STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

ORION TOWNSHIP

MERC Case No. D02 J-2369

-and-

TEAMSTERS LOCAL 214
(clerical and technical unit)
_____/

Report

Thomas L. Gravelle, Fact Finder

February 5, 2005

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on October 27, 2004 in Orion Township, Michigan.

The Employer is represented by Dennis B. DuBay. Also present for the Employer were Gerald A. Dywasuk, Jill Verros and John Kendall.

The Union is represented by Les Barrett. Also present for the Union were Linda G, and Ruth Coss.

I have reviewed the parties' exhibits, testimony and post-hearing written arguments.

FACT FINDING LAW AND RULES

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

> When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R 423.137, explains the contents of the fact finder report as follows:

> Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:
>
> (a) The names of the parties.
>
> (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
>
> (c) Recommendations with respect to the issues in dispute.
>
> (d) Reasons and basis for the findings, conclusions and recommendations. ...

MERC has explained that "factfinding is an integral part of the bargaining process." County of Wayne, 1985 MERC Lab Op 244; 1984 MERC Lab Op 1142; *aff'd* 152 Mich App 87 (1986). The fact finder's report reinstates the bargaining obligation and should be given serious consideration. City of Dearborn, 1972 MERC Lab Op 749.

BACKGROUND

Orion Township is the Employer. It is governed by a seven member Township Board.

Currently, the Employer employs about 53 employees.

Teamsters Local 214 (the "Union") represents 28 employees in the present case: All full and part time clerical and technical employees. These employees work in ten Township Departments.

There are two other employee groups in the Township: Nine employees in the Department of Public Works (" DPW") who also are represented by the Teamsters, and 16 non-union employees (elected officials, Department heads and Fire Department employees).

Except for the issues discussed below, the parties have agreed to the terms of the new collective bargaining agreement, including various economic improvements for employees, for the four-year period January 1, 2003 through December 31, 2006.

The following issues have been presented to me:

1. Wages
2. VEBA
3. Medical/Personal PTO Time
4. Smoke Free Policy
5. Building Inspector Pay Level
6. Step Increases
7. Out of Class Pay

The first four issues are joint issues.

COMPARABLE COMMUNITIES

Internal employee units as well as comparable external communities are often considered in fact finding. The DPW Teamsters' unit is an internal comparable.

The Union has proposed seven external communities: the City of Auburn Hills, Delta Township, Harrison Township, Independence Township, Macomb Township, the City of Rochester Hills, Waterford Township and White Lake Township.

The Employer has proposed five external communities: Commerce Township, Highland Township, Independence Township, Oxford Township, and White Lake Township. Three of these – Highland Township, Oxford Township, and White Lake Township – do not have collective bargaining agreements.

The Employer is a township located in Oakland County with a population of 33,463 (per 2000 census). The most comparable proposed communities appear to be townships located in Oakland County with a population within 50% of the Employer's population, i.e., between 16,000 and 50,000 people. The Employer's comparables satisfy these tests, as do two of the Union's comparables (also proposed by the Employer).

I will consider these five communities as comparable in reviewing the record.

In 1999, Plante Moran prepared a Clerical Union Compensation Study at the request of the Employer. Its comparable communities included the Townships I have adopted and also three other Townships: Harrison, Macomb (both also proposed by the Union) and Pittsfield Townships. In reviewing the parties' wage proposals, I will also consider these three additional Townships.

DISPUTED ISSUES

1. WAGES

The Union proposes that raises recommended in a study committee report be implemented for January 1, 2003, with 3% annual wage increases beginning January 1, 2004.

The Employer proposes 2% across-the-board annual wage increases for each year of the proposed contract beginning January 1, 2003.

A. Findings of Fact

The Union places primary reliance on a study committee report, which recommends immediate raises of between 20% and 73% for the first year of the new contract.

The Employer and the DPW unit went through fact finding. There, the fact finder recommended the same 2% annual wage increases requested by the Employer in the present proceeding. The Employer has implemented the 2% annual raise for the DPW unit.

I have reviewed submitted data on the five external communities I have found to be comparable (as well as the three Townships in the Plante Moran Compensation Study not included in the five external communities I have found to be comparable).

B. Recommendations

I recommend that the Employer's proposal be adopted subject only to a wage reopener for 2006 if the Union deems a 2% wage increase for 2006 inadequate by reason of a spike (if any) in the inflation rate.

I also recommend that an additional 1% wage increase for the Appraiser classifications for one year of the contract, e.g., instead of a 2% raise in 2003 for these classifications, the raise for 2003 would be 3%.

C. Reasons

I do not think that I am bound by the recommendations contained in the study committee report. First, the Township Board never agreed to bound by any study committee recommendations. Second, the size of the recommended raises are based in significant part on incomparable local units of government whose wage rates are significantly hire than units of government comparable to Orion Township.

Further, the fact finder in the DPW case recommended that parties adopt the Employer's recommended 2% annual increases, and these increases have been implemented. Therefore, 2% raises are supported by the DPW internal comparable.

Turning to the Consumer's Price Index (CPI), for 2003 the CPI (less medical care) increased by 1.9%.

Orion Township is among a shrinking group of employers which still pay the full cost of employee medical insurance, the premiums for which have increased radically in recent years.

In reviewing the 2002 median wage rates for comparable classifications in the five external communities I have found to be comparable (as well as the three Townships in the Plante Moran Compensation Study not included in these five external communities), I find that, with one possible exception, the employees' wage rates in the present case appear to be somewhat higher than the median wage rates of their counterparts in comparable communities.

The one possible exception is appraiser (especially Appraiser II):

	Orion T'ship	***5 comparables***	***8 comparables***
Appraiser I	$35,266	$33,613	$36,027
Appraiser II	$38,793	$39,233	$41,226
Appraiser III	$43,943	$43,091	$44,815

This possible shortfall can be corrected by increasing these classifications by an additional 1% wage increase for one year, e.g., instead of a 2% raise in 2003 for these classifications, the raise for 2003 would be 3%.

The parties have agreed that their agreement will run through December 31, 2006. In recent months, the Federal Reserve has been hiking the prime interest rate, which indicates a concern about inflation. Because of this concern, I have recommended a wage reopener for the 2006 wage rate.

2. VEBA

The Employer proposes adoption of a Voluntary Employee Benefit Account (VEBA), under the terms of the Nationwide Post Employment Health Plan, subject to the following: (1) Employees will be eligible for coverage after completing five years of service from their most recent date of hire. (2) The Employer will contribute $100.00 per month for each eligible employee. (3) Earned, but unused, PTO will be contributed to each employee's VEBA.

The Union proposes that (1) the Employer will contribute $100.00 per month for each employee (irrespective of seniority) beginning with each employee's date of hire; and (2) the VEBA plan be initiated within 30 days after the parties' agreement is executed.

A. Findings of Fact

Under the parties' previous contract, the Employer made no contributions to retiree medical insurance.

The VEBA Plan is a new benefit payable entirely by the Employer to accrue moneys for employees' medical expenses after they have retired.

The Employer's VEBA proposal is the same as the plan implemented by the Employer for the DPW bargaining unit.

B. Recommendations

I recommend that the Employer's proposal be adopted, except that I recommend that the eligibility period begin after three years of employment, rather than after five years of employment.

I also recommend a provision that the VEBA plan will be initiated within 30 days after the parties have executed their agreement.

C. Reasons

The VEBA Plan is new; and represents a new cost for the Employer because under past contracts the Employer did not contribute to retiree medical insurance. The Employer has represented that "such new and expensive programs are typically negotiated in stages so that the employer can absorb costs as contracts are negotiated. . . . It is clear that, if instituted, the plan could provide the basis for future negotiated changes in the amount of the employer contribution." (Employer Br. p. 33).

Assuming that the new contract is effective May 1, 2005, if funding were retroactive to first dates of employment, the retroactive payments alone would range between $1,300 and $24,000 per employee. This would create an intra-employee inequity (as well as a large additional cost to the Employer).

As to the Union's concern about building equity in VEBA's, if the parties agree to the Employer's proposal that earned and accumulated sick leave be contributed to

VEBAs this will build equity for employees who have earned and accumulated (or will do so in the future) substantial unused sick leave.

As to the Employer's 5-years of employment eligibility requirement, nine employees in the current bargaining unit would be affected in varying degrees, ranging from eligibility delays of a few months to about three years. If eligibility were based on three years of employment, the Employer's purpose of assurance that new employees likely will be permanent will be achieved; and only two current employees will have delayed eligibility.

3. Medical/Personal PTO Time

The Employer proposes (a) increasing short-term disability benefits to 66 2/3% of base salary to a maximum of $800.00 per week, (b) scheduling the use of paid time off (PTO) with supervisory approval, and (c) a 50% payout of earned and accumulated sick leave at the option of the employee.

The Union proposes that current contractual scheduling language be retained and that employees be given the option of a 100% payout of earned and accumulated sick leave.

A. Findings of Fact

The Employer's proposals are the same as the language in the pending DPW contract.

The parties in the present case have agreed to the proposed increased short term disability benefits.

As to PTO, Article Five, PAY FOR TIME NOT WORKED, Section 3(c) of the parties' agreement now states:

> If an employee appears to be abusing sick leave, he/she may be requested to provide proof of illness and submit same to the elected official responsible for the employee and the Clerk's office in order to receive compensation for accumulated sick leave .

The Employer's proposed language is found in Appendix B of the pending DPW contract. It states:

> 5. Any utilization of sick leave other than due to medical emergency or sudden illness, shall be approved by the employee's immediate supervisor at least 24 hours in advance of utilization. If an employee is too ill, or due to sudden medical emergency, cannot report to work as scheduled, he shall notify his supervisor prior to the commencement of his scheduled work day.

As to sick leave payouts, the parties' current agreement is silent except to state in Article Five, Section 3(a) that "employees will not be compensated for [their earned and accumulated sick] days upon the termination of their employment with Orion Township."

The Employer's proposal, based on the pending DPW contract, provides employees with the option to cash out earned and accumulated sick leave at 50%, with the balance of such sick leave being placed annually in each employee's VEBA.

B. Recommendations

I recommend that the Employer's proposals be adopted.

As to sick leave approval, the parties may consider adding the following sentence after the first sentence of DPW 5 (quoted above): "Such approval shall not be unreasonably withheld."

C. Reasons

It is a common practice for employees to obtain supervisory approval for non-emergency sick leave. Where supervisory approval ordinarily is not required, there is a risk that some employees will treat paid sick leave as if it were paid vacation days. On this point, Article Five, Section 3 (a) of the parties current agreement already states that "medical/personal days are not to be considered additional vacation days."

As to cashing out earned and accumulated sick leave, the parties' current agreement does not contain a right to sick leave payouts, Therefore, allowing the option of a 50% cash-out is a valuable new contractual right for the employees.

The Employer's proposal also provides for building up VEBAs with accumulated sick leave. Appendix B of the pending DPW contract states:

> 6. At the end of the calendar year, the monetary value of any remaining medical leave days will be placed in each employee's Post Employment Health Plan (PEHP) [i.e., VEBA] .

In public employment with more than one bargaining unit, on many issues "pattern" bargaining is an accepted practice. The pending DPW contract contains the same cluster the Employer has proposed in the present case.

4. Smoke Free Policy

The Union proposes that the parties designate an outside smoking area which abuts a door, so that travel time to the area will be minimized and safety risks (such as being hit by a car or slipping on an ice patch) will be avoided.

The Employer proposes that its written Smoke Free Policy be adopted .

A. Findings of Fact

The Employer's proposed Smoke Free Policy states in part:

> DESIGNATED SMOKING AREA
>
> A free-standing sheltered outside area, will be designated as a Designated Smoking Area. Appropriate seating will be provided by the Township in these areas.

Smoking employees currently are assigned to a gazebo across the driveway from the Township Hall's main entrance for the purpose of smoking. It takes about 10 seconds to reach it from the main entrance.

One door on the lower level at the back of the Township Hall has been suggested. However, it cannot be used because (for security reasons) it cannot be opened from the outside. Thus, unless the smokers propped the door open, they would be locked out of the Township Hall every time they smoked there, and have to walk around the Township Hall in order to get back inside. Also, this outside entrance door does not have a covering (a problem in rain or snow).

B. Recommendation

I recommend that the Employer's proposed Smoke Free Policy be adopted.

C. Reasons

The Union's argument that having to cross the driveway to and from the gazebo will cut into smoking employees' break time lacks merit because of the short distance between the front entrance of the Township Hall and the gazebo.

As to safety concerns in walking between the front entrance of the Township Hall and the gazebo, no evidence was introduced at the hearing before me of any hazard peculiar to this driveway. I suppose if the driveway were icy, this would entail a minor risk to a smoking employee whose shoes had poor traction. However, this risk would be no greater than walking across the parking lot at the beginning and end of the work day.

5. Building Inspector Pay Level

The Employer proposes that in the future any newly hired building inspector certified to perform both residential and commercial inspections be hired at a higher pay level than a newly hired building inspector certified to perform only residential inspections.

The Union proposes that the Employer's proposal not be considered because it was not raised in previous negotiations between the parties. Alternatively, the Union proposes that the existing treatment of the building inspector classifications remain unchanged, *i.e.*, no pay differential based on whether inspector is certified to perform commercial inspections.

A. Findings of Fact

The Employer's current building inspector compensation format does not distinguish between inspectors who are certified only for residential inspections and inspectors who are certified for both residential and commercial inspections.

The Employer has proposed that the following section be added to Article Twelve of the parties' agreement:

> 4. A Building Inspector Commercial/Residential (Level 7) classification and a Building Inspector Residential (Level 6) classification will be instituted. The incumbents in the Building Inspector position will be grandfathered at the Level 7 rate of pay.

B. Recommendation

I recommend no change at this time.

C. Reasons

By not distinguishing pay levels between the two types of inspectors, the Employer will be more likely to hire a building inspector with dual certifications, which will give the Employer more flexibility than if a new building inspector were not certified for commercial inspections.

6. Step Increases

The Employer proposes that the current manner of determining step increases be maintained. The Employer is concerned that the Union is seeking to reduce the time for step increases by seeking to avoid the strict application of individual anniversary dates.

I am unsure that the Union is still contesting this issue. To be on the safe side, I will address it anyway.

A. Findings of Fact

Under the parties' current salary schedule, step increases in a classification are based on individual employee six-month and then one-year anniversary dates.

B. Recommendation

I recommend that the Employer's current practice be retained.

C. Reasons

The Union's position (as understood by the Employer) would shorten time served for the purpose of step increases in pay rates. For example, the Employer does not want a system where one hired in November would be treated as having been hired on July 1 for the purpose of determining his one year step increase.

Anniversary dates for step increases are the rule rather than the exception.

I see no reason to make the exception the rule in this case.

7. Out of Class Pay

The Union proposes that a new section 6 be added to Article Ten to provide for out of classification pay for the entire time when an employee is temporarily assigned to a higher classification for more than four hours.

The Employer does not have a proposal on this issue.

A. Findings of Fact

This issue is not contained in the Union's Petition for Fact Finding. However, the Union has represented that the parties settled a dispute on this issue with the understanding that they would address it in the current negotiations. So I will consider it.

B. Recommendation

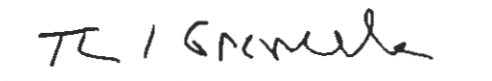
I recommend that the parties adopt the following language:

> Any employee temporarily assigned from his classification to another classification in the bargaining unit for more than four consecutive hours will be paid at the higher rate of the position to which the employee has been assigned, or of the position from which the employee has been transferred, for all time worked in the temporary assignment.

C. Reasons

The proposed language is common in collective bargaining agreements. It recognizes the management right to temporarily assign employees out of classification; and it provides an equitable mode of compensation for employees temporarily transferred to a higher classification.

Respectfully submitted,



Thomas L. Gravelle
Fact finder