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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ST. CLAIR COUNTY

-and-

MERC CASE NO. D09 E-0612

AFSCME MI COUNCIL 25, Local 1089

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

UNION: AINA N. WATKINS, ATTORNEY
EMPLOYER: GARY A. FLETCHER, ATTORNEY

PETITION

DATA: PETITION FILED: MAY 10, 2010
HEARING DATES: MARCH 24 and 29, 2011
RECOMMENDATION DATE: JUNE 2, 2011

FACT FINDER

RECOMMENDATION:

TRANSFERS – ARTICLE 15: THE UNION PROPOSAL IS RECOMMENDED WITH MODIFICATION.

SICK DAYS – ARTICLE 26: SICK TIME FOR PART-TIME EMPLOYEES IS NOT RECOMMENDED, BUT THE UNION PROPOSAL RELATIVE TO PERSONAL TIME IS RECOMMENDED.

VACATIONS – ARTICLE 30: PAID VACATION FOR PART-TIME EMPLOYEES IS NOT RECOMMENDED.

HOLIDAYS – ARTICLE 31: HOLIDAY PAY FOR PART-TIME EMPLOYEES IS NOT RECOMMENDED.

HEALTH CARE – ARTICLE 33: THE EMPLOYER PROPOSAL FOR A PPO 8 PLAN IS RECOMMENDED, PROVIDED THE EMPLOYER PROVIDES FUNDS IN THE EVENT AN EXPENSE ASSOCIATED WITH THE CHANGE IS ENDURED.

SERVICE RECOGNITION – ARTICLE 35: THE UNION PROPOSAL IS RECOMMENDED.

RETIREMENT BENEFITS – ARTICLE 38: THE COUNTY PROPOSAL FOR A 2.5% CONTRIBUTION IS RECOMMENDED.

THE COUNTY PROPOSAL FOR A DEFINED CONTRIBUTION PLAN FOR NEW HIRES IS RECOMMENDED.

WAGES – ARTICLE 42: YOUR FACT FINDER RECOMMENDS A 0% INCREASE FOR 2009 AND A 1% INCREASE IN 2010 AND 2011.

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BACKGROUND

The Union filed a Petition for Fact Finding on May 10, 2010. The Petition enumerated 21 issues as being unresolved and in dispute. The number of issues which remained unresolved was considerably reduced at the Fact Finding Hearings held on March 24 and 29, 2011. At the conclusion of the Hearings, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered. Your Fact Finder commends both Advocates for their case presentations and efforts toward providing me with arguments in support of their respective views relative to the issues in dispute.

I have given careful consideration to all of the evidence and arguments submitted by the Parties, even though the Report and Recommendations herein may not specifically reference each and every one of the above.

DISCUSSION AND FINDINGS OF ISSUES

Ability to Pay

The Employer raised ability to pay as an issue in this case. The County noted that some 53% of its revenue is derived from taxes and some 97% of that amount comes from property

taxes. Property tax revenues have been in substantial decline and are projected to decline another 4% in 2012 and 2% in 2013. Labor costs as a percentage of annual revenue have and are projected to increase: Actual in 2009 = 58%; budgeted in 2011 = 64% and estimated in 2014 = 76%. The forecasted deficit for the County is as follows: 2012 = \$2,414,127; 2013 (assuming the 2012 is balanced) = \$3,889,319; 2014 (assuming the 2013 is balanced) = \$3,119,439. Without prior year balanced budgets, the deficit balloons – *i.e.*, the 2014 forecasted deficit is estimated at \$9,422,885. None of the above reflects inaction by the County: the 2009 budget included elimination of 14 full-time and two part-time positions; the 2010 budget included the elimination of 24 full-time and 12 part-time positions and the 2011 budget included the elimination of 12 full-time and two part-time positions. The prospects for the Michigan economy appear to be on the upswing, however, that will not result in an immediate rebound for property tax collections. The problem arises from the fact that under Proposition A property taxes can only increase at the rate of inflation or 5%, whichever is less. Other revenue sources are also problematic. At the Hearings, the existence of other County funds were noted, however, the evidence indicates they are largely restricted as to use.

Comparables

The Parties do not have a serious disagreement in regard to the counties which are comparable to St. Clair County and which should be referenced in this Fact Finding case. The comparables are as follows: Monroe, Jackson, Livingston, Saginaw and Lenawee. All of the above, with the exception of Lenawee County, were used in a recent Act 312 hearing. In point of fact, for purposes of this case, it appears the internal comparables – the wages and benefits earned by other St. Clair County employees – will have greater significance.

Transfers – Article 15

The Employer has proposed deletion of a provision impacting the ability of bargaining unit employees to fill vacant positions. The Union has proposed a change in language to include “if denied the position they shall be given, in writing, constructive reasons for the denial prior to the position being filled.” The underlined provisions constitute new language. Another point in controversy concerns the availability of training. The Union has proposed: “When or if specialized training is a criteria in awarding a position, then all employees in the Department shall be offered the training equally”. Written reasons when a position is denied does not seem unreasonable. The availability of training is a valid concern, but it probably needs to be limited so as not to amount to being over burdensome.

Sick Days – Article 26

The Union proposes to extend sick time to all part-time employees rather than only to those “hired prior to January 1, 1986.” The availability of some sick time to part-time employees appears to be a valid goal, but this is an item which needs to wait for a better County fiscal situation. Another issue raised by the Union relates to full-time employees receiving “2 personal days to be deducted from accumulated sick days when used”. The Union also proposes: “A request for use of personal days should be made at least forty-eight (48) hours in advance.” The Union proposal to provide two (2) personal days to full-time employees is deemed reasonable as is the proviso that the request be made “forty-eight (48) hours in advance”.

Vacations – Article 30

The Union wants paid vacation for those part-time employees who work 20 or more hours per week. Again, this is a goal which has merit, but it is better addressed in future

negotiations when the Michigan and St. Clair County economies improve.

Holidays – Article 31

This is another area where the Union seeks to improve the benefit level of employees who work part-time. In particular, the proposal is that all regularly scheduled part-time workers receive a holiday benefit as accorded to the full-time staff. Your Fact Finder is sympathetic to the Union's goal to enhance the benefits of the part-time workforce. The Union provided testimony from Arthur Wood, AFSCME Staff Specialist with a long-term familiarity of the bargaining unit, to establish that the proportion of part-time employees is on the increase. Hopefully, the part-time workers will transition to full-time status when economic conditions improve. In the meantime, I conclude this is another item which is best left to be addressed in future negotiations.

Healthcare – Article 33

This appears to be the major issue which has prevented the Parties from reaching a resolution of their differences. The main change proposed by the Employer is to replace the current benefit – Blue Cross/Blue Shield with no premium co-pay and with a \$10/\$20 drug co-pay to a PPO 8 Plan with a \$20/\$30/\$45 drug card. The PPO 8 Plan has a premium co-pay of \$450.32 for single subscribers; \$900.38 for two person and \$1,181.96 for full family. The premium co-pay associated with the PPO8 Plan is the same as that which is applicable to the PPO2 plan – a Plan which had earlier been proposed by the Employer.

The Union does not strongly object to the change in drug benefits. The Union is adamantly opposed to the PPO 8 proposal. The Union is bitterly critical of the County proposing the PPO 8 in March 2010 when it was prepared to accept the PPO 2 Plan which had been the

subject in negotiations. The Union explained that it delayed acceptance of the PPO 2 until it received clarification on various items associated with the change. The Union says it was “blindsided” by the Employer PPO 8 proposal in March 2010 and states it is a drastic proposal:

“The maximum out-of-pocket cost could amount to a 25% wage reduction and less coverage (80/20). There are 254 bargaining unit members whom average approximately \$30,000 per year.”

The Employer responds that this Unit has retained medical benefits in excess of other County employees – “The total loss to the County incurred when the Union did not get on board is \$312,369 or approximately 15% of the deficit the County faces this year.” The Employer references the testimony of Angela Garner, President – Public Employee Benefit Solutions, who noted the coverage for the Plans are nearly the same except for the maximum co-pays (\$600 vs. \$3,000 for a single) and (\$1,200 vs. \$6,000 for a family). With reference to Ms. Garner’s explanation, the Employer notes:

“... the only way to get near the maximum co-pay is for an employee to have two family members who had major claims in the same calendar year. Ms. Garner’s example showed two family members with major claims in the same year. This particular example had two family members requiring surgery one of which was out patient surgery with follow up and the other was heart bypass surgery with an additional inpatient surgery. The total cost of all of these services to the County are \$95,956.00. Using a side by side comparison of the family out-of-pocket expenses for the year show this hypothetical family paying \$4,720 under the PPO 8 and \$2,674.96 under the existing plan. Thus, despite two family members having surgical claims one of which constituted two major heart procedures, the difference between the existing coverage and the PPO 8 is only \$2,045.04. Once again, it took two large claims in the same calendar year in the same family to get to a difference of \$2,045 in out-of-pocket expenses.”

The Employer dismissed the testimony of Union Witness Bambi Costello who testified relative

to a situation encountered by her brother – a non-County employee.

The Employer presented testimony from Ms. Karry Hepting, County Accounting Manager and a CPA, relative to the County financial situation. Ms. Hepting also stated the County Commissioners, County Administrator and non-union employees will change to a PPO 8 on July 1, 2011. In a recent Act 312 case pertaining to the Police Unit, Arbitrator Chiesa adopted the Employer's Last Offer of Settlement which "would require a single subscriber to pay \$416 per year; a two person subscriber \$832 per year; and a full family subscriber \$1,092 per year." Although not specified in the award, it is clear the above related to a PPO 2 Plan. I agree with the County that the major difference between the PPO 8 and PPO 2 is the out-of-pocket maximum co-pay.

Your Fact Finder concludes that if this bargaining unit is to be shifted to a PPO 8 Plan, the County should provide an assurance during the life of this CBA that employee out-of-pocket expenses will not exceed the amount in a PPO 2 Plan. I envisage the County having a fund available for an exigency encountered by employees in this Bargaining Unit. An employee who is confronted with an out-of-pocket expenditure caused by major claims would have access to the fund in the event of a major calamity. The Employer, after all, has stated that the scenario is not likely to be a common occurrence and the protection should assuage the valid concerns of those employees in a bargaining unit whose members are least likely able to afford a catastrophic eventuality.

Service Recognition – Article 35

The Employer seeks to eliminate Service Recognition – commonly called Longevity – on the basis it "affects a small number of people and will save \$75,500 per year." The Union argues

it should be retained to help offset any increased expense to employees for health care and retirement and for a “likely boost to morale.”

The saving to the County stemming from elimination of this benefit is deemed negligible. Additional costs for health care have been added. For new employees, added costs for retirement will also be applicable.

It is recommended that Service Recognition be continued.

Retirement Benefits – Article 38

The Union proposes that “Retirement Health Care shall be accounted for separately by bargaining unit.” This proposal is a drastic change and, if all other County bargaining units asked for the same, it would likely add to administrative costs.

The County seeks a flat 2.5% contribution to the retiree health care trust maintained by the County. The County retiree health care fund is severely underfunded – the County says it has an unfunded liability of \$212 million. The Union proposes a graduated contribution and a limitation to “the first \$25,000 of an employee’s eligible by-weekly wages ...”. The internal comparables support the 2.5% contribution to the health care trust account without limitation to wages. The absence of a wage limitation is a benefit to this bargaining unit since many in the unit are not among the higher County wage earners – those Units with higher earners pay more.

Another County proposal is to close the Defined Benefit Plan to new hires. With regard to retirement benefits, the County seeks an end to a defined benefit plan and replace it, for new hires, with a defined contribution plan. It appears that collective bargaining agreements which have been negotiated since the economic downturn are conforming with the Employer proposal. This proposal, too, is supported by the internal comparables.

Your Fact Finder is aware that a recent Act 312 decision did not adopt the County proposal and stated the defined contribution would result in more cost to the County. Nevertheless, the County has moved toward a defined contribution plan for most bargaining unit groups in the recent period. The external comparables support the Employer move to a defined contribution plan for new hires. The Employer proposal allows an employee to contribute “up to a maximum of 8% of total wages through payroll deduction each pay period” and “the County will match the employee contribution dollar for dollar up to a maximum of 8% of total wages.” The Employer proposal is recommended.

Wages – Article 42

The Employer proposes a wage freeze through June 30, 2011 followed by a wage re-opener. The Union counters with a wage increase of 3% each on July 1, 2009, July 1, 2010 and July 1, 2011.

I have reviewed the Employer internal comparables which it has used to justify its proposal. In all candor, I find the comparison deficient. The data indicates a 2.55% historical average wage increase for this bargaining unit for the period 1999-2011. That percentage is derived by using data for 1999-2008. If the Employer proposal of 0% for 2009, 2010 and 2011 is included, the percentage average is 2.0%. The Union proposal of 3% across-the-board for 2009, 2010 and 2011 would yield an average increase of 2.7% for the period 1999-2011. That increase would be greatly out of line with all other Internal Comparables.

Your Fact Finder concludes that a freeze for 2009 and a 1% increase for 2010 and 2011 is a justified increase.

RECOMMENDATIONS

Transfers – Article 15: The Union proposal is recommended with modification.

Sick Days – Article 26: Sick time for part-time employees is not recommended, but the Union proposal relative to personal time is recommended.

Vacations – Article 30: Paid vacation for part-time employees is not recommended.

Holidays – Article 31: Holiday pay for part-time employees is not recommended.

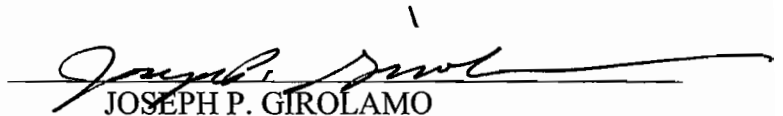
Health Care – Article 33: The Employer proposal for a PPO 8 Plan is recommended, provided the Employer provides funds in the event an expense associated with change is endured.

Service Recognition – Article 35: The Union proposal is recommended.

Retirement Benefits – Article 38: The County proposal for a 2.5% contribution is recommended.

The County proposal for a Defined Contribution Plan for new hires is recommended.

Wages – Article 42: Your Fact Finder recommends a 0% increase for 2009 and a 1% increase in 2010 and 2011.


JOSEPH P. GIROLAMO

Dated: June 2, 2011