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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding

County of Allegan,
Employer,

-and-

MERC Case No. L07 G-7004

Police Officers Labor Council
Union.

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

FACT FINDING REPORT

STATEMENT OF THE CASE

Police Officers Labor Council (POLC), filed a petition for Fact Finding pursuant on July 28, 2008. The County filed an Answer on August 1, 2008. On September 11, 2008, MERC appointed Kenneth P. Frankland pursuant to Act 176 of 1939 as Fact Finder. A pre-hearing conference was held on October 8, 2008 and a report was generated regarding the conference on October 9, 2008. During the pre-hearing conference, three County issues were identified and two Union issues.

The parties also took under consideration the issue of comparability and agreed to meet and confer with respect to communities that might be comparable, given the fact that a prior Act 312 award had been issued identifying comparable communities. Subsequently a stipulation was signed that the parties had agreed upon seven comparable communities: Counties of Barry, Eaton, Grand Traverse, Kalamazoo, Lenawee, Ottawa, and Van Buren.

A fact finding hearing was held on December 15, 2008, at the County offices in Allegan, Michigan. Numerous exhibits were introduced and testimony was taken. Briefs

ALLEGAN FACT FINDING REPORT CONT'D

were filed on or before February 28, 2009.

The parties have agreed to incorporate tentative agreements into a new agreement.

The remaining issues are:

1. Wages - Union
2. Workers Compensation Supplement - Union
3. Retroactivity - County
4. Health Insurance Premium Sharing - County
5. Health Insurance Care Opt-out incentive - County

BACKGROUND INFORMATION

Before going into the merits of each issue, a few prefatory comments are in order. Fact Finding is a process to present the facts to a neutral third party, along with the respective positions of the parties and thereafter a report is generated by the fact finder with recommendations to resolve the disputes and develop a new collective bargaining agreement. By bringing the issues to public scrutiny with public discussion, it is thought as a way to reach an accord.

Similar to mandatory police and fire arbitration, each party designates communities it believes to be comparable and uses data from those alleged comparable communities to support its position. More often than not, the communities that are selected will have provisions in existing collective bargaining agreements that mirror or at least support the position that is taken in this proceeding. As stated above the parties have stipulated to seven comparable counties.

DEMOGRAPHIC AND ECONOMIC INFORMATION

Allegan County contains 827 square miles and is situated in southwest Michigan with Lake Michigan as the western boundary and the eastern boundary just east of US 131. It is bounded by Kent and Ottawa counties to the north, Barry to the east and Van Buren and Kalamazoo to the south. It is noted that Ottawa, Van Buren Barry and

Kalamazoo are stipulated comparable counties.

Allegan has a 2007 estimated population of 110,000 a 7% increase from 2000. Allegan is primarily a rural area but contains the tourist-resort areas of Saugatuck and Douglas along Lake Michigan. The principle cities are Plainwell, Wayland and Otsego but all population centers are less than 10,000.

The County is governed by a 11 person Board and managed by a County Administrator. The Sheriff is a co-employer of the Union members.

Allegan uses a calendar fiscal year. The 2008 budget is at E- Vol I, Tab 15 and 2009 is E- Vol I, Tab 16. In 2008, general fund total expenditures were budgeted at \$31.8 Million and in 2009 \$32.3 Million. The last audited report is for 2007 (E-Vol I, Tab 14); general fund was budgeted at \$32.6 Million and actual was \$31.3 Million. This report indicated an anticipated growth trend with diversity of business sources. (E- Vol I, Tab 14, p 12). The Fund balance in 2007 was about \$3.2 Million or about 10% of expenditures and is anticipated to be in that range for 2008 and 2009.

The main source of revenue is the property tax and the 2008 SEV is \$4.3 billion. For the previous five years growth was up 6% but for 2008 is about 3% and the future is unclear, static or declining. State revenue sharing has essentially been eliminated. Fees for services is nominal. If revenues decline, cuts will be necessary to maintain a balanced budget according to the County witnesses.

The current contract expired December 31, 2007. There are 392 full and part time employees in Allegan organized into 11 unionized bargaining groups, including this one, and one non-represented group of 103 members. There are 29 members of the bargaining unit (E- Vol 1, Tab 2) and thus about 7.5% of the workforce. This is an

unusually large number of groups.

For health insurance in the County, the courts and all other county employees are in one self-funded system with stop loss on catastrophic claims. Blue Cross Blue Shield is the third party administrator. Allegan offers plans from BCBS and the rates for the last five years are contained in E-Vol. I, Tab 3. There are three plans, PPO, POS and New Traditional, effective 1/1/07 replacing Traditional that expired 12/31/06. All benefits are set forth in E-Vol I, Tab 13, Appendix C [the contract]. The 2009 rates are set. 2010 rates will be set in August 2009 and a 5-8% increase is expected. E- Vol I, Tab 11 illustrates the plans for each employee group. Allegan has used the same basic offers to all the groups.

A summary of all the units shows the following.

General employees' contract expires 12/31/08 and PPO and POS plans have 15% pf premium employee contribution and 5% for New Traditional with a \$3,000 opt-out payment.

Telecommunicators will pay 18% 1/1/09 and 20% 1/1/10 and 5% for the three coverages.

Court hourly employees and Court salaried employees pay 10% and 5%.

Circuit Court supervisors pay 12% in 2008 and on 1/1/09 15% and 5%.

Assistant Prosecuting Attorneys have PPO and POS and old Traditional and pay 10% of premium. They were in negotiations at the time of hearing but have since settled and per the County Brief, p. 9, will be part of the 18% and 20% plan starting January 1, 2011.

Road Patrol Deputies and Road Patrol Command Officers pay 10% and 5% and

the contracts expired 12/31/08 and both groups are in negotiations and are each eligible for Act 312 proceedings.

Non-represented employees pay 20% for PPO and POS and 5% for New Traditional coverages.

DISCUSSION OF ISSUES

1. Health Care Premium Sharing

On this issue the County proposes that the employee contribution applicable to PPO and POS plans increase from the current 15% to 18% on January 1, 2009 and 20% on January 1, 2010. The 5% contribution for New Traditional would not change. The Union advocates status quo.

There is a trend in Allegan and the comparable counties for some cost sharing as opposed to other public entities like school districts where there is nominal if any cost sharing. Frankly, this is laudatory and the parties here should be commended for being progressive on this concept.

Since cost sharing is not a new beast to tackle, the issue boils down to what levels are appropriate. The County wants as much as possible and the Union says lets hold the line.

From the financial side, the County is not in dire straits, it has some ability to pay its share of the total cost for compensation. For FY 2007, 2008 and 2009 there is very little difference in expenditures. FY is audited at \$31.3 million versus budget of \$32.6; FY 2008 is completed but not audited at \$31.8 and; FY 2009 is budgeted at \$32.3. The fund balance for FY 2007 was 10% of expenditures and it is anticipated to be about the

same for FY 2008 and 2009.

I am mindful of the testimony that for FY 2009 and the future, revenues may go down because of state revenue sharing reductions and the potential drop in revenue from the property taxes due to current economic malaise. To keep a balanced budget there will be pressure to reduce the fund balance or reductions somewhere in the budget. Thus, prudence suggests that savings should be obtained from as many sources as possible and that applies to health care since it is a large portion of the employee compensation package and while rates for the 2009 are slightly less than 2008, it is plain that health care costs have risen at a steep rate over the last 5 years and the future does not look promising.

The best argument for the County offer is internal consistency. It is always best to have employees not look over their shoulders at persons in other bargaining units similarly situated with a perceived better compensation package. The court-controlled units seem to be different as the judges have input and the dynamics are different and thus they are not good comparisons. So too are the units subject to Act 312 as that process is complicated as a last best offer scenario leads to some disparate results. I would also leave out the non-represented employees as by definition they are not similar employees.

Thus the best comparisons of similarly situated employees would be with dispatchers, dispatcher supervisors, assistant prosecuting attorneys, general employees and the corrections command officers. The latter two are still in negotiations and the offers to each are the same as in this proceeding. We are then left with the first three mentioned.

The County Brief notes that dispatchers will be subject to the same provisions as proposed here on January 1, 2010 and on January 1, 2011 the assistant prosecuting attorneys and dispatch supervisors will be on the 18% and 20% plans.

Since at least three other unionized units and the non-represented will be on the 18-20 plan in January 1, 2010 it seems unpersuasive to adopt the Union status quo argument for the term of this contract. If others are doing it why not this unit. The Union has not suggested a compelling reason why this unit should be allowed to stay on the status quo. Their best argument is we are not getting enough in negotiations to accept this proposal as the County does not want to give us more wages, eg. 3%.

Likewise, if the County plan is recommended then this group would be the only unionized unit going to 18% in 2009 unless the remaining units in negotiation agree to that date. Given the record in this case and what has happened with recent settlements, I RECOMMEND, that the parties agree to 18% on January 1, 2010 and 20% on January 1, 2011. This would be identical to the dispatchers and just one year earlier than dispatch supervisors and assistant prosecuting attorneys. This would move another unit toward a norm in the County and should not be too adverse to the union members as the total package that I will recommend will include wage consideration when the cost sharing increases.

2. Opt-out Payment

While this item was one issue left to resolve, there was little mention of it in the Briefs. Currently, members who opt-out of medical benefits receive a \$2,000 payment. The County is willing to increase this to \$3,000 but only in conjunction with the package proposal it presented.

Since I have opted to recommend increasing the sharing contribution on January 1, 2010 and since that is less than the total package the County proposed as a condition precedent we somewhat of a dilemma. However, it would behoove the County to offer the added payment in 2010 as an incentive to those members who might be eligible and who did not want to participate in the new cost sharing formula and that is what I recommend.

3. Wages

The County has proposed a wage increase of 2% for each year, 2008, 2009 and 2010. The Union proposes an increase of 3% for each year. The Union wants full retroactivity and the County only increases from the date of signing an agreement.

The County has couched its wage offer in the context of the total package approved by the Board of Commissioners and offered to all the groups up for negotiations. This is reflected in the proposed settlement agreement appended to the Answer to Fact Finding. (E-1, Tab 1). There was testimony regarding this document to the effect that the Union during negotiations may have suggested that it would take 2% on wages if the medical sharing did not change and would accept 3% if the medical sharing was increased to 18% and 20%.

The parties have expressed a preference to have the wage issue a three year package instead of yearly. Since the medical recommendation is for increases to begin in the third year of a new agreement it may be difficult to limit the wage discussion to one or the other of the proposals. Equity suggests and general practice is usually that if the Employer gains cost reductions in medical care expenses via premium sharing, then the employees as quid pro quo get a slightly better wage package. Following this

adage, I recommend 2% for 2008, 2% for 2009 and 3% for 2010 since there is no recommended medical sharing increase in the first two years and only starts in year three.

If the parties do not agree to this concept and only want a three year package, then the recommendation is the 2% proposed by the County. The County points out that the four counties that have raises above 2% for 2008 were all negotiated prior to the current economic slowdown. (U-1, Tab 6). Looking at base wage comparisons in U-1, Tab 6, a 2% increase would produce a base wage of \$44,744 in 2008 well above the average for the comparables of \$43,699 and ranking of three. While 3% would be better for the Union, they would still rank third.

The best argument for the 2% increase is internal consistency. As with the medical discussion, the similarly situated units generally have 2% increases. Dispatchers have 2% for 2008 and 2009; assistant prosecuting attorneys have 2% for 2008-2011 (and medical sharing does not increase to 18% until 2011); and dispatch supervisors receive 1% in 2008 and 2% for 2009-2011. Further, the non-represented employees received 2% for 2008 and 2009. It is true that general employees received only 1% in 2008 and corrections command officers received 1.5% in 2008, but the offer to both units for each year of the new contracts is 2%. The internal trend is clear and without significant rationale that this unit is grossly underpaid in relations to the comparables, which is not evident, then there is little basis to adopt the Union proposal.

4. Retroactivity

The County does not want retroactivity on wages and the Union does.

There is little in the record on this issue other than the bald statements of each

party. The County Brief argues it would not be fair to subsidize the long delay in entering a new collective bargaining agreement by the Union not accepting the County's proposal. Also, wage increases go hand in hand with other gives and takes; there is no good retroactivity while avoiding bad retroactivity.

Neither argument is persuasive. The County has already budgeted the raises in 2008 and 2009 suggesting at least their 2% proposal should be fully funded. As to foot-dragging, it always takes two to tango and to blame one and not repose any blame on the other is unrealistic.

The history of the other bargaining suggests no health care sharing in 2008 and 2009 yet 2% raises were negotiated. While the Brief does not mention if they were retroactive, one senses that if they were not, that point would have been made know to the fact finder. Finally, my experience is that wages are more often than not retroactive not withstanding the Employer objection and so should that be the case here.

5. Workers' Compensation Supplement

The Union proposes adding a new section 9.7:

Workers' Compensation Supplement. When an employee is absent from work due to an illness or injury arising out of and in the course of his /her employment by the County and which is compensable under the Michigan Workers' Compensation Act, he/she shall receive full salary from the Employer for the first seven(7) calendar days. After the first seven (7) calendar days, the Employer shall provide the difference between the daily benefits paid by the Workers' Compensation Administrator and daily salary to a maximum to one (1) year from the time of illness or injury. The Employer agrees to continue its applicable percentage contribution as referenced in section 14.1 towards medical insurance premiums for an employee receiving workers' compensation for a period not to exceed three (3) months following cessation of the workers' compensation supplement provided that the employee contributes his/her applicable percentage contribution, as referenced in section 14.1, toward the insurance premium.

The County would accept this section if all other County proposals are accepted but is not willing to agree to the section on a stand-alone basis.

Four of the seven comparables have a similar provision and three have the same as here, using paid leave. Thus the comparables are not persuasive and not of much assistance.

While the County is correct that most of the internal units do not have this provision, three do, the Act 312 eligible Road Patrol and Road Supervisors and the similarly situated Corrections Supervisors. The theory for these groups is the higher level of risk inherent in their working environment warrants additional compensation if they are injured on the job. The Union points out that the Correction Supervisors should not be at any greater risk than their subordinates and yet have this benefit. Thus, they argue, why not us on the County argument throughout of maintaining equity amongst common employees. I find this very argument very compelling and thus recommend that this be added to the contract even on a stand-alone basis.

CONCLUSION

I wish to acknowledge the effort of the parties as they produced a great amount of material in the exhibit books. The Briefs were very helpful to assist in understanding the issues. Needless to say fact finding is an imperfect science. The recommendations may not make a party happy on a particular issue; but that is the very nature of the process. However, it is hoped the comments and recommendations will be of benefit to the parties and that they will be able to reach an accommodation and quickly develop a

new agreement. At least it may give the parties food for thought and the ability to alter their positions and reach an accord.

Respectfully submitted



Kenneth P. Frankland
Fact Finder

Dated: March 17, 2009