STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACT FINDING

In The Matter of the Fact Finding Between:

DELTA MENOMINEE HEALTH
DEPARTMENT

MERC Case No. L03 H-5007

—and—

DELTA MENOMINEE DISTRICT HEALTH
DEPARTMENT EMPLOYEES CHAPTER OF
LOCAL #2755, affiliated with MICHIGAN
AFSCME COUNCIL 25, AFL-CIO

FACT FINDER'S REPORT:
FINDINGS OF FACT AND RECOMMENDATIONS

APPEARANCES:

For Delta Menominee Health Department:
David G. Stoker, Attorney
Dianne Mathews, Director of Environmental Health
Dr. John Petrasky, Medical Director, Health Officer
Debbie Leisner, Director of Finance and Budget
Lynn Woelffer, Program Accountant

For Michigan AFSCME Council 25:
Roger Smith, Staff Representative
Susan Cameron, Staff Representative
Sheryl Farr, Registered Nurse
Betty Andrews, Clerk
Patti Arsineau, Environmental Health Specialist

GENERAL BACKGROUND

The Public Health Department for Delta and Menominee Counties (hereinafter "the Employer") is a public entity created pursuant to MCL 333.2415, and as such, is a separate legal entity providing public health services within the counties of Delta and Menominee in the Upper Peninsula of Michigan. The Employer is governed by a Board of Health consisting of County Commissioners and appointees of County Commissioners from Delta and Menominee Counties. The Health Officer, in addition to performing public health medical functions is the Chief Executive Officer of the Department. The Employer provides environmental health services,

clinical services, substance abuse services and a variety of other local public health services to the residents of Delta and Menominee Counties.

As of October 2004, the Employer employed approximately 75 employees, 18 of which are represented for collective bargaining agreement purposes by the Delta Menominee District Health Department Employees Chapter of Local #2755, affiliated with Michigan AFSCME Council 25, AFL-CIO (hereinafter the "Union"). The Union represents a mixture of full-time and part-time professional and paraprofessional classifications, including registered and public health nurses; registered and unregistered environmental health specialists, a medical technician and clerical staff.

CURRENT BARGAINING HISTORY

The most recent collective bargaining agreement between the parties expired on December 31, 2003 and was extended on a day-to-day basis until April 21, 2004, when the Employer gave notice to the Union that the agreement had been terminated. Furthermore, it provided notice of its intent to discontinue the agreement to arbitrate grievances under the collective bargaining agreement. The parties continued to try to bargain a new agreement and on April 26, 2004, the Union filed a petition for fact finding stating, "The publication of any fact finding awards would be beneficial to both parties in resolving outstanding issues." In the Petition, the unresolved issues were identified by the Union as:

Outstanding Union Issues:
Health insurance
General Provisions
Wages

Outstanding Employer Issues
Definition of Employees
Grievance Procedure
Job Posting and Bidding
Holidays
Health Insurance
General Provisions
Work Location Assignment
Wages
Letter of Agreement

The Employer did not file an answer to the Petition. Pursuant to Section 25 of Article 176 of the Public Acts of 1976, the undersigned was appointed by the Michigan Employment Relations Commission to hold a hearing, determine the facts and to issue a report and recommendations on the matter. A preliminary prehearing conference was held by telephone conference call on October 15, 2004 and an extensive pre-hearing discussion ensued on January 12 and 13, 2005 wherein some issues were resolved between the parties and other issues arose. A hearing was held on January 13, 2005 at the Health Department in Escanaba, Michigan at which witnesses testified and exhibits were received. Both parties filed revised last best offers and post-hearing briefs. The record was declared closed on April 20, 2005, when the last of these was received by the Fact finder.

ISSUES IN DISPUTE

Currently, there are seven issues as identified by the Employer and six issues as identified by the Union still in dispute. The parties jointly submitted the collective bargaining agreements of several agreed upon comparables: Chippewa County and Michigan AFSCME Council 25; Dickinson/Iron District Health Department and Michigan AFSCME Council 25; Dickinson/Iron Health Department and Michigan Nurses Association; Marquette County Health Department and Michigan AFSCME Council 25; Western Upper Peninsula District Health Department and Michigan AFSCME Council 25; Western Upper Peninsula District Health Department and Michigan Nurses Association; Delta County Board of Commissions and Michigan AFSCME Council 25; Delta County Probate Court and Michigan AFSCME Council 25; 47th Circuit Court and Michigan AFSCME Council 25; 94th District Court and Employees of Delta County 94th District Court, Chapter of Local #2755, Michigan AFSCME Council 25; Delta County Board of Commissioners and Delta County Sheriff and Teamsters Local #328 and finally, the Menominee

County Board of Commissioners, et al. and Teamsters Local #328. The Union also proposed the collective bargaining agreement between OSF St. Francis Hospital and Michigan AFSCME Council 25. Both parties agreed that only Upper Peninsula units would be comparable. This Report will utilize the agreed-upon employers when considering the parties' positions.

Issue 1(a): Regular Part-Time Employee Benefits: Article 7-Definition of Employees

The Employer wants to modify Article 7 so that regular part-time employees hired after January 1, 2005 would not be eligible for sick leave, holidays and vacation benefits under the collective bargaining agreement, but would instead, receive an additional ten percent in wages in lieu of paid time off benefits. For employees hired prior to January 1, 2005, the Employer proposes that the incentive in lieu of benefits be raised from an additional seven percent in wages to ten percent. The Employer argues that its proposal is primarily operational, rather than economic, because scheduling time off for part-time employees is disruptive and the Employer may actually experience an increase in budgeted costs under its proposal. The Union wants the language to remain the same so that regular part-time employees may elect whether to receive the additional compensation or pro-rated paid time off benefits. The Union argues that among the comparables, each employer provides part-time employees with some form of pro-rated benefits. The Union argues that the Employer's true purpose is to eliminate the Union by eliminating employees' incentive to be represented.

The collective bargaining agreements of the comparable employers submitted by the parties consistently provide pro-rated benefits to regular part-time employees. Allowing employees to choose between premium pay and additional paid time off avoids a one size fits all approach to fringe benefits and the Employer has not shown any evidence that this language has had an undue adverse impact upon the operation of the Health Department. Furthermore, as the

Employer predicts that its proposal may actually cost *more* than the current language and the employees would seem to prefer to retain the option to choose, insufficient reason for change has been shown.

Recommendation: No change in this language: Regular part-time employees should retain the option to elect premium pay of 7% of wages in lieu of additional paid time off.

Issue 1(b): Regular Part-Time Employee Benefits: Article 22-Sick Leave

In accord with its proposal regarding limitation of paid time off benefits for regular part-time employees, the Employer has also proposed that Article 22 be modified to reflect that only regular part-time employees hired prior to January 1, 2005 would accumulate sick leave. The Union proposes no change in Article 22, so that regular part-time employees can elect to accumulate sick leave at the current rate or receive a premium of 7% of wages.

The Employer argues that giving part-time employees additional paid time off is disruptive to the scheduling process and that its proposal gives newly hired employees an additional 10% of wages. It argues that because the Union has asked that union members' health insurance benefit levels be raised to mirror those of non-union employees, other benefits should be equalized as well. The Union argues that all regular part-time employees should have the option to elect either the premium pay or the pro-rated paid time off.

As indicated above, a review of the comparable collective bargaining agreements show that nearly all the employers provide pro-rated sick leave benefits for their regular part-time employees. Eliminating this benefit for those who choose it seems especially harsh given that employees cannot predict when illness will occur so it is irrelevant that they do not work every day.

Recommendation: No change in Article 22. Regular part-time employees should continue to accumulate sick leave on a pro-rata basis.

Issue 1(c): Regular Part-Time Employee Benefits: Article 24-Holidays

The Employer proposes that Article 24 be modified so that only regular part-time employees hired prior to January 1, 2005 would be eligible for holiday pay if the employee does not work the holiday, at the rate of three hours on Good Friday or four hours for the other holidays. The Employer further proposes that only employees hired prior to January 1, 2005 be paid time and one-half the regular rate of pay for hours worked on a holiday plus holiday pay. The Employer also proposed elimination of the reference to probationary employees in this Article. The Union did not propose a change in the current language.

The Employer argues that its proposal would eliminate differences between union and non-union employees.

A review of the comparable employers shows that most, if not all, provide some sort of pro-rated holiday pay for regular part-time employees. The Employer's argument that eliminating this benefit would eliminate difference between union and non-union employees is not persuasive in light of the comparables.

Recommendation: No change in Article 24. Regular part-time employees should continue to receive pro-rated holiday pay as set forth in the expired agreement.

Issue 1(d): Regular Part-Time Employee Benefits: Article 25-Vacation

The Employer proposes that Article 25 be modified to limit the accumulation of vacation benefits to regular part-time employees hired prior to January 1, 2005. Again, the Union proposed no change in the current language.

The Employer argues that scheduling additional time off for part-time employees decreases productivity by reducing the hours that part-time staff is available. It argues that its additional wage incentive may actually result in an increase in costs. The Employer argues that it provides flexibility in scheduling non-union employees which allows for scheduling of vacations or addressing emergencies and would extend the same flexibility to part-time union employees. The Union argued that regular part-time employees are understandably concerned with whether they will be able to take time off when they need it. Finally, the Union argues, as noted above, the comparable employers provide pro-rated benefits to regular part-time employees.

Most, but not all, of the comparable employers offer annual leave or vacation time to regular part-time employees on a pro-rata basis. In some instances, the leave accrues at the same rate for full-time and regular part-time employees. Although the Employer allows part-time employees to identify days they would like off, there is a vast difference between scheduled days off without pay and an annual leave with pay. Sufficient reason has not been shown for eliminating this benefit for regular part-time employees.

Recommendation: No change in Article 25. Regular part-time employees continue to accrue vacation on a pro-rata basis.

Issue 2: Special Part-Time Employees: Article 7-Definition of Employees

The Employer proposes that Article 7 be modified to raise the limitation on the number of hours a special part-time employee may work to fifty hours per two week pay period. It also proposes to add language which would calculate the hours worked by bargaining unit employees over a three year period. The Union proposes no change in the current language.

The Employer argues that this proposal is operational, rather than economic in nature. Allowing special part-time employees to work up to fifty hours per two week pay period would give the clerical supervisor more flexibility in scheduling to fill in for regular employee absences and to address fluctuating workloads associated with the health department services. The Union argues that if the number of hours is increased, special part-time employees will be used more than they already are to displace current or future bargaining unit members. The Employer responds that current language contains safeguards to prohibit such a practice.

The Union is very concerned that special part-time employees are being used with increasing frequency to perform work previously done by members of its bargaining unit. Although the Employer would no doubt be served by allowing more flexibility in scheduling hours, this convenience does not outweigh the Union's perception that allowing this provision would further erode the bargaining unit. It is doubtful that an agreement containing this provision would be ratified by the Union's members.

Recommendation: No change in this language; the current provision should be retained.

Issue 3: Sick Leave Payout/Personal Leave: Article 22-Sick Leave

The Employer proposes to modify Article 22 so that beginning January 1, 2007 all bargaining unit employees would be paid for no more than one-half of their accumulated sick leave hours, up to the maximum levels set out in the collective bargaining agreement. In that case, upon separation from employment, each regular full-time employee would be paid for up to 360 hours of accumulated and unused sick leave and each regular part-time employee would be paid for up to 180 hours of accumulated and unused sick leave. For an employee who has accumulated the maximum hours allowed, these caps are identical, but where an employee has

fewer than the maximum hours, the current language would result in a larger payout. The Union did not make a proposal to change Article 22.

In its last best offer, the Employer also proposed, for the first time, that Article 22 be modified so that employees with accumulated sick leave will be permitted to convert accumulated sick leave to personal leave under the same guidelines as offered to the non-union and administrative employees. The Union did not make an offer regarding this change, as it was a new proposal.

The Employer argues that these proposals would make the sick leave payout system the same for its union and non-union employees as well as extend the option of converting sick leave to personal leave to bargaining unit members. The Employer argues that all of its proposals are similar in that they would equalize benefits for union and non-union employees.

The Employer raises a legitimate concern regarding the dissimilar payout on accumulated sick leave between union and non-union employees. Furthermore, as budgets are tight, the Employer is appropriately looking for cost-saving measures. The modification will have a relatively small impact upon each bargaining unit member, but the Employer will experience measurable savings. Gradually implementing the Employer's proposal over the life of the collective bargaining agreement would help to equalize the benefits between the Union and non-union employees without immediately taking away a financial benefit.

Recommendation: Taking these competing interests into account, it is recommended that the Employer's proposal be adopted.

Issue 4: Holidays: Article 24-Holidays

The Employer proposes to modify Article 24 to assure that union and non-union employees observe holidays in the same manner. The only change would be to alter how the

Christmas Eve and New Years' Eve holidays are treated, so that when Christmas and New Years' Day fall on a Saturday, Sunday or Monday, the preceding days are not considered holidays. The Union proposes no change in the current language.

Again, the Employer's rationale is to equalize benefits for union and non-union benefits, especially as it difficult to have employees who work side-by-side observing different holiday practices.

The Employer's point is well-taken having different recognized holidays for employees who work side-by-side makes little sense from a management perspective. The impact of changing how Christmas Eve and New Years' Eve will be treated is relatively minor, but will simplify scheduling and may ward off resentment between employee groups. However, if the Employer's proposal were implemented immediately, it would impact how those holidays were treated in 2006-a relatively short time to adapt to the new schedule.

Recommendation: It is recommended that the Employer's proposal be adopted, effective January 1, 2007.

Issue 5: Health Insurance: Article 26-Hospitalization and Medical Coverage

The Employer proposes to modify Article 26 so that the fixed employer contribution toward health insurance premium would be increased to 75% in the first year of the contract, to 80% for 2006 and would be the same as is given to non-union employees in 2007. The Employer's proposal would allow bargaining unit employees to elect either their current benefit plan or the one currently offered to non-union employees until 2007, at which point all employees would participate in the same plan. The employees who chose the non-union plan would receive the same dental plan as non-union employees; employees who stayed with the current Union plan could elect to add the plan at their own expense. Thereafter, the Employer proposes that the

issue be eliminated from collective bargaining and that the employees receive the non-union plan. The Employer further proposes to increase the payment for waiver of health insurance benefits to $100 per month, until 2007, when it would become the same as is offered to non-union employees.

The Union proposes that Article 26 be modified so that in 2005 and 2006, the Employer would pay 80% of the monthly premium and in 2007, the Employer would pay 90% of the premium. The Union proposes that bargaining unit members be offered the option of taking the current bargaining unit plan or the same medical plan that non-union employees receive, including vision and dental insurance. The Union proposes that the waiver for electing not to take the health plan be $125 in each year of the collective bargaining agreement and that the plan will remain the same for the life of the contract.

The Employer argues that throughout negotiations the Union asserted that it wanted its members to have the same insurance as the non-union employees, and now that the Employer has made a proposal which will equalize benefits over the life of the collective bargaining agreement, the Union now seeks to increase the Employer contribution without balancing the benefits. The Employer argues that it has offered to *increase* its contributions, an unusual proposal in the current health insurance climate.

The Union argues that it changed its proposal because it was not willing to give the Employer the unfettered discretion to determine what health insurance plan or Employer contribution the bargaining unit members would receive beginning in the third year of the collective bargaining agreement and carried forward. The Union argues that the agreed to scheme should only be changed through the collective bargaining process.

As with many negotiations, the issue of employer-paid health insurance benefits is a major sticking point between the parties. The unique issue here is that the Union employees seek to have the same benefit as is provided to the non-union employees. The number of Union employees is relatively small compared to the number of non-union employees; fewer still of those elect to take the health care coverage. Furthermore, the Union employees are currently receiving a much smaller benefit when compared to the non-union employees (internal comparable) and with employees of comparable external employers. An agreement would not likely be ratified if the Union waived its right to bargain about this important benefit.

The Union's proposal goes too far in that it fails to recognize that the Employer has proposed a significant gain in the health insurance benefit in a climate where most employers are reducing or eliminating their contributions toward health insurance costs. Given the increase in the Employer's costs with respect to health insurance, it would be inequitable to recommend that the monthly waiver also be increased to $125 per month.

Recommendation: It is recommended that the Employer's proposal for Article 26 be adopted, with the exception of the provision that the Union waive its right to bargain in the future regarding this issue.

Issue 6: Wages: Article 32-Compensation and Appendix A-Wage Scales

The Employer proposes that Article 32 be modified to reflect one rate of pay for each classification as set forth below. The Employer also proposes a one-time lump sum payment of $600 to all Union employees upon ratification of the collective bargaining agreement in lieu of a retroactive wage increase. The Union proposes that Article 32 be modified so that each employee would receive a ratification bonus of 3% of wages paid from 1/1/04 through 12/31/04 in lieu of a retroactive wage increase.

The Employer and Union propose prospective wage schedules as follows:

Clerical employees hired after January 1, 2005 (current start rate is $9.84/hr):

	Union	Employer
1/1/05	2%	$9.10/hr
1/1/06	2%	$9.19/hr (1%)
1/1/07	2%	$9.28/hr (1%)

Clerical employees hired prior to January 1, 2005 (current top of the scale is $11.50/hr):

	Union	Employer
1/1/05	($11.73) 2%	$11.62/hr (1%)
1/1/06	($11.96) 2%	$11.74/hr (1%)
1/1/07	($12.20) 2%	$11.86/hr (1%)

Medical Technician (current top of the scale is $11.57/hr):

	Union	Employer
1/1/05	($12.03) 4%	$12.03/hr (4%)
1/1/06	($12.27) 2%	$12.15/hr (1%)
1/1/07	($12.51) 2%	$12.27/hr (1%)

Registered Nurse (current top of the scale is $16.81/hr):

	Union	Employer
1/1/05	($17.48/hr) 4%	$17.48/hr (4%)
1/1/06	($17.82/hr) 2%	$17.65/hr (1%)
1/1/07	($18.18/hr) 2%	$17.83/hr (1%)

Public Health Nurse (current top of the scale is $18.70/hr):

	Union	Employer
1/1/05	($19.16/hr) 2.5%	$19.07/hr (2%)
1/1/06	($16.65/hr) 2.5%	$19.26/hr (1%)
1/1/07	($20.14/hr) 2.5%	$19.45/hr (1%)

Non-registered Environmental Health Specialist (current top of the scale is $16.37/hr):

	Union	Employer
1/1/05	($16.78/hr) 2.5%	$16.70/hr (2%)
1/1/06	($17.20/hr) 2.5%	$16.87/hr (1%)
1/1/07	($17.63/hr) 2.5%	$17.04/hr (1%)

Registered Environmental Health Specialist (current top of the scale is $19.05/hr):

	Union	Employer
1/1/05	($19.53/hr) 2.5%	$19.43/hr (2%)
1/1/06	($20.02/hr) 2.5%	$19.62/hr (1%)
1/1/07	($20.52/hr) 2.5%	$19.82/hr (1%)

The Employer argues that in order to provide parity with respect to the health insurance benefits of union and non-union employees, it must limit its proposal with respect to wages. Furthermore, the Employer argues that there are significant differences between the classifications with respect to the comparable employers. Whereas the registered nurses and the medical technician need additional compensation to remain competitive in the relevant labor market, the clerical/typists are paid significantly more than the average and median wage rate within Delta County. The Employer argues that under the circumstances, it in inappropriate to consider across the board wage increases for all classifications. The Employer proposes to "grandfather" current clerical employees at their rate with an increase, but to hire new clerical employees at a rate more consistent with the local labor market. The Employer argues that the Union's proposal provides for increases in excess of the cost of living and, coupled with the health insurance proposal, is simply unrealistic. Finally, the Employer argues that in many cases supervisors are earning wages just slightly higher than those they supervise and that some nursing supervisors make less than their subordinates.

The Union argues that the wage increases it proposes are fair when compared with the wage increases received by administrative and non-union employees over the past several years, who already receive health insurance benefits paid for by the Employer.

Taking into account the diversity of the classifications represented by the Union and their relative positions vis-à-vis similar employee classifications in the surrounding area, it is clear that an across-the-board wage increase is inappropriate. As such, neither party has proposed a single wage increase for all employee classifications. However, this Report recommends a significant increase in the health insurance benefit offered to Union employees. Therefore, the Employer's wage proposal is the more equitable in the overall financial picture. Even if the non-

union employees received a greater percentage increase as the Union argues, the actual wage rates proposed by the Employer are more comparable to wage rates for similar classifications both internally and externally. However, neither party proposes a retroactive wage increase and instead asks that employees be given a one time lump sum payment which would not increase the base upon which future wage increases would be based. Given the length of time since the Union employees received a wage increase, the Union's proposal of a single payment of 3% of 2004 wages as a ratification bonus is the more equitable one, especially as it distributes the bonus across the bargaining unit proportionate to each employee's compensation.

Recommendation: It is recommended that the Employer's wage proposal be adopted except that the employees receive the signing bonus proposed by the Union.

Issue 7: General Provisions: Article 35-General Provisions

The Employer proposes that Article 35, Section 15 be modified to exclude the provision which reads, "however, no bargaining unit member will be laid off due to supervisor/non-union staff performing any bargaining unit work." The Union proposes that Article 35, Section 15 be modified to read: "It is expressly recognized by the parties that due to the nature of the Employer's operation, supervisors and non-union staff may only perform bargaining unit work only on a short term, temporary, emergency day-to-day basis to cover short notice sick call-in or vacation. Supervisor or non-union staff will not displace, replace, reduce or erode bargaining unit employees or positions or be used in any way during a layoff." The Union's proposal defines bargaining unit work as any work performed by any classification covered by the collective bargaining agreement and certified by Michigan Employment Relations Commission.

The Employer argues the practice in the health department has been for supervisors, union employees and non-union employees to perform identical functions on a routine basis and

that there is little, if any, "exclusive bargaining unit work" to be protected. The Employer denies that it is attempting to erode the bargaining unit and argues that over the last ten years, the number of union members it employs has remained fairly uniform.[1] The Employer argues that the current language may not remain because the current economic situation may require the layoff of some union members with their duties being assumed by supervisory staff.

The Union argues that the Employer's true intention is to erode the bargaining unit to the point of elimination by replacing union members with non-union employees.

The Employer further proposes the addition of a Section 16 which would read: "Work Location Assignments. The Employer has the right to make work location assignments within the District based on the operational needs of the Department as determined by the Employer." The Union proposes that this language not be added to the collective bargaining agreement.

With respect to the proposal to add Section 16, the Employer argues that it already has the right to make work location assignments pursuant to Article 6, Management Rights, but that the current economic situation may demand that the Employer have greater flexibility to assign employees where the work is within the District. Whereas the Union admits that the Employer has the right to assign work locations on a temporary basis in an emergency, the Employer argues that it must have the right to permanently assign employees where the need exists.

With respect to Section 15, it is clear that neither party will accept the others' proposal as the Union already perceives that bargaining unit positions are being slowly eroded away under the current language and the Employer will not likely further restrict its right to manage its operations.

[1] Employer Exhibit 41 provides that union membership has varied from a low of 15 in 1994, to a high of 20 in 1997 and 1998.

With respect to Section 16, the Employer admits it already has the right to make these kinds of assignments under the current language, so the need for the change is unclear, especially where the Union objects so vehemently to any expansion of management rights.

Recommendation: No change in Article 35-current language should be retained.

Issue 8: Resolution of Grievance

The Union asserts that a full-time union position was vacated and the Employer posted it as a part-time Union position and filled the remaining hours with a special part-time (non-union) employee. The Union proposes that the fact finder make a recommendation that the Employer re-post the vacated clerical position as a full-time union position and further recommend that in the future, the Employer post any such vacancy as a union position. The Employer asserts that the grievance is not properly before the Fact finder, and proposes, in the alternative, that the grievance be denied. The Employer argues that there was no violation of the terms of the expired collective bargaining agreement because no union member was laid off and the union employee who left was not replaced with a non-union employee.

It is not clear that this matter is properly before the Fact finder, as the original petition does not identify the grievance as an outstanding issue and it does not appear that the parties made any attempt to resolve this issue through mediation. During the prehearing conference, it became apparent that resolution of this grievance would require that both parties be willing to address the operation of the posting language, which is not at issue here.

Recommendation: It is recommended that this matter remain open and that the parties utilize the full panoply of resolution mechanisms available in order to arrive at a mutually satisfactory settlement of the issue. At this time, it would be premature to make any other recommendation.

May 12, 2005

Kathryn A. VanDagens