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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC DEVELOPMENT
EMPLOYMENT RELATIONS COMMISSION

Micheal J. Falvo
Fact-Finder

In the Matter of Fact Finding

Case No. L10 I-3007

Arenac County

-and-

International Brotherhood of Teamsters, Local 214

Joseph Valenti, President
Teamsters Local 214
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Detroit, MI 48216

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FACT FINDING RECOMMENDATION

INTRODUCTION

Teamsters Local 214 filed an amended Petition for Fact-Finding on April 12, 2011 and the undersigned was appointed as the fact-finder by Commission Chair Christine A. Derdarian on June 27, 2011. The expired collective bargaining agreement covered the period January 1, 2008 to December 31, 2010. After a telephonic conference on July 11th, a prehearing conference was scheduled and took place on August 2, 2011. With the concurrence of the parties it was continued to September 9th to allow further meetings with Mediator Thomas E. Kreis. At the reconvened prehearing conference the procedure for determining comparables and exchanging exhibits was established and the fact-finding hearing was scheduled for October 20, 2011. However, because of the assigned business agent's unanticipated departure from employment shortly before the hearing, on October 11th an adjournment requested by the Union was granted

without objection from the County with the understanding that the parties would continue attempts to resolve the outstanding issues. The efforts were not successful and the fact-finding hearing took place in the Arenac County Offices, 120 N. Grove St., Standish, MI, 48658 on December 2, 2011. At the close of the hearing the Union requested that the record be kept open in order to provide additional information concerning the Teamsters Health Plan. The County filed a post-hearing position paper that was received on January 13, 2012. The record was kept open in the event I needed clarification.

The Union's petition listed the following unresolved issues:

1. Health insurance
2. Wages
3. Vacation leave
4. Sick leave

Contract duration is also an issue. This bargaining unit consists of four individuals.

1. 911 Director
2. Equalization Director
3. Public Guardian
4. Maintenance Supervisor

Each bargaining unit member has important duties requiring specialized expertise. The 911 Director has numerous responsibilities involving the emergency communications system which takes calls from the public and sends police, fire, or emergency medical assistance. The Equalization Director fulfills duties established by the state General Property Tax Act and advises the County Board of Commissioners in regard to property tax base issues. The Public Guardian serves as a court-appointed guardian to assist adults with mental and/or physical disabilities who are incapable of managing some or all of their own affairs. The Maintenance Supervisor has a wide range of responsibilities involving heating, lighting, cooling, building maintenance and groundskeeping. Testimony established that the Maintenance Supervisor is capable of handling specialized tasks, such as boiler operations, that are typically outsourced in other counties. It is apparent without the need for lengthy explanation that each bargaining unit member is critical to the proper functioning of county government.

The fact-finding process is intended to assist public employers and public employees – as well as constituents -- by having a third party provide a disinterested assessment and

hopefully suggest a viable path upon which parties can resolve disputed matters. Recognizing that the governing statutes are different in terms of purpose and procedure, fact finders nevertheless frequently consider the factors that pertain to compulsory arbitration proceedings involving public safety employees. MCL 423.239. I concur in the view that the Act 312 criteria are appropriate considerations in the fact finding process. The factors establish a helpful framework to weigh the strengths and weaknesses of the respective positions. The proper weight that should be accorded each factor varies from case to case.

ACT 312, SECTION 9 FACTORS

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests 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 involved in the proceeding with the wages, hours and conditions of employment of the other employees performing similar services and with other employees generally;

(i) In public employment in comparable communities.
(ii) In private 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 while the arbitration proceedings are pending.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into 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.

Significantly, last year the legislature amended Act 312 to provide that the financial ability of the unit of government to pay is to be accorded "the most significance if the determination is supported by competent, material, and substantial evidence." Public Act 116 of 2011.

In addition to these factors, fact-finding reports sometimes mention the "art of the possible." George T. Roumell, Jr. has described the notion as recognizing the ordinary give and take that occurs during the negotiation process coupled with the realization that parties seldom achieve everything they would like to attain in a successor agreement. Adherents to this approach contend that an "outsider" serving as a fact finder best preserves sound principles of collective bargaining by attempting to discern the settlement the parties would have reached if their negotiations had been successful. He explained this in *Southfield Public Schools* (MERC Fact Finding Case No. D06 B-0148, May 15, 2007), p. 4.

> The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

COMPARABLES

There have been no previous fact-finding proceedings for this bargaining unit. The parties brought to my attention before the hearing their belief that it would be unlikely that other counties would each have all of these positions. Nevertheless, I asked for external comparables with the understanding that the information might not correspond exactly with the positions in this bargaining unit.

Both parties list Gladwin and Ogemaw Counties. Additionally, the County contends that Alcona and Clare Counties are comparable. The additional comparables advanced by the Union are Iosco and Bay Counties. In dispute are Alcona, Bay, Clare and Iosco counties.

No two counties are ever comparable in all respects and fact-finders have varied approaches in assessing comparability. Although it is understandable that to a greater or lesser degree parties choose comparables that advance their positions, fact-finders rely on objective criteria that typically include proximity, population size, property and other tax base, and per capita income. No single factor is determinative.

The disputed counties proposed by the Union are contiguous to Arenac County. On the other hand, the County's proposed comparables while not contiguous are no more than one county away. The Union's reasoning that contiguous counties represent the most relevant labor market has merit but some limitations. Distance to the county line can be misleading. Although not contiguous Clare County is the adjoining county to contiguous Gladwin County. The cities of Clare and Harrison in Clare County are approximately 40-50 minutes from Standish, Arenac County's largest city. This is only slightly longer than the driving time from Standish to Bay City in Bay County. Based on proximity, even though not contiguous, I conclude that Clare County is an appropriate comparable. In contrast, Alcona County is not contiguous but is the adjoining county to contiguous Iosco County. The driving time from Arenac County to its nearest boundary as best I can determine is more than one hour. Based on that factor I do not believe that Alcona County should be considered.

Although it is contiguous I agree with the County that Bay County is not for these purposes comparable to Arenac County. The differences are stark. The 2010 population of Arenac County is 15,899, an 8.0% decline from 2000. The 2010 population of Bay County is 107,771, a decline of 2.3% from 2000. The population of Bay City alone (34,932) is more than double Arenac County's population and the population of Bay County is nearly seven times greater. As shown in **TABLE 1**, other demographic data from the latest census points in the same direction. (Source: http://quickfacts.census.gov/qfd/states).

TABLE 1

	ARENAC COUNTY	BAY COUNTY
Housing Units, 2010	9,803	48,220
Median value of owner-occupied housing units (2006-2010)	$99,000	$107,800
Median household income (2006-2010)	$36,689	$44,659

Equally important, the disparity in taxable property value is glaring: $550,223,519 (Arenac County) and $2,916,647,488 (Bay County). For all of these reasons Bay County will not be considered.

The County's objection to Iosco County is less solid. One of the County's concerns is that the population of Iosco County (25,887) is significantly larger than Arenac County. There is a problem with that argument. As **TABLE 2** shows, Gladwin County (which both parties propose) has the same population as Iosco County and the population in Clare County (which the County proposes) is appreciably greater than Arenac County. Population as a basis for disqualification of Iosco County is unpersuasive.

TABLE 2 – 2001 Population

CLARE COUNTY	30,926
IOSCO COUNTY	25,887
GLADWIN COUNTY	25,692
OMEGAW COUNTY	21,699
ARENAC COUNTY	*15,889*

The County's objection to Iosco County on the basis of taxable property value is also in tension with its inclusion of Clare County. Both Iosco County ($1,134,908,691) and Clare County ($1,022,980,484) are significantly out-of-line with Arenac County ($550,223,519) property values. One cannot conclude that Iosco County is objectionable on this criterion but not Clare County. Iosco County should be included in the list of comparables. Consequently, the suggested comparables with the exception of Bay County and Alcona County will be considered.

COMPARATIVE SALARY INFORMATION

As the parties anticipated, a complicating aspect in this fact-finding is that not all of the counties deemed comparable have the four classifications in this bargaining unit. Further complicating the matter is that some of the positions in other counties are filled on a part-time contractual basis.

TABLE 3

	Maintenance Director	Equalization Director	Public Guardian	911 Director
ARENAC	YES	YES	YES	YES
CLARE	NO	YES	YES	YES
GLADWIN	YES	PART-TIME	NO	YES
IOSCO	NOT LISTED	YES	NO	YES
OGEMAW	YES	PART-TIME	NO	YES

For wage comparison purposes, the County calculated an "equivalent" annual salary for Gladwin and Ogemaw Counties where the Equalization Directors are part-time contractual employees. The County derived this equivalent wage by taking into account health care, pension, and FICA costs that would be paid if they were employed full-time. After considering this interesting approach I do not consider it satisfactory for these purposes to attempt comparisons between part-time contractual employees and full-time employees. Among other reasons reported salary for full-time employees is over and above these other costs. **TABLE 4** shows the annual full-time salary, where applicable, of each position. I recognize that these comparisons are imperfect because varied job responsibilities are involved and the wage rates do not take into consideration adjustments resulting from contract settlements.

Table 4

	Maintenance Director	Equalization Director	Public Guardian	911 Director
ARENAC	36,555	42,500	31,637	39,560
CLARE	N/A	43,000	31,550	43,160
GLADWIN	44,809	PART-TIME	N/A	43,457
IOSCO	NOT LISTED	36,000	N/A	42,436
OGEMAW	34,180	PART-TIME	N/A	38,000
COMPARABLE AVERAGE	**39,494**	**39,500**	**31,550**	**41,763**
DIFFERENCE	2,939 BELOW	3,000 ABOVE	87 BELOW	2,203 BELOW

No clear pattern emerges from this comparative data. Pay differences exist from position to position and county to county. In Arenac County the Equalization Director is the highest paid employee but to the extent that the position is filled on a full-time basis that does not hold true in any other county. The Maintenance Director is paid less than in one county and more than in another. The Equalization Director is paid less than in one county and more than in another. The Public Guardian's salary is essentially the same as the only other county that has that position. The most noticeable disparity is the 911 Director. That position is paid less than in three counties and more than in one county. In this situation an across-the-board increase as urged by both parties would bring the 911 Director's salary more in line. But it would also further widen the $6,500 salary gap between the Equalization Director in Iosco and Arenac Counties.

There is an aspect of this mosaic that is critically important but missing: employee compensation for County employees in other categories. It is important to consider whether the entire wage scale of a public employer is depressed compared to others. In Act 312 the arbitrator is required to make comparisons with "other employees performing similar services and with other employees generally." Even if it is true that certain supervisory positions are compensated at a lower level than the counterparts in the comparable counties, what is the compensation level of rank and file employees in Arenac County compared to their counterparts in the other counties? Does the disparity exist in those positions as well? It is unnecessary to explain the importance of that question to individuals with the sophistication of these parties. The traditional labor perspective is shared sacrifice in economically difficult times is imperative. Indeed, the Union understandably brought to my attention that in December, 2010 county commissioners by a 3-2 vote increased their salary by $500 which was described in an article in the *Arenac County Independent* as a 12.5% increase. In that regard the Union's submission poses a familiar question: "When do the employees 'catch up'"? The County is undoubtedly concerned about the effect on employee morale – not to mention worrying about difficulties in the future of negotiating contracts – if the supervisory unit achieved a better wage package after those units accepted a

concessionary contract. All of this is to say that more needs to be taken into account than wage differences in these four positions compared to Clare, Gladwin, Iosco, and Ogemaw counties.

INTERNAL COMPARABLES

Obviously salary is not the only significant component of employee compensation. The parties are also at impasse on the issues of vacation and sick pay which will be discussed after the discussion of health care.

The County makes much of the fact that the same wage offer of 0% for 2011 and 1% for 2012 has been made to all unions. It is currently in effect for the POAM which represents deputy sheriffs and the 81st District Court unit. It is my understanding that the 911 unit was not settled at the time of the hearing and that negotiations have been stalled because those employees are in the process of changing or have changed unions. If I understand correctly the 23rd Circuit Court covers Alcona, Arenac, Iosco, and Oscoda County and it would seem that this differentiates it from the other Arenac County employees. Non-represented employees received the same 0% and 1% increase in 2011 and 2012.

The County believes that the fact-finder's recommendation should take into account that members of this bargaining unit received substantial wage increases in the last contract that "far outstripped increases in other units." Those increases were $1,500 (first year), $1,000 (second year), and $1,000 (third year). According to the County this was done in order to bring salaries more in line with the salaries of counterparts in other counties.

Although external and internal salary comparisons are significant, it became clear during the fact-finding hearing that the Union's argument to justify a wage increase greater than received by other employees is the Teamsters Health Plan. More specifically, the Union contends that savings achieved over the next few years by adopting that plan would cover a somewhat higher wage increase for these supervisory employees.

HEALTH CARE

The 2008-2010 agreement provided health care coverage by Blue Cross-Blue Shield of Michigan (BCBS). The policy allowed employees to choose among four options with different

deductibles, co-pays, and prescription coverage. Each option included dental and vision coverage. Effective January 1, 2009, the County paid the following monthly rates and any premium increases above these amounts during the term of the contract were the employee's responsibility.

Single	$410.00
Two-person	$835.00
Family	$1,000.00

Further discussion of the BCBS policy would be pointless since neither party proposes continuation of that plan. The County explained that BCBS based its rate on the experience of this particular group and because of unusually high benefit outlays in 2010 announced a 55% premium increase beginning January 1, 2011. With the assistance of a health care consultant the County found a plan that did not base premiums on individual employer experience. The County entered into a contract to provide health insurance coverage beginning January 1, 2011 with Blue Care Network (BCN). The County proposes that bargaining unit members receive health (including dental and vision) coverage under that policy (BCN-10). The Union proposes that bargaining unit members be covered by the Michigan Conference of Teamsters Welfare Fund Plan (hereafter referred to as the Teamsters Health Plan).

The Union maintains that the County's avowed objection to the Teamsters Health Plan contradicts statements made by County Commission Chairman Raymond Daniels. As reported in the October 20, 2010 edition of the *Arenac County Independent*, Commissioner Daniels said that the Commission would be receptive to adopting the Teamsters plan. He is reported to have stated: "We're good with whatever satisfies the employees -- whatever they feel is good for them." The County responds that the statement must be considered in the context of the discussion. It asserts that the point being made was that the commissioners' principal concern was cost rather than the provider. It did not mean that they were proposing that employees be covered by more than one heath care plan based on subgroup preferences.

The "Publicly Funded Health Insurance Contribution Act" (commonly referred to as Public Act 152) became effective on September 27, 2011. It changed the rules. As the County sums it

up in its position paper: "Today we live in an atmosphere where the legislature tells us what we may spend on insurance." I will not undertake to explain the nuances of the legislation to persons significantly more knowledgeable. The gist of the law is that a county can by a two-thirds vote exempt itself from the requirements for the next succeeding year. If it does not do so, the public employer must implement the default position of a "hard cap" or, by vote, has the option to adopt an 80%-employer/20%-employee premium sharing formula. Arenac County has not opted out and has selected the hard cap alternative. For 2012, under the "hard cap" provision public employers "shall pay no more of the annual costs" in the aggregate than the limits specified in the statute. These amounts will be adjusted in the future based on a specified formula. The amounts for 2012 are:

Single	$5,500
2 person	$11,000
Family	$15,000

In an earlier draft I detailed similarities and differences in BCN-10 and the Teamsters Health Care plan which on reflection contributed length but not substance to this report. Nor do I believe that it would serve any useful purpose to offer a personal opinion on whether one plan is "better" or "worse" than the other. In some respects the Teamsters plan would seem more attractive. As one example, the annual family deductible in the Teamsters plan is $900 as compared to $1000 in the BCN-10 plan. In contrast, the in-network coinsurance requirement is 10% in the BCN policy and 20% in the Teamsters plan. In its post-hearing position paper the County offered an illustration of a family that incurs $20,000 in medical bills in one year and calculates that when coinsurance and deductibles are applied the out-of-pocket cost is $4000 for the Teamster plan and $2,900 for the BCN-10 plan. On the other hand, the Teamsters plan includes six "Benefit Bank" weeks to cover absences that the BCN-10 plan does not. But for purposes of fact-finding all that is beside the point. As in art, health coverage attractiveness is viewed from an individual's perspective and it is the perspective of the union membership that matters most concerning which plan they consider best for them and their families. With increasing frequency, how much they wish to spend and can afford to contribute to the premium

is an essential part of the decision. Unlike in the past, under the new "hard cap" alternative, the legislature rather than insurers determines the cost of health insurance to public employers.

The Union's position is that the Teamsters plan is superior because it locks in rates for a three year period. The drastic increase that BCBS hit Arenac County with demonstrates how important that can be. The County response is because of Public Act 152 worries about unpredictability of costs "was yesterday." According to the County, it is fiscally immaterial if increases in the BCN-10 plan would exceed the locked-in rates in the Teamsters Health Care plan.

The Union has extended an invitation to make its plan available to all County employees. I doubt the legitimacy of a fact-finder tasked to make recommendations concerning a four-member bargaining unit suggesting that the far larger number of county employees change insurance carriers. The purpose of a contract is to settle such issues for the term of the contract. The other contracts end in ten months. At that time the Teamsters Health Care plan may well be an attractive option, particularly if experience with Blue Care Network has been less than satisfactory.

Although the optimal solution would be easier to achieve if it were otherwise, my understanding from the presentation is that a recommendation that the Teamsters Health Care plan be adopted necessitates that I recommend a three-year contract term. This is an obstacle. There is a second potential obstacle to recommending the adoption of the Teamsters plan. The County in this respect has been careful not to overstate its case and expressed this as a "concern" rather than fact. The favorable quote from BCN-10 is based on coverage for all county employees and the County is not sure what effect (if any) agreeing to another insurance plan for a subset of employees would have on rates and, conceivably, on the willingness of Blue Care Network to offer coverage for fewer than all employees. It is ill-advised for a fact-finder to base recommendations on speculation but the County's concern cannot be ignored. The reality is that all insurance providers condition coverage based on business interests.

While the guaranteed rates would not be one of them, in my view the County has valid reasons for being reticent to enter into a three-year contract. Future wage demands top the list.

Although there are a few hopeful signs that the nation's and Michigan's economy are on the rebound, county commissioners would likely not impress constituents by committing unrealized future resources based on optimism alone. If revenues do not improve, or worse decline even further, the proposed 5% raise over three years – while hard in the abstract to characterize as unreasonable -- could be unaffordable. That could put the parties in the frequently experienced but unenviable position of negotiating salary reductions. Secondly, if granted in this bargaining unit there is no way that at least equivalent increases would not be demanded by unions representing rank and file employees. Finally, one cannot reliably predict what funds will be needed to cover the County's future share of escalating health care costs based on annual adjustments to the hard cap. For these reasons I do not recommend that the expiration date of this agreement extend beyond December 31, 2012.

There is a middle ground that *possibly* could accommodate the Union's goal as well as the County's fiscal objectives. It is in two parts. First, is there a possibility that the Teamsters plan could be obtained for the remainder of 2012 with the expectation that bargaining will result in it being carried over in the successor contract? Frankly, I have no idea whether the Teamsters plan has from time to time made exceptions to the three-year requirement. If that is not possible, the second part is moot. However, if a Teamster plan could be obtained for the duration of 2012, my recommendation is that in turn the County should agree to make a good-faith effort to convince Blue Care Network to leave the current rate unchanged. I realize that this suggestion could be a non-starter and if it is I recommend that BCN-10 be adopted. I am unaware of objection by the County to the Union's position that if BCN-10 is recommended the plan and co-pays should not be effective until ratification and that is my recommendation.

CONTRACT DURATION

For reasons explained above, I recommend that the contract be for the period ending December 31, 2012.

SUPPLEMENTARY HEALTH CARE ISSUES

The County has retained the services of a health care consultant to help navigate the complexities of health care coverage. The reality of today's work environment is that changes that everyone would like to avoid are increasingly unavoidable. Sadly, private and public employers increasingly find it necessary to cut-back coverage in order to maintain health benefits for its employees.

There are no part-time employees in this bargaining unit and I am unaware of any intent to change that. The County proposes to eliminate its current obligation to provide part-time employees health care on a "pro-rata" basis but its proposal exempts current bargaining unit members in the event they become part-time employees. Although comparative data was not provided, health care for part-time employees is not the norm. The other unions that have settled have accepted this clause and I recommend that the same occur in this bargaining unit.

The "art of the possible" sometimes results in changed benefits for future hires in order to preserve current benefits. With one exception, I recommend that the Union agree to the other health care changes proposed by the County. These changes have been accepted by the other unions with signed contracts. The first proposal is that the County provide "single subscriber" coverage for new employees. The second proposal is that new hires receive $1500 rather than the current $3000 "in lieu of" payment when health insurance is not required because the employee is already covered. Undoubtedly these were unwelcome choices. I also recommend that the contract include the language proposed by the County that the benefits are subject to the terms of the carrier and that Arenac County will not self-insure. Health insurance is a regulated industry and I have not been made aware of hardships that agreement to this demand would create. I also recommend that the contract include the provision proposed by the County that a spouse with coverage elsewhere must enroll with that employer.

The County also proposes a change in retiree health care coverage. Article 11.1(D) in the current contract states:

D. Retirement. Employees who retire from active employment and were immediately eligible for retirement benefits may continue to participate in the same health insurance, dental and optical insurance offered to the County's active employees by paying the premiums. Upon the retiree becoming eligible for Medicare coverage, the retiree's coverage shall be converted to a Medicare coordinated policy. The above retiree coverage is contingent upon the insurance carriers permitting retired employees participating at the retiree's cost.

Providing health care for governmental employees during a hopefully long retirement presents a sobering challenge. Retiree coverage is described by some as a "time-bomb" to present and future financial solvency. Demands for its elimination are not unusual. Nevertheless, I find myself in a situation where any recommendation on this particular demand would be uninformed and therefore not likely to be helpful. The existing contract places the entire financial burden on the retiree. It conditions eligibility on the carrier allowing retirees to participate. The necessity for the change was not explained or backed up by financial or comparative information and on its face it is not apparent why the change is economically justified. Fact-finding based on speculation is a perilous endeavor. This is not meant as a criticism and I realize that there are numerous considerations on what to present to a fact-finder. But in the absence of an adequate record I think it better to leave this particular matter -- which is of obvious importance -- as I found it.

EMERGENCY FINANCIAL MANAGER PROVISION

As a statute requires its inclusion there is no basis to recommend otherwise.

SICK TIME AND VACATION REDUCTIONS

The County proposes that the maximum amount of vacation time be reduced to 20 days from 25 days and that sick days be reduced from 10 days to 8 days annually. The Union maintains that the status quo be maintained. The County's justification for its proposal is that other units conceded those days in consideration of the increase in health care payments by the County.

I have weighed intra-county bargaining history heavily in other areas. I do not believe the rationale is as convincing for this demand. Bargaining units are not alike in all respects. Ildiko Knott explained the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners. (MERC Case No. L92 F-0095, July 5, 1993), p. 8.

> Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends on the particular circumstances of their negotiations, their bargaining history and their job market. These circumstances cannot be automatically transferred to another unit. Each group must be judged on objective standards appropriate to that group.

For undoubtedly good reasons advancing its interests, the County designated the individuals in this bargaining unit salaried employees whose pay is not reduced for absences. The sick and vacation time reductions in the other bargaining units were components of a conversion to a combined "paid time off" category which I understand is not contemplated in this bargaining unit. The negotiation process must be flexible enough to recognize differences and the distinction between hourly and salaried employees is a significant difference. These differences weaken the County's "equal share" rationale. I recommend that the status quo be maintained concerning sick and vacation days.

WAGES

The Union's principal demand on wages is contingent upon adoption of the Teamsters Health Care plan. It provided a backup proposal if that plan is not recommended. Because I recommend that the contract expire on December 31, 2012 the Union's three-year wage proposal cannot be recommended. The Union's backup proposal is a 1.5% increase on July 1, 2011 and 1.5% on January 1, 2012. Consistent with its offer to all unions, the County proposes no increase in 2011 and a 1% increase in 2012. The County asserts that a 3% raise on the effective date of the agreement is excessive and unjustified.

Public Act 54 of 2011 provides that "after the expiration date of a collective bargaining unit and until a successor collective bargaining agreement is in place, a public employer shall pay

and provide wages and benefits at levels and amounts no greater than those in effect on the expiration date of the collective bargaining agreement." It also provides that parties to a collective bargaining agreement shall not agree to any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement. Obviously a fact-finder cannot recommend what the law forbids.

I find no merit in the County's contention that because the Union is the moving party "any delay in the process must be laid at its feet and not the County's." There is no evidence of anything other than good-faith bargaining on either side. The cancellation of the October hearing was beyond the Union's control. One might characterize Public Act 54 as penalizing prolonged bargaining but that is the reality of the situation. Another reality is that there are four persons in this bargaining unit and they hold supervisory positions. Both of these details affect bargaining power. As a fact-finder I would not rely on size or strength to recommend that these employees be denied substantial gains achieved by other unionized workers. The principle is no different when, as here, those gains are modest.

I previously outlined the reasons why the external comparables do not support a substantial across-the-board pay increase. But in this case I believe the 1% increase over two years offered by the County and accepted by bargaining units representing non-supervisory employees is even more compelling. Particularly in light of the substantially greater pay increases of $1,500, $1,000, and $1,000 for the first, second, and third year of the previous agreement, a three-fold raise compared to other employees would require a substantial justification and such justification has not been established. I recommend that the increase for 2011 be 0% and that it be 1% for 2012, recognizing that the 2012 increase cannot be paid retroactively.

SUMMARY OF RECOMMENDATIONS

1. I recommend that the expiration date of the collective bargaining agreement be December 31, 2012.

2. I recommend that the wage increase for 2011 be 0% and that it be 1% for 2012.

3. I recommend that the status quo be maintained with regard to sick and vacation days.

4. I recommend inclusion of the statutorily-required Emergency Financial Manager provision.

5. On the condition that the Teamsters Health Care plan can be obtained for a contract term ending December 31, 2012, and on the further condition that doing so does not have a significant adverse financial impact on the cost of the BCN-10 plan for other employees, I recommend that the Teamsters Health Care plan be adopted. If either or both of these conditions cannot be accomplished, I recommend the BCN-10 plan with the plan and co-pays becoming effective upon ratification by the parties.

6. With the exception of the County proposal that retirees not be permitted to participate in the health care plan at their own expense, I recommend adoption of the County's proposals on supplementary health care issues.

    - Part-time employees should not be eligible for health coverage. Current bargaining unit members should continue to be eligible for pro-rata coverage under the terms in the expired agreement.

    - The "in-lieu" payment should be decreased from $3000.00 to $1500.00. Current bargaining unit members should not be affected.

    - Health care benefits should be provided subject to the terms of the carrier. The stipulation that the County is not required to self-insure should be adopted.

    - Health care coverage should be single subscriber coverage. Current bargaining unite members should not be affected.

    - Spouses who are eligible for health care coverage through another employer should be required to obtain such coverage.

7. With regard to the County's proposal that retirees not be permitted to participate in the health care plan at their own expense, for the reasons previously explained, no recommendation is made.

In closing I would like to express my thanks for the professional manner in which the parties have advocated their positions. It is my hope that these recommendations will be of assistance.

Michael J. Falvo

MICHEAL J. FALVO

Dated: February 14, 2012