

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

IONIA COUNTY ROAD COMMISSION

-and-

MERC Fact Finding
Case No. L08 G-9012

GENERAL TEAMSTERS UNION
LOCAL 406

Report

Thomas L. Gravelle, Fact Finder

September 5, 2009

RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on April 27 and 29, and June 16, 2009 in Ionia, Michigan.

The Employer is represented by attorneys Craig W. Lange and Nicholas R. Kowalczyk. The Union is represented by attorneys Fillipe S. Iorio and Krista Durchik.

I have reviewed the parties' exhibits, testimony and post-hearing written arguments.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
MERC Fact Finding
Case No. L08 G-9012
September 14, 2009

FACT FINDING LAW

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.

Neither the LMA nor the MERC rules contain factors for reviewing the record and making recommendations in fact finding. However, an analogue does exist: The factors set forth in Section 9 of Act 312 PA 1969, which is the Michigan interest arbitration statute for police and fire fighters.

Section 9 states several factors to be considered by an Act 312 arbitration panel, including the following:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

These factors are appropriate for consideration in fact finding.

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.

KEY ISSUE: ABILITY TO PAY

Factors appropriate for consideration in fact finding include "[t]he lawful authority of the employer, . . . [t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs." A local unit of government's lawful authority is constrained by the requirement that it balance its budget. Road maintenance is within the interest and welfare of the public. The basis of satisfying the above factors is the financial ability of the unit of government to discharge its responsibilities.

Unfortunately, the Ionia County Road Commission – like many local units of government in Michigan – is facing a financial crisis.

At the hearing before me, expert witness Ronald B. Wohlford testified to various financial exhibits and gave his opinions on the Commission's financial difficulties, as did Commission managing director Dorothy Pohl. The record shows the following :

- The primary source of funding for the compensation of the Commission's employees is the Michigan Transportation Fund ("MTF"). It is composed of gasoline and diesel fuel taxes and license fees. For a long time, the tax has remained constant at only 19¢ per gallon for gasoline and only 15¢ per gallon for diesel fuel.
- In 2004, the Commission received MTF payments of \$4.95 million. The annual payments have declined each year since 2004. In 2008 the Commission received MTF payments of \$4.46 million. Using 2004 as a benchmark, the Commission's total reduced MTF for the next four years was \$1.46 million, or an average annual decline for each of the four years following 2004 of \$365,000. (E. Ex. 4(e)(3).
- The decline of MTF payments has continued in 2009. (E. Ex. 31). These declines appear to be the result of Michigan's long recession (15.2% unemployment rate in June 2009) and reduced motor vehicle driving.
- Other revenue sources are not profitable for the Commission:
 - The Commission can only use Federal and State aid funds for small projects (less than \$100,000). The Commission funnels the remainder to private contractors. Ms. Pohl testified that in the last 10 years the Commission has had only two "less than \$100,000" projects. (Nor is the Commission receiving any federal "stimulus" funds.)
 - Five or six Commission employees perform maintenance work for the Michigan Department of Transportation (MDOT). MDOT pays for this work on an actual cost basis, i.e., the Commission earns nothing for this work. Ms. Pohl explained that if the Commission stopped doing this work the sole consequence would be that it would lay off five or six bargaining unit members.
 - Work that the Commission performs for townships is on a project basis without any long term guarantees. Townships appear to be cutting back on utilizing the Commission and also have been using private contractors for township work.
- The Commission is required by state law to balance its budget.
- In 1993, the Commission joined the Municipal Employees Retirement System of Michigan (MERS) in behalf of its Union and non-union employees. All active employees contribute 3% of their annual wages and receive the same benefits. As of

December 31, 2008, there was a 1:1 ratio of retirees and beneficiaries to active employees. (E. Ex. 28, Table 7). This is a high and expensive ratio.

– The Commission's defined benefit plan is severely underfunded. As of December 31, 2008 the plan was only 34% funded and its unfunded accrued liability had increased to \$8.8 million. (E. Ex. 28). (In 2003, the Commission's unfunded accrued liability was \$7 million, or 20% less than in 2008). Further, MERS estimated that it suffered a 25% loss on its investments in 2008. MERS also explained: "If the December 31, 2008 valuation results were based on market value on that date instead of 10-year smoothed funding value: i) the funded percent of your entire municipality would be 25% (instead of 34%); and ii) your total employer contribution requirement for the fiscal year starting January 1, 2010 would be \$663,744 (instead of \$592,044)." (E. Ex. 28 Exec. Summary, p. 3).

– The Commission's MERS contribution rate for 2009 is 30.35% of pay earned by each Commission employee. Since starting with MERS in 1993, the total annual funding percentage increased from 15% of wages to 35% in 2007. (E. Ex. 41, p. 14). For the Commission to obtain an 80% pension funding level (i.e., 20% unfunded accrued liability) it would have to contribute substantially more for the foreseeable future. (E. Ex. 4-1)

– Because of the poor performance of the MERS defined benefit plan, the Commission's contributions will increase by 2.51% of wages on January 1, 2010. (E. Ex. 28, p. 2).

– Public employee pensions are protected by the Michigan Constitution.

• Health care insurance has sky-rocketed since 2000.

– The total yearly cost to insure one Commission employee with family coverage rose from \$6,106 in 2000 to \$16,979 in 2008, an increase of almost 180% (E. Ex. 5-4 a). Beginning in 2004, active employees have contributed to the annual cost. Still, between 2006 and 2008, the Commission's contributions for family coverage rose from \$12,453 to \$16,130, a 30% increase.

– The Commission also maintains a retiree health plan on a "pay as you go" basis. For this reason, the Commission's unfunded accrued liability as of December 31, 2007 was \$5.1 million, with only 1.9% of accrued liability being funded. (E. Ex. 30, p. 30).

– To fully fund the retiree health plan would require annual contributions of \$471,608 annually. (E. Ex. 4(e) p. 16). In 2008, the Commission's payroll was \$1,801,703 (Ex. 28, p. 18). \$471,608 equals 26% of payroll.

– The fact that the Commission is not legally required to fund the retiree health plan at a prudent level does not change the fact of its liability to pay contractual retiree health care benefits, i.e., the liability is real.

- Over the past several years, maintenance costs have increased sharply. For example, since 2000 diesel fuel has gone up 270% (as of March 2008), antifreeze has gone up 103% and bits have gone up 51%. (E. Ex. 4(g)). To save money, the Commission has increased the replacement schedule for Commission equipment from 8 years (recommended by the State) to 12 years, and the Commission is retaining graders 2 years longer than recommended by the State. Ms. Pohl testified that these delays have increased repair costs.
- The Commission has dealt with its revenue shortages primarily by reducing the work force. Between 2004 and 2009 the number of bargaining unit active employees has been reduced from 35 to 27, or 23%. (U. Ex. 18). The Commission's overall active work force has been reduced from 45 to 40 employees.
- Despite these reductions, wages and fringe benefits have risen from \$3.6 million in 2004 to \$3.8 million in 2008. During this period the average labor cost per employee has risen from \$63,000 to \$88,000. (E. Ex. 4(e) 7, as adjusted).
- On December 31, 2007, the Commission had cash on hand of only \$327,721, (E. Ex. 4(e) 9), the lowest among the comparable commissions. (E. Ex. 4(e)11). Mr. Wohlford explained that the Commission's cash on hand was inadequate. On December 31, 2008, cash on hand was reduced to \$277,457. (E. Ex. 30, p. 8).
- On December 31, 2007, the Commission's undesignated fund balance was \$1,001,555 (E. Ex. 4(e) 9). Among the Commission's proposed comparable communities, fund balances as of this date ranged from over \$2 million to almost \$5 million, with an average of about \$3.4 million. (E. Ex. 4(e) 10).

I adopt the above representations, which establish an ongoing and severe financial bind.

The above information supports the following conclusions set forth in the Commission's post-hearing brief:

The Commission's primary source for revenues, the Michigan Transportation Fund, is shrinking annually due to diminishing purchases of fuel by the traveling public. Economic circumstances are predictive of a continued slide. (E. Ex. 4(q)). These continued decreases in revenues demand conservative fiscal policies. Where, however, they are confronted by burgeoning expenditure increases, demand for conservation is inadequate. Instead, change must be accomplished if balance is to be maintained.

p. 7.

The comparison of cash on hand and unrestricted fund balance among comparable county road commissions manifest the critical mass of the ICRC's

fiscal condition. Commissions are being impacted by declining MTF revenues, the ICRC's "double-headed monster" of an acutely underfunded defined benefit plan and a massive OPEB liability compound exponentially the financial problems facing this public employer.

p. 13.

There is not a single bright spot in the ICRC's financial picture, save the Employer's successful juggling act which, to date, has permitted it to maintain a balance between increasing expenditures and declining revenues. This balance has been maintained primarily through staffing reductions and equipment purchase delays.

However, the day is at hand where expenditure demands, caused by escalating pension, OPEB and health insurance cost increases, will no longer permit a balance to be struck. Continuing declines in revenues leave the ICRC with little option short of further decreases in staffing and with it, the lack of capacity to maintain the very road system for which they have responsibility.

pp. 69-70

In summary, because of the Commission's responsibilities, it cannot continually try to balance its budget through shrinking the work force and deferring capital expenditures.

The Commission's financial condition is the overriding consideration in this Report.

COMPARABLE COMMUNITIES

While the main reality faced by the parties is the Commission's financial crisis, outside county road commissions which are "comparable" may shed some light on the parties' disputed issues.

The Commission has proposed road commissions from the following counties: Barry, Cass, Gratiot, Hillsdale, Huron, and St. Joseph.

The Union has proposed road commissions from the following counties: Eaton, Ingham, Kent, Montcalm, Schoolcraft, and Shiawassee.

Selecting comparable communities is inexact. The issue is which proposed package of communities is more comparable to the Commission.

For the following reasons, I am adopting the Commission's proposed communities.

First, the bargaining unit in Ionia County has 27 employees. The Commission's proposed county road commissions range from 21 to 34 employees with an average of 29 employees. The Union's proposed commissions range from 20 to 177 employees with an average of 53 employees.

Second, in fiscal year 2008, the Commission received \$4,322,371 in MTF payments. The Commission's proposed commissions received MTF payments between \$4 million and \$4.6 million, with an average only \$5,968 higher than the Commission's MTF payments. The Union's proposed commissions received between \$1.6 million and \$27.7 million, with an average of \$9 million.

Third, MDOT certifies the miles of road in each county, and part of its computation of MTF payments is based on these miles. Ionia County has 1,073 certified road miles. The Commission's proposed commissions have certified miles between 1,022 and 1,624 miles. The Union's proposed commissions have certified miles between 435 and 1,971 miles.

Fourth, for each MDOT certified mile, the Commission received \$41.76 in 2008. The Commission's proposed commissions received between \$29.41 and \$43.89, with an average of \$39.22 per mile. The Union's proposed commissions received between \$35.80 and \$14,558.00, with an average of \$3,549.11 per mile.

Fifth, three of the six commissions proposed by the Union – Ingham, Kent, and Schoolcraft (in the upper peninsula) – are less comparable to the Commission than any of the Commission's proposed commissions.

DISPUTED CONTRACT ISSUES

A. HEALTH INSURANCE

The Commission proposes: (1) Blue PPO 12 plan with annual \$1,000 single, \$2,000 family deductible; (2) Employee will pay first \$600/\$1,200 of annual services received and Commission will pay balance; (3) Deductible will include \$30.00 per office visit (including chiropractic); (4) Entire premium to be paid by Commission with current 5% employee premium sharing eliminated; and (5) Addition of the following language to address premium increases in excess of 10%:

In the event that health insurance premiums increase more than 10%, a committee consisting of 2 union and 2 management representatives will meet to review alternatives and recommend changes to keep the premium increase below 10%. If recommended changes are not accepted by the majority of employees, employees and retirees will pay an amount equal to the premium increase over 10% via automatic payroll deduction or quarterly checks from retirees.

The Union proposes: (1) Blue PPO 12 plan with no deductible and no employee premium sharing; (2) \$30.00 office visit co-pay; and (3) no co-pay for chiropractic office visits.

RECOMMENDATION

On the issue of health insurance, I recommend that the Commission's position proposals be adopted by the parties, except as follows:

First, I would place the Union members on basically the same deductibility schedule as the non-union employees, i.e., \$500/\$1,000 on adoption of the new agreement and for calendar year 2010, and \$600/\$1,200 beginning on January 1, 2011.

Second, I would add the following clause after "If" in the second sentence quoted above to read:

If a majority of the committee fails to agree or if recommended changes are not accepted by the majority of employees, employees and retirees will pay an amount equal to the premium increase over 10% via automatic payroll deduction or quarterly checks from retirees.

REASONS

In January 2009, the Commission implemented the Blue PPO 12 plan for its non-union employees, with a \$400/\$800 deductible for 2009, \$500/\$1,000 for 2010, and \$600/\$1,200 for 2011. The PPO 12 plan provides the same coverage as the PPO 1 plan it replaced.

Last year, the Commission offered this same arrangement to the Union; but the Union rejected it because of its counter-proposal that its members make no payments other than \$30 per office visit (with no co-pay for chiropractic office visits).

The Commission's proposal addresses the problem that its health insurance premiums have risen dramatically in recent years. Total annual premiums for family coverage rose from \$6,106 in 2000 to \$16,979 in 2008, an increase of almost 180%. (E. Ex. 5-4 a). Even with employee contributions beginning in 2004, for 2008 the Commission itself paid \$16,130 for Union family coverage, – an increase of 164% over its payments in 2000. (Id.).

Further, because employees are relieved from paying any premium costs those employees who use little medical services would pay less in deductibles than under the current premium sharing.

The Union's proposal provides insufficient cost savings.

In my recommendation I am basically putting the Union employees on the same footing as the Commission's non-union employees and I am not "penalizing" the Union members for not agreeing to pay the higher premium percentage paid earlier by the non-union employees.¹

For the above reasons, including the City's ability to pay, I am recommending the Commission's proposal as I have modified it above.

B. PRESCRIPTION DRUGS

The Commission proposes: (1) A \$10/\$40 closed formulary with two-times co-pay on mail order prescription drugs; and (2) Continuation of its \$20 reimbursement on brand name drugs so that employees will continue to pay \$10/\$20.

The Union proposes: (1) A \$10/\$40 open formulary with single co-pay on mail order prescription drugs; and (2) Continuation of the Commission's \$20 reimbursement on brand name drugs so that employees will continue to pay \$10/\$20.

¹ In 2007, the Commission's non-union employees paid 6% of Blue PPO 1 health insurance premiums. In 2008, their co-pay was increased to 8%. The Union employees have been paying 5% of Blue PPO 1 since 2007.

RECOMMENDATION

On the issue of prescription drugs, I recommend that the Commission's position be adopted.

REASONS

Currently, the Commission has in place with BCBS a \$10 generic and \$40 brand name employee co-pay for prescriptions, but reimburses employees \$20 per brand name prescription so that the employee co-pay is \$10/\$20.

A BCBS benefits summary (E. Ex. 5-11) explains a "closed formulary" as follows:

The formulary is a continually updated list of FDA-approved medications that represent each therapeutic class. The drugs on the list are chosen by the BCBSM Pharmacy and Therapeutics Committee for their effectiveness, safety, uniqueness and cost efficiency. The goal of the formulary is to provide members with the greatest therapeutic value at the lowest possible cost. Drugs listed as nonformulary (Tier 3) in the formulary are **not** covered. Formulary alternatives are available. The member is responsible for the full cost of any nonformulary drug that is dispensed, unless the prescribing physician and BCBSM agree that the drug is medically necessary. These drugs are considered medically necessary only if none of the formulary alternatives would be effective or if use of the available Tier 1 or Tier 2 formulary alternatives would pose an unnecessary risk to the member.

Another BCBS publication (E. Ex. 5-12) explains:

Generic Drugs offer the best value

Prescription drugs can be costly, but many are now available as generics. Generic drugs work the same as brand-name drugs, but cost less. Depending on your drug benefit, using generic drugs may lower your co-payment. The FDA requires that generic drugs have the identical active ingredients as the equivalent brand-name drugs, but they may differ from brand-name drugs in color and shape. Since the major difference between brand-name and generic drugs is price, your prescription will be filled with the generic equivalent when medically appropriate.

I accept the above representations of BCBS. Further, the record before me does not establish any abuse of judgment by BCBS in denying Tier 3 drugs when deemed medically necessary by a patient's physician.

The Commission explains its proposal of a double co-pay for up to 90 day mail order prescriptions as being fair because otherwise the employee would be paying the same co-pay for a 90 day prescription as for a 30 day prescription. BCBS representative Diane Van Eck explained that many plans are going to a double co-pay for lengthy mail order prescriptions.

Under the Commission's proposal the Commission would obtain annual savings of about \$39,000, with no significant adverse impact on employees.

C. WAGES

The Commission proposes: Wage level freeze until adoption of a new contract at which time (1) a 20¢/hour raise will be given to Transportation Maintenance Workers (TMWs), Grader/Gradall Workers, and Lead Workers. (2) Certified Mechanics (who received a special increase from \$.75 to \$1.00 per hour during the 2005-2008 contract (J. Ex. 22)) will not receive an additional hourly increase upon adoption of the new contract. The Commission further proposes:

Wage rates to be effective for July 8, 2010 and July 8, 2011 will be governed by the performance of the primary revenue source for the ICRC – the MTF. For the contract year 2010-11, to the extent the MTF receipts increase or decrease for the previous calendar year (2009), wages will be increased or decreased by a like percentage, capped at 2.0% up or down. For 2011-12, wage rates will again be tied to the MTF. To the extent that such revenues will go up, wages will be frozen at 2010-11 rates. If, however, the MTF continues its multi-year decline, wages will be reduced and capped at a 2.0% reduction.

The Union proposes: Annual 3% wage increases for the first three years and 2% for the fourth year, with retroactivity for at least the first year. ²

RECOMMENDATION

On the issue of wages, I recommend that the Commission's proposals be adopted. However, I think that the parties might wish to review the hourly wage of the mechanics, who are not given a step increase under the Commission's proposal (although they did receive a \$.25 per hour increase by special agreement in 2006).

REASONS

As with other disputed economic issues, the overriding issue is the Commission's financial condition: While the Commission's pension and retiree health insurance liabilities are going up (and would sky-rocket if the Commission attempted to fund them at an adequate level to cover accrued liabilities), its primary source of income for employee compensation – the MTF – is going down.

As to pensions, the Commission is currently paying 30.35% of wages (a very heavy burden) and is in line to pay an additional 2.51% of wages beginning on January 1, 2010.

The Union has argued that the Commission's hourly wage proposals short change the Union members in comparison with increases granted to the Commission's non-union employees (which include some lump sum payments in 2008). This is based

² In its brief, the Union proposes wage increases for three years rather than four years (its earlier position) whereas the Commission now proposes a four year contract rather than three years (its earlier position). Because the new contract will not be come effective until late 2009 at the earliest I recommend that the new contract be for four years, with an expiration of July 8,2012.

in large part on timing issues and the data selected for review. For instance, Union members received a \$1,200 signing bonus for their current contract; and in 2008, the non-union employees paid 8% of their health insurance premiums whereas the Union employees paid 5%. In other words, in 2008 non-union employees paid about \$500 more a month for family premium coverage than the 5% paid by Union members. In addition, the administrative costs of the Commission represent a very small percentage of the Commission's budget. Ms. Pohl estimated these costs to be only 4%, which she believed to be far less than what other road commissions incur in administrative costs.

A review of the comparable commissions I have found, shows that in all employment categories the Commission has paid higher hourly wages than the average of the comparable commissions (including the Commission). (E. Exs. 6-5 – 6-10). Further, these exhibits do not include step increases in Section 7.9 of the parties' existing collective bargaining agreement (which the Commission no longer proposes to eliminate). For 2008, these exhibits show the following (minus Commission step increases): For transportation maintenance workers with full time routes, the Commission paid \$17.83 per hour whereas the average was \$16.94 per hour. For other transportation workers, the Commission paid \$17.83 per hour whereas the average was \$16.02 per hour. For grader/gradall workers, the Commission paid \$18.43 per hour whereas the average was \$17.81 per hour. For equipment operators, the Commission paid \$18.23 per hour whereas the average was \$17.68 per hour. For mechanics, the Commission paid \$17.83 per hour whereas the average was \$17.82. For lead workers, the Commission paid \$19.15 per hour whereas for the two

comparable commissions with fixed hourly rates (and the Commission) the average was \$18.72.

Under the Commission's proposals, when the new contract is implemented, a TMW with an assigned route, for example, would begin to receive \$18.23 per hour under Section 7.9 of the new contract whereas the average of the comparable commissions (including the Commission) for 2009 would be \$17.31 per hour. This would represent an hourly wage 5.3% higher than the average of the commissions.

The Commission's reason for not offering a step increase for the mechanics is that in October 2006, the parties agreed to increase the mechanics' Section 7.9(B) step increase from \$.75 to \$1.00 per hour. Even with this, the mechanics' hourly rate might be a tad low in the latter period of the new contract in comparison with the comparable communities. (See E. Ex. 6-9).

Depending on the performance of the MTF, the employees could receive slightly reduced hourly wages in July 2010 and July 2011. However, even if the worst happens (2% reduction each year), the employees will remain roughly comparable to the outside communities if hourly wages are isolated, and very comparable if overall compensation is considered (including massive Commission pension contributions).

The significance of overall compensation is revealed by the Union's proposed comparable, the Kent County Road Commission. While it pays higher hourly wages, it has no defined benefit plan (and therefore no unfunded accrued liability) but instead a 401(K) defined contribution plan. Nor does it offer employer-paid retiree health care for its retirees (and here, as well, it has no unfunded accrued liability).

The only good news is that despite increases in health care the BLS Consumer Price Index recently has been flat.

D. VACATION

The Commission proposes to reduce the existing vacation hours to the following:

| | |
|--------------------|-----------|
| 6 months – 1 year | 40 hours |
| 1 year – 5 years | 80 hours |
| 5 years – 15 years | 120 hours |
| 15+ years | 160 hours |

The Commission also proposes to add the following language:

Any other employees whose vacation allotment exceeds the new schedule shall maintain their old schedule until such time as they move to the next level of vacation hours based upon years of service.

The Union proposes to maintain the status quo, which is as follows:

| | |
|--------------------|---------------------|
| 6 months – 2 years | 96 hours (12 days) |
| 2 – 5 years | 112 hours (14 days) |
| 5 – 10 years | 136 hours (17 days) |
| 10 – 15 years | 160 hours (20 days) |
| Over 15 years | 184 hours (23 days) |
| Over 20 years | 192 hours (24 days) |
| Over 25 years | 200 hours (25 days) |

RECOMMENDATION

On the issue of vacation hours, I recommend that the Commission's proposal be adopted with the following language added at the end of the "freeze" proviso for the purpose of avoiding ambiguity:

. . . years of service, *at which time they will be paid under the new schedule provided that it is not less than what they received at the time of moving to the next level.*

REASONS

In its brief, the Commission explains: "Employees who currently earn more than 160 hours shall be frozen at their current accumulation." However, the language proposed by the Commission could be read to mean that an employee currently allotted 184 or 192 vacation hours would revert to 160 hours upon attaining the next level under the current language.

The lowest ceiling among the comparable commissions is 20 vacation days (i.e., 160 hours) at the Huron County Road Commission.

The Commission argues that its proposal will increase the availability of employees, which is important because of its reduced labor force.

Under the Commission's proposal (as clarified or amended by me), no employee will receive fewer vacation hours than what he is currently receiving at the time the new collective bargaining agreement goes into effect.

E. NON-WORKING DAYS

The Commission proposes: To delete "New Year's" from the current language in Section 9.2, which states:

If Christmas ~~or New Year's~~ falls on a Tuesday, the preceding Monday will be declared a non-working day and if Christmas ~~or New Year's~~ falls on a Thursday, the Friday following will be declared a non-working day except for emergencies.

The Union proposes that the current language be retained.

RECOMMENDATION

I recommend that the Commission's proposal be adopted.

REASONS

None of the comparable commissions have the parties' existing language. (E. Ex. 8).

There does not appear any reason to give special treatment to New Year's day if it falls on a Tuesday or a Thursday.

The Commission's proposal would avoid payment of overtime for employees scheduled to work on the day before or after January 1 in those years when January 1 falls on a Tuesday or Thursday. This will give the Commission more incentive to schedule employees for regular pay on those occasions.

F. REGULAR WORK WEEK

The Commission proposes to (1) delete Section 6.2, and (2) amend Section 7.11

A by removing some "volunteer" language:

~~Section 6.2—A regular work week shall be considered five (5) days (Monday through Friday), with the exception of the Night Winter Maintenance Patrol.~~

Section 7.11 FLEXIBLE SCHEDULING AND SUMMER HOURS

~~A. The Commission may implement voluntary flexible scheduling to more effectively deal with seasonal problems. (For example, pothole patching after heavy precipitation; gravel road scraping; gravel road preparation for dust control applications, etc.) A flexible schedule will be defined as a regular work day which begins and ends at times other than those shown in Section 7.1 or a scheduled second or third shift. The Commission will ask for volunteers qualified for stated work to work a flexible schedule. The Commission will announce the need for volunteers on Monday or Tuesday for a flexible schedule for the rest of a week or a 3-day minimum. Flexible scheduling is entirely voluntary on the part of any employee. Employees working a flexible schedule will receive a \$.50 per hour premium for all hours worked that day. Flexible schedules will not include a scheduled second or third shift position, 4-10 Summer hour schedules or winter maintenance work. In the event of a winter emergency, all employees working flexible schedules will revert back to regular work hours the next working day.~~

The Union proposes: Maintain the current language.

RECOMMENDATION

I recommend that (1) current Section 6.2 be retained except that I would substitute "***normal***" for "regular," and (2) the Commission's proposed amendment of Section 7.11 A be adopted.

REASONS

In proposing this change (and the change proposed in **G. Work Day** below), the Commission argues that the reason is to "end the absolute veto power currently enjoyed by employees to refuse any attempt by the Commission to adjust work schedules to meet the ICRC's needs." At the hearing the Commission admitted that its proposed changes provide no limits on its scheduling of work (other than the disincentive of paying an extra \$.50 per hour). For example, "[h]ours of work may be adjusted, especially during the winter if the work load is light due to dry weather."

At least four of the six comparable commissions proposed by the Commission (which I have adopted) reference a normal work week. (E. Ex. 9-2).

I should add that the Eaton County Road Commission contract (a comparable proposed by the Union) contains language which the parties may wish to consider to address their "work week" and "work day" concerns (U. Ex. 36, p. 16):

The normal work day shall consist of eight (8) consecutive hours and the normal workweek shall consist of forty (40) hours, Monday through Friday, both inclusive; however, nothing contained herein shall be construed to constitute a guarantee of eight (8) hours of work or pay per day or forty (40) hours of work or pay per week.

G. WORK DAY

The Commission proposes: Eliminate Section 7.1 so that there is no "regular" workday and no precise starting time.

The Union proposes to retain Section 7.1, which states:

Section 7.1 A work day will be considered eight (8) hours per day (starting time shall be 7:00 A.M. EST) and will be paid for at the regular rates of pay established for each class of employment. The regular work day April 1st to December 1st of any year shall be eight (8) continuous hours with quitting time at 3:00 P.M. The starting time may be changed to maximize the amount of work days during daylight hours; however, this will not apply when sunrise occurs before 7:00 A.M. The Day shift starting time will not be later than 8:00 A.M.

RECOMMENDATION

I recommend that Section 7.1 be amended to read as follows:

A normal work day will be considered eight (8) hours per day (starting time 7:00 A.M. EST) except when it may be necessary to work at other times as conditions require.

REASONS

At least four of the six comparable commissions proposed by the Commission (which I have adopted) reference a normal (regular) 8 hour work day. (E. Ex. 9-2).

The language I have proposed is based on the language in the Barry County Road Commission contract.

As mentioned above the parties might also wish to consider the language contained in the Eaton County Road Commission contract. (U. Ex. 36).

H. USE OF RETIREES

The Commission proposes to amend Section 1.119 to add the following highlighted language:

Section 1.19 The Commission may rehire retirees of the Commission to return to work on a part-time basis after retirement. Rehired retirees would be eligible to perform the work included in Section 1.18 **and serve as a dump truck or plow truck driver**, but would not be restricted to the dates noted.

The Union proposes that the current language be retained.

RECOMMENDATION

I recommend that the Commission's proposal be adopted with the following sentences added:

Service as a dump truck or plow truck driver will be limited to severe storms or other emergency situations. Further, a retiree will not be rehired to serve as a dump truck or plow truck driver in lieu of recalling a laid off bargaining unit member from layoff or if by doing so an active bargaining unit member would be reduced to part-time employment.

REASONS

The Commission explains that it is seeking to modify Section 1.18 "vehicles" language to include dump truck and plow truck driving, but not heavy equipment. Further, the Commission's expressed concern is that "[t]he current language does not provide enough flexibility in severe storms or other emergency situations for the Commission to efficiently handle its duties. . . . Additionally, the Commission proposes including language which limits this process to a situation where there are no employees on layoff, or where laid-off employees are also called in to work."

The Union opposes the Commission's proposal because it "would allow non-unit retirees to be rehired to perform all the work of the bargaining unit without limitation. The Commission's proposal would serve to severely erode the bargaining unit and only further the bargaining unit size decline."

I believe that the additional language I am recommending addresses the concerns expressed by the Union.

I. PLACEMENT IN MECHANICS CLASSIFICATION UPON LAYOFF

The Commission proposes: Amend Section 7.7 to delete the last sentence:

~~Section 7.7 In the event of layoff, the least senior employee shall be laid off first, and further layoffs shall be in inverse order of seniority, provided, that the employees retained have the skill and ability to do the required work. When a recall is made, recall shall be in order of seniority, provided, that employees recalled have the skill and ability to do the required work. No employee shall be placed in the mechanics classification as a result of layoff unless he can supply the tools necessary to perform the duties of the classification and has demonstrated ability as a mechanic.~~

The Union proposes that the current language be retained.

RECOMMENDATION

I recommend that the Commission's proposal be adopted.

REASONS

In the last 10 years, the Commission has reduced its number of mechanics from 11 to 3. The position is demanding and requires a high level of skill.

Among the contracts of the comparable commissions, four contain no right to bump into the mechanics classification, one states that "a non-mechanic subject to layoff will not be able to replace a mechanic," and one allows bumping provided that the employee has "the necessary qualifications, skills, abilities, and certification required to do the work without further training." (E. Ex. 12-2).

The fact that an employee has a supply of tools and some "demonstrated ability" as a mechanic does not necessarily mean that he could step into the mech-

anics classification without training in the high level of skills required. In other words, it does not follow that he would possess the present skill and ability to do the required work.

J. CONTINUATION OF COVERAGE

The Commission proposes: Amend Section 8.7 as follows:

Section 8.7 Continuation of Coverage – The Commission shall make the payment of insurance premiums for all currently working employees and their eligible dependents. The Commission shall discontinue payment of insurance premiums 30 days after the exhaustion of all sick and annual leave. **In no event shall the Commission pay insurance premiums more than six (6) months after the commencement of any leave.**

The Commission shall discontinue payment of insurance premiums 30 days after an employee goes out on a Worker's Compensation leave, if Worker's Compensation will provide adequate funds to purchase the insurance coverage. In the event that Worker's Compensation does not provide adequate funds, the Commission shall continue to pay the insurance premiums for an eighteen (18) month period .

The Union proposes that existing language be retained.

RECOMMENDATION

I recommend that the current language be modified to provide the same duration as received by the Commission's non-union employees.

REASONS

The Commission explains that “[c]urrently, there is no maximum on the Commission's payments of insurance for a non-duty related injury. There is an eighteen (18) month limitation for work-related disabilities. The Commission's proposal would provide that in no event shall the Commission pay insurance premiums for more than six months after the commencement of any non work-related disability leave.”

As explained by the Union, “[u]nder the non-unit employee handbook, ‘the Commission will continue payment of health insurance premiums for employees on short- or long-term disability for a period not to exceed 36 months.’ See Jt. Ex. 34.” The Union adds that the record does not show any employees who have had their health insurance payments continue beyond six months.

K. SHORT TERM DISABILITY

The Commission proposes:

- Reduce the Section 8.3 waiting period for accident and sickness insurance for non-work related accident or sickness from thirty days to six days.
- Eliminate the Section 9.1 Floating Holiday (between April 1 Dec 1).
- Delete current Sections 11.1, 11.2, 11.3, 11.3 11.1 (1) through (7).
- Redesignate Section 11(8) as new Section 11.1 and increase personal leave days from three to six each year, and delete roll-over of unused personal days.
- Delete current Sections 11.4, 11.5, and 11.7 through 11.12.
- Redesignate current Section 11.6 as 11.2.

The Union proposes to retain current language except to reduce the waiting period for short term disability to the first day following an accident and the eighth day following an illness or injury.

RECOMMENDATION

I recommend that the Union members receive what the Commission’s non-union employees receive. Otherwise, I recommend that the Commission’s proposals be adopted.

REASONS

As explained by the Union, its short-term disability proposal on inception "is identical to the benefit for non-union employees. See Jt. Ex. 34 at page 5."

To the extent that the Commission's proposals are less than what the non-union employees receive they should be denied. Otherwise, they should be adopted because they are reasonable.

L. COMPENSATORY TIME

The Union proposes to amend the language of Section 10.7 to increase compensatory time at time and one-half from up to 24 hours per year to up to 40 hours per year.

The Commission proposes to retain the current language of Section 10.7, which states:

Employees who work overtime or volunteer and work Summer on call hours will be allowed to elect compensatory time at time and one-half for up to 24 hours per year. These hours may be used with supervisory approval. Any unused hours shall be cashed out at the end of the calendar year.

RECOMMENDATION

I recommend that the "24 hours per year" be increased to "**30 hours per year.**"

REASONS

The present language allows employees to elect up to 36 hours of compensatory time off per year. The Union's proposal would allow employee to elect up to 60 hours of compensatory language per year.

The Union argues that its proposal "is at no cost to the Commission" whereas the Commission argues that the Union's proposal "may create more expenses for the Commission by requiring the Commission to offer overtime to perform work otherwise performed by the absent employee."

Electing compensatory time off appears to be subject to supervisory approval, which should at least partially allay the Commission's concern about offering overtime to perform work otherwise performed by the absence employee.

M. DOCTOR'S NOTE

The Union proposes to amend Section 11.3 by modifying the "doctor's slip" requirement:

Section 11.3 An employee may utilize their sick leave allowance for absence as follows:

(1) Necessitated by exposure to contagious diseases in which the health of others may be endangered by his presence on duty. A doctor's slip is required **only when the employee is out of work three or more days.**

(2) Due to personal injuries or illness caused by factors over which the employee has no reasonable immediate control. A doctor's slip is required **only when the employee is out of work three or more days.**

...

(5) Sick leave may be utilized by an employee for routine appointments with doctors or dentists with at least 24 hours of advance notice. Proof of the appointment will be required. Employees will schedule health, vision and dental appointments outside regular scheduled work hours, except in the case of emergency, or notify the Employer no later than ½ hour before their starting time that day, in order to utilize sick leave.

The Commission proposes to retain the current language of Section 11.3.

RECOMMENDATION

I recommend that the current language of Section 11.3 be retained with the following sentence added at the end of subsections (1) and (2):

However, the Employer in its discretion may waive the requirement of a doctor's slip.

REASONS

My proposed language is simply common sense. For example, If someone is vomiting at home with the 24 hour flu, does the Commission always insist that he go to a doctor's office? Also, I have read that there are instances where a doctor's office may be a breeding ground of illness, e.g. the swine flu epidemic.



Thomas L. Gravelle,
Fact Finder