

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR MEDIATION ACT SECTION 25
BEFORE DON R. BERSCHBACK, FACT FINDER
JOHN C. CLARK, EMPLOYER DELEGATE
RONALD PALMQUIST, UNION DELEGATE

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CHARTER TOWNSHIP OF REDFORD,
PUBLIC EMPLOYER

-AND-

MERC CASE# D09 B-0142

MICHIGAN ASSOCIATION OF PUBLIC EMPLOYEES,
LABOR ORGANIZATION

**FINAL FACT FINDER'S REPORT, FINDINGS OF FACT, AND
RECOMMENDATIONS SUPERCEDING INITIAL REPORT
DATED OCTOBER 8, 2010**

Background Information

The current collective bargaining agreement expired March 31, 2009; approximately 18 months ago. That agreement was between the Employer and the TPOAM. In November of 2008 a Petition was filed and the Michigan Association of Public Employees (MAPE) was certified as the bargaining agent for the Union on February 2, 2009. The parties have bargained unsuccessfully toward a final agreement encompassing all issues for the "new" CBA between them since February 2009. The Fact Finder finds that both parties have attempted to put their "best foot forward" in representing their individual entities on all of the outstanding issues. They have utilized every resource available to them including mediation and fact finding.

Your Fact Finder was appointed on January 27, 2010. After the initial telephone conversations, fact finding hearings were held at the Township offices on five separate occasions from March of 2010 through May 18, 2010. Final briefs on unresolved issues were received by the Fact Finder in mid-August 2010.

During the hearings, both parties presented several witnesses and all exhibits were received and placed on file by the Fact Finder. The testimony and exhibits were extensive and had been utilized by the Fact Finder (to a greater or lesser degree) in preparing his final recommendations. Some, but not all, of the issues needed no detailed briefing either because of their lack of complexity or because the parties final positions were either identical or extremely close. The fact finder also relied on the parties' post hearing briefs in reaching his final recommendations.

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral, can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. In reaching recommendations, a Fact Finder is guided by certain criteria. Essentially, these criteria addressed the cost of living, the financial ability of the governmental unit to fund the award, and comparables both internally and with other similarly situated public and private employers in the geographical area involved. Section 9(h) references additional criteria followed by Fact Finders. Bargaining history is one of those additional criteria. The bargaining history not only means the current bargaining history between the affected parties (based on their recent certification in February, 2009 – a very limited time period) but also the parties' previous bargaining history as well as the bargaining history among employees of the Employer and other represented bargaining units. All of these factors have been considered in the Fact Finder arriving at his final conclusions.

The fact finding, as would be true with binding arbitration under Act 312, is a substitute for a strike. The Fact Finder's function is to attempt to present the guidelines to resolve the dispute. It is the above criteria that has guided this Fact Finder in making his recommendations herein.

FACT FINDER'S RECOMMENDATIONS FOR UNRESOLVED ISSUES

1. ARTICLE 39.2 – WAGES

Section 39.2: First Year of the Contract. Beginning April 1, 2009, employees' wages will increase zero percent (0%).

Second Year of the Contract. Beginning April 1, 2010, employees' wages will increase zero percent (0%).

Third Year of the Contract. Beginning April 1, 2011, employees' wages will increase zero percent (0%).

Employees hired after ratification of this agreement shall be paid based on the following scale:

START -10% less than the starting rate for current employees
2nd Year – 8% less than the 2nd year rate for current employees
3rd Year - 6% less than the 3rd year rate for current employees
4th Year – 4% less than the 4th year rate for current employees
5th Year – Same rate as the 5th year rate for current employees

All other language in this article shall remain status quo and brought forward in the new agreement.

Reasoning of Fact Finding: The parties were in agreement on this issue.

2. ARTICLE 45 – TERM OF AGREEMENT

Section 45.1: This Agreement shall be in full force and effective from April 1, 2009 to and including March 31, 2012 and shall continue in full force and effect from year to year thereafter unless written notice of a desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

Reasoning of Fact Finding: The parties were in agreement on this issue. The Fact Finder does point out that from the date of this Fact Finding Report, there is

only approximately 1 ½ years until this particular collective bargaining agreement expires.

3. **ARTICLE 9 – ABSENCE AND TARDINESS**

Section 9.1:

- Employees who are tardy for work, will be subject to the following wage reductions:

<u>MINUTES LATE</u>	<u>WAGE REDUCTION</u>
Less than 5 minutes	nothing
6 minutes to 15 minutes	.25/hr
16 minutes to 30 minutes	.50/hr
Over 30 minutes	1.00 hour increments and considered absent without leave

- Three (3) tardies (including tardies of less than five (5) minutes) within a rolling 12-month period will result in appropriate discipline as outlined in Article 8 herein.

Reasoning of Fact Finding: The parties were in agreement on this issue.

4. **ARTICLE 30 – JURY DUTY AND WITNESS FEES**

Current contract language except delete the following on the third line of the paragraph:

(up to \$20.00 dollars per day).

Reasoning of Fact Finder: It is recommended that the phrase “up to \$20.00 per day” should be deleted from the current contractual language. In that respect, the Fact Finder adopts the Union’s final position on this issue. All persons, including Union employees, have a civic obligation to serve as jurors. The cost of transportation, parking, and related costs attendant to jury duty – especially in downtown Detroit – having substantially increased since 2005. The parties were in agreement on this issue.

5. **ARTICLE 27 – SICK LEAVE**

Section 27.1 – Regular Full-Time Employees

- Effective upon the signing of this Agreement, all regular full-time employees shall accumulate sick leave at the rate of one (1) day for each complete month of service with accumulation being limited to two hundred fifty (250) days. Employees hired after ratification of this Agreement shall be limited to one hundred and fifty (150) days accumulation.

All other language in this Article shall remain status quo and brought forward in the new Agreement.

Reasoning of Fact Finder: The parties were relatively close to an agreement when their respective positions were reviewed. However, the fact finder felt that the Township's proposed reduction of one hundred (100) days for full time employees was somewhat excessive. The fact finder does agree that reductions of sick leave time accumulation (in effect, pay for time not work) was necessary to be changed.

6. **ARTICLE 32 – PAY PERIOD AND HOURS WORKED**

Section 32.3

- Lunch Periods – One-half (1/2) hour lunch period will be granted to employees whose workday is scheduled at least five (5) but less than eight (8) hours. Employees whose workday is scheduled eight (8) hours will be granted a one half (1/2) hour paid lunch period. Lunch periods cannot be used to alter the starting or ending of your scheduled workday.

All other language in this Article shall remain status quo and brought forward in the new Agreement.

Reasoning of Fact Finder: The fact finder felt that this issue was not as important as a material financial savings as proposed by the Township. Based on the number of employees affected, the fact finder felt that the Union's proposal was more in keeping with the prior contractual language and the practice that those employees have followed for a significant number of years.

However, the fact finder specifically notes that the term of this agreement will expire in less than eighteen (18) months. Based on the comparable communities cited by the City, the fact finder would recommend that the parties adopt the approach that the comparable cities have adopted; i.e. no paid lunch periods in future contracts. The Fact Finder also notes that the testimony of Mr. Cubba in that regard could result in hiring additional employees that, obviously, would benefit the residents of the Township.

7. **No Specific Article - FURLOUGH DAYS AND/OR UNPAID HOLIDAYS**

The present contract (Article 25) delineates certain holidays payable to full time employees at the rate of eight hours pay at straight time rates. For fact finding purposes, the fact finder has combined the issues of unpaid furlough days (not presently in the contract) and/or unpaid holidays. No matter how they are "titled" the discussions, negotiations, and proposals by both the Employer and the Union involve "days off without pay".

8. **SECTION 25.1 – HOLIDAYS/UNPAID DAYS**

Change the current contract language for the contract year April 1, 2010 through March 31, 2011 as follows:

For contract year April 1, 2010 through March 31, 2011 there will be eight (8) unpaid days off. There shall be no more than one unpaid day off in any pay period. Three of the unpaid days would be following holidays.

Friday after Thanksgiving
New Year's Eve
Martin Luther King, Jr. Day

The Employer and the Union would agree upon the remaining five (5) unpaid days.

For contract year April 1, 2011 through March 31, 2012 there will be five (5) unpaid days off. Those unpaid days would be the existing holidays as follows:

Martin Luther King, Jr. Day
President's Day
Independence Day
Veteran's Day

and the floating holiday agreed upon between the parties.

Reasoning of Fact: The Fact Finder felt that both parties were attempting to address the Township's current financial information albeit in different ways. Based on the fact that the contract period in question will only extend through March 31, 2012, it was felt that the Union's position on holidays and/or unpaid (furlough days) was more realistic. Testimony indicated that for the current contract year ending March 31, 2011 the Township needed additional relief in the form of unpaid days. While the parties were essentially fairly close on this issue during negotiations and/or in their respective positions at the end of the fact finding sessions, the Fact Finder felt that the Union's position more tenable.

9. **ARTICLE 41 – RETIREMENT BENEFITS**

The issue of retirement benefits is one of the most discussed items in collective bargaining between Employers and Unions. This is especially acute and at the

forefront of negotiations in the public sector. The Fact Finder believes this is generally true because of the relatively generous benefits that public sector employees have enjoyed in recent "good" years when compared to the declining benefits of those employees in the private sector. The declining tax base, declining revenue sharing from the State, and a host of other conditions has exacerbated this issue. No one city or township in the State of Michigan has been immune from a declining tax base. No Union and its members have not been asked to contribute toward retirement benefits and retiree healthcare benefits. A balance needs to be struck between the respective concerns and positions of both the Township and the Union in this fact finding session.

The Fact Finder finds that the parties are in agreement that new hires "defined as a person hired after April 1, 2010 for purposes of fact finding" shall have the following attributable to them:

1. A multiplier reduction from 2.5% to 2.25%.
2. A ten year vesting. Rather than an eight year vesting.
3. A continued defined benefit plan for all employees as opposed to a defined contribution plan.

The Union requests that current employees have no changes in their pension or retiree benefits through the end of the contract period of March 31, 2012. The Township's position requires that existing employees contribute two (2%) percent of their annual compensation into their retirement system which includes all compensation used to determine Final Average Compensation as defined in Section 41. An employer exhibit spells out the differences between the agreed upon comparable communities. Those cities range from a member contribution of three (3%) percent to a maximum of 8.41%. For purposes of fact finding, the Fact Finder finds that a representative contribution average would be in the three (3%) range. Accordingly, it is the Fact Finder's recommendation that, effective April 1, 2011 that current employees pay two (2%) percent of annual compensation into the retirement system, which will include all compensation used to determine Final Average Compensation as defined in this Article.

The Fact Finder now addresses new hires as of April 1, 2010. Based on the position of the parties, the testimony and exhibits provided, and the respective positions of both parties and their post hearing brief, the Fact Finder determines that the following shall be applicable for new hires hired after April 1, 2010. (The testimony indicated that there were no new employees hired into this unit since that date).

1. There shall be a ten year vesting period for those employees.
2. A multiplier shall be 2.25% of final average compensation.

3. Final average compensation shall remain as defined in Section 41.
4. They would contribute three (3%) percent of their applicable income toward their pension benefits. They would contribute an additional three (3%) percent of their applicable income to assist in funding retiree health care.*
5. All other pension benefits for employees would remain the same.

*The parties may have to change their retirement ordinance to effectuate a retiree healthcare program.

10. ARTICLE 40 – INSURANCE

The issue of insurance coverage has a myriad of subsections and a whole host of options that may be available in a comprehensive plan involving many different individuals. Categories include:

- Single coverage for employees only.
- Coverage for two or more (family coverage).
- Employees hired after April 1, 2006 (Union).
- New hires after April 1, 2010 (Township).
- Effective dates of the implementation of type of new medical programs.
- Regular medical coverage, prescription coverage, dental coverage, optical coverage, etc.

The fact finder's position on this complex area was to first take those areas of agreement that the parties reflected in their "latest position" or those positions that were extremely close in substantive terms.

It is recommended:

The new CBA between the parties, effective as soon as is practical, include the following:

A. Current employees:

1. Pay \$10 co-pay on generic drugs and \$20 co-pay for brand name drugs.
2. Office visits at \$20 co-pay.
3. \$100 emergency room as capital fee - waived if admitted in and waived if accidental injury.
4. Employees in traditional and PPO Plan 1 should pay (if available, with pre-tax dollars) through March 31, 2011 – six (6%) percent of annual premiums up to

a maximum of \$680 annually for single coverage and a maximum of one \$1,500 for two person/family coverage through March 31, 2011.

5. Effective April 1, 2011, regardless of healthcare provider, all active employees shall be obligated to pay (if available, with pre-tax dollars) seven (7%) percent of annual premiums for medical and prescription coverage.

B. New Hires as of July 1, 2010:

1. The Township shall provide single healthcare coverage including BC/BS PPO Plan (or its equivalent) with employee option to purchase additional coverage at the employee's sole expense.
2. No HMO option.
3. \$10 co-pay on generic drugs and \$20 co-pay on brand name drugs.
4. Office visits at \$20 co-pay.
5. \$100 emergency room fee – waived if admitted and waived if accidental injury.
6. Employees in Traditional and PPO Plan 1 should pay (if available, with pre-tax dollars), through March 31, 2011 – six (6%) percent of annual premiums up to a maximum of \$680 annually for single coverage and a maximum of \$1,500 for two person/family coverage through March 31, 2011.
7. Effective April 1, 2011, regardless of healthcare provider, all active employees shall be obligated to pay (if available, with pre-tax dollars) seven (7%) percent of annual premiums for medical and prescription coverage.

C. Retirees as of November 1, 2010:

1. Employees who retire will take with them all current and future agreed upon co-pays for office visits, prescriptions and emergency room visits.
2. Retired employees to pay five (5%) percent of the annual premium for continued medical and prescription coverage with an exposure cap of \$1,200 per year.

Reasoning of Fact: The Fact Finder's recommendation does not provide either party with their desired contractual language on insurance benefits/contributions. It is hoped that the parties will continue to explore all avenues of insurance coverage with every resource available to them to continue to meet the needs of the township to operate as efficiently as possible and to provide some contributions (and thus ownership) by the employees toward rising healthcare costs. In the future, this item and related healthcare costs, both for active employees and for retirees, will be the major challenges facing both parties.

11. **ARTICLE 31 – WORKERS COMPENSATION**

31.1 Add the words “coverage shall apply from day one (1) for illness or injury”.

31.2 Add the words “employees shall be allowed to go to doctor’s appointments during work hours without any loss of time. Employees shall be allowed to go to therapy appointments for up to two (2) hours without loss of time if they are unable to schedule these appointments after work.

Fact Finder’s Reasons: The parties were in agreement on this Article.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don R. Berschback", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

DON R. BERSCHBACK
Dated: November 2, 2010