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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:	)	
	)	
Fact Finding	)	
	)	
between	)	**Michigan Employment Relations Commission**
	)	
Eastern Upper Peninsula Community Mental Health Board	)	**Case No. G 951-2009**
	)	
and	)	
	)	
UAW Local Union 3803	)	

REPORT OF THE FACT FINDER
RAYMOND J. BURATTO

REPRESENTING THE PARTIES:

For the Employer:

Thomas Bugbee, Labor Relations Consultant
Christopher Harris, Executive Director
Chris Rogers, Business Manager

For the Union:
Michael L. Fayette, Attorney
Sam Beardslee, International UAW
Karen M. Witek, President Local 3803
Michael Schippani, International UAW

Eastern Upper Peninsula Community Mental Health Board

PRE-APPOINTMENT ACTIVITIES

By petition dated February 16, 1996 the International UAW, Local 3803 requested Fact-Finding for a unit of sixty-six employees, including "all Clinical Nurses, Outpatient Therapists, Behavioral Psychologists, Crisis Intervention Professionals, Occupational Therapists, Training Coordinators, Prevention Coordinators, Client Service Manager Supervisors, Day Treatment Supervisors, Day Activity Supervisors, Reimbursement Managers, Accounting Supervisors and Office Supervisors, all clerical and bookkeeping employees, paraprofessional employees, professional employees, but excluding Recipient Rights Officers, the Executive Director, Personnel Manager, Program Directors, Business Manager and Mental Health Board members at the Sault Ste. Marie and St. Ignace, Michigan facilities.

On May 6, 1996 the Commission notified the parties and appointed Raymond J. Buratto, Esq. as its Fact Finder to conduct a hearing pursuant to Section 25 of Act 176, Public Acts of 1939, as amended and the Commission's Regulations, and to issue a report on the matters in dispute between the parties.

ACTIVITIES SUBSEQUENT TO THE APPOINTMENT OF THE FACT-FINDER

Upon initial telephone contact with the parties, the Fact Finder was advised of additional meetings scheduled between the parties to attempt to resolve the dispute. Following several unsuccessful attempts at same, the Fact Finder was advised by the parties that a hearing would be needed and the same was held in the offices of the Board at Sault Ste. Marie, Michigan on

Tuesday, August 27, 1996. Present for the Board were labor relations consultant Thomas Bugbee, Executive Director Christopher Harris and Business Manager Chris Rogers. The union was represented by Michael L. Fayette, Sam Beardslee and Michael Schippani, both of the International UAW, and Karen M. Witek, President of UAW Local 3803. At the close of the hearing the parties agreed to the submission of post-hearing briefs by September 29, 1996. However, due to his need to file Freedom of Information Act requests for information, Mr. Fayette twice requested and was granted extensions of time to file the union's brief. Mr. Bugbee did not object to these extensions. Briefs were filed with the Fact Finder who exchanged them between the parties earlier this month.

The recently expired contract was effective from October 1, 1994 to and including September 30, 1995. Except for the items treated in this Fact Finding, the terms of the expired contract were unchanged.

Although multiple issues were initially submitted for Fact Finding, by ensuing conversations and letters, and their efforts at hearing, the parties pared the issues down to three which are taken in term for purposes of this Report.

ISSUE ONE - WAGES

The first and foremost issue presented by this Fact Finding is a requested increase in employee wages.

The union argues for a three year agreement with a 1.75 % increase to the base every six months, retroactive to October 1, 1995. The employer's offer also included a three year contract, with a wage freeze in the first year (October 1, 1995 - September 30, 1996), followed by a 1% increase to the base every six months for the remaining two years, commencing

October 1, 1996.

Each of the parties strenuously argued its position. The union maintained its pay increase request was justified by principles of fairness and equity vis-a-vis other community mental health units. The employer argues a general inability to pay defense.

In his opening statement for the union, attorney Michael L. Fayette stated that although the Eastern Upper Peninsula Community Mental Health Board (hereinafter "EUP-CMH" or "EUPCMHB", or "EUP") had enjoyed funding increases of upwards of twenty percent in the early 90's, such increases had since declined and revenues were somewhat flat. However in the period during which the EUP enjoyed revenue increases, the bargaining unit employees' wages had simply not kept pace, either with the increases enjoyed by the agency, nor with inflation. Moreover, bargaining unit wages did not compare favorably with other local units or with units in Michigan.

Fayette cited data from the Michigan Community Mental Health Association, Joint Exhibit 4, indicating that the average increases for state mental health employees was in excess of three (3) percent over the last four years, in contrast to a three year long wage freeze for EUP employees. He also noted the EUP employees received a one-time $500.00 bonus in June, 1995, and that there had been a 7.5% increase in the cost of living since 1993.

The union argues that Delta County, which is two counties west of Chippewa/Mackinac counties, is an appropriate comparison to the EUP in number of clients served (1,681 versus 1,197 for the EUP), revenues ($ 7,701,417 versus $ 6,849,263 for the EUP) and has a single large metropolitan area. (Union's brief, page 4).

While the local governmental units involved in EUP (Mackinac and Chippewa) have provided virtually no funding over the mandated "local match funds", Delta County has provided 4% of its community mental health board's (hereinafter "CMH's" or "CMHB's") total revenues in local match funds. Fayette noted that had the local governments in Chippewa and Mackinac counties provided the same level of non-mandated funding, EUP-CMH would have realized an additional $273,970 in revenues. This amount would adequately cover the increases requested by the union. (Union's brief, page 4.)

Although the union attempted to draw several conclusions from the absence of local government support of the EUP-CMHB resulting in the low funding levels, no evidence was presented to support their contentions, therefore no further treatment is warranted here.

The union made a strong argument that the EUP has a history of misuse, or questionable allocation, of its financial resources, to the detriment of the employees. In its brief the union argued that of the Upper Peninsula community mental health boards, EUP is by far the largest user of state services. Utilizing information from Joint Exhibit 3, page 6, Mr. Fayette noted the Alger-Marquette Counties CMH bought $ 244,954 worth of state services for 4,593 clients, while EUP bought $ 483,771 of state services for 1,197 clients. The difference in per capita spending is 800%. Additionally the EUP utilizes state services at eight times the average of all other Upper Peninsula CMH's and spends nearly 50% more per client than the average. It should be noted that without more evidence to illustrate that this amount is misspent one should not conclude that the higher average spending per client is necessarily inappropriate nor reflective of bad management. Mr. Fayette rightly concludes "[t]here was no evidence given as to why the EUP-CMH should be so statistically aberrant from the norm for the Upper Peninsula." This Fact Finder would have welcomed additional information to explain the apparent huge difference in expenditures, as relates to both the "purchase" of state services and the "expense per client served."

More directly related to the issue of wages was the union's comparison of wages in Delta County CMH. Joint Exhibit 5 illustrates that wage increases to members of that bargaining unit were in the 3% to 6.9% range in '93-'94 and '94-'95.

This Fact Finder does not share the union's suspicion that there is some nefarious reason why Mackinac and Chippewa counties have not contributed additional funding to the EUPCMHB while providing adequate compensation to school teachers, public safety officers and public health employees. Without making a value judgment, one can conclude this to be the fact merely because these employees are in the public eye on a daily basis, have attracted the public's attention and possibly exercise a greater lobbying influence.

In support of its position, the employer cited a general inability to pay. Tom Bugbee, labor relations consultant, cited declining revenues from the State Department of Mental Health, projected increases in expenditures, and a recent reduction in workforce as justification for its position.

The EUP offered Employer Exhibit 6 in furtherance of its inability to pay argument. The exhibit illustrates an annual budget of $6,949,853.36 with a reserve of $24,735.36 year-to-date August 27, 1996. The difference between the two wage offers, approximately $163,324 over the three year term of the agreement, is approximately 7/10 of 1% of the 1996 budget.

The employer offered no explanation of its use of state services, nor for the great disparity of its per client expenditure versus that of other Upper Peninsula CMH's. Nor was any evidence offered by the employer of wage rates in effect at other CMH's in the Upper

Peninsula which were comparable to those being paid by EUP.

RECOMMENDATION

This Fact Finder is persuaded upon review of the record as a whole, that the union's proposal for wage increases should be adopted.

This recommendation is based upon a conviction that the employer's inability to pay argument is in reality an unwillingness to pay argument. The "purchase" of employee services must be prioritized, just like the purchase of computer paper or the outlay of a capital expenditure. Employees should be fairly compensated for their services. Just as the employer budgets the purchase of telephone services or office supplies and equipment, it must budget for the purchase of employee labor, albeit at a higher rate. The employer cannot expect to use its claimed inability to pay defense on a supplier of other goods and services; it should not expect its employees, who have fallen behind the pace of inflation to bear the burden of declining revenues and increased expenditures.

The record demonstrates that these employees have suffered a general "loss of income" as against the cost of living in recent years. This recommendation is an attempt to recover some of that income for them.

ISSUE TWO - "STEP PAY"

Article 26, of the expired collective bargaining agreement provides in Section H "Longevity Pay":

> Following the completion of five (5) years of paid employment with the Board, excluding leave of absence, each employee shall be eligible to receive annual longevity payments. This policy includes accumulated time of personnel hired under the JPTA

program.

> Computation of the Longevity Base Amount: The longevity amount shall be 1% of the employee's salary as of December 31 each calendar year. (This becomes the maximum longevity payment). This procedure shall be used for the first five (5) years. Each subsequent five (5) year period shall increase .5% in value.

The Employer argues the application of "steps" continue to be frozen as in the expired 1994-95 collective bargaining agreement. Its argument is premised upon its general inability to pay and upon the facts that employees are already being rewarded for their tenure by virtue of the "longevity pay" as noted above.

No direct, persuasive evidence was produced at the hearing which indicated either that any employee turnover was the result of the "suspension" of steps during the '94-'95 agreement, nor that the payment of longevity pay was an attraction for prospective new employees. Neither party costed-out the impact of the "step" increases on the proposed new, three year agreement.

This Fact Finder's experience in labor relations leads to the inescapable conclusion that "step pay" and "longevity pay" are so similar in effect and application as to result in the pyramiding of pay where their use is combined. Thus I concur in the Employer's observation that "[i]t is not common for employees to have both a step system and a longevity system, simply because both systems provide the same economic reward: a higher rate of compensation based solely on seniority."

While it would be fair and accurate to assume the Union would prefer to retain both the step system and longevity pay, it offered no cogent argument in this regard. The union's only discussion of the loss of annual step increases is found in its brief in describing its request for a wage increase as "relatively modest given the amount of ground the employees have lost since

1993, both in the form of annual wage increases and the loss of annual step increases." At hearing the parties acknowledged that the costs of retaining the step program were not factored into either proposal, perhaps because they were not included in either so-called "last best offer".

RECOMMENDATION

Based on a thorough review of the record, including the briefs of the parties and the foregoing findings of fact, it is recommended that the step pay freeze be continued.

ISSUE THREE - EXTENSION OF LONG TERM DISABILITY ELIGIBILITY PERIOD FROM THIRTY DAYS TO NINETY DAYS

The employer is the moving party on this issue, arguing the current thirty day waiting period to qualify for long term disability be increased to ninety days. Its argument is not supported with its own financial data but rather is bolstered by notions of "fundamental fairness". Arguing that "acceptable standards dictate that the more generous the sick leave allotment, the longer the waiting period", Employer Exhibit 4 was introduced at hearing and illustrates the treatment of long term disability qualification periods vis-a-vis the number of sick days among "comparable" public sector employers in the Sault Ste. Marie area.

As earlier expressed, this Fact Finder is troubled by the use of comparables, which while geographically relevant, do not represent comparisons within the same service industry. In this case the EUPCMHB cites sick leave and LTD policies of local employers including the City of Sault Ste. Marie, Lake Superior State University, the War Memorial Hospital, County of Chippewa, and Sault Area Public Schools. While they are arguably public sector employers, with the possible exception of the hospital, none of them provide a mental health service similar to EUP. To this extent their use as comparables is flawed. Comparisons to other CMH's geographically proximate would have been wholly appropriate. In addition some attention should have been addressed to the sick leave and LTD provisions as components in the overall wage and fringe benefit package elsewhere. That analysis may have indicated that waiting periods in LTD provisions are driven as much by wage rates as by the generosity of sick leave terms.

Employer Exhibit 5 entitled "Staff Wage and Fringe Costs Projection" compares the cost of the union's proposal to that of the employer. The employer has costed out the union's LTD proposal at $1,686.84, versus its own LTD proposal at $552.50, each proposal dependent upon the percentage wage increase applied. Apart from the cost projection of Employer Exhibit 5 and the "comparables" offered in Employer Exhibit 4, neither party submitted data or evidence further explaining or justifying its position.

There is an approximate $1,100.00 difference in the cost of the two proposals over the term of the contract.

The Employer-cited "comparables" provided from twelve (12) to sixteen (16) days of sick leave per year coupled with LTD waiting periods as short as ninety days, and as long as six months. Two of the five comparables, which offered fifteen (15) sick leave days, did not offer long term disability coverage. None of the five provide as short a waiting period as that currently applied in the EUP.

RECOMMENDATION

Based on a review of the record as a whole, including the hearing testimony and exhibits, and the parties' briefs, it is recommended that the employer request to extend the long-term disability waiting period be accepted.

This recommendation is not premised on a belief that this is significant cost item to the EUP, but rather upon a conclusion that the thirty day waiting period is overly generous when compared to the data submitted in Employer Exhibit 4. Extending the eligibility period for long term disability insurance to ninety days would place the Eastern Upper Peninsula Community Mental Health Board squarely within the norm of other Sault Ste. Marie area public sector employers. The evidence does not indicate this change would bring any undue hardship upon members of the bargaining unit.

CONCLUSION:

The above Report represents the findings of fact and recommendations arrived at following the hearing conducted by the Fact Finder. All submissions of the parties, whether or not cited, were reviewed and considered in the preparation of this Report.

Raymond J. Buratto

Dated: January 30, 1997
Rochester Hills, Michigan