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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
FACT FINDING REPORT

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

COUNTY OF ALLEGAN  
Allegan County Central Dispatch

May 16, 1997

-and-

MERC Case No. C94 4006

TEAMSTERS LOCAL 214,  
STATE, COUNTY AND MUNICIPAL WORKERS

BACKGROUND

Procedural Matters. Petitioner Local 214 is the bargaining representative for the full-time telecommunicators employed in the County's Central Dispatch offices. The Union filed a Petition for Fact Finding on October 3, 1995. The undersigned was appointed Fact Finder on September 6, 1996. A telephone conference with the parties' representatives was held on October 21, 1996, to identify the issues in dispute and decide upon an efficient means and a schedule for the parties to provide the Fact Finder with evidence and argument.

Fact-finding hearings were scheduled for January 16 and 17, 1997, but were postponed, the first day because of a death in the family of the Union's attorney, the second due to severe winter weather. A hearing was convened on February 18, 1997. The parties exchanged their exhibits in advance of the hearing and for the most part, the hearing was concerned with both identifying and narrowing the issues and making limited argument. It was agreed that additional exhibits could be exchanged by March 10, and post-hearing Briefs were scheduled for receipt after that. The parties' post-hearing Briefs were exchanged on April 17, 1997, and the record closed.

Issues in Dispute. The collective bargaining agreement between the parties expired on December 31, 1994. The petition seeking fact finding listed eight issues in dispute at time of filing. Since then several of the initial issues have been resolved and others have arisen. The issues in dispute that pertain to specific terms of employment, often termed "economic" are: (1) wages; (2) whether employees will be required to

*Allegan County*

*Fact Finder: Ruth E. Kahn*

contribute toward pensions and if so, how much; (3) retroactive effect of the wage increase and/or pension contribution; (4) the duration of the contract. Two issues involve contract language: (1) election of compensation for working overtime vis-a-vis compensatory time off and (2) a reopener for the pension plan.

The primary focus of the parties' arguments in support of their respective positions is upon "comparables", namely, a comparison of a proposal with provisions in the contracts of similar governmental bargaining units in what each regards as comparable communities. The Union has put forward thirteen comparable units; the County has proposed eight external units and nine of its own employee ("internal") groups. The parties' selections of externals agree on four County units: Barry, Calhoun, Eaton and Grand Traverse. The Union expressed its willingness to have only these four units used, or alternatively to add two counties it relies upon, Ionia and St. Joseph, and two -- Lenawee and Van Buren -- proposed by the Employer. The use of four comparable communities makes the analysis manageable and for the most part, this Report will utilize these four agreed-upon counties as well as the internal groups when considering the competing positions.

Ability-to-pay is addressed principally by the County. It notes that dispatch operations currently are funded to a substantial degree, pursuant to the Emergency Telephone Service Enabling Act, by phone bill surcharges rather than from the general fund. It cautions that (1) the Act imposes caps on collections; (2) a deficit would have to be covered by funding from another source; (3) the Act is repealed in December 2002.

No figures are provided to show revenues and outlays for the dispatch operation. The concerns expressed by the Employer, apart from the actual statutory repeal date, are speculative. As to the consequences of the repeal, that too is subject to legislative action. Reasonableness and equity must be the guiding principles in this regard.

Term of the Agreement. Ordinarily this provision is found in the closing provisions of an agreement. Here, because several of the issues involve the disputed fourth year, it is best to resolve the duration of the agreement at the outset.

The Employer seeks a four-year term. The Union wants a three-year term. The Employer contends that there are considerations "unique" to this situation that support a finding for the Employer. It notes the short period of time remaining before expiration of a three-year contract, on December 31, 1997. It argues that recommending a three-year term would produce instability that is contrary to the policy of the governing labor law.

It is readily apparent from the exhibits that a three-year term is the norm. Seven of the eight external comparables put forward by the County have three year contracts. Five of the seven

internal units have three-year terms. It has been my experience that many parties, both in fact finding and Act 312 proceedings, end such proceedings in similarly close relationship to contract expiration. That is a not unexpected result of hard bargaining and may prove an incentive to the parties to effectuate their new negotiations more productively.

**Recommendation:** A three year contract, commencing January 1, 1995 and ending December 31, 1997.

Wages, Pensions and Retroactivity. The current maximum annual wage rate is \$26,375. The Union's demand is conditioned upon there being no employee contribution to the pension plan. Should the County prevail and the employees are required to contribute these percentages to their pension, the Union would structure its wage demand thus: 1995 - 5%; 1996 - 4%; 1997 - 5%. The parties propose these percentage increases and resulting rates:

	<u>Union</u>	<u>County</u>
1995	3% - \$27,166	2.5% - \$27,034
1996	3% - \$27,981	3.0% - \$27,845
1997	3% - \$28,820	2.5% - \$28,541

The County seeks a four-year Agreement and offers a three percent increase for the fourth year.

According to the County's exhibit, the cost of living increased in 1995 by 2.7% and in 1996 by 2.5%. The purchasing power of the employees' 1994-level wages has been eroded by that amount. Three internal comparable units received a 3% increase for 1995, one received 3.8%, and four got 2.5%. All but one received 3% for the second year and the one got 5.6%. With respect to the external comparables, Barry and Eaton awarded 3% each year; Calhoun awarded 2-2-3.5%; Grand Traverse awarded 3.4%, 2.3%, 3.65%.

Employees are now in the third year without a contract and without a wage increase and with somewhat reduced purchasing power. A three percent annual increase is well within the pattern demonstrated by the exhibits for both the external and internal comparable units.

**Recommendation:** Wages be increased by 3% for each of the three years of the new Agreement, 1995, 1996, and 1997.

Contributions to the Pension Plan: The County seeks these contributions from employees toward pensions: in 1996, 2% of gross wages; in 1997, 3%. (It seeks 4% in 1998 but in view of my recommendation for a three-year term, that proposal will not be considered.)

The Union notes that the County began paying toward pensions only in 1995. It sees the demand for employee contributions as a means to relieve the County of its obligations. It maintains that "in each instance [of the eight accepted comparable counties] where a pension contribution is required, the retirement plan provides much greater benefits than Allegan County's current plan."

The Employer contends the evidence shows that five of its eight comparable counties "require employees to contribute toward their pension plan if they wish to receive benefits at retirement". That statement suggests some element of voluntarism, although without detailed analysis of the particular plans it is not certain. The chart submitted by the County shows that none of the eight external comparables has the same Plan (MERS B-2) that covers the Dispatch Unit. Three of the eight require no contribution; two require none but appear to have matching employer-employee contributions for a Deferred Compensation Plan. In sum, the comparison with external communities is not determinative.

The situation with the internal comparables is covered by County Exhibit 20. All units are covered by MERS B-2, with some different age, service and vesting conditions. Three are shown to make no contribution; one will contribute 5% in 1997 for a MERS B-4 Plan. Two contribute 2% and two contribute in the manner the County seeks for the dispatch unit, namely 2%, commencing in 1996 and 3% and 4% for each of the successive years.

Contributions to a pension may properly be regarded either as deferred wages or forced savings. An employee's standard of living is governed by take-home pay and that is understandably the focus of attention. To the extent an employee can provide an adequate living standard and also save for the future, the contribution has merit. There may be tax-saving consequences as well. When addressing whether and how much a contribution should be, there must be consideration of wage levels, that is, whether and how much an employee can afford. From the Employer's standpoint, the contribution clearly is a cost-saver.

**Recommendation:** Taking these many competing considerations into account, it is recommended that employees contribute 3% of gross wages for the contract year commencing January 1, 1997.

**Retroactivity.** The parties agree that any change in contract language will have prospective effect. They further agree that economic benefits will apply only to employees on the rolls at the time of the signing of the new contract.

Concerning the wage increase, the Employer's Brief opposes retroactivity and argues it is not appropriate because of the Union's alleged dilatory and obstructive conduct during the Fact Finding proceedings. The argument is based upon facts that were not part of the exhibits exchanged by the parties nor were they

presented at the February 18 hearing. I can give them no weight. Accordingly, I cannot assess fault for the two-and-one-half year lapse of time since the initial filing of the Fact Finding Petition.

In the intervening period the Employer has had the use of the funds it has saved because of the lack of a contract and the employees have, of course, not had the benefit of any improvements. The equities weigh in favor of making the economic benefits retroactive to the first day of the new contract term, January 1, 1995.

**Recommendation:** Wage increases shall be retroactive to January 1, 1995.

Compensatory Time Off. The issue here is whether employees shall have the option to choose between compensatory time off or payment at the premium overtime rate when overtime is worked. Section 11.5 of the expired agreement reads:

**Premium Overtime Pay.** Employees who work in excess of forty (40) hours per week shall be paid for all such hours worked at one and one half ... times their regular ... rate. In lieu of premium pay, the Employer may grant compensatory time ... for hours worked in excess of forty... .

The Union Brief contends that the Employer supports this language because it believes it allows the Employer "sole and exclusive right to decide whether compensatory time off will be allowed". Hence, the Union seeks a provision that will assure only the employee makes the choice, albeit scheduling of the compensatory time off must be by mutual agreement.

The Employer contends its other units do not give employees the right to earn compensatory time absent Employer approval. The four agreed-upon comparable Counties permit the election to reside with employees, subject to a cap on the amount of time that can be accumulated. Neither party provided argument or evidence that explains benefits/burdens of the current provision. The Union has presented no evidence of the past practice in applying this provision nor has it provided convincing support for modifying this language, that is, there is no evidence that demonstrates the current language has had an adverse impact upon the bargaining unit.

**Recommendation:** Given the absence of persuasive reasons to change together with the short time remaining on this contract term, I recommend no modification of this section.

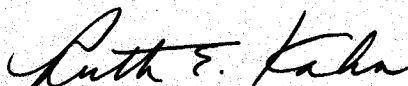
Mutual Pension Reopener. The Union's Brief opposes the County's "proposal to include in the new agreement language permitting a 'mutual' reopening of the new agreement to negotiate

pension plan changes". It asserts that the County seeks a provision that if legislation is adopted to permit defined contribution plans by County government, the Agreement may be reopened by mutual agreement.

The County's Brief makes no reference to this proposal. Having been presented with no evidence or argument to support what appears to be a new term in the Agreement by the party allegedly seeking the change, it must be assumed that the County has withdrawn the proposition. No recommendation need be made on this issue.

#### SUMMARY OF RECOMMENDATIONS

1. A three year contract, commencing January 1, 1995 and ending December 31, 1997.
2. Wages be increased by 3% for each of the three years of the new Agreement, 1995, 1996, and 1997.
3. Employees shall contribute 3% of gross wages toward pensions for the contract year commencing January 1, 1997.
4. Wage increases shall be retroactive to January 1, 1995.
5. Given the short time remaining on this contract term together with the absence of persuasive reasons to change, I recommend no modification of Section 11.5.

  
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RUTH E. KAHN, Fact Finder