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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between:

VAN BUREN COUNTY ROAD COMMISSION,

Employer,

Case No: L07 J 7004

-and-

MICHIGAN AFSCME COUNCIL 25, Local 2901,

Union.

FACT FINDING REPORT AND RECOMMENDATION

Appearances:

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REPORT

At issue is a three year contract from January 1, 2008 until December 31, 2010. The AFSCME employees are full and part time road maintenance workers and mechanics.

Mediation was held before Mediator Corbin. On April 29, 2008 he issued a recommended settlement, which is attached. The mediator's recommendation relative to wages was for a 2% increase for each of the three years of the contract. Regarding health insurance, the recommendation is for the Employer to pay 90% of the premium cost effective July 1, 2008 and up to 10% of the premium increases in December of 2008 and 2009. The mediator also made certain recommendations in regard to retirement.

On subcontracting, the mediator proposed certain contract languages changes that permitted subcontracting based upon cost effectiveness. The mediator also allowed for certain vacation call-off privileges.

The Employer maintains that the Union is requesting no cost sharing for insurance premiums, and that this is unreasonable. It notes that in previous contracts the Union traded health care cost sharing for higher wages. The Road Commission further argues that employees in comparable road commissions pay from 8% to 15% of their insurance premiums, and that therefore cost sharing is appropriate for the Van Buren County Road Commission employees.

The Employer argues that revenue has been decreasing for road commissions, and that the high cost of gas in 2008 reduced consumption, and thereby reduced the amount of gas tax available to the Road Commission.

The Road Commission also maintains that the price of salt and asphalt has significantly increased. It therefore contends that it is no longer able to offer the recommendation found in Mediator Corbin's proposal. The Road Commission now offers the following:

5. EMPLOYER'S SUGGESTED CONTRACT RESOLUTION

The employer believes that the fact finder's recommendation should be as follows:

1. Retroactivity: To award retroactivity to the union for its unwillingness to accept the employer's reasonable offers of compromise, and then reject state labor mediator Jim Corbin's settlement recommendation, mandates that this union not be rewarded with any retroactivity in the fact finder's recommendation. The mediator's recommendation was prospective only.

2. Wages: The employer recommends a 2% wage increase effective on ratification, and another 2% across the board wage increase effective January 1, 2010, assuming a contract has been ratified by then. Again, the employer believes it is imperative that any recommendation be prospective only.

3. Insurance Premium Co-Payment: The employer believes that in light of the union's unwillingness to reasonably settle the contract, and the more difficult economic situation faced by the Road Commission today than what existed at the outset of negotiations, the mediator's recommendation on the Employer's contributions to health, dental, and vision insurance premiums be changed to reflect the following employer contributions upon ratification of the new contract:

Single:	Up to $495.10 per month
Two-Person:	Up to $1,114.01 per month
Family:	Up to $1,336.80 per month

This represents an Employer co-pay of 85% of the premium costs effective January 1,2009, and the employee paying 15%. Although this is less than the 90-10 split recommended by mediator in April, it is a significant reduction from the 22.17% employee - 77.73%

employer co-payment currently required of the employees.[9] In addition, the Employer agrees to meet with union leadership to explore other less costly insurance plans. By way of example, if the current plan changed from a 10-40 drug card to a 10-60, the two person premium would be reduced by $50 a month. Changing the office visit co-pay to $30 from $10 would save $65 a month.

The Employer's suggested recommendation for the fact finder includes that any such premium savings go 100% to the membership. The Employer's monthly premium obligation as set forth above would stay the same, and go up as much as 10% of any December, 2009 premium increase.

4. Future Insurance Premiums: Modify Article XI - C. to reflect that the Road Commission will pay up to 10% of the premium increase in 2009.

5. Subcontracting: The employer recommends the following new language on subcontracting:

> ARTICLE XV - GENERAL
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> Section 2: Subcontracting. The Employer shall have the right to subcontract that work which, in its judgment, it does not have the manpower, proper equipment, capacity or ability to satisfactorily perform, or which in its sole judgment can be completed in a more cost effective manner through subcontracting.

6. Retirement: Accept the mediator's proposal as recommended.

7. Vacation Call Off: Accept the mediator's proposal as recommended.

8. Term: 3 years.

9. Tentative Agreements: The employer believes that it is essential that the tentative agreements reached by the parties prior to

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[9] See Footnote 5 (The employee currently pays 13.20% of the premium cost for single coverage and 11.48% for two-person coverage. Effective December 8, 2008, this will change to 20.50% and 18.92% respectively.)

seeking the assistance of Mediator Corbin be affirmed and included in any new contract. This is an important aspect of the fact finder's recommendation.

The Union asks for 2% for the first year of the contract, and 2.5% for the 2 years thereafter.

The Union proposes the following on health insurance:

ARTICLE XI - HEALTHCARE

Union Proposal

Section 10: Group Insurance: The Employer agrees to pay contributions toward health, dental and vision insurance premiums for 2008.

In addition, employees will be covered with a $20,000 term life insurance policy, a term AD&D policy and a $75.00 weekly S&A benefit.

a) If the Road Commission offers additional plans and/or riders to any of its employees, the AFSCME employees shall be allowed to apply the Road Commission's maximum toward the purchase of an additional plan and/or rider. If the premium for the additional plan and/or rider is greater than the Road Commission's maximum payment, the excess will be collected through a payroll deduction. If the premium is less than the Road Commission's maximum payment the Road Commission shall pay the entire premium; however, in such case, the employee shall not be entitled to a rebate of the difference between the cost of the additional plan and/or rider and the maximum payment by the Road Commission. *At the request of the Union, the Road Commission will work with the Union to explore less costly health insurance plans that could reduce the employee premium contribution.*

b) The Road Commission's maximum monthly premium contribution shall be increased by *12% in 2009 and by 12% in 2010.*

c) Employees who do not need medical insurance will be eligible for a subsidy of $225 per month paid through the Van Buren County Road Commission flexible benefit plan. The employee shall execute the forms supplied by the Employer when applying for this subsidy;

...

For retiree benefits, the Union requests current contract language and on pensions, the Union requests a change to the MERS plan as follows:

ARTICLE XI - PENSION

Union Proposal

Michigan Municipal Employees' Retirement System (MERS)

Retirement Plan: B02 / FAC - 5

Normal Retirement Age: 60

On vacations, the Union asks:

Union Proposal

c) New paragraph

The Employer may, at his discretion approve *"call in" same day vacation request* up to 1 time per calendar year by requesting employee.

The Union requests that there be no change to the subcontracting language of the contract.

AFSCME recognizes the financial problems facing the Road Commission. However, it notes that non-Union Road Commission employees received a 2.5% wage increase effective January 1, 2008. It asserts that it would be inequitable for AFSCME-represented employees to be the only Road Commission employees to feel the effect of fiscal problems. The Union also asserts that other comparable road commissions have received 2% increased from 2008.

Regarding healthcare, it is argued that all of the non-bargaining unit employees of the Road Commission receive health care insurance at no charge. The comparables are also said to support the Union's position.

Relative to retiree benefits, it is asserted that the Employer has not met its burden of proof. Concerning the pension plan, it is maintained that the MERS plan is larger and more beneficial.

The Union contends that its recommended vacation language is reasonable. In regard to subcontracting, the Union asserts that that issue was resolved during negotiations, with the Employer agreeing on December 12, 2007 to withdraw its subcontracting proposal. The Union is concerned that during this time of financial hardship, the Employer could use new subcontracting language to erode the bargaining unit or to reduce overtime opportunities.

RECOMMENDATION

The purpose of fact finding is to facilitate a settlement of the contract. To that end, fact finding should be a continuation of the negotiation and mediation process, and not a contract imposed by a third party. The mediator's recommended settlement of April 28, 2008 represents an appropriate basic template for resolution of the contract. The mediator had the benefit of talking with the parties and assessing their position. Absent compelling circumstances, the mediator's recommendation should be strongly considered in this proceeding.

WAGES

The 2% recommended by the mediator for each of the three years of the contract should be adopted. This is consistent with wages being paid to road commission employees in neighboring road commissions and is also relatively consistent with the wages paid to non-Union employees at the Van Buren County Road Commission.

The 2% increases were initially accepted by the Employer at the time of the mediator's report. The additional increases sought by the Union would not be appropriate in consideration of the financial crisis facing Michigan and the nation.

There should be retroactivity. The non-Union employee have not been asked to give up their 2 1/2% increases and it would be inequitable to require AFSCME employees to forego a 2% increase under these circumstances. Also, it should be noted that the increase in healthcare costs for the Employer, recommended by the mediator, have not occurred at this time. Therefore, retroactive payment of wages will be offset by the lack of retroactivity for increased Employer healthcare contributions.

RECOMMENDATION REGARDING WAGES

Two percent for each year of the contract pursuant to the mediator's recommended settlement.

INSURANCE

The mediator has recommended an increase in the premium contribution for the Employer. This is appropriate. The Union asks that there be no premium sharing by AFSCME members. However, bargaining unit members have agreed to contribute to healthcare at a higher level in prior contracts. There are no changed circumstances to justify a complete elimination of employee healthcare contributions, especially in consideration of the serious financial problems facing this state.

The Union is upset that non-bargaining unit employees do not contribute to their insurance premiums. However, these employees are not directly comparable to the AFSCME Union employees. In other road commissions, AFSCME employees do engage in premium sharing. Most importantly, the Union has agreed in prior contracts to premium sharing, and there is no particular showing of changed circumstances requiring an alteration of this practice.

The Employer's increased responsibility for healthcare premiums should not be retroactive, consistent with the prior discussion on the retroactivity of wages. There should be no reduction in the Employer's contribution, based upon the factors that were considered by the mediator.

RECOMMENDATION ON HEALTHCARE

The mediator's recommendation on healthcare should be adopted, without retroactivity.

RETIREMENT

The mediator's proposal, which reflect a consideration of the relative positions of the parties, should be adopted.

RECOMMENDATION ON RETIREMENT

The mediator's recommendation on retirement should be adopted.

PENSIONS

Pensions were not part of the mediator's recommendation. However, the Union requests a change to the MERS pension system. There is insufficient evidence, and in particular, evidence relative to the costs, to support a change in the pension plan.

RECOMMENDATION ON PENSIONS

The status quo should be maintained relative to pensions.

SUBCONTRACTING

The Employer's proposal, which allows for subcontracting for cost containment, creates the possibility for an erosion of the bargaining unit and the loss of overtime opportunities. There is no support for this proposal among the potential comparables, and there is no showing of changed circumstances that would require an alteration of the traditional contract language on subcontracting. Accordingly, this is one area where the mediator's recommendation should be rejected.

RECOMMENDATION ON SUBCONTRACTING

The current contract language on subcontracting should be maintained.

VACATION CALL-OFF

As the quid pro quo for rejecting new language on subcontracting, the vacation call-off language requested by the Union should also be rejected. This is a result that is consistent with collective bargaining. However, if the Union feels that it could live with the subcontracting language as requested by the Employer, in exchange for receiving the vacation language, this swap could be made by the parties.

RECOMMENDATION ON VACATION CALL-OFF

The proposed contract language by the Union on vacation call-off should be rejected, absent an agreement by the parties relative to subcontracting.

TENTATIVE AGREEMENTS

It is strongly recommended that the previously agreed upon tentative agreements be adopted by the parties.

Mark J. Glazer
Fact Finder

January 12, 2009