

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
IN THE MATTER OF FACT-FINDING BETWEEN

MERC Case No D12J-0895

COUNTY OF MACOMB,

Employer

and

MACOMB COUNTY ROAD COMMISSION
ADMINISTRATIVE AND TECHNICAL
EMPLOYEES ASSOCIATION (ADTECH),

Union

PRESENTED TO

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Representatives & Witnesses:

For the County of Macomb:

Timothy McConaghy
Michelle Mykytiak, Asst. Finance Director
Karen Bathanti, Human Resource Service Director

For the Union:

James R. Andary
Bryan Santo, President, ADTECH
Monty Bolis, Vice-President, ADTECH
Patricia Lawrence, Secretary, ADTECH
Rich Sabaugh, Unit 2 Steward, ADTECH
Joseph P. Stockel, Unit 1 Steward, ADTECH
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Jeff Thompson, Unit 3 Steward, ADTECH

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EMPLOYMENT RELATIONS COMMISSION

Before Fact Finder: Betty R. Widgeon
BACKGROUND

Effective January of 2011, the former Macomb County Road Commission officially became the Department of Roads (DOR). There are two unions within the DOR: Administrative and Technical Employees Association, (hereafter, ADTECH or the Union) and ROADTECH.

Twenty-seven bargaining units exist within the County. The County and 24 of those 27 bargaining units reached agreements for the contract years of 2011-2012. The County did not reach agreement with ROADTECH, and terms were finally implemented/imposed. The County is still negotiating with the Command Officers unit.

ADTECH and the Macomb County (the County) began negotiations in 2011. The parties' most recent Collective Bargaining Agreement (CBA) expired on December 31, 2011. Negotiations began in 2011 and continued into 2012, but the parties were not able to reach agreement on all issues. During the course of negotiations the parties met with MERC mediator, Wanda Mayes once. A second mediation session was scheduled; however, before the date for that 2nd session, the Ms. Mays found the parties to be at impasse, and the County filed a petition for fact-finding on November 1, 2012.

County funding comes from two main sources. The first is known as Public Act 51 (PA 51) funds and is commonly referred to as the Michigan Transportation Fund (MTF). The MTF is made up of the 19 cent per gallon flat tax on gasoline as well as from registration fees on vehicles. The other major source of revenue is described as Federal/State revenue.

OUTSTANDING ISSUES

The outstanding issues are listed below.

1. Duration of the Contract
2. Wages
3. Healthcare
4. Employee Contribution to Retirement

5. Longevity
6. Furlough Days
7. Minimum Retirement Age
8. The Deferred Retirement Option Program (DROP)

Employer's Position

The Employer's last written proposal is stated below.

- 1) A two-year contract (January 1, 2012 to December 31, 2013);
- 2) 0% wage increase for 2012 and 2013;
- 3) Current employees to have healthcare coverage with plan specifications to comply with PA 152; Employees hired after 1/1/2012—\$100 monthly contribution (single), \$150 monthly for 2 person contract, \$200 monthly for family contract; Employees hired after 1/1/2012 must work 20 years of actual service for healthcare for the employee in retirement; Employees who retire after January 1, 2012 will have healthcare coverage as determined by the Employer;
- 4) Increase employee contribution by 2%, effective January 1, 2012; Eliminate overtime from inclusion in Final Average Compensation for those who retire on or after the ratification; Employees hired after January 1, 2012 must have 15 years of actual service to be vested;
- 5) Eliminate the Longevity Program;
- 6) From date of ratification/implementation until December 31, 2013, each Employee shall be docked/furloughed twelve working days without pay. The days must be requested and scheduled and have department head approval; days not taken by June 1, 2013 will be scheduled at the Employer's discretion prior to December 31, 2013; Alternatively, Employer may in its sole discretion reduce holiday pay and/or wages as necessary to achieve cost reductions equivalent to the twelve docked/furloughed days.

Employer's Rationale

The County explains that the more than \$50 million in the fund balance is earmarked for road projects. Although the Union may view this as money that should be used to meet Union demands, it is the obligation of the County Highway Engineer and the County Executive to determine what road projects will take place as well as when and how they will be funded. The fund balance grows as the DOR is able to run a surplus and add to the fund. This has not been possible in the last several years, and now the fund has essentially become static. The County stresses that the fund balance is "not simply a large bank account holding funds that have no stated purpose."

The County points out that since 2004, its MTF revenues have continually declined while salary, pension, and health care expenses have significantly increased. Additionally, the general costs of operating the DOR have risen. The County underscores that it has no control over the level of MTF revenue it receives. The State disperses these funds on a monthly basis and the amount received per month fluctuates. The County maintains that it has faced severe financial pressures, and it is doing all it can to recover from the housing downturn and reduced tax revenue.

The County notes that the DOR reduced its actual head count by approximately 30% from 2004 through 2012 and projects that its 2013 head count is expected to be 230 employees. Moreover, the DOR has made further budgetary reductions by delaying purchases of new equipment, increasing prescription co-pay for retirees, and implementing health care concessions for non-union employees.

The County also conveys that there have been no wage increases for non-union staff, and non-union employees took a total of 12 furlough days in 2012 and 2013. Additionally, in 2011 non-union staff switched to the health care plans that the County has offered to the Union, while throughout 2012 and 2013 this Union's members have continued to receive coverage from the lucrative Blue Cross plan that requires no deductibles, co-pays, or out-of-pocket maximums.

The County counters the Union's argument that the DOR fund balance is healthy enough to afford the Union's requests by stressing that the County has never argued that financial inability to meet some of the Union's desires. Rather, the County emphasizes that the fund balance is dedicated to pay the DOR portion of new construction projects and major repairs, either by funding those expenses at 100% or with a 20% match to federal funds. Funding the Union's requests would diminish the County's ability to repair and maintain safe roadways for

the public. Moreover, the Union's requests do not constitute one-time payments; the DOR would be forced to invade the general fund on a continuous basis in order to make those payments.

The County acknowledges that ADTECH members, as well as the rest of the County's employees, both Union and non-union are hardworking professionals, and in better financial times all employees would be deserving of more. It concludes, however, that the responsibility and duty to consider the best financial practices and uses of the DOR funds lie with the County Executive and Highway Engineer.

Union's Position

The Union specified in its closing brief that it accepts paragraphs 1-3 of the County's proposal but opposes the County's proposed paragraphs 4-6. The Union's position on the County's proposal is listed below.

- 1) A two-year contract (January 1, 2012 to December 31, 2013) (Agreement with County);
- 2) 0% wage increase for 2012 and 2013 (Agreement with County);
- 3) Current employees to have healthcare coverage with plan specifications to comply with PA 152; Employees hired after 1/1/2012—\$100 monthly contribution (single), \$150 monthly for 2 person contract, \$200 monthly for family contract; Employees hired after 1/1/2012 must work 20 years of actual service for healthcare for the employee in retirement; Employees who retire after January 1, 2012 will have healthcare coverage as determined by the Employer. (Agreement with County);
- 4) The Union rejects the County's proposed increase of employee contribution by 2%, effective January 1, 2012; rejects the proposed elimination of overtime from inclusion in Final Average Compensation for those who retire on or after the ratification; and rejects the proposal that Employees hired after January 1, 2012 must have 15 years of actual service to be vested;
- 5) The Union rejects the proposed elimination of the Longevity Program;
- 6) The Union rejects the proposed docked/furlough days;
- 7) The Union proposes that the minimum age retirement requirements be adjusted to age 50 with 70 points;
- 8) The Union proposes that the membership be allowed to participate in the Deferred Retirement Option Program (DROP) program.

The Union emphasizes that the County has the ability to pay what the Union has requested. There is no financial necessity confronting the DOR that requires ADTECH to give concessions. ADTECH members have not had a pay increase in 7 years. Yet and still, the County is insisting on pattern bargaining. If the County does not receive the concessions it demands, it is all too ready to move to imposition of terms.

The Union points out that ADTECH and the costs and expenses that relate to payroll and its benefits are funded by restricted revenue from PA 51 and Federal Highway funds. The Federal Highway Funds that are received by the county can only be used for road construction and other related road uses, including salary and fringe benefits of DOR's employees only. DOR funds cannot be blended with other County funds. Therefore, there is no economic or financial necessity for the concessions proposed by the County.

Moreover, any concessions the County was able to extract from ADTECH would have no impact on funding any other bargaining unit if there was indeed a shortfall for other County Departments. Yet, the Union notes, throughout negotiations, the County insisted upon the percentage of concessions it has received from other bargaining units, regardless of the fact that it is "impossible" for the County to use any savings it seeks (from ADTECH) for the County's general fund or for other bargaining units.

The Union observes that the DOR has experienced a reduction of personnel of almost one third since 2004. Yet operations have continued at the highest levels, and there have been no pay increases. The Union questions the whereabouts of the funds saved from personnel reduction. It maintains that there has been unauthorized mixing of restricted funds with the County's general fund and/or that the County has used restricted DOR funds to support non-road recognized operations.

Additionally, the Union points out that the County's projected budget expenses rarely align with the final actual numbers. Rather, the revenues have far exceeded the projections. For example, the projected fund balance in the County's proposed budget for 2012 and 2013 underestimated significantly the actual fund balance for 2012 and 2013. The Union notes that "hardly has there ever been in the last two years" a shortfall situation. The Union charges that if there are increased expenditures, they are the result of spending on new office buildings that results in improperly taking money from DOR personnel. The Union urges that the County must show that respecting the concessions it seeks from ADTECH, the County "absolutely need[s] to insist upon pattern bargaining."

With respect to the Union's proposals, it points out that the concept of longevity has a long-standing tradition within the DOR. The Union argues that inclusion of the longevity program adds value because it helps maintain a high degree of efficiency and experience within the department. Moreover, nowhere does the County suggest that the longevity program is an unusual expense or that it will somehow adversely impact the budget.

The Union views the County's proposal of furlough days as unnecessary, given extensive proofs that "overwhelmingly indicate" the DOR is financially stable. The Union points out that the fund balance increased over \$14 million from what the County budgeted for 2012-2013. It argues that the DOR is effectively served with a substantial reduction of personnel and an increased amount of fund balance.

With respect to adjusting the minimum retirement age for eligible ADTECH members, the Union maintains that a comparable analysis reveals that the retirement program provided to ADTECH membership falls far below that of all other Unions except for those associated with the Sheriff's Department. Moreover, the Union asserts that in previous negotiations the County had assured the Union that the 55/70 formula would place it on par with other bargaining units.

ADTECH agreed to the 55/70 formula in the previous contract only after being assured that other units would not have the 50/70 formula or the DROP. The Union concludes that testimony at the hearing established that the pension fund is in good shape; therefore, adjusting the eligibility to age 50 for qualified ADTECH members would have no adverse impact on the retirement system. Similarly, the Union argues, the DROP program adds no cost factor, and should be made available to all employees.

WITNESS TESTIMONY

Michelle Mykytiak (Mykytiak), Assistant Finance Director, Fiscal Services, for Macomb County, testified that the DOR's fiscal year begins on October 1 and ends on September 30. She described the general operations of the DOR as involving maintenance of all the roads in Macomb County through a contract the County has with the State. The DOR is also responsible for the construction and preservation of all the roads in the County, including maintenance of current roadways and bridge construction. Mykytiak testified that the Finance Department is no longer located at the DOR; that department is now located at the County building. She confirmed that her duties and those of Mary Beth Schenden have expanded to include some County work but explained that she (Mykytiak) also lost the IT and Purchasing Departments for the DOR. Those two departments now report to the County IT Director and the County Purchasing Director, respectively. All Finance Department staff were brought over to the County.

Mykytiak testified that main source of DOR revenue is PA 51 or MTF dollars. Mykytiak described these funds as restricted in the sense that they can only be used on road related expenses including salaries and benefits, supplies, and equipment. Mykytiak stated that the MTF are always received two months after the month in which they were collected, so she is always two months behind in revenues. She testified that the County also receives Federal/State revenue

that is earmarked for specific construction projects and they are primarily used for paying contract fees for those projects. Mykytiak explained that those dollars are restricted for the projects for which they were received. For example, if a construction project has been approved for a certain roadway, the funds must be used to pay the contract fees for that roadway. Mykytiak testified that, in general, those dollars may not be used to pay wages, benefits and/or overhead. However, occasionally, some of this money has been available to pay salary of construction engineers.

For a few of these projects, like the Congestion Mitigation Air Quality (CMAQ) project, the DOR received 100% funding; for construction projects, however, 80% of the project is federally funded and the DOR must come up with the remainder. This remaining 20% has to come from the DOR budget and any contributed community funds. Mykytiak testified that although the community contribution is usually 10%, sometimes community matching has been promised but not received.

Mykytiak testified that the MTF are received monthly, and that the DOR does not know ahead of time how much it is going to receive in those monthly checks. She stated that sometimes the funds come in "low", and that sometimes it comes in higher than the DOR anticipates. Mykytiak confirmed that in 2004 the DOR received \$40 million in MTF, but that the amount decreased from 2004 through 2010. In 2011 and 2012 the MTF increased, with the 2012 total coming in at a little over \$37 million. Mykytiak stated that the 2013 projected revenue was slightly under \$37 million because she created the budget mid-year 2012 with the projections the DOR received from the County Road Association of Michigan (CRAM). Mykytiak testified that when she put the 2013 budget together, CRAM had stated MTF "would be flat to 2011 with maybe about a 1% increase."

Mykytiak confirmed that after DOR pays salary, pension, and healthcare expenses from MTF, the balance of the funds are available for all other costs, including equipment purchases, supplies, road materials, costs for participation on constructions projects, and any other costs. She testified that for 2012, after paying salary, pension and healthcare, the DOR projected just shy of \$11 million to pay its other expenses. Mykytiak further testified that if there is a surplus after paying all the expenses, that money goes into the fund balance. If there is a deficit, the DOR has to tap into the fund balance to pay the additional costs. Mykytiak testified that the DOR is not allowed to operate at a deficit, and mentioned that in 2011 the DOR had to take \$600,000 from the fund balance because of a deficit. Mykytiak testified that the DOR puts away roughly \$3 million a year for future retirees' healthcare and that, at present, the DOR is using its fund balance to help fund the retiree healthcare.

Mykytiak stated that the DOR has always had a fund balance during the 14 years she has been employed with it (and the former Road Commission). She confirmed that 2012 was the only year that DOR had been unable to contribute to the fund balance. Mykytiak explained that if construction projects are delayed, the amount of the fund balance increases. Mykytiak testified that present the DOR has several big projects for which it has received advances from communities. These advanced funds sit in the fund balance at present, but that is only because the DOR has not yet started the projects. Mykytiak confirmed that there is a lag time and that some projects have sat for a year or even longer. Once the DOR starts construction and begins to pay bills, that money will be pulled away from the fund balance.

Mykytiak testified that aside from seeking concessions under labor agreements, the DOR has attempted to control its expenses by reducing its staff. She confirmed that as employees retired, there was a concerted effort "not to fill those position and [to] try to save funds."

On cross-examination, Mykytiak stated that her position combines duties with the DOR and with the County on a weekly basis. She stated that the justification for using some of her time on County matters is that "Road work is being done by County employees and they're not billing the County for those dollars, and [her] time to the County is not being billed to the County." Mykytiak testified that she did not participate in formulating the concessions packet the County is requesting from ADTECH. She confirmed that she did run the numbers when requested but she had nothing to do with determining which concessions were appropriate and which were not. Mykytiak further stated that she may have been called upon to provide information on costs relative to pensions and healthcare and the cost of the DOR's longevity. Mykytiak conceded that the impact of eliminating longevity would be greater on the ADTECH bargaining unit than it would on other County employees.

Mykytiak confirmed that the MTF comprises only 35% of the DOR's budgeted revenue. She testified that the County exhibits did not take into consideration the other 65% of the DOR's revenue because those dollars cannot be used to pay salary, pension, healthcare costs, or other expenses. Mykytiak indicated that she does not know if the actual MTF revenues received for 2013 will be higher than the budget because those revenues depend on how much gasoline the public uses. Mykytiak further agreed that the 2012-2013 budget projected a fund balance of nearly \$42 million and that at this particular time the fund balance sits at \$54 million. Mykytiak testified that the audit for 2012 is ongoing at this time.

She conceded that if the County decided to give ADTECH a pay raise it would come out of the fund balance. Mykytiak stated she had not calculated what the payroll expense would be with respect to a 2.2% or 3% raise. Mykytiak reiterated that, aside from looking at the longevity amount, she had not been asked to prepare any numbers respecting what concession percentages would be in real dollars.

Karen Bathanti (Bathanti), Service Director for the Human Resources and Labor Relations Department, testified that she started with the County in August of 2011. Bathanti stated that she is not paid with PA 51 funds, but she provides labor relations, negotiation, benefits services, and other services for the DOR. Bathanti gauged that the time she spends on DOR services fluctuates, depending on whether negotiations are on-going at the time or not. Bathanti recalled that she spent a lot of her time performing DOR services during its transitioning from the Road Commission.

Bathanti testified that the County's November 5, 2012 proposal to ADTECH was identical to those given to the other bargaining units with respect to dock/furlough days. She further testified that in the implemented contract with ROADTECH the County did not increase the employee contribution to the pension plan and did not eliminate overtime in the FA for those who retire on or after ratification.

On cross-examination, Bathanti stated that she did not participate in formulating the County's November 5, 2012 proposal to ADTECH. Additionally, Bathanti testified that to her recollection she had not been asked to prepare an analysis to determine the actual amount of money the requested concessions would generate and how they would impact ADTECH members. Bathanti conceded that if the average wage of ADTECH members is greater than that of some other bargaining unit, ADTECH would be giving up more than those other units if the same number of docked/furlough days were applied across the board to both bargaining units.

With respect to the County's healthcare proposal, Bathanti confirmed that the ADTECH healthcare plan has a different enrollment period than plans of other County employees in the DOR in that the ADTECH plan expires on September 30th of any particular year. She further confirmed that ADTECH proposed in September of 2012 to accept the healthcare plan offered by the County and that substantial savings would have occurred had the County accepted

ADTECH's proposal. Bathanti explained that the County rejected ADTECH's plan because the County did not agree to ADTECH accepting just that piece of the County's proposal. She indicated that ADTECH's healthcare plan was "extremely rich" and very different from the County plan, so her assumption was that there would have been a savings.

Bathanti conceded that with ADTECH's percentage contribution to retirement being at 3.5% right now, a 2% increase would make ADTECH employees' contributions to retirement higher than the contributions for employees of any of the other County departments.

John Schell (Schell), Deputy County Highway Engineer, testified that he has been employed by the DOR since 2005. Schell testified that he and Hoepfner make decisions on which projects they want to work on and when. Schell stated that they look at the funding levels and make application through the Macomb County Federal-Aid committee, along with other cities, for the projects they want to have funded. Schell further stated that he and Hoepfner target a number of types of federal funds that become available in a fiscal year and that they "try to size the program accordingly to fit the financial constraints." Schell testified that when the DOR can get community participation, the required DOR share to receive federal funds for projects is 10%. He emphasized that the DOR cannot always get community assistance, and when the community does not participate, the DOR contributes the entire 20% of matching funds. Schell testified that there is some latitude with some sources of federal programs regarding payment of construction costs. Schell further testified that it is a "discretionary call" made at the time of a project as to whether there are adequate federal funds to help cover construction costs. Schell conceded there are some components for engineering costs, including the costs for inspecting and surveying.

Mary Beth Schenden (Schenden) is the Fiscal Services manager with Macomb County assigned to the Department of Roads. Schenden testified that since the transition from the Road

Commission to the DOR, her work is roughly 65% with the DOR and 35% with the County. She confirmed that she is paid 100% from PA 51 funds. Schenden explained that when she was with the Road Commission, she worked from 7:30 am until 4:00 pm with an hour lunch. Because she now works 7:30am until 5:30 pm with no lunch, Schenden points out that she is working virtually two and a half hours a day on her own time. Schenden testified that although she does not supervise federal contracts, she makes sure that the accounting for the contracts is accurate. Schenden affirmed that the programs that provide for construction engineering costs are in the minority. She estimated that “no more than a dozen projects a year have some construction engineering billing implication.”

Robyn DiCristofaro (DiCristofaro) is a Service Partner with Macomb County who described his job description as a Human Resource Generalist. DiCristofaro testified that his duties include assisting in representing the County conducting data analysis, preparing comparability information, and comparing cost estimates of Union demands and Employer proposals for collective bargaining. However, DiCristofaro testified that he was not called upon to prepare the County’s concession proposal to ADTECH. DiCristofaro further testified that he did not participate in any meetings that discussed the amount of concessions that would be asked of ADTECH, and he was never asked to estimate what the Union’s proposals would have cost the DOR. DiCristofaro also stated that he had nothing to do with supervising the administration of PA 51 funds.

Robert Hoepfner (Hoepfner), Director of Roads, testified that he believed the majority of Mykytiak’s work is DOR-related. He indicated that the justification for this split in Mykytiak’s duties while being paid 100% by PA 51 funds is *shared services*. Hoepfner testified that he is allowed to share services, and that County shares many services with the DOR and other departments that are not reimbursed through various departments of the County. He offered

the example of the services of Corporation Counsel, stating that under PA 51 those services should probably be billed to the DOR; instead, the County and the DOR trade time. Hoepfner indicated that such trades are not unusual, and testified that he found the exchanges to be “perfectly justified.”

Hoepfner noted that PA 51 allows him to spend 10% on administration. He testified that while Mykytiak reports to Peter Provenzano, who works for Macomb County, but does DOR financial work, Mykytiak prepares all of Hoepfner’s budgets, does all his financial data, processes all DOR payments, processes all DOR checks, and keeps track of all DOR payroll. Hoepfner confirmed that DiCristofaro does not work for him although she is paid by PA 51 funds. Instead she works for Karen Bathanti and Eric Herppich of Risk Management. In trade off, Hoepfner stated that he no longer does the DOR’s workers’ compensation or short-term disability. Hoepfner testified that with the savings realized from staff reductions, the DOR has more funds to pay for building roads and bridges, buying more equipment, making road improvements, and maintaining roads. Hoepfner testified that he had nothing to do with formulating the County’s concession proposal submitted to ADTECH. Hoepfner stated that he was aware that the ADTECH members have not received a pay raise in 7 years, and that he also has not received a raise during that period.

ANALYSIS & RECOMMENDATION

Criteria For Recommendations

Although no clear criteria dictates what Fact Finders must look to in order to adequately formulate recommendations, many Fact Finders use the criteria established in Article 9 of the Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire Departments, as a guide. These criteria are commonly used in fact finding proceedings involving public

employers and police and fire unions, and this Fact Finder finds them to be a useful tool in assessing the issues presented by the parties in fact finding proceedings.

The applicable factors to be considered as set forth in Article 9 are as follows:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(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 in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) 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.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that 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.

The Fact Finder contemplated totality of the testimony, all exhibits and the representatives' presentations and also considered the criteria of Article 9 of the Act 312 of 1969 and its amendments as a guideline in making her recommendations. Paragraphs (a), (e), and (i) of Article 9 were particularly helpful and relevant to the discussion at hand.

Ability to Pay

As far as the County is concerned, ability to pay is a non-issue. Testimony indicated that the County has maintained all along that "it is not about the money." The Union sees this point quite differently. Although the Union has repeatedly requested numbers from the County reflecting the total amounts the County believes it needs to remain financially stable and the County's rationale for the concessions the County indicates are required, the County has responded only in general terms. The Union poses several legitimate questions: (a) what were the savings, if any, realized from the reduction in staff; (b) what amount of savings in dollars is the County seeking; (c) what amount does the County expect to realize from the concessions it is requesting; and (d) what are the estimated costs of the projects in the queue? The number of DOR staff has declined from 310 to between 217 and 230 for 2013. Mykytiak testified that staff reduction has been the biggest cost saving method employed by the DOR aside from seeking concessions, yet this cuts both ways. With fewer employees, one would expect that there would be significant savings because of lower labor costs.

The County hints that some savings have gone to increased health care. However, it does not specify the numbers, provide sufficient details, or paint a clear picture of how this balances out.

For example, Mykytiak listed the other cost-cutting efforts as including using more outside bidding to seek lower prices, utilizing brine in maintenance instead of calcium chloride, using brine in stead of calcium chloride in some maintenance of the roads, moving to limestone programs that help cut down on the “gravelling and chloriding” roads, and “other creative ways.”

Bryan Santo (Santo), a civil engineer with 19 years service with the DOR, testified that on many occasions and throughout numerous negotiations ADTECH asked the County to provide a dollars and cents concession package. Santo explained that each negotiating team wanted to look at different avenues of being able to save the County money, and to know what the total concessions would mean to the membership. With this information, ADTECH would be able to look at different ways of coming to the required dollar amount. The County has never provided this information. In applying the guidelines of Article 9 of the Act 312, paragraph (a) to the considerable facts not disclosed here, the Fact Finder did assign moderate weight to the County's ability to pay.

Comparables and Pattern Bargaining

Testimony signified that the County does have an interest in parity among similarly situated employees; however, the two sides describe that desired uniformity differently. The County indicates that it wishes to have all bargaining units making similar concessions. Yet testimony and exhibits provided several examples that demanding the same concessions across the board in this instance will result in disparate impact.

Monty Bolis (Bolis), a Computer Aided Draftsman for the DOR, testified that there are essentially two groups of employees within the County, including those within the DOR:

employees hired on or before December 31, 2001, who are considered long-term employees, and those hired after December 31, 2001. Long-term employees all have age 50 as the minimum retirement age. Bolis testified that ADTECH is requesting that its senior employees also be allowed to have age 50 as their minimum retirement age.

Bolis described that during negotiations, before the parties agreed on their last contract, the County specifically promised ADTECH that the rest of the bargaining units were going to be moved from a minimum retirement age of 50 to 55. Additionally, the County indicated that the other bargaining units would not be offered DROP participation. Bolis underscored that once the County reached agreement on its contract with ADTECH, the County entered into agreements with other bargaining units where the minimum retirement age was 50 and employees were allowed to participate in the DROP.

Fact Finder's Recommendations

It is the Fact Finder's understanding that there were never any tentative agreements (TAs) between the parties for any contract provisions. If the parties have entered into any TAs, the Fact Finder incorporates them by reference and includes those agreements as a part of these recommendations.

As stated above, the parties are in agreement with the County's proposal respecting paragraphs 1-3.

Therefore, the Fact Finder recommends paragraphs 1-3;

- 4) With respect to paragraph 4, testimony established that that none of the other County groups or bargaining units has a pension contribution that exceeds 3.5%, as ADTECH's already does. Moreover, the Fact Finder found no persuasive, reasonable basis for the County's proposed increased employee contribution by 2%, effective January 1, 2012, its elimination of overtime from inclusion in Final Average Compensation for those who retire on or after the ratification, or a requirement that employees hired after January 1, 2012 must have 15 years of actual service to be vested.

Therefore, the Fact Finder recommends no change with respect to this issue;

- 5) With respect to paragraph 5, the Fact Finder finds the Union's presentation respecting the tradition of longevity and its overall value to the County more persuasive than the County's general explanation respecting the need to eliminate it as a part of its overall efforts at cost cutting and maintaining financial stability.

Therefore, the Fact Finder recommends continuation of the current longevity program;

- 6) With respect to paragraph 6, the Fact Finder finds the County's presentation on the necessity of this concession countywide with regard to the County's efforts to maintain the overall financial stability and the relatively healthy conditions it currently experiences more persuasive than the Union's presentation on why ADTECH employees should be excused from this concession.

Therefore, the Fact Finder recommends the County's proposal of 12 docked/furloughed days for 2012/2013;

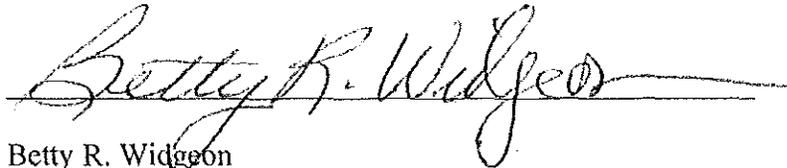
- 7) With respect to the Union's proposed paragraph 7, the evidence presented at the hearing persuaded the Fact Finder that for parity with similarly situated employees, the overall circumstances at this time require adjusting the minimum age for retirement to 50 with 70 points for eligible ADTECH employees.

Therefore the Fact Finder recommends change to the 50/70 formula for eligible ADTECH employees;

- 8) With respect to the Union's proposed paragraph 8, similarly, the Fact Finder was not persuaded from the testimony and exhibits presented at the hearing that allowing ADTECH members to participate in the DROP would jeopardize or undermine the County's efforts to maintain its overall fiscal health.

Therefore, the Fact Finder recommends that the ADTECH membership be allowed to participate in the DROP program.

Respectfully submitted and issued this 30th day of September, 2013.



Betty R. Widgeon
Fact Finder