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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

GENESEE COUNTY COMMUNITY
MENTAL HEALTH

MERC Case No. L02 G-8005

and

TEAMSTERS LOCAL 214
_____/

Report

Thomas L. Gravelle, Fact Finder

September 1, 2004

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on July 21, 2004 in Flint, Michigan.

The Employer was represented by Raymond Knott and Sheila Mason. The Union was represented by Les Barrett.

I have reviewed the parties' exhibits, testimony and 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

Genesee County Community Mental Health (the "Employer") is an agency of Genesee County.

The Employer is one of the largest mental health agencies in the State of Michigan. Its budget for 2004 is $96 million.

Unlike two other major mental health agencies - Oakland County and Wayne County - the Employer not only administers this budget but also retains employees to provide many mental health services. Oakland and Wayne Counties merely administer the funds and retain outside contractors to provide the mental health services.

The Employer's vice president of business operations appeared at the hearing. He explained that a federal requirement is that mental health agencies obtain "best value" and that Federal officials do not like the idea of an agency's both managing and providing services because of a latent conflict of interest. He also explained that it would be less expensive if the Employer contracted out the provision of services. This appears to be due to the Employer's much higher "fringe benefit" expenses, including funding a defined benefit plan, and medical and hospitalization premiums for both present bargaining unit employees and retirees.

Currently, the Employer employs about 390 employees.

Teamsters Local 214 (the "Union") represents about 100 current employees, who work in professional mental health capacities. (In 2001, there were 125 employees represented by the Union. The loss of these positions is a significant concern of the Union.)

Michigan AFSCME Council 25 represents about 204 current employees, who provide various support services. On November 20, 2003, the Employer and AFSCME executed their current agreement for the period October 1, 2002 -September 30, 2004.

About 87 employees are not represented by any labor organization. The Employer gave these employees the benefits contained in the AFSCME agreement.

The parties have been in the negotiation process for two years.

In May of 2003, the parties reached a tentative agreement, which the Employer rejected.

In December of 2003, the parties reached a second tentative agreement, which the Union membership rejected.

Prior to the hearing before me, the parties resolved two major disputed issues: Hospitalization and Health Care on Retirement.

COMPARABLE COMMUNITIES

Internal bargaining units as well as comparable external entities are often considered in fact finding. The Employer's employees represented by AFSCME Council 25 are an internal comparable.

The Union has proposed that I consider Macomb, Ingham (comprised of Ingham, Clinton and Eaton Counties) and St. Clair Counties as comparables. On the subcontracting issue, the Union has proposed that I consider Antrim/Kalkaska, Lapeer, and Van Buren Counties.

The Employer has proposed three external communities: Ingham, St. Clair, and Saginaw Counties.

DISPUTED ISSUES

The parties have agreed to all terms of new agreement except for the following disputed issues submitted to fact finding:

1. Wages
2. Holidays
3. Subcontracting
4. Duration

1. WAGES

The Union proposes to add the following language to ARTICLE XXXIII SALARY RATES, Section 1:

A. Five Hundred Dollars ($500) bonus paid upon signing.

B. Two percent (2%) retroactive wage increase on all salaries to October 1, 2003.

C. Two percent (2%) wage increase on all salaries effective October 1, 2004.

D. Wage re-opener effective October 1, 2005.

The Employer proposes no wage increase for the year beginning October 1, 2002 and a $500 bonus for the year beginning October 1, 2003.

A. Findings of Fact

In reviewing comparable external communities, I will look at annual wages at the top of the wage scales for various bargaining unit positions. Employees reach top wage rates after several years.

The following chart compares top wages for four positions in Ingham, St. Clair, and Macomb Counties in 2003, as set forth in Union Ex. 34, with the Employer's top wage rates for 2003 (before considering the parties' wage proposals):

Union Comparable Communities		***Genesee***
Case Manager:	$43,568	$45,892
Nurse (RN):	$43,579	$45,892
Occupational Therapist	$49,111	$53,701
Program Coordinator	$47,557	$53,701

This data shows that the Employer's employees are already highly paid in relation to the Union's comparables. In addition, if the Employer's proposed comparable, Saginaw County, were added, the averages for the comparables would be somewhat lower.

The parties' December 2003 tentative agreement (which the Union membership rejected) contained the following language on wages:

> A. Wages
>
> $625 lump sum payment for employees on payroll effective September 30, 2003 and currently still employed and $625 lump sum payment for employees on payroll effective November 11, 2003 and currently still employed, which will include employees on sick leave or workers comp leave and employees who were laid off on or after November 11, 2003.

In reaching agreement in November of 2003, the AFSCME bargaining unit members received these two lump sum payments. Later, the Employer's unrepresented employees also received these two lump sum payments.

Prior to the hearing before me, the parties settled two important disputed issues: Hospitalization, and Health Care on Retirement.

The Employer has reduced its wage offer to offset costs incurred by it by reason of a lack of agreement on these two issues until sometime after AFSCME reached agreement with the Employer.

B. Recommendation

I recommend that the language of the parties' tentative agreement quoted above ($625 and $625) be adopted.

C. Reasons

First, the Employer's agreement with AFSCME provides for these two payments; and the Employer has granted these two payments to its unrepresented employees.

Second, at the hearing before me the Employer explained that the history of its labor relations is that one of its two unions reaches agreement first; and this agreement then sets the pattern for the other union (and the unrepresented employees).

Third, the Union's members already are well paid in relation to the Union's comparable communities.

Fourth, the costs of the members' fringe benefits – which are part of their overall compensation -- are significant.

2. HOLIDAYS

The Union proposes that the current holiday language in Article XVI remain unchanged.

The Employer proposes that the agency be closed on Martin Luther King Day and also that Columbus Day be eliminated as a holiday.

A. Findings of Fact

Under the parties' current contract, employees have 15 holidays. On five of these days (including Martin Luther King Day and Columbus Day) the agency remains open. The special value to employees of these five days is that employees may work on one or more of them and then take off another day as a holiday. In effect, this arrangement allows for five additional personal leave days.

The parties agree on two external comparable communities: St. Clair County and Ingham County. These two Counties have 12 holidays; and neither has a Columbus Day holiday. The Union's third comparable community, Macomb County, has 15 ½ holidays (including Columbus Day). The average of these three communities is slightly more than 13 holidays.

Under the Employer's AFSCME contract, Columbus day has been eliminated and the Employer's offices are closed on Martin Luther King Day. However, 15 holidays exist for 2004 because a December 30 "New Year's Eve" holiday has been added.

B. Recommendation

I recommend that the Employer's proposal be adopted.

I also recommend that (as with the AFSCME employees) the December 30, 2004 "New Year's Eve Holiday" be added as a holiday for 2004.

Under the current contract, there is a special provision for Jewish employees regarding Jewish Holidays. Perhaps the parties could work out a way that Jewish employees could take off Jewish Holidays in lieu of Christian holidays (i.e., Good Friday, Christmas Eve, Christmas Day.)

C. Reasons

The Employer's Board of Directors feels strongly that the Employer should be closed on Martin Luther King Day as a gesture of respect. Further, the Employer is closed on this day for all of its other employees.

The Employer believes that the present number of holidays is excessive. The record shows that the number of holidays is higher than most comparable external communities. Further, the AFSCME Union has already agreed to drop Columbus Day; and this deletion has been adopted for the Employer's non-union employees.

Despite the deletion of Columbus Day the employees will still have 15 holidays in 2004 if the Employer agrees to add December 30, 2004 (as it already has agreed to with AFSCME).

3. SUBCONTRACTING

The Union proposes to modify ARTICLE XXXI - CONTRACTING AND SUBCONTRACTING, by adding "layoff" language.

The Employer proposes that the current contract language be retained.

A. Findings of Fact

Article 31, Section 1 of the parties' current contract contains the following contracting and subcontracting language:

> The right to contracting or subcontracting is vested with the Employer. This right will not be utilized for the purpose of eroding the bargaining unit. In cases where contracting or subcontracting will displace bargaining unit employees, Employer representatives will hold advance discussions with the Union under the Special Conference provisions of the Agreement. During such discussions the Union shall be advised of the scope of contracting or subcontracting that effects its members; including the number and classifications of any employees to be laid off, the duration of the layoff, the purpose of such contracting or subcontracting, type of work being performed, the benefits and/or savings to the Employer and any other pertinent details. Any bargaining unit employee who is displaced by contracting or subcontracting will be permitted to bump in accordance with the provisions of ARTICLE IX, Section 1.

The Union proposes to modify the second and third sentences as follows:

> This right will not be utilized for the purpose of eroding the bargaining unit ***or the layoff*** of a bargaining unit member. Employer representatives will have advance discussions with the Union under the Special Conference provisions of this Agreement.

The current language has been in this bargaining unit's collective bargaining agreements for many years. It also has been in the agreements of the AFSCME bargaining unit for many years.

B. Recommendation

I recommend that the Employer's proposal be adopted.

C. Reasons

First, both union contracts for many years have had the current language.

Second, for public mental health agencies, a condition of government funding is efficiency; and contracting out the provision of services is encouraged by government officials. In these circumstances, the Employer needs more flexibility than a more autonomous local agency.

Third, the exception proposed by the Union would go a long way to swallowing the rule.

Fourth, none of the Union's proposed comparables on this issue contain such a broad exception: ***(a)*** While the Antrim Kalkaska contract (Union Ex. 31, p. 11) contains the language requested here, it also states: "The decision to subcontract is not

grievable and shall be within the Employer's sole discretion." ***(b)*** This is also true under the Van Buren contract (Union Ex. 33, pp. 5-6), although it appears that the employees do have the right to continue in Van Buren's employment if they agree to work "under the same conditions required by the Employer" of the subcontractee. ***(c)*** The Lapeer contract (Ex. 32, p. 8) authorizes layoffs resulting from subcontracting if the subcontracting results in cost savings. The record before me shows that the bargaining unit employees are more costly that the cost to the Employer to contract out their work.

4. DURATION

The Union proposes that ARTICLE XXXIX TERMINATION, Section 1 be amended as follows:

Contract effective October 1, 2002

Wage reopener October 1, 2005

Contract expires September 30, 2006.

The Employer proposes the same effective date but an expiration date of September 30, 2004.

A. Findings of Fact

The December, 2003 tentative agreement provided for an expiration date of September 30, 2004.

In November, 2003, AFSCME agreed to a September 30, 2004 expiration date.

B. Recommendation

I recommend that the contract be for the period October 1, 2002 to September 30, 2005, with a wage reopener for October 1, 2004.

C. Reasons

My principal reason is that the parties almost certainly will not agree to a new agreement prior to September 30, 2004. To reopen the entire new agreement to renegotiation prior to it having been agreed to and executed seems to me to be an odd way of doing things.

By limiting negotiations as of October 1, 2004 to wages (and also to the quirk of the December 30, 2004 "New Year's Eve" holiday contained in the AFSCME contract), some stability will be achieved because the issue(s) will be narrowed.

Respectfully submitted,

Thomas L. Gravelle
Fact finder