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

FACT FINDING

In The Matter of the Fact Finding Between:

LIVINGSTON COUNTY ROAD
COMMISSION

—and—

MERC Case No. L04 H-8013
AFSCME Log #L1641-1071-04

MICHIGAN AFSCME COUNCIL 25, AFL-
CIO, LOCAL 1071

**FACT FINDER'S REPORT:
FINDINGS OF FACT AND RECOMMENDATIONS**

APPEARANCES:

For Livingston County Road Commission:

Michael R. Kluck, Attorney

Michael Craine, Managing Director

For Michigan AFSCME Council 25:

Donald Gardner, Staff Representative

GENERAL BACKGROUND

The Livingston County Road Commission (hereinafter "the Road Commission" or "the Employer") maintains the roads, bridges, overpasses and interstate highways in Livingston County. Livingston County covers an area of 568 square miles with a population of 156,951 in 2000, up 35.7% from 1990. Michigan Council #25, AFSCME, Local #1071 (hereinafter "AFSCME" or "the Union") represents approximately fifty regular employees of the Road Commission, excluding supervisory, managerial, confidential and seasonal or temporary employees.

The most recent collective bargaining agreement between the parties expired on September 30, 2004 and was extended on a day-to-day basis until December 28, 2004. The parties began bargaining on September 15, 2004 and met for six bargaining sessions. On November 3, 2004, the parties sought the assistance of a mediator and held their first mediation session on December 6, 2004. The Union filed for fact finding on December 16, 2004 and the Employer answered the petition on December 23, 2004. A second mediation session was held on December 28, 2004.

The petition for fact finding filed by the Union states, "Petitioner believes publication of and public opinion about the demands made by the employer will assist the parties in resolving the dispute." The parties agree that at the time of the fact finding hearing, the outstanding issues are:

Article 18-Hours of Work and Overtime
Article 20-Insurance and Retirement
Article 29-Cost of Living
Article 32-Duration
Appendix B-Wages

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 May 3, 2005. A hearing was held on July 11, 2005 at the Road Commission's office in Howell, Michigan at which witnesses testified and fifty-two exhibits were received. Both parties filed post-hearing briefs. The record was declared closed on August 23, 2005, when the last of these was received by the fact finder.

ISSUES IN DISPUTE

Currently, there are five issues identified by the parties as still in dispute. All other remaining issues have been resolved by tentative agreement and are hereby incorporated into this recommendation. The parties were unable to agree on which county road commissions are comparable to Livingston County. The Employer proposes as comparable the collective bargaining agreements reached between Jackson County Road Commission and Michigan AFSCME Council 25 and Kalamazoo County Road Commission and Teamsters Local 214. The Union proposes as comparable the collective bargaining agreements between Ingham County Road Commission and Michigan AFSCME Council 25, St. Clair County Road Commission and SEIU Local 516-M and Washtenaw County Road Commission and Teamsters Local 214.

The majority of the Employer's revenue is comes from the Michigan Transportation Fund ("MTF"), which is primarily funded by a tax on gasoline and diesel fuel and license and registration fees. The Employer contends that its proposed comparables should be considered because they have MTF revenues very close to those received by the Employer. The Union contends that its proposed comparables should be considered because the populations of those counties are substantially similar to Livingston County and it is reasonable to believe that the amount received as a result of license and registration fees would be related to the population in each county. The Union also contends that Washtenaw County is comparable because its funding per mile of road is similar to Livingston County's.

The primary source of funding for all of the road commissions is the MTF. As pointed out by the Employer, Jackson County's and Kalamazoo County's MTF revenues are 100% and 114% of Livingston County's revenues, respectively. Ingham County's MTF revenues are 118% of Livingston County's, but its population is decreasing. Assuming population and license and

registration revenues are related, as theorized by the Union, the revenues going forward may be quite similar. Washtenaw County's MTF revenues were 149% of the Employer's and St. Clair County's MTF revenues were 96% of the Employer's, despite a higher population. Ingham, Washtenaw and Jackson counties all border Livingston County whereas Kalamazoo and St. Clair Counties are more removed. Therefore, Jackson County, Kalamazoo County and Ingham County will be used as the primary comparables with limited reference to St. Clair County and Washtenaw County.

Article 18: Hours of Work and Overtime, Section 3-Overtime

The Employer wants to modify subsection (g) of Article 18, Section 3 and add a new section (k) so that an employee who misses an overtime opportunity because he is not called by the Employer will be placed at the top of the overtime call-in list until he has been offered no less than the original number of hours missed. The Employer proposes this contract remedy as the sole relief for an employee who is denied an overtime opportunity. The Employer argues that more than half the grievances filed during the last collective bargaining agreement dealt with denied overtime opportunities and that the Board of County Road Commissioners cannot support a collective bargaining agreement which allows for payment to an employee who did not work overtime because of a missed overtime opportunity. The Employer points out that the Kalamazoo Road Commission collective bargaining agreement provides that there will no pay for time not actually worked in cases of a lost overtime opportunity.

The Union wants the language to remain the same so that an employee who misses an overtime opportunity can file a grievance and request monetary relief. The Union contends that the scheme proposed by the Employer would negatively impact only the "number two" person on the overtime list and would allow the Employer to ignore the seniority-based call list with

impunity. The Union contends that the Employer has failed to show a change in the language is necessary, because in the past three years, not a single grievance regarding overtime has gone to arbitration. The Union also points out that the comparable collective bargaining agreements allow aggrieved employees to file a grievance and to seek monetary relief.

The majority of the comparables do not limit the employees' rights to resort to the grievance procedure in this regard. Employees who assert that they have been improperly denied an overtime opportunity should not be precluded from grieving the alleged violation and seeking monetary relief when appropriate, especially where the parties have successfully negotiated resolution for this problem in the past.

Recommendation: It is recommended that this proposal not be adopted.

Article 20: Insurance and Retirement- Section 1(a): Insurance Premiums for Retirees

The Employer proposes that Article 20 be modified so that an employee retiring after October 1, 2004 would receive the same coverage and Employer contributions as active employees, but in no event would retiree health benefits be greater than those provided to active employees. The Employer asserts that its proposal makes economic sense by controlling the cost of retiree insurance and that it is consistent with its underwriter's policy that benefits for retirees not exceed those for active employees. The parties have already reached agreement with respect to a change in the benefits for active employees. The Employer points out that Jackson County and Ingham County provide retirees with benefit levels identical to active employees.

The Union proposes no change in this portion of the contract clause except to include the prior tentative agreement regarding benefits for active employees. The Union asserts that it does not represent any employees who retired after October 1, 2004 but before the ratification of the collective bargaining agreement and, therefore, does not have the authority to bargain on their

behalf. Additionally, the Union asserts that future retirees should be entitled to retain the benefits in place at the time of their retirement, with respect to both the benefit level and the amount of the Employer's contribution. The Union argues that the language in the comparable collective bargaining agreements has the same meaning as in the parties' current agreement-that an employee who retires retains the same benefit until age 65 that the active employees at the time of the retiree's retirement had. The Union argues that the comparable collective bargaining agreements do not allow an employer to shift the financial responsibility after retirement and so the Employer's proposal to do this must fail.

As indicated above, a review of the comparable collective bargaining agreements show that nearly all the employers provide retiree health benefits which are the same as active employees' benefits. It would strain the reading of the comparable contracts to conclude that those retirees' benefits would remain constant irrespective of changes in benefits for active employees, as the Union suggests. However, the Union's point is well-taken regarding change of benefits for those who have already retired.

Recommendation: It is recommended that the parties adopt the Employer's proposal, but only for employees who retire after the date of the signing of the agreement.

Article 29: Cost of Living

The Employer proposes that Article 29 be deleted from the collective bargaining agreement and effective the first full payroll period after the new contract is signed, the employees receive a 20¢ per hour roll-in. The Union proposes no change in the current language.

The Employer argues that the COLA provision is outdated as the average wage increase for the employees in the bargaining unit over the life of the expired contract was 12.75% when

the CPI change for the same period was 7%. The Employer contends that a COLA increase on top of the increased cost of health insurance benefits and the wage increases is too much for it to bear. The Employer contends that the wage increases and the health insurance costs are added together, the employees received an equivalent raise of 24.02% over the life of the expired contract, without taking into account the COLA paid for hours worked. Finally, the Employer points out that none of the proposed comparables provide for COLA increases.

The Union argues that the Employer is trying to take away a benefit the employees already have and is not willing to fairly compensate the members for the take-away. The Union argues that in 2001 the Employer paid an average COLA of 33¢ an hour to employee and in 2004 it paid an average COLA of 23¢ an hour and so its offer of only 20¢ per hour does not adequately compensate the employees for giving up this benefit. Furthermore, the Union argues that the Employer has offered the 20¢ wage increase in the first year of the contract as the sole wage increase, so it is trying to have it both ways.

Not one of the five collective bargaining agreements proposed as comparable by either party contains a provision for payment of COLA. Nonetheless, it is a benefit that has been enjoyed by the Union's members in the past. As shown in the Employer's exhibits, it made COLA payments to employees of \$2,981.93 in 2002, \$14,257.53 in 2003 and \$22,683.99 in 2004. The employees must be adequately compensated if this benefit is to be eliminated.

Recommendation: It is recommended that the parties adopt the Employer's proposal to eliminate this proposal going forward, but effective the first full payroll period after signing, roll in 23¢ per hour for each employee.

Article 32: Duration

The Employer proposes a three year contract with no retroactivity. The Union proposes a three year contract with a retroactive effective date of October 1, 2004.

The Employer argues that the collective bargaining agreement should not be made retroactive because the Union's members have received COLA payments during the bargaining process and the Employer has had to continue the higher cost health insurance. The Employer contends that neither Jackson nor Kalamazoo County Road Commissions granted retroactive agreements. The Employer implies that a retroactive agreement would reduce the incentive for the Union to reach a quick settlement of the outstanding issues.

The Union contends that its members should not be denied two years of wage increases because the Employer insists upon eliminating the COLA payment and incorporating its proposal regarding Article 18 in the collective bargaining agreement. The Union contends that, with the arguable exception of wages, all the remaining proposals are the Employer's, so the delay in reaching agreement cannot be solely the fault of the Union. The Union argues that the road commission employees in the comparable collective bargaining agreements received a wage increase in 2004 and these employees should, as well.

While it may be true that the employees in the comparable bargaining units received wages in 2004, from a review of the collective bargaining agreements, it does not appear those wage increases were the result of an agreement to make their contract retroactive. Furthermore, the employees have continued to receive increases in the form of COLA and the more expensive health care coverage.

Recommendation: It is recommended that the contract be effective upon signing by the parties.

Appendix B: Wages

The Employer proposes a 20¢ per hour increase for all employees in the bargaining unit upon signing of the collective bargaining agreement, the equivalent of about 1% of wages. In the second and third years of the contract, the Employer proposes an annual wage increase of 25¢ per hour or 35¢ per hour if the cost of the dental insurance increases less than 6% from the previous year's rate. The Union proposes that the employees be paid the COLA increase and receive annual 3% across the board wage increases effective October 1, 2004, and in the second and third years of the contract.

The Employer argues that the bargaining unit employees in Livingston County have been generously compensated in the past; their raises have outpaced the CPI by 6% without taking into account the increase in health insurance costs and COLA. The Employer contends that even with the 20¢ wage increase, the Livingston County Road Commission employees would be compensated at an hourly rate well in excess of that paid to Jackson or Kalamazoo County employees. The Employer contends that, with the exception of mechanics, its proposed rates even exceed the average rate paid to Heavy Equipment Operators and Truck Drivers in the comparables proposed by the Union. In contrast, the Employer argues, the Union's proposals exceed the average of its own proposed comparables. The Employer contends that the 2.5% wage increases in the comparable contracts were combined with concessions in health insurance.

The Union contends that because the 20¢ per hour to be paid upon signing in the first year of the contract proposed by the Employer is in lieu of the COLA payment, the Employer is in effect offering a 0% wage increase in the first year and offering 1.3% or 1.8% in the second and third year of the contract while the comparables' wage increases were between 2.5% and

3%. The Union further points out that because the parties have not yet negotiated an agreement and the Employer is proposing no retroactivity, it is actually proposing 0% for 2004 and 2005.

The Employer has presented evidence that the MTF is not growing as fast as initially projected, so counties were urged to take into account the reduced growth rate when planning. The projected MTF revenue for fiscal year 2006 is projected to below revenue for fiscal year 2004. At the same time, the percentage change in the CPI for 2004 was 3.2% and is projected as 1.9% for 2005. Although the employees in the bargaining unit have been well-compensated in the past, a proposed settlement in which they fall behind would not be acceptable to the Union's membership, especially as Livingston County continues to grow at a pace much faster than its neighboring counties, including Ingham, Jackson and Washtenaw. Furthermore, although it is not at issue in the fact finding, the parties have reached tentative agreement on a health insurance plan which will provide significant savings to the Employer. In a related matter, the Employer has proposed to increase the wages if the health and dental insurance costs do not increase by more than 6%, in recognition of the relationship between these costs for the Employer..

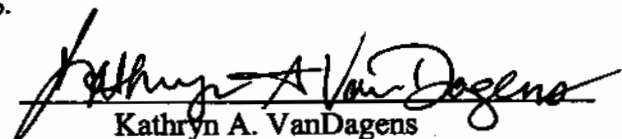
Recommendation: It is recommended that upon signing of the agreement, that the parties adopt the Employer's proposal of increasing the wage rate if insurance costs are kept low, but the rates should be more reflective of the increase in the CPI and well as the employees' understandable desire not to fall behind the neighboring counties. Specifically, the following is recommended:

Upon signing of the agreement: COLA payment as described above

Upon signing of the agreement: 2% across the board; 2.5% across the board if health insurance and dental do not increase by more than 6%.

Effective October 1, 2006: 2% across the board; 2.5% across the board if health insurance and dental do not increase by more than 6%.

October 7, 2005


Kathryn A. VanDagens