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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING BETWEEN:

ARENAC COUNTY ROAD COMMISSION,

EMPLOYER,

and

MERC Case No. L 02 F-4007

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 214,

UNION.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Hearing Location: Omer, Michigan

Hearing Date: March 26, 2003

Appearance:

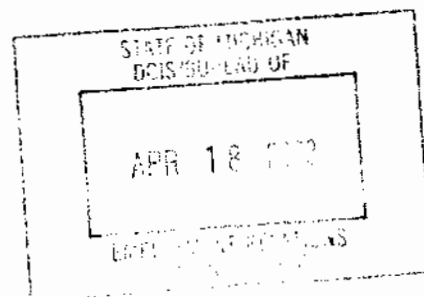
For the Employer: Darrell Jacobs
Arenac County Road Commission Attorney

For the Union: Les Barrett
Business Representative

Also Present: Darren Pionk
ACRC Engineer Manager

Randy Gates
ACRC Foreman

Debbie Groat
ACRC Stock Clerk



INTRODUCTION AND BACKGROUND

The Collective Bargaining Agreement between the Arenac County Road Commission and Teamsters Local 214 was set to expire on August 18, 2002. One bargaining session was held on August 7, 2002, with a second negotiating session on September 30, 2002, with the assistance of State Mediator, James Spaulding.

As the evidence was introduced at the Fact Finding Hearing, the contract that was being negotiated between employer and union was a significantly different contract from the previous contract. First of all, the contract as being negotiated would call for a change in the Blue Cross Blue Shield Medical and Hospitalization Plan from a traditional Blue Cross Plan to a Community Blue PPO-1, which both sides agree would have and will ultimately cost bargaining unit members an increased cost for payment of services. Secondly, the contract as being negotiated between the parties contemplated a change, over the term of the contract, for pension benefit purposes, by which, during the latter terms of the contract, the employees would begin contributing to their pension fund, when previously the fund had been contributed to only by the employer. In addition, the contract as being negotiated contemplated a new dental and optical coverage where none had existed in the past. As the parties indicated, most of the issues concerning a new contract were "in effect" agreed to as of September 30, 2002, (including wages and the PPO-1 Blue Cross Plan) except for the following three items:

1. Drug Rider;
2. Pension; and
3. On-Call

It is undisputed that on October 22, 2002 the union submitted a ratified settlement offer, which was dated October 16, 2002. Pursuant to this ratified settlement offer, the new contract was to run for five (5) years, effective August 18, 2002 to August 18, 2007. Significantly, the "offer" indicated as to wages: Retroactive to August 18, 2002. Further, as to the Drug Rider, the following was set forth:

OPTION A:

- All years - \$5 / \$10 Drug Rider

OPTION B:

- First year - \$5 / \$10 Drug Rider
- Second, Third, Fourth and Fifth years - \$10 / \$20 Drug Rider

As the union representative testified at the hearing, the Drug Rider "Options" as set forth in the offer were a mistake. According to the union representative, the membership had actually ratified Option A and, therefore, Option B should not have been included in the offer, but had been included by inadvertent typographical error. Unfortunately for the parties, that typographical error was not found until after the offer had been sent out and Option B was accepted by the employer. Immediately upon discovering the error, the union sent out a letter on October 24, 2002, advising the employer of the error on the offer of settlement. The parties could not resolve the issue of the Drug Rider at that point (although all other items of the proposed contract were agreed to) and the union filed a Petition For Fact Finding on November 11, 2002.

The Petition For Fact Finding, as submitted by the union, indicated that there was only one disputed issue for the Fact Finder to review and make recommendations: Drug Rider. While the employer did not file a written response to the Petition, at the pre-hearing conference by phone between the parties and the Fact Finder on February 6, 2003, the employer indicated that a second issue was to be addressed at the Fact Finding Hearing and that was the question of Retroactivity of the Contract (Wages).

Drug Rider

EMPLOYER'S POSITION:

The main thrust of the employer's position in the Fact Finding Hearing was not so much on comparables but more on the general costs to the employer to pay for all of the benefits being provided to the employees. The employer provided exhibits to show that the revenues received by the Arenac County Road Commission from the Michigan Transportation Fund had decreased over the past several years or at the most remained static. The employer further pointed out that the MDOT Maintenance Contract had also either remained static or had decreased, at the same time that MDOT expected the Road Commission to maintain more miles of trunkline roads without any additional compensation for doing so. While asserting that local and state revenues for road maintenance were decreasing, the Road Commission asserted that over the years of the previous contract the cost for wages, medical benefits and retirement had increased, without any offsetting increase in funds to pay for such increases.

As to comparables, the employer cited as appropriate comparables one contiguous County, Iosco, and five comparable size counties: Alcona, Benzie, Crawford, Leelenau and Presque Isle. In Employer's Exhibit 1, the Road Commission identified the following as the prescription co-pay for these counties:

1. Iosco: \$10;
2. Alcona: \$10 / \$20;
3. Benzie: \$10 / \$20;
4. Crawford: \$5;
5. Leelenau: \$10; and
6. Presque Isle: \$10 / \$40

The problem with comparing Iosco County with Arenac, is that Iosco has a much larger budget for its roads (almost \$1,000,000 more), with a larger population and more roads. Further, from the evidence introduced at the hearing, Alcona would appear to be a very consistent comparable for Arenac; however, there was a problem with using Alcona as a comparable based upon the face of the contract as to the Drug Rider, i.e., \$10.00 / \$20.00, as the Alcona County Road Commission submitted a letter to the union, dated February 24, 2003, in which it advised that while the contract provides for a \$10.00 / \$20.00 co-pay, the Road Commission actually reimburses its foreman employees and administrative employees \$5.00 for generic drugs and \$10.00 for brand name drugs. Lastly, the union noted that the Road Commission budgets for Leelenau and Presque Isle Counties exceeded Arenac County's budget by \$250,000 and \$400,000 respectively.¹

¹ The union would accept three (3) of the employee's comparables as appropriate, i.e., Alcona, Benzie and Crawford, with a clarification as to Alcona based upon the reimbursement provided to Alcona Road Commission employees.

Lastly, the employer introduced some documentation from Blue Cross Blue Shield, showing that prescription drugs constitute 30% of all health care costs. As part of that documentation, the employer introduced evidence from Blue Cross indicating that 81% of its customers had a prescription co-pay of \$10.00 or greater.

UNION'S POSITION

The union countered the employer's position on costs, by focusing on the specifics of the Drug Rider cost to its members. It is undisputed that under the previous contract there was a \$2.00 co-pay for union members. If the union approach were adopted for the new contract, its employees would be picking up a 2 ½ times greater co-pay for generic drugs and 5 times for brand names. If the employer's approach were adopted, the increase for the employees would be 5 times for generic drugs and 10 times for brand name drugs. Breaking this down into specifics, the union noted that its members currently have 26 monthly recurring drug charges, 13 for generic and 13 for brand name drugs. Under the current contract, the employees pay \$52.00/month on the drugs. Under the union formula, these same employees would be paying \$195.00/month (a 3 ¾ times increase); while under the employer proposal, they would spend \$390.00/month (a 7 ½ times increase).

Focusing on comparables, the union would propose the following contiguous comparables:

1. Bay;
2. Gladwin;
3. Iosco; and
4. Ogemaw

As to comparable size counties, the union would propose the following;

1. Alcona;
2. Benzie;
3. Crawford;
4. Montmorency; and
5. Oscoda

Bay County, although contiguous, can hardly be used as a comparable because of its far greater size and far greater revenues. Eliminating Bay County, the following Drug Rider co-pays are applicable for these counties:

- | | | |
|----|--------------|---------------------------|
| 1. | Gladwin: | \$5 / \$10; |
| 2. | Iosco: | \$10 / \$10; |
| 3. | Ogemaw: | \$5 / \$10; |
| 4. | Alcona: | \$10 / \$20; ² |
| 5. | Benzie: | \$10 / \$20 |
| 6. | Crawford: | \$5 / \$5 |
| 7. | Montmorency: | \$5 / \$10; and |
| 8. | Oscoda: | \$5 / \$10 |

RECOMMENDATION

A review of the economic arguments and the comparables shows that the union's position is the better approach. Over 80% of the comparable counties have a \$5.00 / \$10.00 drug co-pay. A \$5.00 / \$10.00 drug co-pay would be equitable for the Arenac County Road Commission, and this Fact Finder so recommends.

² As noted, because of reimbursement, Alcona's Drug Rider is de facto \$5.00 / \$10.00

RETROACTIVITY

EMPLOYER'S POSITION:

The issue of retroactivity was raised for the first time by the employer on the telephone conference pre-hearing conference of February 6, 2003. Essentially the employer argues in negotiating its contract with the union, it agreed to certain wage increases, believing that those wage increases would be set off by the adoption of the PPO-1 and the Drug Rider benefit, whereby the bargaining unit employees would be picking up an increased amount of the medical costs under the PPO-1 and increased costs under the Drug Rider benefit. Further, because there has been no contract in place, the employer is paying for the traditional Blue Cross benefit, with the \$2.00 Drug Rider. If the wage increase is made retroactive to August 18, 2002, the union will have the best of all worlds, as they will have the benefit of a pay increase and also the benefit of the traditional Blue Cross and the \$2.00 Drug Rider, as there is no way to make the insurance costs retroactive.

UNION'S POSITION:


The union asserts quite correctly that in the proposal of October 16, 2002, which was accepted by the employer, the proposal specifically indicated that wages "Retroactive to August 18, 2002." All of the other items in the proposal, except for the "Drug Rider" were agreed to, so the employer knew, other than the Drug Rider, that everything was agreed upon, even though the bargaining unit employees would have the traditional Blue Cross until the contract was finally ratified. The union also points out that the proposed contract was not limited to the change in PPO and the Drug Rider; there were additional new benefits, including dental, optical and an increase

in life insurance, which cannot be made retroactive, benefits that the bargaining unit employees have lost and the employer obtains the requisite benefit. Lastly, the union asserts that the question of retroactivity is not properly before the Fact Finder. The only issue submitted to be addressed was the Drug Rider. The employer did not raise retroactivity in writing in response to the Petition For Fact Finding, and only raised it as a last minute argument immediately before the hearing.

RECOMMENDATION

The position of the employer concerning retroactivity is not well taken. The employer did not submit the question of retroactivity to Fact Finding, nor did it respond in writing to the union's submission that retroactivity would be a question for consideration. Most importantly, the employer agreed that wages were to be retroactive. The employer's argument that it has had to bear the burden of paying a greater cost for benefits over the last number of months is disingenuous at best as it has not had to pay anything for the other new benefits (dental, optical and life insurance) which it has agreed to and which cannot be made retroactive. It is the recommendation of this Fact Finder that the wage increase be made retroactive to August 18, 2002.

Respectfully Submitted,


John A. Obee, Fact Finder

Dated: April 16, 2003