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In the Matter of Statutory Fact-Finding between:

CHARLEVOIX COUNTY ROAD COMMISSION,
Employer,

-and-

TEAMSTERS LOCAL 214,
Union.

Case No. L06 J-3017

Fact-finder Ben Kerner

Hearing:

July 13, 2007
Boyne City, Mi.

Appearances:

For the Employer: Michael R. Kluck
Michael R. Kluck & Associates

For the Union: Michael L. Fayette
Pinsky, Smith, Fayette, & Kennedy, LLP

FACT-FINDER'S FINDINGS & RECOMMENDATION

BACKGROUND.

This fact-finding matter was initiated by the Union's filing of a petition dated January 23, 2007, in which it identified the issues of wages and health and dental insurance as issues in dispute between the parties. The Employer filed a response on March 2, 2007. On March 9, 2007, I was appointed as the Fact-finder by the Michigan Employment Relations Commission under its authority under the Labor Mediation Act, Section 25, MCL 423.25, by which the Commission is authorized to appoint agents to find the facts of a labor dispute and make them publicly known, in an effort to obtain settlement.

In bargaining, the parties reached near-agreement, as the following history demonstrates. The prior contract expired on December 31, 2006. The parties started negotiating in October 2006. On October 17, 2006, the parties reached a tentative agreement, which changed the health insurance plan from Blue Cross Blue Shield Community Blue PPO Plan 2 to a Blue Cross Blue Shield Flexible Blue Plan 2 80%, $10/60 prescription rider, with health reimbursement accounts (HRA's) to be funded annually. The employer would provide HRA's of $1150 for single subscribers; $2300 for family subscribers, with employees responsible for deductibles of $100 (for single subscribers) and $200 (for family subscribers).

Unfortunately, there was some misunderstanding related to the terms of the proposed tentative agreement, and the Union did not take it back to the membership.

As of November 28, 2006, the Union made a proposal which included the described Flexible Blue Plan 2, and wage increases of:

1/1/07	2%
1/1/08	1%
1/1/09	1%.

However, this proposal was rejected by the Union membership. Thereafter, the parties engaged with a mediator, and during those talks the Union took the position that the health insurance plan under the expired contract should be maintained. On January 23, 2007, the Employer gave the Union a final offer, which was identical in terms of health insurance plan and wage increases with the November 28th Union proposal, except that the Employer did not offer retroactive wage increases to January 1, 2007. The Employer implemented its final offer on May 1, 2007, including the change from

Community Blue PPO to Blue Cross Blue Shield of Michigan Flexible Blue Plan 2 80%, $10/60 Rx with Health Reimbursement Accounts.

In the meantime, the Union had submitted its petition for Fact-Finding on January 23, 2007. The Employer offered a response. I was appointed by the Michigan Employment Relations Commission on March 9, 2007. There were preliminary proceedings related to establishing a group of comparable communities for the purposes of this case. Then, I held a hearing on July 13, 2007, at which both parties were represented by counsel; both parties were afforded full opportunity to present their testamentary and documentary evidence; and both parties were afforded full right of cross-examination. The parties have briefed the matter as of August 27, 2007.

Regarding comparable communities, the Fact-finder looked at the factors of size of the Michigan Transportation Fund budget; the population of asserted comparables; and distance from Boyne City. I arrived at a recommendation that the parties consider the four surrounding counties of Antrim, Cheboygan, Emmet and Otsego County Road Commissions together with Kalkaska County Road Commission. [Opinion dated June 13, 2007]

The evidence presented in this case, broadly, included reference to the working conditions of employees in these five comparable communities; to the financial ability of this Employer to pay, and to the cost of living over the last 3 years.

HEALTH CARE: POSITIONS OF THE PARTIES and REASONS FOR THEIR POSITIONS.

The Employer offered that its proposed Blue Cross Blue Shield of Michigan Flexible Blue 2 plan would have (after deductibles) an 80% coverage to a limit of $1000 for a single subscriber or $2000 for a family subscriber . The drug portion of the coverage is $10 for a generic drugs and $60 for brand name co-pay. [Tr. 11] There is a separate premium charged for family continuation coverage. [Tr. 12]

According to Ms.Flinn, the Employer's insurance agent, "the minimum annual savings including the reimbursements that were described if they were reimbursed to maximum for each of the contracts, would be a $54,636 annual savings. That would be the minimum savings they would be able to achieve relative to the October 1st rates for a 12-month period."

In terms of the affect on employees, according to the Employer's insurance witness, Denise Flinn, "[T]he plan implemented May 1st was designed to have the deductible to the employee be the same. From a benefits perspective, the Flexible Blue plan has the same services covered as they are with the Community Blue Plan 2." [Tr. 15]

On cross-examination Ms. Flinn opined that there was a higher drug co-pay for brand name drugs in the Blue Cross Blue Shield Flexible Blue Plan 2 than in the Community Blue [old] plan. She admitted that under the new plan, employees have double the percentage co-payment and double the maximum out-of-pocket. [Tr. 27] It is uncertain how some preventive care services would be covered under the new plan. [Tr.

29-30] However, the extent of preventive service coverage is the same ($500) under the old plan as under the new plan. [Tr. 31]

The Union offered a Priority Health Point of Service Plan 100%--150V; $10/$40. This is a manage care style of plan that covers many of the same services as the prior Blue Cross Blue Shield plan. But prescription coverage is different in that prescriptions must come from the managed formulary. Another difference: under the old plan, as well as under the Employer's proposal, the Employer is charged for family continuation coverage. Under the Union's plan, the Employer is not charged separately for family continuation coverage.

The Union maintains that the total cost of the Union's proposal is $334,896, which is $2,500 less than the Employer's total cost of $337,314 for mid-range exposure and $37,500 less than the $372,389 cost of maximum exposure (assuming maximum utilization of the health reimbursements accounts). [E'er. Exh. 33].

The Union also maintains that the health plan it has recommended is more in line with what comparable employers are utilizing. Thus, it shows that Antrim County Road Commission has a Community Blue Plan No. 1 $10/$20 Rx with auto-80 vision.

The Union shows that Cheboygan County Road Commission has a Community Blue PPO Basic Plan with $10/$20 Rx.

The Union shows that Emmet County Road Commission has a Blue Cross Blue Shield PPO 4 plan with the employer reimbursing the employees to the level of PPO 2 deductibles and co-pays, $10/$40 Rx with the employer reimbursing Rx co-pays up to $20.

The Union shows that Otsego County Road Commission has a Blue Cross Blue Shield PPO 1 plan with $10/$20 Rx with the employer reimbursing up to $10 of the prescription drug co-payment.

The Union also shows that Kalkaska has a Community Blue PPO plan, $10/$40 Rx with the employer reimbursing $30 of the Rx co-payment. And, the employees pay a premium of $10 per week.

The Employer argues further in support of its proposal:

> Once implemented on May 1, 2007, the Road Commission's projected annual premium cost for the Flex Blue 2 was $239,212, a 34.3% decrease over the previous heath insurance cost. Even with maximum exposure as to Employer reimbursements under the plan, the Employer would still realize a 15% decrease in its annual health insurance costs. This would equal a total savings of approximately $125,000 annually. [citing E'er Exh. 33b]
> [E'er. Brief p. 3]

Further, the Employer points out that the premiums for Community Blue Plan #2 on October 1, 2007, rose 17% over 2006 rates. That equates to an annual premium cost of $426,910. Of course, the Flexible Blue Plan 2 was also slated for an increase on October 1, 2007. The amount of that increase was 26%. Argues the Employer, "Even at full utilization, the projected annual cost of the [Flexible Blue Plan 2] will be $372,289," which is less than the Community Blue. Using the mid-range of exposure "under the Flexible Blue Plan 2 as of October 1, 2007, will result in an annual cost of $337,314, down 21% from the projected costs of the Community Blue Plan #2." [E'er. Brief, p.3]

The Employer says that premiums under the old Community Blue Plan 2 have continued to escalate without mercy. The cost of health insurance for 2-person subscriber rose 20.2% during the 2004-2006 period. For family subscribers, the cost rose

21.8%; and for single subscribers , the cost rose 18.5%. [E'er. Exh. 31]. Argues the Employer, it was time for a change. And, the change it has selected carries a certain down-side risk of unpredictable health reimbursement costs; however, even with that risk, the cost of the overall plan is better than the competing plans, including the Union's.

The Union argues that the Priority Health POS plan is less expensive than the Employer's plan and has the additional advantage of being simpler to administer. There is no need for paper-filling of expense vouchers for Health Reimbursement Account dollars. There is no need for transcribing information from pill bottles onto expense reimbursement forms. It is easier for the employee; it is easier for the employer.

The Union's plan is more in line with the comparable employers' plans, says the Union. Three out of the 5 comparables have a Community Blue PPO plan of some size or description. This summary indicates that, "The Union's proposal is much more in line with the comparable employers" according to the Union. By contrast, "The Employer's proposal is a gamble with a new product—a gamble none of the other comparable employers has seen fit to take. There is simply no reason to move to such a radical plan when a more traditional plan, acceptable to the employees, is available at less cost," says the Union.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION ON HEALTH CARE.

Although the Union may not agree with the Employer's assessment of health care costs, the Employer's costing-out of the premium dollars and projected costs of the Flex Blue 2 Plan is persuasive. It appears under these calculations that the Employer can save, conservatively $54,636 per year with the new health care plan it has already initiated. [Tr. 14]

The affect on employees will be significant, including a time lapse between date of bill for health care service and date of reimbursement under the Health Reimbursement Account. Secondly, the higher dollar screen for name brand drugs is a significant difference. Thirdly, instead of paying a 10% co-pay on all medical expenses after exhausting a $200 deductible up to a maximum of $1,000 (as under the Employer's old plan), the employee (with family coverage) would pay a 20% co-pay on all medical expenses—including drug costs—after exhausting a $2,500 deductible up to a maximum of $2,000. Fourthly, there will be an increased amount of record-keeping and paper work associated with the Health Reimbursement feature of the plan.

The affect of the Union's proposed plan on employees is also significant. It involves adjusting to a managed formulary of drugs. [Tr. 19]. And, the Union's plan, "Priority Health has their own doctor network, their own provider network." [Tr. 20] This involves a potentially major adjustment for employees who have a primary care provider who is outside the network.

There is no discemible pattern in the group of comparable employers, at least not one that would argue strongly for the Union's POS concept.

In sum, the Employer's ability to pay has been put in issue; and the overall evidence supports the need for the Employer to curtail health insurance costs, or at least to curtail the rate of increase in such costs. In addition, the Fact-finder is not unmindful of the bargaining history here, which indicates that there was substantial agreement at one time—although not consummated by acceptance by the bargaining unit—of the concept of the Flex Blue 2 plan. These reasons incline me to recommend the Employer's Blue Cross Blue Shield of Michigan Flexible Blue Plan 2, as described in these proceedings.

It is recommended that the Employer and the Union agree on the Blue Cross Blue Shield of Michigan Flexible Blue Plan 2 for their health insurance coverage.

WAGE INCREASE: POSITIONS OF THE PARTIES and REASONS FOR THEIR POSITIONS.

The Employer's position is that the bargaining unit should have wage increases of 2% (at implementation of the revised health insurance plan); 1% on January 11, 2008; and 1% on January 1, 2009. The Union takes the position that increases should be 1% on July 1, 2007; 2% on January 1, 2008; and 2% on January 1, 2009.

The Union takes the view that the differences are minor; but that the increased allocations to wage increases in years 2 and 3 mean that the employees will end up with a stronger base wage at the end of the contract. Further, says, the Union, the stronger base wage is necessary to preserve Charlevoix employees' place among the group of comparables.

In support of its view the Union cites the record of wage increases at the comparables. Antrim County Road Commission had a 2.6% increase in 2006; a 2.5% increase in 2007. (Cheboygan is under negotiation and has no settled wage increases.)

Emmet County Road Commission had a 2.2% wage increase in 2006 and a 1.6% increase for 2007.

Otsego County Road Commission had a 1% increase for 2006 and a 2.5% increase for 2007.

Kalkaska County Road Commission had a 3.8 increase for 2006; and a 3.7% increase for 2007.

In sum, says the Union, the average increase for those counties that have contracts gives us an increase of 2.4% increase in 2006; and 2.6% increase for 2007. Here, the Union is requesting a 2% increase in 2008 and a 2% increase in 2009, "not inconsistent with the comparable employers." [U. Brief, p. 6]

Finally, the Union argues that the amount of recent increases in cost of living justify the increases in seeks. The Union cites readily available statistics from the U.S. Department of Labor that the cost of living in 2004 went up 2.7%; in 2005, it went up 3.4%, and in 2006, it went up 3.2% for a total 3-year increase of 9.3%. During this same time period, the amount of increase in wages at Charlevoix County Road Commission was 5.5%. Thus, employees lost purchasing power, says the Union.

The Employer takes the view that the fund balance is declining, in the words of Manager Patrick Harmon. Michigan Transportation Fund revenues are down. And, costs of everything from retirement benefits to cold patch and grader blades is up. This is , in essence, an argument derived from the Employer's ability to pay: it is limited and is becoming more restricted. Thus, says the Employer, an increase of only 1% in 2008 and another 1% in 2009 is warranted.

Finally, the Employer argues that the history of the bargaining indicates that the "Employer's final offer reflects the position closest to what the parties were willing to agree to at the bargaining table." [E'er. Brief p. 9] And, the results in Fact-finding should resemble what the results at the bargaining table would look like, had the parties been able to agree. As a result, says the Employer, its wage offer of 2%, 1%, and 1% is more reasonable.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION ON WAGES.

The concept of preserving one's place in the group of comparables is an old and hallowed tradition in labor relations. Here, it appears that the increase sought by the Union would tend to preserve the bargaining unit employees' place vis a vis other comparable employers' employees. Increases, on average, of 2.4% were achieved by the comparables in 2006; and increases of 2.6% were achieved by the comparables in 2007. To recommend that the employees of Charlevoix County Road Commission receive wage increases of 2% in 2008 and 2% in 2009 would tend more to keep pace with the comparables. Thus, in reliance upon the factor of the wages and benefits paid to comparable groups of employees I conclude that the Union's offer on Wages is superior.

It is recommended that the Employer and the Union agree to wage increases of 1% effective July 1, 2007; 2% effective January 1, 2008, and 2% effective January 1, 2009.

Benjamin A. Kerner
Fact-finder

Dated: August 29, 2007
Detroit, Michigan.