MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
TEAMSTERS LOCAL 214 (UNION)
And
BERRIEN COUNTY TRIAL COURT – FRIEND OF THE COURT
(EMPLOYER)

MERC CASE NO.: L16 J-0994

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FACT FINDER'S REPORT
Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A. 336 of 1947 as amended)
[MCL 423.201, et seq]

FACT FINDER
C. BARRY OTT

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Petition filed: May 23, 2017
PANEL CHAIR APPOINTED: June 14, 2017
SCHEDULING CONFERENCE HELD: July 6, 2017
HEARING DATE HELD: September 26, 2017
REPORT ISSUED: November 22, 2017

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WITNESS LIST

FOR THE EMPLOYER
Shelley Jasper, HR Director
Thomas Watson, FOC

FOR THE UNION
Margaret A. Harrington
Lisa G. Haygood

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INTRODUCTION AND BACKGROUND

Teamsters Local 214 represents a bargaining unit composed of some 28 worker employed by the Berrien County Trial Court – Friend of the Court. The last collective bargaining agreement covered the period of January 1, 2014 through December 31, 2016. Efforts to negotiate a successor agreement were unsuccessful. During the course of the negotiations, the parties were able to reach a tentative agreement on two occasions, however the membership rejected the tentative agreements and the Union subsequently filed a petition for Fact Finding dated May 23, 2017. The petition identified four issues in dispute as follows: Wages/Salaries, Employee contribution towards Retirement, Vacation and Dental/Vision reimbursement. A hearing was held on September 26, 2017 and post hearing briefs were filed on November 2, 2017.

In addition to the Trial Court – Friend of the Court bargaining unit the County also deals with other bargaining units identified during the hearing as: Sheriff's Non-Command, AFSCME Probate and Juvenile Court, FOPLC General County Employees, Sheriff's Command Unit, Public Safety Dispatcher Unit, and the Public Safety Dispatch Supervisors Unit. The General County Employees bargaining unit covers approximately 182 employees and the Probate and Juvenile Court unit covers 49 employees.

BARGAINING HISTORY

The parties negotiated a three year bargaining agreement covering the period beginning January 1, 2008 through December 31, 2010. The agreement included a one percent annual wage increase for each year. In addition, Dental benefits increased from $700/ annual reimbursement to $800 in 2009 and to $900 in 2010. The parties also agreed to order a supplemental actuarial valuation and to equally share the cost of such study. Moreover, the Union agreed to pay 100% for the cost for any pension enhancements they choose to select.

The next negotiated contract covering the period beginning January 1, 2011 through December 31, 2013 included a wage freeze for calendar years 2011 and 2012, with a .5% wage increase effective January 1, 2013. In lieu of wage increases for the two year period, the parties agreed to provide a lifetime benefit of total service, times 2.2% of final average earnings. The pension improvements would have resulted in an employee contribution rate of 10.9% of earnings, but the decision to forego any wage increases for two years reduced the employee contribution rate to 8%.

STATUTORY AUTHORITY

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

> When in the course of mediation..., it shall become apparent to the commission that Matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R423.137, explains the contents of the fact finders report as follows:

Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:

(a) The names of the parties.
(b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
(c) Recommendations with respect to the issues in dispute.
(d) Reasons and basis for the findings, conclusions and recommendations....

COMPARABLES

Both parties selected the following Counties as comparable: Calhoun, Jackson, Monroe and St. Clair. The parties submitted exhibits at the September 26, 2017 hearing without objection, therefore the exhibits and the information contained therein shall be considered stipulated as to admissibility.

ISSUES IN DISPUTE

As noted earlier the petition identified the following four issues in dispute:

1. Wage/Salary Increase
2. Employee contribution towards Retirement
3. Vacation
4. Dental/Vision Reimbursement, increase from $900 to $1200

All of the issues shall be viewed as economic issue.

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WAGES/SALARY

1. WAGES/SALARY/UNION PROPOSAL

   At the start of the hearing, the Union was proposing a 3% across the board increase for the year 2017, and urged the employer to complete a countywide wage study. At the conclusion of the fact finding hearing, the under signed fact finder urged the parties to continue negotiations in an effort to reach an agreement. Consequently the Union submitted a proposal for a 2% across the board increase and the addition of a new step 8 to the salary schedule for those employees with the highest seniority, resulting in a 5% wage increase at the top step. In addition the Union proposed to increase the dental reimbursement from $900 to $950. The Union offered a short term contract with an expiration date of February 28, 2019 to enable the Union to negotiate wages, working conditions and benefits after completion of the wage study. The Union dropped two of its original bargaining issues: vacation and retirement/pension contribution. The Employer rejected the proposal, but did confirm that any County wage/salary study would include the positions within the F.O.C.

The Union amended its offer of settlement to change the term of contract effective November 1, 2017 or upon ratification and ending June 30, 2019. The proposal included a wage increase of 2% effective upon ratification followed by a 1.5% increase effective 7/1/2018 and 1.5% effective 1/1/2019. The proposed step 8 was amended to reflect a 2.5% increase upon contract execution and 2.5% increase effective 7/1/2018. The proposal was rejected by the Employer.
Since offers of settlement were unsuccessful, it is assumed that the position of the parties remains at the level as of the start of the Fact finding hearing.

1. Wages/Salary Increase/ Employer Proposals

The Employer proposes a 1.5% across the board increase to occur upon ratification of an agreement with a 1.5% across the board increase effective 1/1/2018 and 1/1/2019.

Or

As an alternative proposal the Employer offers to drop the 1st Step of the current Salary Schedule (making the current 2nd step the new entry level step) and add a new last step which is 3% higher than the current last step; each step in this new Salary Schedule will increase by 1.5% on 1/12018 and 1/1/2019.

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DISCUSSION/ISSUE 1, WAGES/SALARY INCREASE

The Union argues, in support of their proposal, that there is a significant gap in wages paid to its members and that of the non-union employees (UD#4-1). In support of such contention, the Union has submitted comparisons of wages paid to non-union employees who work in job classifications that the Union asserts are comparable to FOC positions. Moreover, the Union has offered wage data for two recent job postings in Calhoun County for positions that the Union claims are comparable to two positions with the FOC. A similar claim is made for one job posting in Jackson County. Such comparisons reveal a significantly higher wage rate than that provided to the FOC positions claimed to be comparable (UD #6).

The Employer argues that no other employee group received a 3% increase for 2017 as is proposed by the Union. Employer Exhibit G lists the wage increases for the various Union and non-union employee groups. The AFSCME-Family Division negotiated a contract for the period of 8/1/2017 through 12/31/2018 (17 months), that included a drop step and add step to the salary schedule, similar to that offered to Local 214 as an alternative. The FOPLC-County General Unit negotiated a 1% increase for 2017. All other employee groups received a 2% increase for 2017. The Employer has submitted a comparison of the wages provided to the comparable counties demonstrating the effect of their alternative proposals. The resulting data indicates that the Employer's alternative proposals are within the parameters of the comparable counties wages (Employer exhibits H1-H6).

FINDINGS AND RECOMMENDATIONS/WAGES

While there is some evidence of a wage gap between the employee groups, it has been caused, in part, by the decisions made in negotiations regarding the allocation of financial resources to wages and improved fringe benefits. An example, the Union agreed to a two year wage freeze for the years 2011 and 2012 in order to reduce the employee pension contribution from 10.9% to 8% to pay for pension improvements they decided to select. A similar result is reflected in the variable levels of employee contributions to the pension fund (Employer Exhibit F and Union Exhibit #4).

The Union's evidence regarding specific job classification wage rates and external comparable counties simply does not support an across the board wage increase for all classifications within the bargaining unit. This especially so since there are no job descriptions in the record for the

FOC positions to verify the claim of comparability with both external and internal comparable position titles.

Since the County has committed to include the FOC classifications in a contemplated wage and/salary study, I find that is the most appropriate method to address both internal and external wage variations.

Therefore, I recommend the parties adopt the alternative last best offer of the Employer as follows:

a. Wages

1b. Employer's Proposal:

Drop the 1st Sept of the current salary schedule (making the current 2nd step the new entry level Step) and add a new last step which is 3% higher than the current last step; each step in this new salary schedule will increase by 1.5% on 1/1/2018 and 1/1/2019.

I make this recommendation as it affords a majority of the employees with at least a 3% increase at the last step of the salary schedule and a 5% increase at the entry level. Since all but one month of calendar year 2017 will have expired as of the date of the date of this recommendation, and all steps of the new salary schedule will increase by 1.5% on 1/1/2018, all employees at the last step will experience a combined increase of 4.5% as of 1/1/2018, and a combined increase of 6% over the life of the agreement. In making this recommendation I have factored in the conclusion that if the County does conduct a comprehensive Wage/Salary Study that it will include the employees of the FOC represented by Local 214. Hopefully such a study will address the concerns of the Union and correct any issues of wage equity among the various classifications. Failure to address such issues will only further irritate the affected employees to the detriment of employee morale and that is not in the best interests of the parties.

PENSION/EMPLOYEE PENSION CONTRIBUTION

2. Union Proposal:

The employees of the FOC currently contribute 8% of their gross wages to the pension plan and seek a reduction of 3%. Under the terms of the 2008 – 2010 labor agreement the employee rate of contribution was 4.5%. During the negotiations for the 2011 – 2013 contract, the Union selected pension improvements that resulted in the 8% employee contribution rate was continued as a result of the negotiations for the 2014 – 2016 contract period.

The Union argues that at some point after they had secured pension improvements, the same improvements were granted to the non-union employees, but without any additional employee contribution and the Union considers such action unfair.

The Union argues that since the Supplemental Actuarial Valuation (ED-F) reports the cost of their proposal to the Employer at 2.3% of gross pay while the employees contribute 3%, and the Union asserts that at a minimum the Employer should pass the difference on to the employees. The Union further asserts that their contribution supplements other employee pensions since retirement funds are co-mingled to maximize retirement investment returns. Moreover, the Union maintains that since the Employer admitted that it has the ability to pay the cost of their proposal, failure to do so is punitive.

3. Employer Proposal:
The Employer proposes no change to the current pension plan and to continue the 8% employee contribution.
The Employer argues that the contribution rate was part of the bargaining process to pay for the cost of enhanced pension benefits and the employees have the benefits of those improvements.

DISCUSSION/EMPLOYEE PENSION CONTRIBUTION RATE

The Employer negotiates with seven bargaining units representing a variety of classifications. Each bargaining unit makes decisions regarding pension benefits that often results in differences in benefit levels and related costs (Employer Exhibit F), (Union Exhibit #4). Four of the bargaining units, including the FOC unit, have an employee contribution rate of 8% of gross wages. One has a rate of 10.49% and two units have rates of 6.89% and 7.06%.

In this case the Union has focused on the decision of the Employer to grant the same improved pension benefits as the Union secured through negotiations, but without an increase in the employee rate of contribution. There is nothing in the record in this case regarding that decision. However, the fact remains that six other bargaining units have different contribution rates, resulting from the bargaining process.

The Union's contention that their contributions somehow supplements other employee pensions since retirement funds are co-mingled to maximize retirement fund investment returns is without foundation. All bargaining units benefit from such practice. The cost of retirement benefit changes are determined by an independent actuarial evaluation. Those cost are calculated estimates based upon a number of assumptions as indicated in Employer Exhibit F-1, page 1. The employee rate of contribution is a fixed rate by contract. The Employer rate of contribution is determined annually and may vary based in part upon fund investment performance, or whether the actuarial assumptions were met. Each bargaining unit pension benefit is cost rated for that particular unit. The pension plan is a defined benefit plan and as such the Employer is responsible for all costs associated with the plan beyond the fixed rate of employee contribution. The Employer rate of contribution in 2017 was 13.38% of participating payroll and an increase of 3.12% is anticipated for next year, according to the testimony of HR Director Shelley Jasper.

FINDINGS AND RECOMMENDATIONS/PENSION CONTRIBUTION

I find that the record evidence does not support the Union's proposal to reduce the employee rate of contribution from 8% to 5%. The Union argument relies primarily on the premise that since the non-union members were granted the same benefit as the Union without a corresponding employee rate increase, therefore the same consideration should also be granted to the FOC bargaining unit. Such an approach ignores the variable employee contribution rates of the other bargaining units. The 8% contribution rate was agreed upon in negotiations for pension improvements and is in line with the contribution rates of the other bargaining units.

Therefore I recommend the adoption of the Employers proposal to continue the 8% rate of employee contribution to the retirement plan.

VACATION

Union Proposal:
The Union proposes to amend Article 16 Vacations, Section 1. Vacation Schedule to allow all employees to utilize vacation days once they are earned.

This proposal differs from the Union's prehearing proposal which was: Allow new employees who have been employed less than three (3) years to convert unused sick time to vacation days.
The Union argues that non-union employees are allow to earn vacation time immediately upon hire and may use any earned time with the approval of supervision. According to the

Union, the is no addition cost to the Employer and no additional personnel time accrued in allowing employees to use vacation time as it is earned.

Employer Proposal:
Increase personal days by three (3) additional days (for a total of four (4) from accumulated sick leave and maintain the one "free" personal day) for employees with no more than three (3) years of seniority. If an employee uses sick days as extra personal days and subsequently becomes ill and exhausts their accumulated sick leave, no transfers of time from other employees will be allowed for that calendar year.

DISCUSSION/VACATION

The expired labor agreement required new employees to complete one year of continued employment before they are granted two weeks of vacation. A review of the practice among the comparable counties indicates that Jackson County allows five days of vacation to employees with 0-1 year of service, starting at the date of hire, Monroe County allows 40 hours vacation to new employees after six months employment, Calhoun County 18 days paid time off from the date of hire through four years of employment (Union Exhibit 6). Union Exhibit 4 indicates that four employee groups allow the use of vacation time after completion of one year employment and two groups permit the use of vacation as soon as it is earned. As argued by the Union no additional paid leave days result from their proposal and there is no additional cost to the Employer.

FINDINGS AND RECOMMENDATION/VACATION

The record evidence in this case does support the Union's proposal, without any accrual of additional paid time off or significant cost to the Employer. Therefore I recommend adoption of the Union's proposal as follows: Amend Article 16 Vacations to allow employees to use vacation time as it is earned from the date of hire, and eliminate the one year waiting period.

DENTAL/VISION REIMBURSEMENT

Union Proposal:
The Union proposes to increase dental reimbursement from the current $900 per year to $950. This is an amended proposal from the prehearing level of $1200 per year.

The Union argues that the cost of their proposal amounts to $1,400 total and is consistent with the $950 annual allowance enjoyed by the non-union employees.

Employer Proposal:

The Employer proposes to maintain the present level of reimbursement of $900.

It should be noted that the Employer's response was related to the Union's prehearing proposal of $1,200 annual reimbursement. The Employer argues that the $1,200 level applies only to Public Safety Dispatchers and Supervisors that were once part of the Sheriff's Department bargaining units subject to an Act 312 award. The Employer valued the cost at $8,700 annually and was prohibitive.

DISCUSSION/DENTAL VISION REIMBURSEMENT

A review of the record evidence indicates that two of the comparable counties have Employer paid dental/ vision coverage and one pays 95% of the premium. Among the various internal employee groups, three have $950 reimbursement, three have $900 and four have $1,200. The cost of the Union proposal amounts to $1,400 and since the benefit is a reimbursement program that cost would only materialize if all 28 employees incurred the $950 maximum dental costs in a year.

FINDINGS AND RECOMMENDATION

The record evidence tends to support the proposal of the Union. There is a very modest cost to the Employer and given my earlier recommendation on wages and pension, I recommend the adoption of the Union's proposal as follows: Amend Article 14, Section 10 to increase the reimbursement from $900 to $950 per calendar year.

SUMMARY OF RECOMMENDATIONS

ISSUE

Wages	Employer Proposal
Pension	Employer proposal
Vacation	Union Proposal
Dental Reimbursement	Union Proposal

Respectfully Submitted,

C. Barry Ott

C. Barry Ott, Fact Finder

Date: November 22,2017