt nor Kaiser materials is based on public employers, unionized workplaces or school settings. Nor are they based on metropolitan Detroit area or Macomb County data. Nor is there any indication that they arise out of similar insurance plans. While employers may rely on prevailing practices, those practices must be the 'end results of the successful collective bargaining of other parties similarly situated.' *Elkouri*, 804. The Hewitt and Kaiser materials do not reflect the practices of similarly situated parties and should, therefore, be entirely disregarded."

In regard to internal comparables, it is stressed that:

"Local 2172-represented employees' inability to afford large premium contribution increases is also demonstrated by the comparative median and average salaries of police, supervisory & technical, maintenance and clerical employees. According to the Employer's own documents, the median and average earnings for other units is:

UNION NAME	MEDIAN SALARY	AVERAGE SALARY
Public Safety Command Officers	$51,357.00	$52,788.00
Supervisory and Technical	$45,602.00	$45,582.00
Maintenance	$37,940.00	$37,036.00
Public Safety	$39,606.00	$38,129.00

In contrast, the average salary of the AFSCME Local 2172 employee is $26,406.

Not only do AFSCME Local 2172 employees earn less in terms of their base salaries, but **they also earn significantly less in overtime.**"
(Emphasis in original.)

The Union also notes this unit has a lower opt-out rate:

"The other MCCC units are also not fair comparables because of their significantly higher opt-out rate with respect to insurance coverage. For example, the administrators represented by the MCAPP/UAW has a 52% opt-out rate. The faculty, MCCFO, has a 23% opt-out rate. POLC police officers, who are often retirees from other forces, have a 74% opt-out rate. The POLCCO command officers have a 33% opt-out rate. In contrast,

> AFSCME Local 2172-represented employees opt out at a much lower rate of 15.6%."

Insofar as HAP is concerned, the Union says:

> "The Employer does not propose free HAP coverage" and
>
> "HAP is not equivalent coverage in any event."

The Union maintains it has made significant movement:

> "Certainly the Union has not agreed to the entirety of what the Employer has demanded. But the terms that vary from the Employer's are fair and well supported by the circumstances:
>
> 1. The Union has not agreed to the Employer's 'fixed contribution plus 35% of future increases' proposal because that would, frankly, be too expensive and burdensome for this clerical unit. It is also wildly out of sync with Macomb County public sector and school contracts – where the employees pay nothing;
>
> 2. The Union has not agreed to the retroactive nature of the Employer's proposal – which seeks premium contributions retroactive to January 1, 2002. This is unfair because an employee's contribution burden depends on the coverage she selects. It would be unfair to impose this contribution obligation retroactively where employees will be unable to retroactively change the coverage they had between January 1, 2002 and the date of the new contract. Instead, the new contribution obligations should become effective after an open enrollment period that follows the ratification of this contract;
>
> 3. The Union has not agreed to contribute to HAP coverage in this contract. These clerical employees, whose base salary rate is lower, who earn less overtime, who, in contrast to other MCCC employees, have virtually no ability to increase their wages by teaching, do not have the luxury to opt out of coverage altogether. In exchange for agreeing to a greatly expanded contribution obligation for all

> Blue Cross coverages, fairness indicates a safe harbor for HAP insurance coverage. While the Employer has argued that HAP will be effectively free, it should stand by that commitment for at least the duration of this contract.

Thus, the Union asks that the Fact Finder recommend the Union's proposed medical benefit language:

> Effective upon the completion of the open enrollment period immediately following ratification of this agreement, the college's contribution for the coverage selected under MVF-1 or Community Blue PPO options shall be an amount calculated for the balance of the year equal to the pre-existing premium cost of the Community Blue PPO plus 75% of the increase in the coverage selected for the remainder of the premium year. (Community Blue PPO with a $10 generic/$20 brand name co-pay preferred prescription rider.) The employee shall pay the balance of the premium for the remainder of the year through payroll deduction. In each succeeding year, the college's contribution toward the premium for coverage selected under MVF-1 or Community Blue PPO options shall equal its contributions for the preceding year plus an amount equal to 75% of any premium increase for Community Blue PPO (with a $10 generic/$20 brand-name co-pay preferred prescription rider). The employee shall pay the balance of the premium through payroll deduction.
>
> * * *
>
> The college's contribution toward the premium for coverage selected under HAP shall equal the cost of a HAP premium."

The issue of health insurance benefits is a difficult problem for the Employer and Employee alike. The increasing cost of providing the benefit make it more difficult for Employers to alone bear the cost. Employees view a demand that they pay a share of the cost as a reduction in their level of compensation.

It is true that the Employer has not argued ability to pay in this case. It has, however, emphasized that the fixed contribution it seeks in this case is applicable to all of its other employees. If all of its other employees did not have the fixed contribution obligation, it would presumably have a negative impact on the Employer financial condition to the extent that it would be obligated to pay all those costs.

The Undersigned has reviewed the Union proposed comparables. To a great degree, the Employer observations in regard to the comparables have merit as to the scope of benefits provided therein. The Fact Finder does not perceive that the Employer proposal as to the fixed contribution "is wildly out of sync with Macomb County public sector and school contracts...."

The Union has emphasized that the earning level of employees in this bargaining unit is substantially lower than which prevails for employees in other bargaining units and for non-bargaining unit employees. The Employer's basic response is that it has taken into account variation in earning level by having negotiated different rates for different bargaining units only as to future premium increases. The largest fixed contribution sought by the Employer applies to family coverage and it amounts to $873.75. The average salary for those in this bargaining unit is $26,406. The fixed contribution sought here is about 3.3% of the average salary. The Parties have resolved the matter of compensation as follows:

2001-2002	4.41% increase
2001-2003	2.5% increase
2003-2004	2.0% increase

It seems fair to say that the above wage increases have diminished the adverse impact resulting from imposition of a fixed contribution.

The remaining issue relates to the percentage payment relative to future increases. On this issue, the Fact Finder is persuaded that the Union proposal as to percentage is reasonable:

> "In each succeeding year, the College's contribution toward the premium for coverage selected under MVF-1 or Community Blue PPO options shall equal its contribution for the preceding year plus an amount equal to seventy five percent of any premium increase for Community Blue PPO (with a $10 Generic/$20 Brand-name co-pay preferred prescription rider). The employee shall pay the balance of the premium through payroll deduction."

On the matter of effective date, the Fact Finder concludes retroactive application would be onerous. On the other hand, the Employer is entitled to a reasonable effective date. The Undersigned concludes that a fair resolution to all Parties is achieved by making the fixed contribution employee obligation effective on the date of this Recommendation. Thereafter, the percentage payment for premium increase shall begin in calendar year 2004.

Finally, the Fact Finder is persuaded that the Employer proposal as to HAP has merit. The Employer Proposal is recommended:

> "4. The Board's contribution toward the premium for coverage selected under HAP shall equal the premium cost of the coverage selected unless the premium cost exceeds an amount equal to the Board's contribution for the coverage selected under MVF-1 or Community Blue PPO, as provided in subsection 3 above. If the premium cost of HAP exceeds an amount equal to the Board's contribution for the coverage selected under MVF-1 or Community Blue PPO, the Board's contribution toward the premium for coverage selected under HAP shall equal its contribution for the coverage selected under MVF-1 or Community Blue PPO, as provided in subsection 3, and the employee shall pay the balance of the premium through payroll deduction."

SELECTION

The second major area of dispute relates to Selection.

The Employer's major complaint is:

> "The fundamental flaw with this system, both as to Classifications 1 through 3 and Classifications 4 through 6, is that the College is typically presented either no choice and extremely limited choice in its selections."

For Classifications 1 through 3, it is urged that after the posting policy is followed "either no one applies or no one qualified applies." In regard to Classifications 4 through 6, it is argued "the College rarely if ever obtains the full or maximum number of seniority bidders from among whom the College is entitled to select."

In counter-balance to the above, the Union says:

> "In light of the importance of seniority principles, bargaining unit members' legitimate expectation of access to jobs within their unit and the opportunity to be upwardly mobile within their unit, the Employer has a heavy burden of proof in these proceedings."

For Classifications 1 through 3, the fact that the Employer is obligated to follow the posting process prior to hiring an outside candidate is an insufficient basis to offset the concerns articulated by the Union. The cost and delay associated with the bidding process were not shown to be burdensome to the extent that a complete revamping of the selection process procedure for these jobs is necessary.

In regard to Classifications 4 through 6, the fact that the number of candidates does not equate to the number contractually permitted is, again, an insufficient reason for discarding the present system.

The overriding fact is that, under the present system, the Employer has not shown that it is saddled with unqualified employees. The Employer, after all, has the ability to set the necessary qualifications for a position. Moreover, in the event a selected candidate is deemed unsuitable, the Employer can remove a status employee from a new position during a sixty day trial period. In regard to new employees – they are subject to a ninety day probation period and "during such period, probationary employees may be terminated by the Employer without recourse to the grievance procedure...."

The Fact Finder concludes that the current language should be retained as it relates to Selections.

FACT FINDER RECOMMENDATION

MEDICAL CARE BENEFIT

The fixed contribution sought by the Employer is recommended effective the date of this Report. The employee percentage payment for future premium increases of twenty-five (25%) percent is recommended beginning calendar year 2004.

The Employer proposal for HAP is recommended.

SELECTION

The Union proposal that the status quo be maintained is recommended.

JOSEPH P. GIROLAMO
Fact Finder

August 21, 2003