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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING BETWEEN:

COUNTY OF KENT,

EMPLOYER,

and

MERC Case No. L07 1-7009

COMMAND OFFICERS ASSOCIATION OF MICHIGAN
ON BEHALF OF THE GERALD FORD
AIRPORT COMMAND ASSOCIATION,

UNION.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Hearing Location: Gerald R. Ford International Airport
Grand Rapids, Michigan

Hearing Date: February 9, 2009

Appearance:

For the Employer:

Thomas Drenth
County Labor Counsel

Donald Clack
Human Resources Director

Robert Benstein
Airport Public Safety and Operations Director

For the Union:

Jim DeVries
POAM Business Agent

Scott Atkinson
POAM Business Agent

Garry Quakkelaar
Airport Law Enforcement Supervisor

INTRODUCTION AND BACKGROUND

The issues to be addressed in this Fact Finding arise from negotiations for the inaugural collective bargaining agreement between the County of Kent and the Gerald R. Ford Airport Command Association. In order to put the present negotiations and collective bargaining agreement in their proper context, however, there is a history involving the airport law enforcement officers which is both relevant and critical to the ultimate recommendations of this Fact Finder. It is undisputed that prior to 2006, law enforcement staff at the airport consisted of a chief, five sergeants and fourteen patrol officers. The sergeants and the patrol officers were a part of a UAW bargaining unit.

From documents provided at the hearing, sometime before 2006, there were discussions among the Kent County Commissioners about splitting off the sergeants from the patrol officers. Various reasons for this split are contained in the meeting minutes, including the fact that staff and supervision were in the same bargaining unit, creating issues concerning supervision and disciplinary action. In addition to splitting the supervision from the patrol officers, there was also discussion of the airport law enforcement officers becoming part of the Sheriff's Department, but this concept was rejected because of the specialized nature of airport law enforcement, including the fact that such law enforcement is more heavily regulated and more customer service oriented. The Kent County Commissioners discussed the split in terms of creating a better opportunity to improve accountability of the department and have the law enforcement supervisors take on a more managerial role. In

addition, at least one Commissioner expressed concern that if a separation were to take place, the supervisory positions would no longer be Union positions and the supervisors would fall under the management pay plan and become “at will” employees.

Ultimately the decision was made to split the sergeants from the patrol officers, re-titling the sergeants as law enforcement supervisors. The law enforcement supervisors became “statutory supervisors,” as that term is used, meaning that they administered the County and airport’s policies and procedures, supervised law enforcement patrol officers to ensure compliance with work rules and disciplined employees if necessary. Lastly, as documented in the discussions of the Kent County Commissioners, it is undisputed that the law enforcement supervisors fell under the management pay plan.

According to the Command Officer’s Association in their pre-fact finding brief, when the law enforcement supervisor’s position was created, the former sergeants became decertified from their Union and lost Union protection. The sergeants at the time, including two with 24 years service, were required to interview for the law enforcement supervisor’s position and were ultimately selected. Once selected they petitioned and were certified by MERC on July 23, 2007 as the Gerald R. Ford International Airport Command Association.

Negotiations began on a Union contract, and while many issues were resolved, an impasse was reached concerning a number of significant issues and a request was made by the POAM for MERC to schedule a Fact Finding to assist in the resolution of unresolved issues. The undersigned was appointed by MERC to act as the fact finder on October 17, 2008.

PRE HEARING CONFERENCES AND THE STIPULATED RESOLUTION OF ISSUES

On October 30th and again on November 3, 2008 pre-hearing conference calls were held with the representatives of the parties to discuss the issues to be addressed at the Fact Finding Hearing and the proposed comparables to be considered under the statute. After considerable discussion, the following six issues were identified as the issues that the parties would address at the Fact Finding Hearing:

1. Whether the Preamble to the Collective Bargaining Agreement can form the basis for a grievance;
2. Whether there should be a “just cause” provision in the Collective Bargaining Agreement for discipline and discharge;
3. Whether the services performed by bargaining unit members are designated as essential to health, safety and welfare;
4. Whether management should have the right to reduce hours of work as opposed to lay off;
5. What the policy will be regarding vacancy replacement, including for vacation; and
6. Wages

Both sides submitted pre-hearing briefs outlining their positions on all six issues, including identification and discussion of applicable comparables.

As agreed by the parties, the Fact Finding hearing was scheduled and did take place at a conference room at the airport. Before formally commencing the hearing, this fact finder inquired of the parties whether there was any potential for any of the issues to be resolved before the actual commencement of the hearing. The representatives of the parties agreed to talk and after a lengthy

discussion, advised the fact finder that a resolution had been reached on three of the six issues. A formal stipulation was entered and signed by the parties and is attached to this Fact Finder's Report. It was agreed that the hearing would go forward to address the following three issues, only.

1. Just cause;
2. Whether the bargaining unit services should be designated as essential to health, safety and welfare; and
3. Wages

Each issue will be addressed separately.

JUST CAUSE

The Union had proposed as part of the negotiating process that the following would appear in Articles IV and V of the Collective Bargaining Agreement:

4.1: Reserved Rights. It is understood and hereby agreed that the Employer reserves and retains, solely and exclusively, all of its inherent and customary rights, powers, functions and authority of management to manage the Employers operations and its judgment in these respects shall not be subject to challenge. These rights vested in the Employer include, but are not limited to, those provided by statute or law along with the right to direct, hire, promote, transfer within the department, assign, and retain employees in positions within the County consistent with the employees ability to perform the assigned work. Further, to suspend, demote, discharge for just cause, or take such other disciplinary action which is necessary to maintain the efficient administration of the Employer. It is also agreed that the Employer has the right to determine the method, means and personnel, employees or otherwise, by which the business of the Employer shall be conducted and to take whatever action is necessary to carry out the duty and obligations of the Employer to the taxpayers thereof. The Employer shall also have the power to make reasonable rules and regulations relating to personnel policies, procedures and working conditions not inconsistent with the express terms of this Agreement.

5.12: Discharge and Discipline.

A. The Employers agree that they shall not discipline or discharge an employee except for just cause.

The Employer, on the other hand, opposed inclusion of a “just cause” provision in the contract. The reasoning of each party will be considered.

EMPLOYER’S POSITION:

The gist of the Employer’s position on the issue of just cause was that the law enforcement supervisors are statutory supervisors. Prior to the change they functioned more as “lead workers.” Now they enforce airport policies and procedures, work rules and can administer discipline. The Employer believed that the supervisors should be held to a “higher standard.”

As to comparables the Employee asserted that no “supervisory employees” in the County system were “just cause” employees. The Employer cited to the only other Union representing a supervisory unit in the County, i.e., the Captain and Lieutenants Union, which did not have a just cause provision in their Collective Bargaining Agreement, but rather had an “arbitrary and capricious” standard for discipline and discharge in their Collective Bargaining Agreement. Further, the assistant county prosecutors, who also have a Collective Bargaining Agreement, are “at will” employees. Finally, the other employees who work at the airport and are subject to the management pay plan are “at will” employees.

UNION'S POSITION:

The Union points to the concept of “just cause” as being the hallmark of any Collective Bargaining Agreement. Looking at the local labor force comparables, the Union points out that every Union contract in Kent County, except one, has a just cause provision in its labor contract. That one exception, the Sheriff’s Department Lieutenants and Captains, has an arbitrary and capricious standard. The Union asserts that the Employer wants to make this one group of law enforcement supervisors “at will” employees.

Addressing the statutory supervision issue, the Union looks to the comparables in terms of job function, rather than job title. The Union asserts that the Sheriff’s Department’s Lieutenants and Captains are essentially pure administrators, while the airport law enforcement supervisors do have an administrative function, that is not their sole function. Akin to the Sergeants in the Sheriff’s Department who have a just cause provision in their contract, the airport law enforcement supervisors directly supervise the patrol officers and function as front line supervisors, more than administrators such as the Lieutenants and Captains. Finally, the Union points to the fact that under the current policy for filling vacancies, senior patrol officers are called in to act in a supervisory capacity. These senior patrol officers have a “just cause” provision in their contract, which would be applicable, even when they are acting as supervisors.

RECOMMENDATION

Reviewing the positions of the parties, the fact finder finds that the Union has the better argument. First of all, the Union is correct that “just cause” is an essential aspect of most Union contracts. Indeed, before these employees, who were called sergeants in the past, were made airport

law enforcement supervisors they had a just cause provision in their contract. The nature of their work, even as statutory supervisors, is more hands on than administrative, unlike the work of the Lieutenants and Captains. While there is an administrative function, there is also a direct supervisory function, much like the Sergeants in the Sheriff's Department, which have a just cause provision in their contract. As will be noted in the Wages section of this Fact Finding Report, the Fact Finder found some of the arguments made by the Employer disingenuous as to the nature of the work of these employees. On the one hand, the Employer would focus on the high level administrative function of the airport law enforcement supervisors' job to argue against "just cause;" however, when it came to wages, the Employer asserted that these same employees had less authority than the Sergeants or other employees in other Unions so they should not be as highly compensated as these other employees. The Employer cannot have it both ways. This inconsistency along with the other positions as noted above, leads to the conclusion that these Union employees should be afforded the greater protection that a Union contract can provide by having a "just cause" provision in their Union contract. It is so recommended.

NO STRIKE CLAUSE

The Union had proposed that as part of Article VI of the Collective Bargaining Agreement that the following sentence should be the lead sentence in paragraph 6.1. No Strike - No Lockout:

6.1: No Strike - No Lockout. The parties to this Agreement mutually recognize that the services performed by the employees covered by this Agreement are services essential to the public health, safety and welfare.

EMPLOYER’S POSITION:

The County’s position is very succinct. The language which the Union seeks to put in the contract, i.e., that the services of these bargaining unit employees are “essential to the public health, safety and welfare” is contrary to legal authority in the state. The County notes that the Michigan Supreme Court in Metropolitan Council No. 23 AFSCME, AFL-CIO v Oakland County, found that the term “public health, safety and welfare” is determinative as to whether certain police and fire employees are eligible for Act 312. In a follow up case, involving employees at this very airport before it was re-named after former President Ford, the Court of Appeals found that the work of airport security officers does not promote the “public health, safety and welfare,” and as such these employees are not eligible for Act 312. Michigan Fraternal Order of Police v Kent County, 174 Mich App 440 (1989). The Employer asserts that the Kent County case is dispositive of this issue.

UNION’S POSITION:

The Union points to the fact that the proposed No Strike clause language was taken directly from the Kent County Sheriff Deputies/Sergeants Contract. The Union further points to language on the Gerald R. Ford Airport website which describes these law enforcement officers descriptively as providing law enforcement and public safety services throughout the airport complex 24 hours a day.

RECOMMENDATION

The fact finder finds that the Employer’s position as to this issue is the correct position. The issue has been decided by the Courts. Pursuant to the Michigan Court of Appeals Opinion in the

prior Kent County case, the Court found that, at least for Act 312 purposes, that the services that these very employees perform are not “essential to the public health, safety and welfare.” To include such language in the Collective Bargaining Agreement would be contrary to legal precedent and would serve no purpose other than to cause confusion over an issue that has already been decided. It is the recommendation of the Fact Finder that the language as proposed by the Union should not be included in the contract.

WAGES

As might be expected the most thorny issue for resolution is wages. The parties’ positions are far apart and even though the same outside comparables were used, the parties could not agree that the comparables were actually comparables and the two groups received differing information from the comparable groups they approached. This makes evaluating the comparables in this context even more challenging.

EMPLOYER’S POSITION:

The Employer’s position focused on the Management Pay Plan (MPP) which had been adopted by Kent County for all non bargaining unit employees and was put in effect for the airport law enforcement supervisors because at the time that the plan was put into place, the supervisors were not a part of a bargaining unit. The MPP is a complex plan, through which the pay grade and the pay range of each classification is determined. According to the Employer, in 2007 the MPP structure and supporting processes were evaluated and updated through a comprehensive study conducted by Fox Lawson Associates. Under this study a new pay classification, Decision Band

Method, was used to classify all MPP positions. This method of determining pay classification was based upon “decision making levels” and “accountability” to reflect the dollar value of a position to the organization as a whole. The DMB study was completed in 2007 and implemented in 2008. Although the Employer acknowledged that the airport law enforcement supervisor’s position was not specifically evaluated as part of the process, it was evaluated relative to other non bargaining unit classifications in the county and pay ranges were determined for the supervisor’s position, accordingly. Based upon this evaluation process, it was determined that the pay grade for the airport law enforcement supervisors should be \$44,338 at a minimum and \$59,864 at a maximum. Further, over the years of the proposed Collective Bargaining Agreement, the Employer suggested that cost of living increases be added to the contract in January 2009 and 2010 of 2% and 2.25% for 2011, citing the current economic meltdown.

The Employer also pointed out that the comparables upon which the Union was relying were flawed. As to the outside comparables from other airports that the Union relied on, which showed a high end average compensation for Sergeants of \$66,875 for 2009, the Employer made a number of assertions. First the Employer asserted that a number of the comparable departments were non-Union. Second, while Grand Rapids had only one level of supervision below the Chief, many of the comparables relied on by the Union had tiered levels of supervision with Captains, Lieutenants and Sergeants. Third, the higher compensation at other airports could be based upon the fact that at some airports, the law enforcement officers had to perform public safety duties, as well as fire and EMT. Fire and EMT were not required of the law enforcement supervisors in Grand Rapids.

As to the local and internal comparables, the Employer, while recognizing the management and supervisory responsibilities of the airport law enforcement supervisors, down played the actual

duties and responsibilities of these supervisors in comparison to other law enforcement officers both in Kent County and surrounding counties. On this basis and the application of the MPP, lower salary scales were justified.

UNION'S POSITION:

The Union began by pointing out what it believed was the great contradiction in the Employer's position, i.e., these positions were established to create a streamlined supervisory process and to provide for greater managerial and supervisory responsibility. How then, the Union asks, can a 1% increase in base pay be justified when these employees were "promoted" to this true supervisory position? In the Union's view, it cannot be justified.

Further in analyzing the comparables on a national and local level, it is clear from the Union's perspective that the airport law enforcement supervisors are not receiving comparable compensation. The Union points to the fact that the Grand Rapids supervisors' top pay in January 2009 was \$59,357. The average comparable pay for sergeants at other airports in January 2009 was \$66,875 and for lieutenants significantly higher. In the local labor market, the average pay for a sergeant in a law enforcement program was \$65,776. Based upon the comparables, both national and local, the Union asserted that the maximum base pay for the law enforcement supervisors should be \$65,500, retroactive to January 2009.

Finally as to cost of living increases, the Union asserted that what the Employer has offered during the negotiating process is too low and not consistent with what is being offered to others. The Union points to the fact that the Sheriff's Department Sergeants and Lieutenants received more than 2%, and the Lieutenants will receive more over the life of their contract. Further, the average

increase approved by the County Commissioners for those employees affected by the MPP was 3%. In addition, as to the UAW contract, which is under negotiation, the Employer has offered 2.5% for all of the years of the contract. Lastly, the Union agreed that the Employer cannot assert an economic hardship to justify a lower pay scale and cost of living increase, because the funding source for the airport law enforcement supervisors is not the general county budget but rather is based upon airport revenue and federal grants, for which there has been no decrease.

RECOMMENDATION

As a starting point in analyzing the outside comparables, the Fact Finder determines that the parties are not that far apart. Whatever the criticisms that the Employer has of the comparables, the difference between the maximum pay rate of safety officers at the airports from which the Employer obtained information is \$62,746. The Union, on the other hand, adding one more airport location, i.e., Knoxville, Tennessee, which has the highest rate of compensation over any of the airport comparables, comes up with a maximum figure of \$66,875, but is willing to reduce that number to \$65,500, for purposes of the fact finding process. On its face, the comparables of both parties are, at the maximum, considerably higher than what the airport law enforcement supervisors at the maximum level are making, i.e., \$59,864, under the MPP program. The Fact Finder is aware that the Employer has challenged the comparables generally because some of the law enforcement officers at other airports are fire and EMT certified; however, the Fact Finder notes that even taking such airports out of consideration, two of the remaining comparable airports, Richmond and Savannah, have maximum rates of \$68,000 and \$66,000 respectively, entirely consistent with the

Union comparables. On the basis of the outside comparables alone, it would be the recommendation of this Fact Finder that the Union's compromise maximum figure of \$65,500 be adopted effective January 2009.

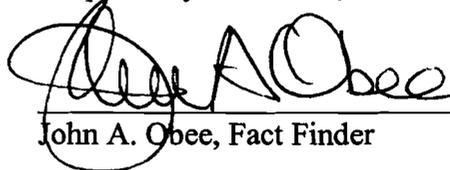
The conclusion is also supported by comparison of local comparables. While the Employer did not offer any comparables from local law enforcement entities, Union Exhibit 10 showing comparables from local communities shows a comparable average for 2008 of \$65,776. Noting that the few local communities that have figures for 2009 show an increase of \$1,500.00 each (Kent County, Kentwood and Lowell) for 2009, the maximum comparable number offered by the Union of \$65,500 at the maximum level seems entirely appropriate as the high end compensation for these supervisors. The Fact Finder is aware of the Employer's general criticism that these law enforcement officers should not be compared with other law enforcement officers; but this criticism fails to take into account the administrative responsibilities that these officers have, administrative responsibilities that they assumed as part of the creation of the position, that sergeants in local police and sheriff's departments do not have. Under all of these circumstances, it is recommended that the maximum rate of pay as proposed by the Union, i.e., \$65,500 be adopted.

Lastly is consideration of the cost of living increases. According to the Union, what had been offered by the Employer in the negotiation process was 2% in 2009, 2% in 2010 and 2.25% in 2011. The Employer comparables for other County bargaining units showed larger increases than that being offered to this bargaining unit, i.e., 2.25% in 2010 and 2.5% in 2011. No explanation was offered for this difference. While the Employer did suggest that there might be some "economic hardship" at play because of the local Michigan economy, economic hardship is not an appropriate

consideration, as these positions are funded, not from the local county general fund, but from airport revenues. The Employer introduced no evidence that there was any reduction in airport revenues, even in these admittedly difficult economic times.

As with wages generally, the Union has the better position on cost of living increases. The Union notes and the Employer acknowledged that the average increase under the MPP was 2.82%. Taking into account the internal comparables involving the Kent County Sergeants and the Kent County Lieutenants, the proposed cost of living increase for the airport law enforcement supervisors of 2.5% for 2009, retroactive to January 1, 2009, and 2.5% in 2010 and 2011 is entirely reasonable and it is the recommendation that such cost of living increases be adopted.

Respectfully Submitted,



John A. Obee, Fact Finder

Dated: February 27, 2009