FACT FINDING REPORT

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

April 19, 2004

SAGINAW COUNTY COMMUNITY
MENTAL HEALTH AUTHORITY
(The Authority)

-and- Case No. LO3-H-3006

SERVICE EMPLOYEES INT'L. UNION
LOCAL 517 M
(SEIU)

Saginaw County had a Department of Mental Health for some years. It created a separate Saginaw Community Mental Health Authority in 1997. The Authority is a completely independent public employer no longer associated with the County. It provides mental health services to County residents. More than 150 of its employees are part of a combined office, technical, and professional bargaining unit represented by SEIU. That unit includes people with diverse skills - custodians, clerks, occupational therapists, mental health educators, client service managers, and so on.

The first collective bargaining agreement (CBA) between the parties ran from January 1, 1996 through October 1, 1999. The next CBA was executed on August 30, 2002, after mediation and fact-finding. Its expiration date was September 30, 2003.

Because of rapidly escalating health care costs, negotiations on this subject began in mid-September 2002 and ended in late August 2003. Those negotiations were conducted jointly with SEIU, the Michigan Nurses Association (MNA), and the American Federation of State, County and Municipal Employees (AFSCME). No agreement was reached. The parties broke off their health care talks and began bargaining separately for new CBAs. That bargaining led to the Authority executing a CBA with MNA on October 1, 2003, and with AFSCME on January 9, 2004. As for the Authority and SEIU, they had 11 separate bargaining sessions, several with the aid of a MERC mediator, and they arrived at tentative agreement on most issues. However, they were unable to resolve their differences with respect to wages, longevity pay, health insurance, and subcontracting. They exchanged final proposals on January 7, 2004. When further movement did not occur, they requested fact-finding.

In order to expedite the handling of this fact-finding case, the parties agreed that there would be no formal hearing. Instead, they provided lengthy submissions containing their arguments and various supporting materials and exhibits on March 31, 2004. The Authority was represented by Robert A. Kendrick, Attorney (Braun Kendrick & Finkbeiner); SEIU was represented by Marianne Woods, Union Representative. Each issue will be dealt with separately although there may be occasional crossover between issues.

* * *

I - Subcontracting

The parties agreed to the following Memorandum of Understanding (MOU) on subcontracting on August 19, 2002:

> The Employer (...Authority) reserves on its own behalf to subcontract any existing or new work. However, if such subcontracting will directly cause the layoff of one or more bargaining unit employees, the Employer is required to advise the Union at least thirty (30) working days in advance of such subcontracting and will address all aspects thereof with the Union. In the event of a layoff resulting in [from?] subcontracting, all the bumping rights, layoff, and recall provisions of the Collective Bargaining Agreement between the parties would apply.
>
> This understanding shall remain in effect until the parties agree otherwise.

The Authority urges that the terms of this MOU be continued in effect and written into the Management Rights clause of the new CBA. SEIU urges that the MOU be discontinued and that no such subcontracting language be included in the new CBA. The Authority stresses that such a clause allows bargaining unit work to be done at a lower cost by a contractor and that such cost savings are essential to the health of the Authority in face of the financial pressures it has experienced. SEIU believes the Authority has exaggerated its current financial difficulties and it stresses the adverse consequences already visited on the bargaining unit through the Authority's use of the subcontracting clause.

Neither of these views is without merit. It is true that the Authority's operating deficits have increased year to year and are projected to be close to one million dollars for the 2003/2004 fiscal year. It is also true, at least not disputed by the Authority, that the Authority is expected to receive Medicaid capitation increases which will add several million dollars annually to its income. I am certainly not in a position to evaluate the full significance of these changes but it appears that the Authority's financial situation, considering also the size of its reserve fund, may not be as dire as the Authority would have me believe.

Equally important, SEIU claims it signed the MOU because the employees were anxious to receive the pay increases negotiated in August 2002 and because the Authority had said it did not intend to use the MOU "to outsource any significant number of workers..." Thus, some loss of work within the bargaining unit was anticipated. The actual impact was much larger. According to SEIU, some 27 of the employees it represents were displaced[1] at several facilities in early 2003 through subcontracting. That was roughly 15 percent of the bargaining unit. And again,

---

[1] It is not clear whether some (or any) were able to bump junior employees elsewhere and thus retain their employment. But even if such bumping occurred, the net result would likely have been the layoff of 27 people assuming of course that no other jobs were created by the Authority at the time the displacement occurred.

according to SEIU, the Authority has expressed its intent to engage in further subcontracting which could displace as many as 50 employees or another 33 percent reduction in the bargaining unit. Thus, assuming these are indeed the facts, "significant numbers" of employees have been and may be adversely affected.

Inasmuch as I will be recommending wage and benefit restraint (see II, III and IV) and inasmuch as that restraint should serve to improve the Authority's financial situation, I recommend that the Authority drop its subcontracting proposal. The price for achieving such restraint should be job security. The subcontracting clause, as presently written, undermines job security. If sacrifices are to be made, the Authority's work should be performed by those who have customarily performed it. I recognize nevertheless that subcontracting may be triggered for reasons other than labor cost (e.g., unavailable skills or equipment) and that in such circumstances subcontracting may be perfectly sensible. I recommend therefore that the parties attempt to negotiate a subcontracting clause which will protect the Authority's interest in controlling costs while at the same time protecting the job security of its current work force.

II - Wages

The parties are in substantial agreement on wage increases. The following table indicates the date of the increase, the classification affected, and the percentage increase urged by each party[2]:

Date	Classifications	Percentage Increase	
		SEIU	Authority
10/1/03	T-13, T-10 Tech, T-5 Aide	0	0
	P-6, P-5	3	3
	All others	2	2

[2] Some changes in the number and scope of the T-classifications have apparently also been agreed to.

Date	Classifications	Percentage Increase SEIU	Authority
10/1/04	P-6, P-5	3	3
	All others	2	2
10/1/05	All classifications (T, P, and others)	3	
	P-6, P-5		3
	All others		2

The dispute concerns the year beginning 10/1/05. The parties agree that the P-6 and P-5 classifications should receive a 3 percent increase; they disagree on what all other employees should receive. The Authority urges a 2 percent increase; SEIU seeks a 3 percent increase.

Several factors support the Authority's position. First, the affidavit of the Authority's Human Resources Director states that "wages for professional employees (i.e., P-5 and P-6 designations)" at the Authority are "generally under market as compared to professional employees employed by other mental, behavioral, and other health organizations throughout the State..." SEIU did not claim otherwise. Second, SEIU agrees that P-6 and P-5 classifications should receive a larger pay increase than other classifications for the years 10/1/03 and 10/1/04. This position presumably reflects an awareness that professional pay at the Authority is "under market" as asserted by the Human Resources Director. There is no sound reason why that reality should not prompt a larger increase for the year 10/1/05 as well. Skill differentials built into a wage structure tend, over a period of time, to be eroded by straight percentage pay increases for all people in a bargaining unit. Finally, as explained earlier, wage restraint seems appropriate here in the interest of job security.

I recommend, accordingly, that the Authority's pay proposal for the year 10/1/05 be adopted.

As for the effective date, consistent with the previous CBA, I recommend that pay increases should be "effective at the start of the first full pay period after October 1..."

As for retroactivity, the parties sharply disagree. SEIU believes any wage settlement should be retroactive; the Authority offered retroactivity initially but added that the offer would be "withdrawn if the offer [presumably referring to the Authority's overall final offer] is not ratified by the Union by January 30, 2004". There was obviously no ratification. And the Authority would deny retroactivity because SEIU "should not be rewarded for its intransigence in these negotiations" and because of the additional cost of retroactive wages.

I have no way, on the evidence before me, of determining whether one side or the other or both were "intransigent". I have no knowledge of the anatomy of this recent negotiation. I am not convinced, however, that the positions taken by SEIU were unreasonable. There was a genuine impasse. And although MNA and AFSCME did arrive at CBAs in October 2003 and January 2004, respectively, I note that the critical issue of health care was conditioned upon what non-unit personnel or SEIU personnel ultimately received. All things considered, I recommend that the wage increases be made retroactive.[3]

III - Longevity Pay

Article X of the current CBA includes a "longevity bonus" provision. Employees with more than five years of service have been eligible. The amount of the bonus varies with the employee's status and years of service. Once becoming eligible, the bonus for a full-time employee is $70 for each year of full-time employment. For example, a full-time employee with ten years' service would receive a $700 bonus. The Authority proposes to end this benefit through the following clause:

> Longevity shall end and no longer be payable and this entire article shall be of no effect whatever after the December 1, 2004, longevity payments have been made.

SEIU says "longevity pay" should be continued in effect.

---

[3] The Authority was prepared to do so as late as January 30, 2004, just three months ago.

A longevity bonus has been part of employee compensation for some years. No doubt an individual employee's budget is planned on the reasonable expectation that the bonus will be paid. To eliminate the bonus involves a real decrease in compensation. On the other hand, the Authority's operating budget deficits demand attention. If those deficits continue to increase and erode the operating reserve fund, the Authority's ability to function could come into question.

In the interest of wage restraint, I recommend that, as proposed by the Authority, longevity payments be made for December 2003 and December 2004 but not for December 2005. However, I recommend that the longevity bonus concept remain in place with the parties negotiating new arrangements to allow for future longevity payments conditioned on the financial health of the Authority. The relevant factors in such a formula should be apparent to the parties.

IV - Health Care Insurance

Sharply rising health insurance premiums have posed a major problem in the nation's workplaces. That is true at the Authority as well. Consider, for instance, the monthly premium cost[4] for a family's Blue Cross/Blue Shield PPO-1 coverage in recent years:

1999	- $ 529
2000	- $ 591
2001	- $ 632
2002	- $ 759
2003	- $1,009

Employees have shared the burden of these rising premiums through a 10 percent contribution under the current CBA. There was also a PPO-2 coverage in which the employee contribution to the total premium was just 5 percent. In either event, the Authority has borne the brunt of these substantial premium costs.

[4] These monthly figures are the average premium cost per month for a June 1-May 31 year.

The parties have agreed to change BC/BS plans - from the PPOs mentioned above to Community Blue (CB) plans. There will be three choices, CB-1, CB-2, and CB-3, with deductibles and co-pays for the CB-2 and CB-3 plans. The CB-1 plan, like the existing PPOs, will have no deductibles and no co-pays. The parties have also agreed that those who choose CB-3 will contribute 10 percent to the cost of their premium.

The parties disagree only as to the amount of the employee contribution for CB-2 and CB-1 coverage. For CB-2 coverage, the Authority urges a 14 percent contribution while SEIU asks for just 12 percent. For CB-1 coverage, the Authority urges a 17 percent contribution while SEIU asks for just 15 percent.

SEIU thus recognizes that an employee contribution should increase when he (or she) chooses a plan with a level of benefits greater than that provided by CB-3. The question is the size of the increase. The percentage figures proposed by the Authority would mean that the Authority's share of the premium would remain the same, in dollar terms, regardless of which plan the employee chooses. An employee would have to make a greater contribution if he(or she) opted for something more than basic CB-3 coverage. The incremental increase in cost would be the employee's obligation, not the Authority's. To do otherwise would require the Authority to subsidize employees who wished the better CB-2 or CB-1 coverage. The Authority's position, 14 percent and 17 percent contributions for CB-2 and CB-1 coverage, respectively, seems reasonable. I recommend such cost-sharing.

* * *

As for a cap, a ceiling, on the Authority's health care premiums, the Authority has proposed the following provision:

> If the cost of any employee and/or retiree hospitalization/healthcare coverage or employee dental insurance exceeds twelve (12) percent of the previous contract year's costs (present... contract being June 1 through May 31) participating employees and/or retirees will be

responsible for all costs which exceed the twelve (12) percent increase and which will be in addition to all cost sharing provided in this Article.

In short, the Authority would pay for the initial 12 percent increase in costs while employees would pay for anything over that. SEIU would set the cap at 18 percent.

Two points are worth emphasizing. The current CBA recognized this problem and stated that if health care costs, year to year, increase more than 15 percent, either side had a right to reopen the CBA on the limited issue of employee contributions for such increased costs. And it stated further that should the CBA be reopened in this manner and the parties fail to agree, this limited issue would be subject to interest arbitration at the request of either party. This 15 percent trigger was exceeded in June 2002 but the parties were unable to reach agreement and were unwilling to invoke interest arbitration. Nothing in the record suggests that the 15 percent trigger was exceeded again in June 2003. Equally important, the parties' agreement to switch from PPOs to CB plans and to increase employee contributions for the better CB-1 and CB-2 coverage will almost surely result in substantial use of CB-3 coverage with its modest deductibles and co-pays. All of this should reduce health care costs. And the contracting out of 27 SEIU jobs in early 2003 no doubt has also reduced such costs.

Given the fact that the parties once before agreed to use 15 percent as a trigger for reopening the CBA, that the parties are now willing to establish a true cap, and that the likelihood of again exceeding a 15 percent increase is dim indeed, I recommend the parties adopt a 15 percent cap.

* * *

As for retirees, the parties disagree on several points. The health care contributions of retirees have been based on each person's years of service at the time of retirement. Under Section 14.2 of the current CBA, for example, a retiree with six years' service pays 75 percent of his health insurance cost while a retiree with 20 or more years service pays just 5 percent. The remainder is of course the Authority's obligation.

The Authority, as I read its brief, does not propose to alter this arrangement for those already retired. Rather, it urges that those "who retire after October 1, 2003, will be required to pay for the [CB-3]...coverage above and will be required to pay the difference (increase) in costs should the retiree choose [CB-1 or CB-2]..." It urges further that such retirees should also be required to pay their share of annual health care increases over 12 percent.

SEIU agrees that present retirees should not be affected by any of the changes discussed here. But it asks that new retirees after October 1, 2003, be allowed to stay in the old PPO program and not be subject to any increase in their contributions regardless of the overall increases in the Authority's costs.

I recommend that these new retirees be placed in the CB-3 plan with the option of choosing CB-2 or CB-1 coverage at their own expense. There is no sound reason why they be placed in a PPO program which will no longer apply to active employees. I recommend too that if cost-sharing increases as a result of the 15 percent discussions (or arbitration) referred to earlier, retirees should be subject to that adjustment. And, finally, I recommend that the cut-off for retirement under presently existing arrangements be extended to a date 30 days after the execution of the new CBA.

* * *

My recommendations are found in the above report. In most (perhaps all) other respects, the parties appear to be in agreement.

Richard Mittenthal
Fact Finder