STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of:

OAKLAND COUNTY

-and-

MICHIGAN NURSES ASSOCIATION

MERC Fact Finding
Case No. D09 F-0697

FACT FINDER'S FINDINGS OF FACT, REPORT AND RECOMMENDATIONS

APPEARANCES:

FOR OAKLAND COUNTY:

Malcolm D. Brown, Attorney
Tom Eaton, Deputy Director, H/R
Karen Jones, Labor Relations Supervisor
Jorae Kramer, Labor Relations Analyst
Jean Ulmer, Administrator, Public Health Nursing

FOR MICHIGAN NURSES ASSOCIATION:

Anita Szczepanski, Attorney
James Feeny, Labor Representative
Vicki Dickie, Public Health Nurse
Any Sova, Public Health Nurse
Jennifer Erskine, Public Health Nurse

Background

The Michigan Nurses Association ("MNA") represents a bargaining unit currently consisting of 82 nurses, 75 of whom are classified as Public Health Nurse III, and seven of whom are classified as Public Health Nurse II, employed by Oakland County. The nurses serve as field nurses, in clinics operated by the County's Health Department and one nurse is assigned to the Children's Village.

These nurses are covered by a Collective Bargaining Agreement negotiated by the Michigan Nurses Association effective October 1, 2007 through September 30, 2010.

Appendix A of the 2007-2010 contract contains the following wage reopener for wages for the October 1, 2009-September 30, 2010 period:

WAGES – FY 2010

Wage re-opener for FY 2010 no later than July 15, 2009.

Appendix B of the 2007-2010 contract provides:

Benefits 2010 – The parties shall reopen negotiations for 2010 benefits no later than July 15, 2009.

The Association and the County commenced bargaining on July 7, 2009 to address the wage benefits reopeners. Bargaining sessions were held on July 7, 2009, August 11 and 31, 2009, September 24, 2009 and October 8, 2009. These sessions did not result in an agreement though the Association presented a number of proposals in response to the initial position of the County, which the County maintained throughout negotiations, namely, a 2 ½% reduction in wages for the period October 1, 2009 through September 30, 2010 plus the elimination of a $300 contribution toward deferred compensation.

As a result, the parties on November 4, 2009 met with a State Mediator in an attempt to resolve their dispute. Mediation did not result in a resolution of the dispute.

On February 22, 2010, following a request for fact finding, the undersigned was appointed as Fact Finder to find the facts and issue a recommendation as to the parties' dispute.

This Fact Finder conducted hearings on Thursday, April 29, and Friday, April 30, 2010, receiving evidence and comments from the parties concerning the dispute.

The sole issues before the Fact Finder are a determination of the wages pursuant to the reopener clause for the period October 1, 2009 through September 30, 2010 and the County's $300 contribution to the deferred compensation plan.

The Criteria

A Fact Finder does not make findings of fact or recommendations in a vacuum. There are criteria that a Fact Finder considers in performing his task of finding of facts and making recommendations.

Among the criteria applicable in this situation would be the finances of Oakland County, the bargaining history between these parties, and not only the external comparables but in particular the internal comparables and what can be termed the "art of the possible," namely, what is a realistic settlement considering the circumstances involved.

This Fact Finder proceeds based upon this criteria to analyze the evidence that was presented to him.

Oakland County's Financial Situation

Oakland County is part of Southeastern Michigan immediately north of Wayne County, also having a border with Macomb, Washtenaw and Genesee Counties. As is true throughout Southeastern Michigan as well as the State of Michigan, Oakland County has been plagued by the downturn in the economy with particular emphasis on the downturn in the auto industry. The County is headquarters of Chrysler Corporation, has General Motors plants including abandoned General Motors plants, and at least one abandoned Ford Motor Company plant. What these economic realities have meant to the County is a downward trend in the County's finances making it difficult for the County to budget and meet its financial obligations.

Fifty-two percent of the County's revenues are from property taxes. Sixty percent of the County's expenditures are personnel costs, including wages and fringes. In terms of property revenues, in 2009 the taxable value of all property in Oakland County decreased 3.6%. One year later, the property taxable values had decreased another 11.5%. In terms of dollars, in 2007 Oakland County collected $259 million from property tax revenue. By 2009, this source of revenue had dropped to $244.9 million and was predicted to drop in 2010 to $219 million. By any standard, this is a dramatic change and has a substantial impact on the County's ability pay and financial health because, as noted, property taxes account for 52% of the County's revenue.

To emphasize the troubled state of relying on property tax revenue in Oakland County, the Fact Finder notes that in 2005 one out of 174 homes in Oakland County had been foreclosed. By 2009, this figure had risen to one out of 59 homes, or a total of over 8,000 homes in Oakland County which were foreclosed and Sheriff tax deeds issued.

Coupled with this financial storm, the County found that its expenses were increasing and that by 2007 the expenses were approaching exceeding revenue, impacting on the County's Fund Balance. The projections for 2010 and beyond reveal a definite expenses exceeding revenue cycle.

Among the examples of the increasing cost of expenditures experienced by the County is the active employee medical cost. For the fiscal year 2003, this cost was $24 million. For the fiscal year 2009, this cost was $35.4 million. For fiscal year 2010, the budget is $37 million. For retirees there are similar increasing costs.

A summary of the financial picture in Oakland County is set forth in the following balance sheet:

General Fund / General Purpose Long-Range Forecast

Fiscal Year	Total Revenue	Total Expenditure	Variance	Variance Percentage	Percent Change Revenue	Percent Change Expenditure
1999	*$ 312,206,697*	*$ 298,375,539*	*$ 13,831,158*	*4.64%*		

2000	321,613,785	313,110,842	8,502,943	2.72%	3.01%	4.94%
2001	335,826,202	324,293,073	11,533,129	3.56%	4.42%	3.57%
2002	355,552,550	357,912,752	(2,360,202)	-0.66%	5.87%	10.37%
2003	365,512,326	347,785,703	17,726,623	5.10%	2.80%	-2.83%
2004	372,671,773	367,221,032	5,450,741	1.48%	1.96%	5.59%
2005	386,511,077	390,024,799	(3,513,722)	-0.90%	8.63%	6.21%
2006	408,947,248	400,339,297	8,607,951	2.15%	5.80%	2.64%
2007	427,367,155	422,728,654	4,638,501	1.10%	4.50%	5.59%
2008	429,580,106	424,249,368	5,330,738	1.26%	0.52%	0.36%
2009	422,536,238	410,178,556	12,357,682	3.01%	-1.64%	-3.32%
2010	409,835,938	390,372,934	19,463,004	4.99%	-3.01%	-4.83%
2011	380,510,611	374,742,690	**5,767,921**	1.54%	-7.16%	-4.00%
2012	370,872,576	374,344,273	**(3,471,697)**	-0.93%	-2.53%	-0.11%
2013	341,236,170	375,031,765	**(33,795,595)**	-9.01%	-7.99%	0.18%
2014	338,868,146	381,952,969	**(43,084,823)**	-11.28%	-0.69%	1.85%
2015	331,728,087	386,667,895	**(54,939,808)**	-14.21%	-2.11%	1.23%
2016	317,857,676	391,448,995	**(73,591,319)**	-18.80%	-4.18%	1.24%

1. The 1999-2009 reflect actual revenues and expenditures LESS the effect of the Public Act 357 of 2004. ($74,185,650 in FY 2005; $77,153,076 in FY 2006, $80,239,199 in FY 2007), as well as $9.6 million in accelerated budget *transition credits carried in fund balance to be used in FY 2013 and beyond.*
2. The amount reflected in FY 2010-FY2016 are based upon the assumptions below **INCLUDING** additional structural budget reductions of $3.0 million EACH YEAR for FY 2011-2013 (rendering an on-going $9.0 million in budget reductions in FY 2013 and beyond.
3. Estimates for 2013-2016 are based on detailed categorical analysis.
   a. Revenues:
      Property taxes - continued reductions through FY 2013; no growth 2014-2015
      Intergovernmental Revenue - no growth.
      Miscellaneous (investment income, contributions) - decreasing due to shrinking cash position.
      Revenue Sharing Reserve - annual contribution plus inflation - will end in FY 2015
      Transfers - reduced beginning FY 2013 as excess transfers from other funds are eliminated.
   b. Expenditures:
      Salaries - 2.5% salary base reduction in FY 2010, additional 1.5% salary base reduction in FY 2011, no increase in FY 2012-2011, 1.0% in FY 2014 and additional 1.0% in FY 2015
      Fringe - annual percentage of salary adjustments, however cost increases reduced by.5% each year due to successful implementation of health care and retirement programs.
      Contractual Services - growth based on historical 1.7% annual cost increases.
      Commodities and Capital Outlay - no growth
      Internal Service Funds - growth based on historical 1.0% annual cost increases
      Non-Departmental- growth based on historical 9.66% annual cost increases
      Other Transfers - includes anticipated $5.0 million annual reduction in departmental spending for FY 2011,2012, 2013
4. The County's fiscal year runs from October 1 through September 30.
5. Please note the above assumes no positive action to reduce county expenditure growth .

The above projections contain the work of a task force in the County seeking to reduce expenditures. Among the expenditures that the County effectuated was the requirement that cars that certain County personnel were taking home now were prohibited from being taken home with the exception of the Sheriff. Other measures were taken. Those planning the County's finances concluded, with the approval of the County Board of Commissioners, that it would be necessary for the 2010 fiscal period, namely, October 1, 2009 through September 30, 2010, that bargaining units take a 2.5% pay cut. The projections as to the expenses for 2009-2010 are on this basis. This projection includes all union and non-union employees and all elected officials taking a 2.5% pay reduction as well as vendors reducing their charges by 2.5%.

As the Fact Finder reviews the County's financial picture, it is approaching a financial meltdown which, if not brought under control, could lead to substantial layoffs of County employees. What the Fact Finder also notes is that the County through its administrators has taken steps to avoid a financial meltdown by controlling expenses, notwithstanding that there are factors beyond the control of the administrators that are contributing to the County's financial crisis.

The Bargaining History – Internal Comparables

The bargaining history that confronted the Fact Finder is really an issue of internal comparables. The County in its negotiation with the various unions sought the 2.5% wage reduction covering the period October 1, 2009 through September 30, 2010. Not only did the County obtain a 2.5% reduction from all non-union personnel as well as the volunteer reduction of wages of 2.5% by elected officials, who were not obliged under State law to agree to such a reduction, and received a 2.5% reduction from vendors, but the County with all of its bargaining units (except the Sheriff Patrol Deputies and the Command Officers of the Sheriff's Department who are now in negotiations and subject to Act 312 binding arbitration) have agreed to the 2.5% reduction. The agreements and the effective date of the reductions, namely, beginning with the payroll involved, are as follows:

OAKLAND COUNTY - INTERNAL COMPARABLES - FY2010 WAGE REDUCTION

Unit	Amount of Reduction	Effective Date of Reduction
Non-Union (includes elected and appointed officials)	-2.5%	9/26/2009
Board of Commissioners Comm. Rptrs. (AFSCME)	-2.5%	11/21/2009
Children's Village (Governmental Employees Labor Council-Police Officers Labor Council)	-2.5%	12/19/2009
Family Court Employees (AFSCME)	-2.5%	12/19/2009
Jail Clinic Health Nurses (Teamsters)	-2.5%	12/19/2009
Oakland County Employees Union (Independent)	-2.5%	12/19/2009
Prosecutor's Investigators (Independent)	-2.5%	11/21/2009
Oakland County Deputy Sheriff's Association Corrections Unit Non-312 (Independent)	-2.5%	9/26/2009
Oakland County Deputy Sheriff's Association Patrol Services 312 Unit (Independent)	In negotiations	
Command Officers Association of Michigan (COAM) 312 Unit	In negotiations	
Public Health Nurses (Michigan Nurses Association)	In Fact-Finding	

In some cases, the 2.5% reduction began with a payroll starting prior to October 1, 2009. In no case did the 2.5% reductions started with the payroll effective later than December 19, 2009. It was explained to the Fact Finder that even then the Unions agreed to retroactivity to initiating the pay reduction on or about October 1, 2009 but, because of the need for approval in those particular cases by the Board of Commissioners and the time to do so, the December 19, 2009 payroll date was by practicality a necessary starting time. In regard to the two 312 units, there are proposals by the County for the 2.5% pay reduction.

The Nurses did not agree to the 2.5% wage reduction to take effect on or about October 1, 2009. As of the date of this Report, they are the only group in the County that have not taken a 2.5% reduction except for the pending Act 312 groups.

The internal bargaining history leads to one overwhelming conclusion, namely, that there is absolutely no reason why the nurses could not, along with everyone else in the County, take a 2.5% pay reduction for the fiscal year beginning October 1, 2009 through September 30, 2010, retroactively.

External Comparables

The internal comparables are so overwhelming supporting a retroactive 2.5% pay reduction that it is not necessary to consider external comparables.

Nevertheless, the external comparables, if anything, support the County's position as indicated in the following chart:

COMPARISON OF WAGES FOR PUBLIC HEALTH NURSE III FOR EXTERNAL COMPARABLES

Comparables	FY 2009	FY 2010
Genesse County (1)	59.459 (Eff. 04-01-09)	60,945 (Eff. 04-01-10)
Kent County (2)	56,513 (Eff: 01-01-09)	57,803 (Eff: 01-01-10)
Macomb County	50,097 (Eff. 01-01-09)	50,097 (Eff. 01-01-10)
Washtenaw County	56,338 (Eff: 01-01-09)	57,184 (Eff: 01-01-10)
Wayne County	70,153 (Eff: 6-29-09)	63,677 (3) (Eff: 10-28-09)
Oakland County	**63,572 (Eff: 9-27-08)**	
Oakland County Proposal		**61,982 (Eff: 10-1-09)**

(1) Genesee County only has *Public Health Nurse II Classification*
(2) Kent County has only one Public Health Classification
(3) Reflects the salary impact of 24 furlough days

It is true that Genesee, Kent and Washtenaw Counties gave slight pay raises. But these were continuing contracts that were not negotiated in the current financial crisis in Southeastern Michigan. Even then, the Oakland County proposal of a reduction would still keep Oakland County nurses, the vast majority of whom are PHN IIIs, at the highest rate except for Wayne County among the comparables. True, the comparables do not seem to have a Public Health Nurse III classification. But that is the point. All but seven nurses in Oakland County have reached the Public Health Nurse III classification – the top pay. In Oakland County, the nurses have the opportunity to reach a higher grade than in the other counties.

Then note what happened in Wayne County. Wayne County took 24 furlough days and in effect took a 10% wage cut.

As the Fact Finder views the matter, the external comparables, standing alone, do not support the position of the nurses. When combined with the internal bargaining history, the external comparables become irrelevant. What is involved here is Oakland County. What is involved is Oakland County's financial situation. What Oakland County has done is develop a financial survival plan that requires all employees to take a 2.5% pay reduction retroactively.

The MNA-County Bargaining

At the first meeting of the parties on July 7, 2009, the County made the following economic proposal to reduce labor costs:

> **OAKLAND COUNTY ECONOMIC PROPOSAL**
>
> 2.5% wage reduction for the entire FY2010 (October 1,2009 through September 30,2010). This 2.5% wage reduction must be effective for the entire fiscal year, beginning October 1,2009, or if not effective on October 1, 2009, must be increased to a larger percentage of wages for the remaining portion of the fiscal year.
>
> Accordingly, for each month beginning on October 1, 2009 and continuing thereafter that the wage reduction is not in effect, the amount

> that wages shall be reduced shall be increased by an amount that will equal a 2.5% wage reduction for the entire fiscal year. For example: If the wage reduction of 2.5% does not begin until June 1, 2010, then the applicable wage reduction from that date to September 30, 2010 will be 7.65%; if the wage reduction of 2.5% does not begin until July 1,2010, the wage reduction from that date to September 30,2010 will be 10%. Thereafter, effective October 1,2010 the wage reduction will return to 2.5% of wages.

The County's proposal also included eliminating the $300 contribution to deferred compensation. As the proposal indicated, if there was a delay in adopting the 2.5% reduction until sometime after October 1, 2009, County negotiators pointed out that the reduction to compensate for the retroactivity would increase over 2.5%. Examples were given as set forth above in the proposal.

The Association in the various bargaining sessions resisted the 2.5% reduction. The Association suggested, for example, at one point that the cost savings could be accomplished by furlough days. Another proposal was to eliminate part-time nurses. A third proposal was to have some nurses work seasonal, namely, nine months per year, for 3/4 salary. A fourth proposal included half pay for holidays and early retirements. The Association suggested sometime in December 2009 that if the 2.5% wage reduction was accepted it not be retroactive. The Association also proposed to eliminate the $300 deferred compensation contribution and proposed an agency shop.

The response of the County was that the County did not have a pattern of providing agency shops to its unionized employees; that the 2.5% wage reduction would have to be retroactive to October 1, 2009; that the use of furlough days or half pay for holidays as a method of providing savings was not structurally feasible because the County was seeking a reduction in the base wage and had not agreed to furlough days or reduced holiday pay with any other union.

The Association also noted that seven Public Health Nurse IIIs had retired and are not being replaced. The Association suggested that this represented a savings of approximately $444,221. The Association then suggested that the 2.5% reduction retroactive to October 1, 2009 represented a savings of $129,379. The point the Association was attempting to make is that with the retirement of the seven Public Health Nurses, this would be a sufficient savings and thus a 2.5% wage reduction would not be necessary for the nurses. There was also a further suggestion that for the H1N Flu Clinic the nurses were not paid out of County funds, but out of federal grant funds for apparently a day of service, which also would represent, in the Association's view, a further savings to the County.

The response from the County, which the Fact Finder credits, is that the money that would have been spent on the seven retiring nurses is now being allocated to the Children's Village as the County, because of Court rulings, is increasing the capacity of the Village from 20 beds to 40 beds. In regard to the federal grant for H1N Flu, none of this money was paid for nurses who were assigned as part of their regular duties to the clinics. Only overtime for those working in the H1N Flu Clinics was paid from federal funds.

The Association bargaining team was instructed, upon coming to fact finding, to "fight hard" for the Association's position. The Association's bargaining team and Advocates did just this. But the fact is the Association had no equity in their positions. The proposed savings from the retirement of the seven nurses are non-existent for the reasons just explained. Nor does the reference to the federal grant for the H1N Flu Clinics provide any savings.

The fact is that the County, in order to manage its financial crisis that it is faced with, which the County did not create, has planned to obtain a 2.5% wage reduction from all of its employees for October 1, 2009 through September 30, 2010. The County is accomplishing this.

The nurses have elected not to voluntarily take the pay reduction. Yet, everyone else has. And the Act 312 eligible Road Patrol Officers and the Command Officers are expected to do the same.

The nurses are professionals. But so are the Prosecuting Attorneys. So are the doctors employed by the County. So are the jail clinic health nurses. Yet, all took a 2.5% pay reduction. In good conscience, the nurses must step up to the plate and do what the other employees in the County have done and that is to accept the 2.5% pay reduction retroactively.

Conclusion

As pointed out in this Report, the nurses are obliged to take the 2.5% wage reduction from their base salary retroactively. The $300 match on the deferred compensation must be eliminated. There is no other approach. To repeat, all other Oakland County employees, including bargaining unit members, except the 312 eligible employees who are now in negotiations, have accepted the 2.5% wage reduction.

However, four groups did not have the wage reduction begin until the payroll beginning December 19, 2009, namely, Governmental Employees Labor Council, Family Court Employees, Jail Clinic Health Nurses and Oakland County Employees Union. Following this precedent, this Fact Finder will recommend that the retroactivity will be commencing with the December 19, 2009 payroll period because of this internal precedent. Because of the practicalities, the prospective reduction will not become effective on June 19, 2010. What this means is from June 19, 2010 to the payroll period ending September 25, 2010, there will be 2.5% reduction from the base wage plus a percentage each pay period that represents the retroactive amount that should have been paid from the pay period effective December 19, 2009 to June 19, 2010.

In order to help defray the retroactive payments as an offset, the nurses will not be paid for the July 4, 2010 holiday. Translated, this means for the first 13 pay periods until the pay period effective June 19, 2010, the nurses owe retroactively about $795. With July 4, 2010 as an unpaid holiday, this would mean an offset of approximately $245, leaving approximately $550 that the nurses will have deducted in addition to the 2.5% from their pay over the pay periods effective with the pay period beginning June 19, 2010 up to the pay period effective September 25, 2010. With the pay period beginning on September 25, 2010, the reduction will be only at 2.5% for the retroactivity will at that point have been paid off.

The figures that the Fact Finder has used in this calculation are approximate figures using the top rate for a Public Health Nurse. After calculation by County Payroll-Finance, the figures may be changed as said calculations will be more exact. But the concept is as just explained by this Fact Finder.

From the nurses' standpoint, they owe the retroactivity. The retroactivity will be paid off by deductions in the remaining pay periods. The nurses will get the credit for forfeiting their pay for the one holiday, July 4, 2009, toward the retroactivity. The $300 match on deferred compensation will be eliminated.

This conclusion is consistent with what the other unions have done. The nurses are not being treated any differently than anyone else. This Fact Finding Report is issued within days of the Fact Finding hearing. The nurses are expected to ratify a contract based upon the recommendations encompassed by these conclusions and as set forth generally in the Recommendation portion of this Report within a reasonable time, which should be no later than May 14, 2010, so that the mechanics put into effect to accomplish the 2.5% reduction retroactively.

If the nurses do not ratify an agreement based upon the Recommendations in this Report by May 14, 2010, what are the alternatives? The County will continue to insist on a 2.5% wage reduction retroactively and will probably insist that the retroactivity go as far back as it did with some groups to the payroll period beginning September 26, 2009, which would mean a substantially greater reduction from the nurses' paychecks than proposed as to retroactivity in the Recommendations in this Report, causing a financial hardship on nurses. In the alternative, noting that the County is attempting to avoid layoffs, layoffs could be a possibility if the County is unable to achieve the 2.5% reduction in labor costs for the October 1, 2009- September 30, 2010 period.

And herein comes the art of the possible. The nurses have no basis to claim that they should be treated differently. Their bargaining team and bargaining representatives have fought "hard" for them. But there must be a reality test. The test now comes. And the one question that the nurses must ask, is there any basis that the nurses be treated any differently than Jail Clinic Nurses, for example, or the doctors employed by the County, or the Prosecuting Attorneys? This Fact Finder answers this question with a resounding "no."

Thus, by any standard, a realistic settlement of the dispute is to follow the Recommendations of this Fact Finder as explained in the "Conclusion" section and as set forth generally in the Recommendations. This is the art of the possible in this situation.

If anything, the Fact Finder has given the nurses some consideration by using the December 19, 2010 date and agreeing to allowing as an aid in paying the retroactivity, the forfeiting of pay for July 4, 2010. But this Fact Finder, in good conscience, can do no more.

Finally, this Fact Finder believes that the alternatives are not in the best interest of the nurses. In good conscience, the nurses should ratify the agreement based on the Recommendations herein as explained in this conclusion portion.

What now follows is a generalization of the Recommendations as outlined in the Conclusion portion of this Report.

RECOMMENDATIONS

1. The base wages of the nurses shall be reduced by 2.5% effective June 19, 2010.

2. The retroactive period for the payment of the 2.5% reduction that was not paid shall begin with the pay period effective December 19, 2009.

3. A portion of the retroactive pay shall be paid by the nurses taking an unpaid holiday for July 4, 2010 and the money they would have earned that day will be credited toward the retroactive payments.

4. Effective with the pay period beginning June 19, 2010, the base wages of nurses will be reduced by 2.5% plus a portion of the reduced wage rate between December 19, 2009 and June 19, 2010 representing the monetary value if the 2.5% wage rate reduction had been in effect with the payroll period beginning December 19, 2009, minus the value of the July 4, 2010 holiday.

5. Beginning with the pay period on September 25, 2010, the base wage rate shall be adjusted to reflect the 2010 base wage which will be 2.5% less than the 2009 base wage rate.

6. The $300 match on deferred compensation is eliminated.

George T. Roumell

GEORGE T. ROUMELL, JR.
Fact Finder

May 4, 2010