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In the Matter of Statutory Factfinding between:

CHARTER TOWNSHIP OF WATERFORD,
Employer,

-and-

TEAMSTERS, LOCAL 214,
Union.

MERC Case No. D03 F-1865

Hearing: Dec. 14, 2005
Waterford, Michigan

Briefs filed by: Jan. 23, 2006

**FACTFINDER BEN KERNER'S
FINDINGS AND RECOMMENDATIONS**

Appearances:

For the Employer: Stanley W. Kurzman
Stanley W. Kurzman, LLP

For the Union: Les Barrett
Staff Representative

Also present for all or part of the proceedings: William Davis, Joe Heffernan, Robert Seeterlin.

Dated: January 27, 2006

BACKGROUND.

This case originated with the filing of a petition by the Teamsters, Local 214 for fact-finding under Section 10 of the Public Employment Relations Act. The petition listed 5 issues in dispute between the parties:

1. Sick leave
2. Short term/Long term disability insurance
3. Pension
4. Wages; and
5. Hospitalization insurance.

During the course of the proceedings, the parties settled wages (except for a single item which pertains to the Union's position on pensions) and Hospitalization insurance. The parties assembled at Waterford Township Hall on December 14, 2005, to present their positions and their evidence in support of their positions. The Factfinder's job is to make recommendations based upon the evidence, with a view to having the public become aware of the terms of the labor dispute and the proposed solutions, such that settlement becomes possible.

In the course of the proceedings, the parties agreed that the new contract should be effective for a 3-year period from January 1, 2004 through December 31, 2006. They also agreed as to which communities form a comparable base of information on wages and benefits. The communities agreed as comparables were Canton Township, Clinton Township, City of Dearborn Heights, City of Pontiac, City of Redford, City of Royal Oak, St. Clair Shores, Shelby Township, and City of Westland.

SICK LEAVE.

The current contract between the parties (effective January 1, 2002 through December 31, 2003) provides that an employee in the bargaining unit may utilize up to 83 days for sick time for any illness or non-duty related injury. Illness/ Sick leave is deemed to be continuing employment. Management has the right to verify sickness under designated circumstances, upon written notice to the employee.

The Employer proposes to change Sick leave, so that the employee is granted 48 hours of sick time annually. The allotment would be granted on October 1st of each year; and hours remaining after September 30 of the following year would be paid at the employee's full rate of pay on that date.

The Employer's proposal includes the provision that employees who exhaust their paid sick time are allowed to use vacation or personal leave or compensatory time off to cover an illness or injury. However, employees on Family Medical Leave must use any available paid time off above 40 hours to cover their medical (or family medical) leave.

The Union proposes to keep the terms of the current contract.

The Union's evidence consists of a comparison of Waterford Township with other similarly situated comparable communities. The employees in the Canton Technical, Professional and Officeworkers unit are allowed to utilize essentially unlimited sick time. Similar to the employees in this Teamsters bargaining unit, the employees in the Shelby Township Municipal Employees unit are entitled to use of sick time at full wage up to 180 days. The Union also points out that no other groups of employees of Waterford Township, including the 2 police units, the Dispatchers unit, the Fire unit, or the non-unionized

office-managerial group have as a condition of employment anything like what the Employer proposes here for this unit. Rather, all such units and groups have something similar to what is currently in effect for employees of the Teamsters-represented unit.

The Union additionally points out that the Employer's proposal does not provide enough time to cover the casual use of sick time by the average employee, and at the same time provide enough paid time to cover the waiting period proposed under the Employer's Short Term Disability (STD) plan.

The Employer points to the internal unit-specific data on usage of sick time by this group of employees as a principal reason for its proposal. The Employer points out that the Teamsters unit is near the top (97 hours used, on average, in 2004, E'er. Exh. 115). The Employer also points out that employees of comparable employers have more restricted number of sick days available for their use, ranging from 7 days in Clinton Township and City of Pontiac (AFSCME unit) to 12 days at the City of Royal Oak. (E'er. Exh. 116). This indicates according to the Employer, that the number of unrestricted sick days allowed to employees in this unit is excessive.

In addition, the Employer pointed out, by chapter and verse examples, some clearly excessive utilization of sick time, including such utilization by foremen. For instance, one employee used 187 hours, another employee used 504 hours, as shown in the tabulations for all employees in the bargaining unit. The Union responds that only 55 of employees, or 45% of the unit, used more than 6 days in 2005; only 28 employees, or 23% of the unit used more than 12 sick days in 2005. In 2004, the figures are that 61 employees, or 46% of the unit, used more than 6 days of sick leave; 40 employees, or 30% of the unit, used more than 12 sick days.

My observation is that there is a problem with some members of the bargaining unit using more than a reasonable number of sick days. According to the Employer, the problem is endemic with this bargaining unit. I was not afforded comparative information with employees in other bargaining units, but I am inclined to believe that the problem of excessive use of sick time is a problem that the Employer must address with this bargaining unit. The tool the Employer has chosen is essentially to severely limit the number of sick days available at full pay, and to introduce, at the same time, an incentive for conserving the use of sick time (full pay for unused days at the end of the program year). The number of sick days available in the Employer's proposal is, as the Union's brief puts it, "at the low end" of the number applicable in the comparable communities. In some units, such as City of Pontiac (AFSCME) and Clinton Township only 7 days are allotted per year. In most of the other comparable communities, 12 is the norm. Hence, I see a need to amend the Employer's proposal to allow up to 8 days' use of sick time per year. Unused sick time, credited once per year, would be paid at 100% of pay, on the anniversary date of the plan.

RECOMMENDATION.

In sum, I recommend that the parties adopt the Employer's proposal on sick leave, with the modification that it allow for 64 hours for illness or injury of the employee or a family member under the care of an employee.

SHORT-TERM DISABILITY (STD)/LONG-TERM DISABILITY INSURANCE.

The current contract provides that an employee who has exhausted his sick leave benefit may be provided with STD for 87 days, at 75% of base wages. The STD benefit is not available to employees on worker's compensation, and a number of other limitations and exclusions apply. The current contract provides in Appendix H [U. Exh. L] that a Long-Term Disability plan is available to employees after the conclusion of the STD program and provides a benefit of 60% of base wages.

The Employer has proposed to have short-term disability available to employees effective 7 days after the injury or illness commences, effective for 60 days at the rate of 80% of pay. Then for the 60th day through 180 days the Employer would have benefits payable at 60% of pay. Thereafter, the employee would be eligible for long-term disability benefits at the rate of 60% of base pay.

The Union proposes to stay under the terms of the current contract.

The evidence presented shows that the plan currently in effect for this bargaining unit is similar to the one available to employees in other bargaining units of the Employer. The Union argues that there has been no bargaining unit that has accepted the Employer's proposed sick time program, or short-term disability plan or long-term disability plan.

Some of the comparables have short waiting periods, such as Dearborn Heights and Canton Township (7 days) and Clinton Township (5 days). Others have longer waiting periods (in which sick pay is deemed applicable) such as Redford Township (30 days). Shelby Township has a 20 work day waiting period; and benefits are payable up to 180

days .Generally, among the other comparables, short-term disability benefits are available for 180 days.

The Union argues that the current STD benefit is adequate as formulated (75% pay for 87 days, after exhaustion of sick pay). The Union says the Employer's proposal has not been accepted by any of the other employees groups of Waterford Township. The Union argues that the long term plan is similar to the plans found in Canton Township, Clinton Township, the City of Royal Oak, and Shelby Township, in that the employee is compensated 60—66-2/3rd% of pay for the duration of injury or illness. Finally, the Union argues that the Employer's proposal for SDT does not distinguish between illness and hospitalization/ injury. In many jurisdictions, such as Canton Township and Clinton Township the STD plan covers hospitalization or injury from day one, not after 5 or 6 or 7 days' waiting period. In other words, the employee in those jurisdictions is not required to utilize his or her sick time for such hospitalization /injury.

The Employer argues that the STD plan should be commensurate with the sick leave proposals it has made. The current STD pays benefits of 75% of base wages. [U. Exh.. L, p. 31]. The Employer proposes a plan that pays 80% for a period of 60 days; then from the 60th day through the 180th day, an employee's STD benefit would be 60% of base wages.

The factfinder is persuaded that the factor of other internal comparables should hold sway here and that factor supports the Union's proposal. This factor is more

significant than the factor of external comparables where the external comparables show a wide variation in the terms of the STD plans available. Some have a short qualification period (7 work days); others have a long qualification period (30 work days). Some pay 65 or 66% of base wages for a stated period (St. Clair Shores, Clinton Township, Canton Township AFSCME) whereas others pay 80% (Redford Township) or even 100% (Shelby Township). No comparable external bargaining unit has a graduated payment plan, such as is proposed here by the Employer for the Teamsters unit (80%, 60%). In short, there is a rich diversity among the comparable external communities, and no common thread that links most or all of them. In these circumstances, the factfinder is of the opinion that the members of the Teamsters unit, as well as the representatives of management will look to the internal comparables for a sense of "what's right."

One modification is here recommended. Given the more restricted number of sick days available to members of the bargaining unit under the Employer's plan, recommended above, I see a need to allow short-term disability to become available on the first day of injury/ hospitalization. Thus, an employee who suffered an injury or hospitalization would not have to utilize sick days before becoming eligible for the short-term disability benefit.

RECOMMENDATION.

Thus, in sum, I recommend that the parties settle on the basis of the Union's proposal, to continue the current contract's provisions for STD and Long-Term Disability plans, with the exception that the short-term disability benefit become immediately available to employees who suffer injury or hospitalization.

PENSION.

The current contract calls for pension eligibility at age 55 plus 25 years of service, or at age 60 with 8 years of service. The pension is calculated as the product of three factors, the final average compensation, which is defined to include base wages plus longevity payments; the number of years of service; and the multiplier, which is currently 2.25%. The pension is uncapped.

The Union proposes that eligibility should be established after 30 years of service, without any age requirement. The Union proposes to change the 2.25% multiplier to 2.50%. The Union proposes to cap pensions at 80% of wages. In addition, the Union proposes to provide a 1% cost-of-living adjustment in the pension amount, each year after retirement.

For three particular employees with many years of service (J. Methner, E. Lamarb, and J. Lance), the Union recognizes that to go from an uncapped pension to a capped pension would have the effect of reducing the pension benefit to which these employees would otherwise be entitled. Thus, they should be red-circled as eligible for immediate retirement, at uncapped pension benefits, utilizing the new multiplier.

For new employees, the Union proposes a new formula: a multiplier of 2% for the first 10 years, a multiplier of 2.25% for the next 10 years of service, and a multiplier of 2.5% for all remaining years of service. The new employees' pension would be capped at 80%.

The Employer proposes the current contract's provisions for current employees; adding, however, that current employees can switch to a defined contribution plan, with the employer paying 15% of wages. For new employees, the Employer proposes a defined

contribution plan in which the employer pays 10% of wages, and the employee contributes 5% of wages. The plan would be vested 50% after 3 years, 75% after 4 years; and 100% after 5 years.

The Employer's justification for moving to a two-tiered pension plan is the need to stabilize the pension plan, and account for all costs in the year in which the employee benefit is earned. Other units of government, argues the Employer, including the federal government in the '80's, the State government in the '90's and many private businesses have gone to a two-tiered approach without undue repercussions.

The Employer argues in general that the ability of Waterford to pay for increases in benefits is restricted. In this regard, the Employer presented Joe Heffernan, actuary for the Township. Mr. Heffernan illustrated that the revenue sharing portion of the budget has declined from \$7,467,000 in 2001 to \$6,103,000 in 2004. If the revenue sharing had kept up with inflation, the amount in 2004 would have been \$8,049,000. Thus, there is a 1.9 million dollar shortfall, says the Employer.

On the other major contributor to the budget, property taxes, the Township has budgeted for increases, from \$6,194,000 in 2000 to \$8,614,000 in 2004 with further budgeted increases in 2005 and 2006. [E'er. Exh. 103]. However, Waterford has limited ability to raise more money from property taxes due to two factors: it is restricted from raising millage (except for special millages needed for police or fire operations) and it has a taxable value which will not go up significantly because the community is a "built-out community." Thus, in sum, concluded Mr. Heffernan, the ability of the Township to raise revenue

from property taxation will remain relatively constant, going up perhaps at the rate of inflation.

The Township's restricted revenue posture is a factor that the Employer relies on in support of its position that the pension plan should remain the same for current employees; and should go to a defined contribution plans for new employees.

The Union argues that raising the multiplier to 2.5% brings the Teamsters' unit in line with the other general employees of the Township. For instance, the management officials of the Employer, the court supervisors, the elected officials, the Crime Scene Investigators receive pension calculations using the 2.5% multiplier. (U. Exh. E) Likewise, the Act 312 eligible units of firefighters, police officers, and dispatchers receive pension calculations using the 2.5% multiplier. Looking at outside groups, the 2.5% multiplier is used in half the comparable communities. (Dearborn Heights, Redford Township, City of Royal Oak and City of St. Clair Shores) (U. Exh. D). The cap and potential for early retirement should be as good for Teamsters as for other general employees of the Township, says the Union. Finally, the request for 1% cost-of-living adjustments on pensions is modest in comparison to comparable communities. For instance, the Union points out that St. Clair Shores has an adjustment of 5% at age 60 or five years after retirement and another 5% adjustment, 5 years later. (U. Exh. S, p. 37)

Overall, the Employer has not demonstrated a compelling need to go to a defined contribution plan for new employees. Nor has the Employer demonstrated that it cannot afford to pay the increase in pension contributions for current employees demanded by the Union. The Employer's actuary testified as to the condition of the general fund, and as to

the sources of income to the general fund. He opined that the condition of the Township, in general, was good. There is no special out-of-kilter situation that would lead to the conclusion that the Employer doesn't have the ability to pay all negotiated wages and pension increases.

The evidence in support of the Union's argument is compelling. First, in regard to the other general employees of the Township, the Union points out that the 2.5% multiplier is utilized in the instances cited above, as well as for the Act 312-eligible units. Second, in regard to the external comparables, half of the communities have a 2.5% multiplier or an even richer pension program. (Westland had a 2.8% multiplier for the first 25 years of service). In short, the equities favor the Union's position in regard to both new employees and current employees. However, the cap applicable to pensions should be commensurate with the cap of 75% available to other Township employees.¹

I note that the cost-of-living adjustment appears to be justified. The current cost-of-living (U. Exh. H) shows that the current annual CPI-U for the Midwest is 3.4 for the year 2005, 4.2% for the second half of 2005. A change in pension benefits of 1% per annum does not keep up with inflation, but it is a minimally appropriate adjustment to make.


In addition, under the scenario I have recommended here, there needs to be a red-circle in the handling of retirement for J. Methner, E. Lamarb, and J. Lance. These employees should be granted immediate retirement at uncapped pension benefits, utilizing the new multiplier.

¹ It is recognized that some members of the bargaining unit will achieve pension contributions which bump up against the 75% cap before they are eligible for normal retirement. For these individuals, it is recommended that the parties provide for optional early retirement.

Finally, there needs to be a wage adjustment of 5% at the time when the parties settle on the increased pension benefits here outlined. That is because the employees would begin to contribute 5% of their base wages to their pensions.

RECOMMENDATION.

For all the above reasons, I recommend that the parties adopt the Union package of pension proposals, including those applicable to current employees (with the caveat that the cap should be 75% with option for early retirement) and those applicable to new employees (with the caveat that the cap should be 75% with option for early retirement).

A handwritten signature in black ink, reading "Benjamin A. Kerner", is written over a horizontal line.

Benjamin A. Kerner
Factfinder

Dated: Jan. 27, 2006
Detroit, Michigan