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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ARENAC COUNTY ROAD COMMISSION

-and- **MERC CASE NO. L05 L-3002**

TEAMSTERS, LOCAL 214

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

UNION: LES BARRETT, BUSINESS REPRESENTATIVE

EMPLOYER: WILLIAM P. BORUSHKO, CONSULTANT

PETITION DATA:

PETITION FILED:	MARCH 6, 2006
CASE HEARD:	JULY 27, 2006
RECOMMENDATION DATE:	OCTOBER 13, 2006

FACT FINDER RECOMMENDATION:

Temporary/Seasonal Employees – The Union Proposal is recommended.

Vacations – The Union Proposal is recommended.

Insurance –

23.2 Hospital/Medical/Surgical Insurance – I recommend Community Blue 3 with the $10/$40 Drug Rider, provided that employees be reimbursed to $5/$10 co-pays.

23.2B – Retiree Insurance – The Employer Proposal of Health Care Savings Plans for new employees is recommended.

23.7 Dental and Vision Insurance – The Union Proposal is recommended.

Wages – 28.1 – The Employer Proposal is recommended except for the effective date.

Brush Hog/Daily Assignment – The Union Proposal is recommended.

Retroactivity – I recommend the wage increase of 2.5% be retroactive to February 10, 2006.

Pensions - The Employer Proposal is recommended except that the F55/25 rider be implemented on the date the new Agreement is approved and ratified by the Parties.

Health and Safety – The Union Proposal is not recommended.

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INTRODUCTION

Teamsters Local 214 filed a Petition for Fact Finding on March 6, 2006. The expiration date for the Collective Bargaining Agreement between the Parties is February 10, 2006. The Petition identified the following as Unsolved Issues:

"1. Temporary/Seasonal Employees
2. Personal Days
3. Health Insurance
4. Qualifications for Retiree Health Care
5. Dental/Optical Coverage
6. Wages
7. Retroactivity
8. Equipment Posting And Daily Assignments
9. Pension"

A Hearing relative to the unresolved issues was held on July 27, 2006. At the conclusion of the Hearing, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered. I have given careful consideration to all of the evidence and arguments submitted by the Parties, even though the Recommendations herein may not specifically reference each and every one of the above.

The Parties are not in agreement as to the Comparables which should be utilized by the Fact Finder.

The Union contends that the four Road Commissions which had been used in a prior Fact Finding should be used in this proceeding. In a Report dated August 8, 2003, Fact Finder Kotch determined the following Road Commissions were comparable: Alcona, Benzie, Crawford and Iosco. The Union has no objection to the addition of the Lake County Road Commission as an additional Comparable. The Union strongly objects to the use of Arenac County and St. Mary's of Michigan Hospital as Comparables: "These comparables do not meet any test needed to consider them to be a comparable to Arenac County Road Commission."

The Employer places great emphasis on the revenue source found in the Michigan Transportation Funds "because it is the most consistent of all funding sources for Road Commissions in the State of Michigan." On that basis, it proposes the following Road Commissions as Comparables:

Alcona	$2,619,222	Iosco	$3,894,201
Benzie	$2,711,838	Lake	$2,937,032
Crawford	$2,629,658	Oscoda	$2,463,284

The corresponding amount for Arenac is $2,621,787. The Employer also urges that Arenac County and two other employers located in Arenac County should be considered as Comparables: "These three employers have a significant impact in the Arenac County labor market."

I conclude that the Road Commissions on which the Parties agree are sufficient for purposes of resolving the matters herein. Those Road Commissions are as follows: Alcona, Benzie, Crawford, Iosco and Lake. With regard to other area employers, I note that Act 312 provides that "public employment in comparable communities and private employment in

comparable communities" are enumerated factors. One of the primary reasons for their inclusion as Comparables lies in the fact that they have a common source from which to recruit their worker requirements. On that basis, area employers are deemed relevant.

ISSUES

Temporary/Seasonal Employees:

The current Agreement provides:

> "6.2 Temporary Employee. Temporary employee(s) are employed at an hourly rate for seasonal or temporary work with the understanding they are not eligible for regular status until they have been reclassified as probationary employee(s) and complete the applicable probationary period. A temporary employee may be employed for a period of five (5) calendar months or for the duration of a leave of absence of a regular employee, whichever is greater...."

The Union seeks to replace the above with the following:

> "Temporary employees are hired to replace a bargaining unit member on a leave of absence.
>
> Seasonal employees are hired from April to September to perform lawn and building maintenance duties.
>
> If an employee is kept past the allowed time they shall be placed into the bargaining unit."

The Employer favors retaining the existing language.

The Union's rationale for its proposal is as follows:

> "All prior administrators have used temporary employees as summer help or to replace an absent bargaining unit employee. The current administration has expanded the use of temporary employees to create an additional work force doing bargaining unit work but not in the bargaining unit. The Union proposal would restore the original intent of this language to allow the Employer to hire summer help and replace absent employees to maintain their

work force at the same level as with regular employees."

The Employer denies any abuse in regard to its use of temporary employees:

> " ... We have recently employed temporary persons to assist us in some seasonal duties. The largest number of temporary employees that we have utilized at any one time is two. We certainly do not feel that we have taken advantage of this provision by over utilizing temporary employees, and we do not see the basis for a change in the existing language."

The Employer also references an arbitration award wherein it was held the employer did not have to post a Heavy Truck Driver job before advertising it as a temporary position.

The Union did provide an Exhibit wherein the Employer indicates it is accepting applications "for the position of Temporary Employment to assist in winter maintenance" and it further states "all applicants are required to have a Commercial Driver License." The posting does not indicate the rate of pay so it is not clear whether the Laborer rate is applicable.

I conclude the Union Proposal has merit. Adoption of the Union Proposal enables the Employer to utilize Temporary and Seasonal employees under specified conditions. Two of the Comparables – Alcona and Lake – define Seasonal Employees as those employed during the months of May through September.

The Union Proposal is Recommended.

Vacations:

The current Agreement provides:

> "22.3 An employee may carry over to the next anniversary year up to forty (40) hours of vacation earned during the preceding anniversary year. ..."

The Parties have agreed to increase the number of Personal Holidays from one to two

days.

The Union proposes to change Section 22.3 to allow a carryover of "40 hours plus a fraction of a day."

The Employer wants the current language.

With the Tentative Agreement, the amount of available personal leave is 16 hours. If an employee utilizes personal leave during the summer ten-hour schedule, the additional hours are taken from the vacation bank. Given the above, the Union notes "an employee may have a fraction of a day left over at the end of the anniversary year."

The Union concern appears to have validity. It has not been argued that the additional fractional day carryover will result in an undue burden on the Employer.

The Union Proposal is Recommended.

Insurance:

Several issues are unresolved.

At the present time, the Employer provides:

> "23.2 Hospital/Medical/Surgical Insurance. The Employer shall pay the cost of providing each regular employee and his/her legal dependents - children to age 19 - with hospital/medical/surgical insurance coverage *as follows:*
>
> *Blue Cross/Blue Shield Community Blue PPO, Option 1, with a ten ($10) doctor visit rider, and a five ($5) dollar generic and ten ($10) brand name drug rider with the 1x-MOPD and PD/XED riders."*

The Union proposes the following:

> "Employer pays the full premium for the following insurances:

Health Insurance

- Community Blue Option 2
- $15/$30 drug rider with the employer reimbursing the employee to $5/$10
- MOPD 1x and pd./xed.
- $20 office visit reimbursed to $10"

The Employer Proposal is summarized as follows:

"1. Community Blue 3
2. $10/$40 Drug Rider
3. MOPD 1X
4. $20 Office Visit (includes Chiro.)
5. Employees to pay 5 percent (5%) of premium in third year
6. All other riders to remain in effect"

A review of the Comparables reveals that two of them have the Plan 1 Option and another has Plan 2. The Employer cost for Option 1 in 2006 amounted to $1,261.64 for Full Family coverage. The Option 3 coverage will amount to $994.05 for a family. The difference is $267.59 per month or $3,211.08 per year. By any measure, that is a substantial savings to the Employer.

I recommend the Employer Proposed Community Blue 3 be adopted with the $10/$40 Drug Rider provided the Employer reimburses employees for drug purchases to the current $5.00 and $10.00 co-pays. Given the fact that the Option 3 is being recommended, contribution from the employees for Health Insurance coverage is not deemed warranted.

Section 23.2B of the Collective Bargaining Agreement states an employee "must be at least sixty (60) years of age at the time of retirement." The Parties agree that the age is to be reduced to 55 years.

The Employer proposes the age reduction be applicable only to current employees and it proposes to establish a MERS Health Care Savings Plan for all new employees with a 1%

Employer contribution and a 1% employee match.

The Union proposes the *status quo* other than the above age reduction.

The Employer explanation relative to its Proposal for new employees is as follows:

> " ... In place of retiree health care, which covers only the retiree, the Employer is willing to establish a MERS Health Care Savings Plan for new employees. With this plan, the Employer would contribute 1% of wages for all new employees into this plan, with a 1% match on the part of the employee. These funds are invested by MERS and are available to the employee upon retirement to be utilized for health care needs. We believe this presents a very viable alternative to the present system. As we all know, healthcare is an expensive proposition, and particularly retiree health care. Recent GASB requirements will necessitate reflecting the accrued liability on our financial statements. We believe that this liability is currently in excess of $4-6 million. This Employer, with its limited means, can no longer afford to provide fully paid health care for its retirees. It is willing to establish a plan which should greatly assist all new employees upon retirement, which can be revised and remodeled in future negotiations, and which should provide the basis for the recommendation for the Fact-Finder."

I recognize that Health Care Savings Plans are a relatively new development. I am persuaded that the Employer Proposal deserves careful consideration and implementation for new employees.

I recommend adoption of Health Care Savings Plans for new employees to be available for health care needs at retirement.

Dental and Vision Insurance

The current Agreement provides:

> "23.7 *Dental & Vision Insurance* *The employee may elect the coverage and shall pay the full cost of monthly premiums for the following benefits:* ***Dental-Traditional Plus 50/50/50 $800.00 and Vision-VSP 24/24/24.*** *The full monthly premiums shall be*

automatically deducted from the employee's 2nd pay check each month."

The Union Proposes:

"Dental – Paid by Employer
Vision – Paid by Employer"

The Employer wants the *status quo*.

The Union notes that several Comparables do provide Dental Coverage. It also states that this Employer provides Dental and Vision to its other Bargaining Unit Employees.

The Employer states that the cost of the benefit – $64.51 per month per employee for family coverage – "is an expense that this Employer simply cannot afford."

A review of the Comparables reveals that for Dental they have limitations on contributions and coverage which are in line with that of this Employer. Most of the Comparables do not provide Vision coverage. The cost of this item is not unduly burdensome. Moreover, the earlier recommended Option 3 coverage will provide the Employer with substantial health care cost reductions and enable it to provide Dental and Vision benefits.

I recommend the Union Proposal.

Wages:

The Union seeks the following:

"Article 28, Section 28.1:

- Increase each classification by 80¢ per hour for each year of the contract retroactive to February 10, 2006.
- All Mechanics brought up to the Master Mechanic level.

Section 28.3 - The Employer shall post the brush hog equipment as a temporary assignment each September of each year among existing Heavy Equipment Operator employees.

Section (New) - The Foreman shall use seniority as one of the factors when making daily assignments.

The Employer offers the following:

"Section 28.1:
Increase all classes by 2.5% per hour for each year of contract effective upon ratification by both parties.

Section 28.3:
Rejected

Rejected"

The Union referenced three classifications for illustrative purposes – Driver, Equipment Operator and Mechanic – and acknowledges that its proposal would, for 2007, place all of them at the highest rate for all Comparables. It is urged:

"There is no claim by the Employer to have an inability to pay as stipulated at the hearing by the Employer representative. Therefore, although the cost of wage increases proposed by the Union is higher then that of the Employer, it is justified by the comparables.

If the Employer's proposal is adopted then those employees would be farther behind then other road commission comparables. The other road commissions are providing between 2% and 3% each year of the contracts. This Employer is only offering 2.5% each year. The cost-of-living over the past 12 months has been running between 2.8% and 4.8%. The Employer's proposal would leave the employees having to spend more of their existing money on gas, food, etc. because the increase proposed by the Employer would not ever cover the increase in the prices for these goods that the employee has to pay.

The spread between the classifications is currently acceptable to the Union. The increases if made in cents per hour would maintain this spread. If the increases are in percentages, then the spread between the highest classification and the lowest classification will incur."

The Employer responds:

> " ... The Employer proposes that each classification be raised by 2.5% per year of the agreement. In the case of the Heavy Equipment Operator, which we previously used for comparison, this would amount to $.38 in the first year, $.40 in the second, and $.40 in the third. We certainly believe this to be a reasonable increase, given all of the circumstances in this dispute. Bearing in mind the tentative agreements previously referred to, our 'package' is significant."

One noteworthy item in the Tentative Agreements reached by the Parties relates to the Mechanic Classification. The Parties have agreed that those in the Mechanic Classification will be elevated to the Master Mechanic level.

The rate of increase among the Comparables is between 2% and 3% for all except Lake County Road Commission, which "is to be negotiated" for April 1, 2005 and April 1, 2006. The Union Proposal of an $.80 increase amounts to a 5.1% increase for the Master Mechanic and a 5.8% increase for the Laborer classifications for the first year. For the second year, the Union Proposal amounts to an increase of 4.9% and 5.7%. The offer by the Employer falls within a range which is deemed fair and reasonable. Although some Comparables may be above and others below, the employees herein will maintain their relative position. With regard to the matter of inflation, I note the data presented related to "all urban consumers" for the Midwest. In any event, the adopted wage increase of 2.5% for each year of the Agreement will not result in a large loss of purchasing power for the relevant period.

The Employer Proposal is recommended except for the effective date.

The next item relates to the posting of the "Brush Hog" equipment.

The Union states:

> " ... All the equipment used in this Employer is bid out among the members of the bargaining unit except the brush hog. This equipment is used on a temporary basis during the year, but it is a desirable job assignment. The Foreman use this equipment assignment to reward their favorites rather then on a seniority basis as all other equipment is bid upon."

The Union uses a similar argument in regard to using seniority when making daily assignments:

> "New Section - Often the work assigned on a daily basis ends up going into overtime. The contract requires that overtime be offered in seniority order except for that work that continues at the end of the shift. The Union's proposal to use seniority in making assignments would bring this casual overtime in line with the rest of the contract. If seniority was used when making daily assignments then these jobs that are anticipated to extend into overtime could be assigned to the senior employees within their classifications and bring all overtime into the seniority system which is currently in place in the contract."

The use of seniority in both of the above situations seems a reasonable manner in which to eliminate any charge of unfair treatment. I do not find that abuse has been established, but the use of seniority will achieve the result of eliminating any allegation of unfair treatment.

I recommend the Union Proposal in regard to the "Brush Hog" and Daily assignments.

Another issue is that of Retroactivity.

The Union argues:

> " ... The Employer should not be rewarded for failing to agree to the issues as they compare to other road commissions and gain a windfall by also not paying retroactivity pay to the employees. The Union has bargained in good faith and should not be disadvantaged from holding out for comparable treatment in wages and benefits to lose retroactivity."

The Employer has a very different view:

> " ... We cannot agree to that request and propose that any wage increase be effective upon ratification of the agreement. One of the most significant reasons for that position is contained in Employer Exhibit 9, which Road Commission Clerk John Albrecht testified to. The change in health care as proposed by the Employer and agreed to by the Union (without the reimbursements), results in a savings to the Employer of $4493.74 per month. This represents approximately 8% of payroll. We have, from the very beginning, repeatedly insisted that this agreement be concluded by the expiration of the prior agreement. That has not occurred. However, the Commission has incurred substantial additional costs as a result of that failure to agree, and we do not believe that reluctance to enter into an agreement should be rewarded, and leave the Employer as the only 'person' who must pay a cost for this delay. Obviously, this Employer anticipated a savings from the new healthcare package, which would have offset some of the increased cost of this new agreement, both now and in the future. As one can see from the table, the Union's proposal really does not contain significant relief to the Employer. Failure to obtain the relief that was necessary should mandate that all changes to this agreement be placed in effect at the same time."

It is understandable that both sides view the issue of retroactivity from their own vantage. It is the Undersigned's determination that the wage increase is to be retroactive to February 10, 2006.

I recommend that the wage increase of 2.5% be retroactive to February 10, 2006.

Pensions:

Section 31.1 of the Collective Bargaining Agreement is displayed:

> "31.1 The Employer shall pay the full cost for the participation of all employees covered by this Labor Agreement under the Michigan Employees Retirement System (MERS) Pension Plan with the B-1 Pension Benefit for employees who retire on or before February 9, 1998 and with the B-2 pension benefit for employees who retire on and after February 10, 1998. *Employees who retire on or after February 10, 2005 will be covered by the MERS-B3 pension benefit plan.*"

The Union seeks the following:

"Article 31, Section 31.1:

- Increase current employee pension from MERS B-3 to the MERS B-4 with the F55/25 rider.

- Change new employee pension to a defined contribution as follows:

  - Employer pays eight percent (8%).
  - Employer match three percent (3%) if employee wants to contribute up to three percent (3%) into pension -or-

  - Maintain current contract."

The Employer is offering the following:

"Section 31.1:

Current Employees
1. B-4 paid by Employee contribution.
2. Third year-F55/25 Employer paid.

New Employees:
Defined Contribution Plan
First year -5% Employer-3% match
Second year - 6% Employer-3% match
Third year - 7% Employer-3% match
Employees may contribute zero or 3% (by MERS rules)."

In support of its Pension improvement for current employees, the Union says:

"The Employees in Arenac County Road Commission have contributed over 12% of gross pay throughout the years in order to upgrade their premiums to the B-3 level."

The Union contends:

"The comparables justify the request of the Union to have the fact finder recommend the solution to the pension issues to be an increase for current employees to the B-4 with the cost paid by the

> Employer and a defined contribution plan requiring the Employer to put in 8% and a match of up to 3% for each new hire."

The Employer agrees with the Union Proposal as to the F55/25 rider to the existing Plan except it wants it effective the third year. With regard to the MERS B-4 proposal, the Employer urges:

> " ... This proposal has a cost associated with it, by the Union's own admission, of somewhere between 3.0% and 4.0%. Not only does this proposal have a significant cost attached to it, but it is simply not supported by the comparable counties. If the Fact-Finder reviews Employer Exhibits 2, 3, 4, 5, and 6 he will see that only one of the Employer's proposed comparable commissions has a B-4 pension plan, and the employees pay for it. Based upon the cost and comparable data, the Employer suggests that the Fact-Finder should recommend against this proposal."

Insofar as the defined contribution for new employees is concerned, the Employer proposes 5%, 6% and 7% employer contributions during the Agreement. With regard to the matter of employee contribution and Employer match, the Employer explains:

> " ... In discussing this plan with MERS representatives, the Employer believes that only two levels of contributions are permitted by the employees, and that would be either zero or 3%, with nothing in between. If the MERS rules are somehow modified to permit other levels of contributions, the Employer would be willing to agree to the same provided the match does not exceed 3%."

In response to the Union's contention that it has "paid" for its pension benefit in an amount of 12% over the years, the Employer responds:

> " ... We agree that the unit has taken zero percentages in years that improvements were negotiated. Their estimate of the 'cost' was 12%. Perhaps our math and logic skills are faulty, but the Union's proposal for wage comparison alleges that they lag by 2.3% to 5.2% (the 7.2% figure for the Mechanic position should not be credited, because the Employer has already agreed to raise

that position). If they have previously conceded 12%, shouldn't their wage be approximately 12% behind the comparables? It clearly is not. Also, if that is the trade that was made, can this Fact-Finder set that aside? If the bargaining unit agreed to pay for those costs, they should continue to pay for them now and in the future. If that wage difference is made up, perhaps the Employer should modify its proposals to include pension contributions."

A review of the Comparables reveals the following:

> Alcona County Road Commission "The Employer makes available a defined contribution employee's retirement plan.....The Employer will contribute an additional 1/2% of employees' basic income to the plan (5.5% total) commencing with the first full payroll period after June 30, 2006. The Employer will contribute an additional 1% of employees' basic income to the plan (6.5% total) commencing with the first full payroll period after June 30, 2007. The Employer will contribute an additional 1/2% of employees' basic income to the plan (7% total) commencing with the first full payroll period after June 30, 2008."
>
> Benzie County Road Commission "... will provide eligible employees retiring after January 1, 2003, with the Municipal Employees' Retirement System B-2 program. Effective June 1, 2005, the F55/25 rider will be adopted."

It also will match up to 7% of an employee's basic income to a deferred compensation employee's retirement plan.

> Crawford County Road Commission – a MERS Plan B-3 with the F Rider (F55/15) and:
>
> > "Employees shall pay four point three percent (4.3%) of their income in pre-tax dollars towards their retirement benefit.
> >
> > Implementation of MERS B-4 Program on or before June 30, 2008. An actuarial would be secured prior to July 1st of 2007. Once the cost of the B-4 program is resolved from the actuarial, the hourly wage increase can be determined. Overall increase for this contract period shall not exceed 3% total. The hourly wage increase shall be the difference

between the percentage cost for the B-4 program and the maximum allowance of 3%."

Iosco County Road Commission – Pays Benefit Program C-1 " ... B-1 and B-2 are funded by the employees with a payroll deduction of 6.7% of gross wages. The Commission funds the MERS upgrade from program B-2 to B-3 ..."

Lake County Road Commission – B-4 with F55/25 rider and:

"The employee shall pay two percent (2%) of his/her annual wages for said pension and the Board shall pay the balance."

A review of the Comparables reveals that the majority do not have a MERS B-4 retirement benefit. In the case of Crawford County Road Commission, a MERS B-4 Program will be implemented in June 2008. The above improvement is subject to the following limitation:

"The hourly wage increase shall be the difference between the percentage cost for the B-4 program and the maximum allowance of 3%"

In the case of Lake County Road Commission, the B-4 benefit is provided with the proviso:

"The employee shall pay two percent (2%) of his/her annual wages for said pension and the Board shall pay the balance."

Your Fact Finder concludes the Employer Proposal has greater merit. I recommend that the additional costs associated with the MERS B-4 benefit be paid by the employees.

In regard to the F55/25 rider, it is recommended that it be implemented on the date the new Agreement is approved and ratified by the Parties.

With reference to new employees, the Union Proposal of 8% toward a defined contribution plan is deemed excessive. The Employer Proposal for new employees represents a

reasonable starting point. If modifications are deemed necessary, adjustments can be made at a later date.

Health and Safety:

The Union requests a new provision:

> "Article 16, Section 16.6 - The Employer shall install a permanent roof and windshield on the Roller equipment."

The Union provides the following rationale in support of the demand:

> "The roller equipment is used during the summer months. It is very hot on this equipment due to the heated asphalt. The heat is increased due to direct exposures to the sun and wind. A roof and windshield will protect the driver from the elements of sun and wind.
>
> The employees when they are out on the job use the equipment to store their personal items like jackets and lunches. They also use the equipment to take their break and lunches. This equipment has no protection from the elements like rain and sun and therefore does not offer the Operator any relief during these breaks or lunches.
>
> All the other equipment of the Employer has a cab or a roof to protect the driver when operating the equipment."

The Employer does not favor the proposal.

As a general proposition, it does not seem to be a good idea to insert equipment specifications in a Collective Bargaining Agreement. The Undersigned is simply not in a position to render an informed judgment on whether roller equipment should be equipped with a windshield and roof. The Union can make its concerns known to the Employer who can then discuss the matter with the equipment manufacturers and retailers.

The Union Proposal is not recommended.

RECOMMENDATIONS

Temporary/Seasonal Employees – The Union Proposal is recommended.

Vacations – The Union Proposal is recommended.

Insurance –

23.2 Hospital/Medical/Surgical Insurance – I recommend Community Blue 3 with the $10/$40 Drug Rider, provided that employees be reimbursed to $5/$10 co-pays.

23.2B – Retiree Insurance – The Employer Proposal of Health Care Savings Plans for new employees is recommended.

23.7 Dental and Vision Insurance – The Union Proposal is recommended.

Wages – 28.1 – The Employer Proposal is recommended except for the effective date.

Brush Hog/Daily Assignment – The Union Proposal is recommended.

Retroactivity – I recommend the wage increase of 2.5% be retroactive to February 10, 2006.

Pensions – The Employer Proposal is recommended except that the F55/25 rider be implemented on the date the new Agreement is approved and ratified by the Parties.

Health and Safety – The Union Proposal is not recommended.

JOSEPH P. GIROLAMO
Fact Finder

Dated: October 13, 2006