

2216

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In The matter of:

Marquette County Road Commission,

MERC Fact Finding
Case L 06-5003

-and-

MICHIGAN AFSCME COUNCIL #25
AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
AFL-CIO

Raymond J. Buratto
Fact Finder

Report and Recommendations of the Fact Finder

The instant case is the result of the Employer's Petition for Fact Finding, dated January 31, 2007. The fact finding was assigned to me by letter dated April 5, 2007.

A hearing was initially scheduled for August 10, 2007 in Marquette. However in response to Bureau Director Okun's June 13, 2007 letter requesting arbitrators and fact finders exercise fiscal restraint, it was my decision to forego an on-site hearing and ask the parties for written submissions stating their positions on the issues in dispute.

In lieu of a pre-hearing conference, the parties submitted a letter dated June 26, 2007 detailing those contractual issues still in dispute after mediation and to be submitted for fact finding. While the letter was submitted on the letterhead of the employer's counsel and not signed by the union's representative, no objection to its contents were raised by the union, therefore I accept the submission as the intent of the parties. The parties have submitted ample background including, but not limited to, information in the nature of the employer's financial condition, comparables, prior bargaining history and the economic impact of the last contract, and changes in the state budget relative to road commission funding. All of these concerns have been considered in the following set of recommendations.

The issues submitted to me for recommendation are: Article 12 Employee Discipline; Article 17 Layoff and Recall Procedures; Article 18 Job Postings and Bidding Procedures; Article 20 Michigan National Guard; Article 21 Leaves of Absence; Article 27 Workers Compensation; Article 28 Wage Rates; Article 31 Personal Leave; Article 32 Time and One Half; Article 36 Insurance Coverage; Article 39 Work Performed by Supervisors; Article 40 General Provisions and Article 43 Appendixes/Duration.

Article 12 – Employee Discipline

The union has proposed deleting the current contractual language which allows an arbitrator, having found the employer is justified in taking discipline, to modify the penalty imposed. The union's request is based on an "all or nothing premise", to wit; the employer is either right or wrong in the discipline meted out; if the MCRC is right, then the discipline is also right. The corollary is that the degree of discipline need not be considered if the arbitrator does not agree with the administration of discipline.

FINDING AND RECOMMENDATION:

I do not concur with the union, for there are instances where the disciplined employee's rights are best protected by the consideration of mitigating circumstances which would serve to reduce the penalty even though the offense merits discipline. Therefore I recommend retention of the existing language.

Article 17 Layoff and Recall Procedures

At issue is new language proposed by the employer creating a "Highway Maintenance Specialist/Mechanic" position. In justifying its proposal the MCRC cites "an absolute need to do more with less" (MCRC Brief, p. 17). The union counters by citing the diminution of the bargaining unit from 75 employees to 54, arguing that the employer does not need this added flexibility because there already exists a shortage of employees to perform the work available. Moreover according to the union, the Commission already has the

ability under the temporary assignment provisions of the collective bargaining agreement to make the work assignment in question.

FINDINGS AND RECOMMENDATION:

While it would seem logical that this added flexibility would benefit the employer, the Commission has not supported its request for the requested change, nor has it shown how operation of the temporary assignment language does not achieve the same purpose. Therefore I recommend retention of the existing language.

Article 18 Job Postings and Bidding Procedures

The employer proposes to delete Article 18 (a) (1) (ii) (b) yet no where in the joint submission nor in the employer brief does it tell the fact finder what that language entails.

FINDINGS AND RECOMMENDATION:

Neither party has afforded me a copy of the current collective bargaining agreement therefore I cannot address the proposal to delete this language of Article 18 (a) (1) (ii) (b). I will retain jurisdiction of this matter in the event any recommendation made herein inadvertently alters the language of this article and section.

The employer further proposed (Exhibit L) replacing sub-sections (i), (j) and (k) with a new sub-section (i) recognizing the occasional need for truck drivers to do mechanic work and mechanics to operate equipment, and the seniority provisions to deal with these issues. I find this proposal well reasoned and drafted to address the concerns of the parties and therefore support its adoption

The balance of the Article 18 employer proposal deals with the creation of the Highway Maintenance Specialist/Mechanic position and has been dealt with herein above.

Article 20 Michigan National Guard

The union proposes language requiring the employer make up the difference of any wages lost by Commission employees serving on active duty with their National Guard unit. The MCRC is opposed for purely economic reasons.

FINDING AND RECOMMENDATION:

While it is indisputably “good public policy” to do so, little other support is given for a contractual change which is neither immediately necessary nor quantifiable, given that no member of the bargaining unit is identified as serving in the National Guard in either reserve or active duty status. Beyond the reference to “good public policy”, no justification for the change is offered and for this reason I concur with the employer that the proposal be rejected.

Article 21 Leaves of Absence

The Commission proposes a change to the leave of absence policy to comport with the Family and Medical Leave Act, whereby an employee must utilize all sick leave prior to going on an unpaid leave. This would be required even where the employee needs FMLA leave to care for a sick family member and places the employee in the position of having no sick leave remaining for their own use if needed later. The Commission rejects the union’s proffered “amendment” to its proposal, arguing that the additional bank of sick days coupled with the current two-year entitlement is simply too great a burden.

FINDING AND RECOMMENDATION:

I agree with the proposal that all paid sick leave be used prior to commencement of unpaid FMLA leave. This removes any incentive of the employee to opt for “FMLA” (quoted because the need is questionable) leave and preserve his or her paid leave for later use.

Article 27 Workers Compensation

The employer proposes a change to the existing agreement whereby any employee receiving workers’ compensation would, after the first week of such status, be paid out of their accumulated sick leave an amount

equal to the difference between the workers' compensation received and their regular weekly earnings. These payments would be charged against and limited by the "balance" in the employee's extended sick leave "bank". It seeks the opportunity to challenge the veracity of each and every claim of work related condition prior to the payment of workers' compensation and the incursion of the attendant increased experience factor.

The union supports its opposition to the plan by asserting that the proposed change is ripe for employer abuse and should be rejected.

FINDING AND RECOMMENDATION:

While I understand the union's concerns, I find merit in the proposed language change. Payment of the initial five days waiting period out of accrued sick leave merely serves as the guarantee of the employee's income stream and causes no one injury, particularly where as here the employees have been afforded a substantial accrual.

Article 28 Wage Rates

The union proposed an across-the-board wage increase of 3% for each of the three years of the agreement. The employer countered with an offer of a 2.75% increase in each of the three years conditioned upon retention of the existing three job classifications, the addition of the highway maintenance specialist/mechanic position, and the union's acceptance of a reduced benefit/cost health insurance coverage. The employer argues that since the parties were unable to reach accord on reducing costs of health insurance, the first year is rendered a nullity and that no wage increase should be granted retroactively.

The employer also proposes changes in the use of Acting and Working Foremen as described in Article 28, (d) (e) and (f). In an overall attempt to reduce employee expense the employer proposes to amend Article 28 (e) to allow for the designation of the "Working" (formerly called "Acting") Foreman at its discretion. Limitations on their numbers are applied at principal garages. By virtue of the renaming of Article 28 (e) as "Working Foreman" I must conclude the employer intends the elimination of the "Acting Foreman" designation which was formerly Article 28 (e). It argues the need to do more with less as justification for this change, and

further believes the experienced work force knows how to do the work that is required.

FINDING AND RECOMMENDATION

I recommend adoption of the union's proposal for pay increases at three percent (3%). However, given the inability of the parties to reach accord on the reduction in health care expenditures, I recommend the increases begin in the second year of the contract.

Article 31 Personal Leave

As stated in the parties' June 26, 2007 joint submission of items in dispute, the union proposes an amendment to Article 31 of the contract granting an additional three (3) personal leave days not chargeable to accumulated sick leave. These days are intended for conducting personal business. The change is opposed by the MCRC as antithetical to its goal to "do more with less". The record offers no support for the union's proposal.

FINDING AND RECOMMENDATION:

I am not satisfied that there exists a justification for these additional days without a concomitant reduction in the accumulated sick leave. There is no submission that the use of sick days for purposes other than being sick is prohibited. Therefore I cannot recommend the union's unjustified request and therefore urge rejection of this proposal.

Article 32 Time and One Half

The dispute concerns language in this article relating to the priority afforded in the scheduling of vacations. The employer proposes a change in the current agreement which would confer preference to the scheduling of vacation time over scheduling personal leave which in turn would have scheduling priority over compensatory time off.

The union proposes deletion of Article 32, Section 3 (b) which currently requires the annual use of accumulated compensatory time off on or before December 11 of each calendar year, after which any unused time will be paid along with the longevity payment.

The second issue within this article relates to the employer's proposal changing the current term "Acting Foreman" to "Fill-In Working Foreman" and deleting the current prohibition on foremen doing bargaining unit work, replacing it with a provision allowing foremen to perform bargaining unit work *de minimis* or minor in nature, or when the calling out of regular bargaining unit employees "would negatively impact timely and efficient operations." The union is opposed to any change in the existing language.

FINDING AND RECOMMENDATION:

I find merit in assigning the scheduling of vacation priority over the scheduling of personal leave and compensatory time off. Recognizing that vacation time off is typically taken in blocks of time and with due regard to the wants and needs of one's family whereas personal leave and compensatory time off do not typically involve blocks of time nor consideration of the employee's family. Therefore I recommend the adoption of the employer's proposal regarding the prioritization in scheduling.

I do not recommend adoption of the union's request to delete Article 32, Section 3 (b).

Article 36 Insurance Coverage

The employer proposes, and the union opposes, a substantial reduction in coverage for employees who become ill or die during employment. The current agreement requires the employer to pay for health insurance coverage for up to two years in the event of a non work related injury or disability requiring absence from work. In its brief the union states it's a little used provision, quoting "approximately one employee per year." Further the union clarifies that this provision has been tied to the leave of absence provision which allows employees to be on medical leave for up to two years. The employer's proposal is to limit that coverage to six (6) months and make it available only to those employees who are "qualified", which is defined as having ten or more years of service. The employer estimates the annual savings as exceeding \$20,000.00. Since 2000, nine employees have either exhausted or nearly exhausted this benefit. The employer states the ten year service requirement impacts only four (4) current bargaining unit employees.

Lastly the employer has proposed to limit the level of benefit coverage of future retirees to that of active employees. In its brief the employer notes the MCRC has decided to unilaterally implement a change for those retirees from group to individual plans ...the idea being that the equivalent levels of benefits would be provided and that if the economic benefit level was reduced the employer would make up the difference. The next window for that action would be December, 2007.

As a result, it would not appear the Fact Finder is required to consider or rule on that planned action, which is already being implemented.

The union concurs with the concept of individual policies for retirees but does object to the employer's plan to change the level of insurance coverage for current retirees. The union also asserts it has no authority to negotiate changes to pre-existing retirement benefits.

The parties apparently agree to the change in insurance levels as detailed in the union's brief and in the employer's last offer. The MCRC notes that non union employees opting for retirement since the commencement of negotiations of this agreement did so with the BCBS PPO 4 plan and the 10/40 drug card. However this was done with the parties' understanding that the plan would be automatically enhanced should AFSCME be able to negotiate a better plan. It is also noted that the "top MCRC managers took a decrease in health insurance benefits, to the level of BCBS PPO 4" (page 6, MCRC Brief) and remain in that plan today.

The MCRC has offered coverage equivalent to the BCBS Community Blue Plan 2. On page 5 of its brief the union states it has offered to change the current coverage to Plan 2 and then presents a graphic illustration of the coverage and co-pays available within that plan. The union further requests that the employer convert to wages the full savings of approximately \$1.22 per hour, one-half of which the employees would be required to contribute toward the cost of the premium.

The union believes the proposal to move current employees to Plan 2 is the most appropriate action, given the bargaining history of the parties.

According to the union, remaining in dispute are issues relating to network availability, access, co-pays, and deductibles when treatment is delivered by a non-participating provider. The union offers no justification for its apparent concern over the potential loss of access to Wisconsin and Minnesota physicians brought about by the “equivalent coverage”, other than to allude to the potential difficulty in obtaining referrals and a possible increase in the deductibles and co-insurances.

The employer’s Exhibit J attached to its Brief, the two page May 25, 2007 memo to employees on the status of negotiations, details the impact of these plan changes. The Fact Finder notes some benefits are enhanced while others are decreased. Unfortunately the neither the “Benefits at a Glance” nor the information on UP Blue referenced in the memo was afforded to me. This information may have been helpful.

FINDING AND RECOMMENDATION:

I find merit in the employer’s proposal to limit the continuation of health care coverage to six (6) months following non work related illness or injury. We all recognize the importance of health care in the total employment package and realize the disincentive to return to work presented by the continuation of health care coverage for up to twenty four months. Absent any compelling evidence in the record to the contrary, I find that a six month continuation of health care coverage is both fair and equitable and therefore recommend adoption of the employer’s proposal in this regard.

Inasmuch as the employer has determined to unilaterally invoke the changes in retiree insurance coverage at year end, I need not address those issues as part of these findings and recommendations.

As to the proposed change in insurance levels for current employees, I recommend the parties agree to the implementation of the coverage “equivalent” to BCBS Community Plan 2. The substantial savings to be enjoyed cannot be ignored and there is no proven overarching concern that the employees/membership will be substantially adversely impacted. The employer has demonstrated its good faith when in the face of the prior recommendation of Fact Finder George Roumell it opted to continue a more expensive plan rather than the one suggested by

Roumell, and provided by a carrier which the employer deemed “suspect”.

It is axiomatic that the trend in today’s labor negotiations, irrespective of private or public sector, is the shifting of the cost of health care coverage to the employee and/or retiree. The cost of providing these benefits has grown out of control, much like an Upper Peninsula wildfire. The parties must be artful in the transition of a portion of these costs to the employees/retirees/membership. Transfer of a portion of the burden to this group engages them as a stakeholder and urges them to become better, more educated consumers of health care, thereby assisting in the overall goal of cost containment.

I cannot recommend the savings be awarded to the employees in wages, with a portion to be “rebated” later to the employer in an effort to have the employees share in the insurance premiums. It is both an unreasonable increase to the bargaining unit, given the recommendation on Article 28. Moreover this method exposes the employees to the additional costs associated with payroll and unemployment taxes. I recommend the parties attempt to resolve this issue through a payroll deduction plan involving pre-tax dollars to fund this benefit.

Article 39 Work Performed by Supervisors

Current provisions of the agreement prevent Supervisors from performing any bargaining unit work which is not (a) experimental; (b) demonstrative; (c) emergency in nature; or (d) negligible in amount.

The employer proposes to allow Supervisors to perform bargaining unit work so long as all other employees of the District have either been called out to work or are presently working. Employer justification would appear to be found in the “do more with less” staffing argument.

The union opposes this proposal; its justification lying in the diminution in bargaining unit size as well as its apprehension that the proposed changes will “promote grievance upon grievance.”

FINDING AND RECOMMENDATION:

I am disposed to agree with the union. While I do agree that the proposed change is in the nature of “doing more with less” the MCRC has

offered no acceptable justification for its proposal. To recommend its adoption, cognizant of the continued decline in bargaining unit membership, is to fly in the very face of the contractual relationship. Certainly the very issue of supervisors working and effectively depriving bargaining unit employees of the opportunity for overtime would provide enough work to fund an arbitrator's retirement annuity.

Article 40 General Provisions

In anticipation of creating a "Highway Maintenance Specialist/Mechanic" position, the employer offered to provide three (3) pairs of overalls to the person(s) filling that position, as well as to the greaser. The union, while opposed to the creation of the position, would agree to the overall proposal should the creation of the new position be recommended.

FINDING AND RECOMMENDATION:

Inasmuch as I do not recommend the adoption of the new "Highway Maintenance Specialist/Mechanic" I need not address this portion of the proposal.

Article 43 Appendixes/Duration

FINDING AND RECOMMENDATION:

The MCRC brief indicates that because the parties have not been able to draft a desired written callout procedure there is nothing presented to the Fact Finder in this regard.

By operation of the Union's Brief and the Employer's Exhibit L letter dated August 16, 2007 it is evident that the parties agree to eliminate Appendix D, the Cost of Living Adjustment, therefore I do not address this issue.

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I expressly retain jurisdiction of any issues in the Petition or the joint submission of the parties not specifically addressed by this recommendation.

This report and recommendation issued at Rochester, Michigan on September 30, 2007.

A handwritten signature in cursive script that reads "Raymond J. Buratto". The signature is written in black ink and is positioned above a horizontal line.

Raymond J. Buratto
Fact Finder