STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

KALAMAZOO COUNTY ROAD COMMISSION

MERC Fact Finding
Case No. L09 B-1021

-and-

TEAMSTERS LOCAL 214

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Report

Thomas L. Gravelle, Fact Finder

January 6, 2011

RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on October 14, 2010 in Kalamazoo, Michigan.

The Employer is represented by attorneys Douglas L. Callander and Leigh M. Schultz. The Union is represented by Union President Joseph Valenti and Joel Gutzki.

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

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, a non-binding 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.

THE COMMISSION'S FINANCIAL SITUATION

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 state law, which requires that it balance its budget. Road maintenance, including snow removal, 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.

As of December 31, 2010, the Commission's fund balance was projected to be $4.3 million based on projected total expenditures of $20.4 million. Expressed as a percentage its fund balance would be 21.14%. Part of the fund balance has been achieved by employee attrition. As recently as 2006, the Commission had 60 employees (24 office and 36 Teamsters). As of 2010, this number was reduced to 49 employees (a decline of 18%). Among the Teamsters members, the reduction was from 36 to 32 (a decline of 11%). In addition, Commission managing director Joanna Johnson explained at the hearing that the Commission also has sought to save money by halting technology and equipment upgrades, eliminating some maintenance projects, and turning some roads into gravel.

Other concerns include the following:

- The most significant 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. Since 1997, 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 $13.59 million. The annual payments have declined each year since 2004. In 2010, the Commission received MTF payments of $11.76 million (a decline of 5.7% from 2009). Using 2004 as a benchmark, the Commission's total reduced MTF payments for the next six years was $5.23 million, or an average annual decline for each of the six years following 2004 of $872,000. (E. Ability Ex. G).

- The decline of MTF payments appears to be the result of Michigan's long recession and reduced motor vehicle driving.

- The Commission's projected unrestricted fund balance for 2010 is $4.3 million based on projected total expenditures of $20.4 million. As of December 31, 2009, the Commission's fund balance was $6.2 million based on total expenditures of $18.5 million. This means that the Commission has projected in 2010 to use $1.9 million (or 31%) of the December 31, 2009 fund balance. Were this the start of a fixed trend, the Commission's fund balance would be jeopardized in the near future.

- Health insurance premiums have sky-rocketed in recent years. For the one year period beginning November 1, 2005, the annual premium for BCBS PPO family coverage was $13,809. For the one year period beginning November 1, 2009, the annual premium for BCBS PPO family coverage was $20,126, an increase in only four years of 46%.

- Over the past six years, the cost of road salt has more than doubled, the cost of a new truck increased by about 50% and diesel fuel by about 23%. The price of oil is expected to rise in 2011.

- In February 2010 the County Road Association of Michigan ("CRAM") published a report addressing Michigan's 87 county road agencies, which includes the following:

> Thirty eight counties have now returned more than 100 miles of paved roads to gravel; approximately 35 miles in 2009 alone. Results [of CRAM annual survey] indicate that by 2010, half of Michigan's county road agencies will be faced with the decision of moving backward to maintain their infrastructure.
>
> . . .
>
> Over the past three years, 79 county road agencies have reduced maintenance, preservation, or construction programs; 77 have reduced or eliminated maintenance or replacement activities on hard surface roads; 68 have reduced or eliminated gravel road maintenance; 63 have reduced or eliminated roadside mowing and brush control; 49 counties reduced or eliminated bridge/culvert replacements; and levels of service have been reduced statewide for winter maintenance.
>
> The survey also showed that the worst is not behind us. In 2010, 65 counties plan to delay necessary capital preventive maintenance due to a lack of funding; 54 anticipate reductions of traffic safety measures such as re-striping roads or replacing signs and guardrail; and 45 counties plan to delay a local road or bridge project which could have a negative impact on communities and local businesses.

- Largely because of health insurance premiums (to which Union members currently contribute about 2.7% of their wages for family coverage) the fringe benefits for Commission employees are about 140% of payroll. The major components of this very high percentage are 75% for health insurance, and 33% for social security and retirement. For example, a hypothetical employee paid $40,000 for hours worked would have annual overall compensation of $96,000.

On the bright side, the Consumer Price Index published by the federal Bureau of Labor Statistics shows that in recent years the Index's increases have been somewhat low and in 2009 actually declined.

COMPARABLE ROAD COMMISSIONS

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 which abut Kalamazoo County: Allegan, Barry, Calhoun, and Van Buren. The Commission's primary argument is that contiguous county road commissions are comparable because they are in the same local labor and "cost-of-living" markets.

The Union has proposed road commissions from the following counties: Berrien, Ingham and Saginaw. The Union argues that the Commission's proposed road commissions receive far less MTF payments whereas the Union's proposed road commissions are approximately equal to the Commission in MTF payments.

The Commission does not deny these facts but explains that when local non-MTF revenues are included, in 2009 the Commission's revenues were $13.9 million whereas its proposed road commissions had total MTF and local revenues in 1999 of $16.2 million (Allegan); $10.3 million (Van Buren); $7.9 million (Calhoun); and $5.5 million (Barry). I note that the average revenues under this formula for Allegan and Van Buren is $13.2 million (which is very close to the Commission's).

The Union also argues that if proximity to Kalamazoo County is to be emphasized, then Berrien should be deemed "most comparable."

Berrien County is abuts Van Buren County on the latter's west side and is about 50 miles from Kalamazoo County. Further, along with Van Buren and Allegan Counties, it lies on Lake Michigan with the result that it directly shares the "lake effect" for snow of these two Counties.

Selecting comparable communities is inexact.

I think it is appropriate in this Report to consider the Berrien County Road Commission along with the Commission's four proposed road commissions in this Report.

DISPUTED CONTRACT ISSUES

A. SNOW ROUTES/SNOW DISTRICTS/WINTER MAINTENANCE EQUIPMENT

The Commission proposes: At the start of each winter season, employees will bid based on seniority whether they want to be a "snow route" (i.e., primary roads) driver starting their shift at 4:00 a.m. The Commission will then assign the bidding employees to a particular route and a particular piece of equipment, with the Commission retaining the right to make route and equipment changes as it deems necessary. The Commission will retain its right to assign employees to a "snow district" (i.e., secondary roads).

The Union proposes that its view of current practice be retained.

RECOMMENDATION

I recommend that the Commission's proposal be adopted. The parties might want to consider a provision allowing the bidders to submit non-binding "snow route" preferences if they have any.

REASONS

The CBA does not expressly address winter road and equipment assignments, although it does provide that the Commission has the right to "direct and supervise its operations." The Commission argues that it needs the right to assign drivers and equipment on the bases of need and skill. The issue is limited to winter months. In the summer, the Commission assigns jobs and equipment.

The Union argues that during the winter months its members have the right to choose assignments and equipment and in the process to "bump" as often as daily based on seniority.

At pages 15-16 of its post-hearing brief, the Commission explains its proposal as follows:

> As a compromise, the Employer has proposed that at the start of each winter season, the Union employees will bid based on seniority whether they want to be a "snow route" driver and start their shift at 4:00 a.m. each morning because it may entitle them to additional compensation and changes their regular working hours. The Employer will then assign each bidding employee to a particular route and a particular piece of equipment. However, the Employer would maintain the right to make changes to the route and equipment assignments as it deems necessary.
>
> With regard to "snow districts," the Employer proposes that it maintain the right to assign employees to the districts of its choosing because each and every employee plows a "snow district" – even those assigned to "routes" (they are required to plow a district after they are done with their route).

The Commission's proposal is efficient and fair. My suggestion of submitting non-binding route preferences may be of benefit to the Commission and its employees in making assignments.

B. **PROMOTION AND TEMPORARY TRANSFER.**

The Commission proposes to clarify CBA language addressing training, promotions, bumping and transfers consistent with current practices and policies. The proposal includes (1) deleting daily bumping language; and (2) adding temporary assignment language allowing employees to receive additional pay while temporarily working in a higher classification.

The Union proposes that (1) if qualified, promotions will be by seniority; no change in the current language; (2) the current language on daily bumping be retained; and (3) no change be made regarding prequalification for promotions.

RECOMMENDATION

I recommend that the Commission's proposal be adopted

REASONS

The Commission proposes to eliminate "daily bumping" language from the transfer language of the current CBA because daily bumping does not occur but would be extremely burdensome if employees were to pick their daily activities based on seniority.

The addition of temporary assignment language will benefit employees by authorizing higher pay while temporarily working in a higher classification.

The Union's current position on these issues is unclear, although it has filed a grievance which the parties have agreed to hold in abeyance for the purpose of the parties bargaining a resolution.

C. HEALTH INSURANCE

The Commission proposes: (1) Eliminate from the CBA the reference to BCBS Traditional Plan coverage. (2) BCBS PPO1 Plan or substantially equivalent plan selected by the Commission. (3) Employees' share of any health insurance premiums shall be 5% upon parties' ratification of new CBA, with employees' share increased to 8% 12 months after parties' ratification of new CBA and to 10% 24 months after ratification. (4) Office visit co-pay increase from $10 to $20, emergency room co-pay increase from $25 to $100, prescription co-pay increase from $10/generic and $20 brand name to $10/generic and $40/brand name, and chiropractic coverage limited to 24 visits.

The Union proposes: (1) Retain 92% payments made by Commission per the cost of the BCBS Traditional Plan and if so (2) Union agrees to Commission's proposed co-pays and chiropractic coverage

RECOMMENDATION

On the issue of health insurance, I recommend that the Commission's position proposals be adopted by the parties, except as follows: For the third year of the CBA (24 months after the parties' ratification) I recommend a re-opener on the percentage of employee premium sharing.

REASONS

The parties' 2002-2005 CBA provided that the Commission's share of "the published monthly rates for Blue Cross Blue Shield traditional insurance" would be capped at 95%. The parties' 2005-2009 CBA decreased the Commission's share to

94% on November 1, 2006, 93% the next year, and 92% the year after that. The BCBS traditional plan was the most expensive BCBS plan. Most Union members opted for less expensive plans. In 2008, BCBS discontinued the traditional plan. (It also discontinued its POS plan.) But because the CBA 92% Commission liability as measured by the discontinued BCBS traditional plan remains in effect and many employees are covered by the good (but less expensive) BCBS PP01 plan, the result has been that bargaining members paid only 2.27% of their health insurance premiums in 2010. For single coverage this would be $169 per year and for family coverage this would be $977 per year. The Commission argues that it cannot afford to continue paying 98% of employee health insurance premiums.

Paying 5% of premiums at ratification would result in modest increases in employee payments. For example, based on a single coverage premium of 5% an employee would pay $375 per year for a policy costing $7500 per year (or $206 more per year than under the Union's proposal) and for family coverage an employee would pay $1,000 per year for a policy costing $20,000 per year (or $23 more per year than under the Union's proposal).

Paying 8% of premiums for year two under the Commision's proposal would result for single coverage in an employee contribution of $600 (assuming the policy premium remained at $7,500 per year) and for family coverage in an employee contribution of $1,600 per year (assuming the policy premium remained at $20,000 per year).

Paying 10% of premiums for year three under the Commision's proposal would result for single coverage in an employee contribution of $750 (based on a policy premium of $7,500 per year) and for family coverage in an employee contribution of $2,000 per year (based on a policy premium of $20,000 per year).

On November 1, 2008, all the Commission's proposed changes were implemented for the non-Union employees, with those employees paying 8% of the premiums.

By not agreeing to the Commission's proposal (CBA expired 3/31/09) the Union members have enjoyed a cost advantage on this issue in relation to the Commission's non-Union employees (internal terms of employment being a relevant factor).

Among the five comparable road commissions I am considering, the four proposed by the Commission average $5727 for single coverage and $14,799 for family coverage. Berrien (proposed by the Union) is $7,644 for single coverage and $20,628 for family coverage (with no employee contribution). When the five comparable road commissions are averaged, single coverage is $6,110 and family coverage is $15,965. These averages are less than the Commission's premiums of $7,454 for single coverage and $20,124 for family coverage. Further, a Commission exhibit shows that if an employee of Allegan or Calhoun selects a plan better than the base plan the employee is required to pay 10% of the higher premium and for Van Buren the employee must pay 100% of the increase of the premium over the base plan. Further, it appears in this exhibit that an employee of Calhoun (where the annual premium is $6,732 for single coverage and $16,980 for family coverage) the employee is required to pay 10% of the premium.

The drug co-pay for Berrien is $20/generic and $40/brand name. The Commision's proposal is $10/generic and $40/brand name.

The Berrien CBA expired on June 30, 2010. Its premium rates were very similar to the Commission's. The Berrien employees do not contribute to premium payments. However, as explained below, they contribute 6% of gross wages to their pensions (whereas Commission employees do not contribute to their pensions). Also, they do not receive longevity pay. The record before me does not show whether a new Berrien CBA has been ratified or what its (proposed) terms are.

The reason I am proposing a third year reopener on the percentage of employee contributions to health premiums is that health insurance is in flux and premium payments may warrant a fresh look in 2013.

D. WAGES

The Commission proposes: 2% wage increase upon ratification of the new contract by the parties; 1% wage increase twelve months after ratification; and 1% wage increase 24 months after ratification.

The Union proposes: Raise of $0.75 per hour retroactive to April 1, 2009; raise of $0.60 per hour retroactive to April 1, 2010 (other than mechanics for whom a raise of $0.45 is proposed); and a raise of $0.50 per hour effective April 1, 2011.

RECOMMENDATION

In choosing between the two proposed wage packages, I recommend that the Commission's package be adopted.

REASONS

The Commission's proposed raises are relatively modest and are prospective.

The Union's proposal for wage increases is retroactive to April 1, 2009; and as of April 1, 2011 at the top wage scales the raises would total 10% for Group 1 employees, and 11% for Groups 2 and 3 employees.

The Commission's primary source of income for employee compensation – the MTF – is going down.

Between October 1993 and April 2008 the employees' hourly wage rates increased by almost 50%. In the four year period between April 1, 2004 and April 1, 2008 the employees' hourly wages rate increased by more than 10%.

In 2009, the Commission's non-Union employees received a 1% raise.

In 2010, they received no raise.

Between 2005 and 2009, fringe benefits as a percentage of payroll increased from 116% to 140%, an increase of more than 20%.

In comparing overall compensation paid by the Commission with the four road commissions proposed by the Employer which I have accepted, Commission employees are paid more.

Part of overall compensation is pensions. A chart prepared by the Commission shows that Commission employees have a <u>2.2%</u> multiplier and make <u>no contributions</u> whereas Berrien (the fifth road commission I have found comparable) employees have a <u>2%</u> multiplier <u>and contribute 6% of gross wages</u> (or an estimated $2,500 annually). The Commission chart concludes that annual wages for a hypothetical Commission employee are about $38,000 at present, whereas for Berrien it is about $39,500 when pension contributions are included. (Using this same analysis, the four Commission comparables are less than the Commission.)

The above chart does not include longevity pay, which is a part of overall compensation. Berrien has no longevity pay whereas under the parties' 2005-2009 CBA the Commission pays longevity pay based on gross earnings of 3% for 5 but less than 10 years, 5% for 10 but less than 20 years, and 7% for more than 20 years. It appears that longevity pay will remain in the parties' next CBA. In addition, the Commission chart does not include overtime, which would appear to be part of "gross earnings." In sum, the overall compensation of the Commission's employees as of today appears closer to Berrien's overall compensation than would appear by only comparing hourly wage rates.

For these reasons, I find that the Commission's package of proposed raises (although modest) is more realistic in a troubled financial climate than the Union's package of proposed raises. *See also* THE COMMISSION'S FINANCIAL SITUATION above.

E. EMERGENCY OVERTIME

The Commission proposes: For emergency overtime, each October 1 all employees will be listed with "zero" emergency overtime. During the year, the Commission will first call those employees who have volunteered that year to work the most emergency overtime.

The Union proposes that the current CBA language be retained.

RECOMMENDATION

I recommend that the Commission's reasons for its proposal be addressed. I am unsure what the precise language would be. I suggest that an efficient result could be obtained simply by adding language that "an employee who does not answer his phone shall be deemed to have turned down emergency overtime." The parties might also consider deleting or reducing "double" in Section 4 c.

REASONS

Under Article X, Section 4 c of the parties' 2005-2009 states:

> [T]he Employer will attempt to equalize emergency overtime on the basis of hours worked. . . . Any employee who turns down emergency overtime shall be charged double the amount of overtime hours worked by the person who actually worked it. In no event shall the Employer be obligated to pay any employee for time not worked due to inadvertent supervisory or clerical error.

The Commission has applied this language as follows: An area superintendent is assigned the duty of phoning each employee on an emergency overtime list by seniority. Because of equalization, the area superintendent first calls the employees with the least emergency overtime hours worked. However, because some employees do not answer their phones, the result is that the superintendent has to make a large number of futile calls in emergency situations. An exhibit submitted by the Commission shows that in the period between October 1, 2008 and September 30, 2009, area superintendents made 806 calls to cover 52 emergencies in order to get 79 employees to show up, a ration of 1 employee for every 10 calls. This is a very inefficient way to handle emergencies.

F. CLASSIFICATIONS

The Commission proposes to clean up current CBA language by removing equipment which is no longer used from the equipment list in Appendix A in the CBA, delete classifications no longer occupied or utilized; and to make the language of the Promotions and Temporary Transfer sections of the CBA consistent as to the references to "Job Classifications" v. "Job Groups."

The Union proposes that the current language be retained.

RECOMMENDATION

I recommend that the Commission's proposal be adopted.

REASONS

The purpose of the Commission's proposals is to bring CBA language up to date. Managing Director Johnson explained that the proposal deletes listed equipment and classifications no longer used, and clears up Promotions and Temporary Transfer language as to "job classifications" and "job groups."

The Commission has "acknowledged that it has a duty to bargain with the Union over wages for any new or substantially modified job, classification or job duties. The Union has all the protection it needs should any of the obsolete equipment be put back into service or any deleted classification become necessary to the operation of KCRC."

TL Gravelle

Thomas L. Gravelle,
Fact Finder