2266

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

MACOMB COUNTY

-and-

MERC Fact Finding
Case No. D07I-1308

TEAMSTERS LOCAL 214

______________________________/

Report

Thomas L. Gravelle, Fact Finder

July 8, 2009

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on May 28, 2009 in Mt. Clemens, Michigan.

The Employer is represented by attorney Timothy K. McConaghy. The Union is represented by business representative Michael Landsiedel.

I have reviewed the parties' exhibits, testimony and post-hearing written arguments.

FACT FINDING LAW AND RULES

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

> When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R 423.137, explains the contents of the fact finder report as follows:

> Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:
>
> (a) The names of the parties.
>
> (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
>
> (c) Recommendations with respect to the issues in dispute.
>
> (d) Reasons and basis for the findings, conclusions and recommendations. ...

MERC has explained that "factfinding is an integral part of the bargaining process." County of Wayne, 1985 MERC Lab Op 244; 1984 MERC Lab Op 1142; *aff'd* 152 Mich App 87 (1986). The fact finder's report reinstates the bargaining obligation and should be given serious consideration. City of Dearborn, 1972 MERC Lab Op 749.

OVERVIEW: ABILITY TO PAY

Macomb County– like many local units of government in Michigan – is facing a financial crisis.

In early 2008, the County projected a budget deficit of $10 million for the next year. In May 2008, this deficit was revised to $33 million.

At the hearing before me, County Finance Director Dave Diegel reviewed various financial exhibits and explained (as set forth in the County's post hearing position statement):

- The County's general fund which had a balance of $65 million in 2003 had a balance of approximately $32 million in 2008 which is slightly more than a 50% decrease in the fund balance.

- With a County annual budget of $550 million, the minimum acceptable level of surplus is 10 to 15% ($55 to $80 million).

- The County has been in an annual deficit mode from 2004 through 2010 (projected) with the exception of 2009 which is now projected to have a slight surplus due to the decreased costs generated from the Collective Bargaining Agreement and millage rate increase. <u>Despite this there is a projected deficit of $10 million in 2010.</u>

- There is a 3.5% decline in the taxable value of County property in 2009 with a projected decrease in taxable value of <u>7.5%</u> in 2010.

- The 2010 projected deficit does not in any way reflect the bankruptcies of General Motors and Chrysler and their valuable properties in the County nor does it project the fall out to the supplier industry or automotive dealerships.

- Residential building permits declined 90% from 2003 to 2008.

- 60% of the State Equalized Value (SEV) of real property in the County is already equal to the taxable value, with a projection that in a couple of years virtually all of the property in Macomb County would have an SEV equal to the taxable value.

- There are projected increases of $3.4 million in the employer contribution to the pension fund.

- In 1980 there were 5.1 active employees per retiree. In 2007 (the latest available) there were 1.2 active employees per retiree.
- Employee and retiree health care costs are projected to increase almost $4 million in 2010.
- Fringe benefits as a percentage of payroll are currently 55% and are projected to exceed 60% in 2010.
- Revenue sharing provided to the County from the state will be depleted in 2012 and the state currently has identified no plan to replace the revenue which equals approximately $200 million state wide.

In addition, the County took various innovative steps to save over $4 million in the 2009 budget.

I adopt these representations, which establish a severe financial bind.

BARGAINING HISTORY

There are 29 separate employee bargaining units in the County, represented by 9 or 10 labor organizations ("unions").

Eric Herppich has served as the chief negotiator for the County in the negotiations for new collective bargaining agreements for these bargaining units, which process began in 2007.

Because of concerns about the financial condition of the County, several unions, including Teamsters 214, formed a coalition to address common issues on economics. The goal, as explained by Mr. Herppich, was that the County and the coalition would reach a pattern settlement. Mr. Herppich also explained that the County's non-union employees would also receive the pattern settlement, and that after agreements had been reached with the coalition unions, the County would seek to negotiate the same pattern with the non-coalition unions.

In these negotiations, a major goal of the County was to attain substantial savings in its health care expenditures. In order to avoid continuing losses on this issue, in January 2009 the County agreed with the recommendations of mediator Wanda Mayes, which included a health insurance plan more generous to employees than the plan contained in the County's table position, *i.e.*, while the County's savings would be less than its table position, the savings would occur earlier.

In January 2009, coalition unions reached tentative agreements with the County based on the mediator's recommendations. For the most part, their constituent bargaining units and also the County ratified the tentative agreements before the end of February 2009.

Teamsters 214 represents two separate bargaining units: the Court Reporters unit (about 10 employees), and the Circuit Court and Friend of the Court unit (about 90 employees.) On February 6, 2009, the Court Reporters unit ratified the tentative agreement. However, on March 3, the Circuit Court/FOC unit rejected the tentative agreement.

The County's offer to the coalition unions and later to the non-coalition unions contained various concessions, including the following (as set forth in the Teamsters' Court Reporters agreement, which was ratified by the parties in February 2009):

<u>Insurance Benefits</u>:

A. Elimination of BCBS Traditional for employees and future retirees.

B. Benefit plan design changes as agreed to by the parties.

Dock Days

> The County and the Union agree for the years 2009 and 2010, each employee shall be docked six (6) working days without pay per calendar year. Three (3) of those dock days utilized will be Memorial Day, Independence Day, and Columbus. Day. The remaining three (3) dock days shall be requested and scheduled by the employee and will have judge approval prior to September 1 of each year, 2009 and 2010 respectively . . . .
>
> Longevity
>
> The County and the Union agree to cancel Longevity payments for all eligible employees and DROP participants for the year 2009 and 2010.
>
> This letter of Agreement will expire on December 31, 2010.

The health insurance provisions of these February 2009 ratified agreements were not implemented until April 1, 2009 in order to give the employees time to exercise their open enrollment option under the new health insurance coverage.

After the coalition ratifications, the County bargained with seven non-coalition unions, four of which reached tentative agreements in March and April, 2009 and were ratified by the County at the end of April, 2009. The health insurance provisions of these ratified agreements (which were the same as the ratifying coalition unions) were not implemented until June 1, 2009 in order to give the employees time to exercise their open enrollment option under the new health coverage.

As of April 2009, 1428 County employees (out of 2,400 County employees) were covered by the pattern agreements.

During the negotiations, the County published a schedule of terms under its proposed plan option of BC/BS PPO Plan 6 and compared this schedule to what it would offer to bargaining units that failed to ratify the new pattern agreement, BC/BS PPO Plan 3. Highlights of the two Plans include the following:

	Ratifying Unions (and non-union employees)	County position for non-ratifying groups
Deductible	$250/$500	$250/$500
Max. out of pocket	$400/$750	$1,000/$2.000
Office Visit Primary Physician	$20	$25
Office Visit Specialist	$20	$25
Preventive Services	100% covered with $750 max.	100% covered with $500 max.
Other Covered Services (including hospitalization)	90% covered after deductible	80% covered after deductible

. .

The HAP Option and the Macomb County Plan as modified (BCN) also contain some higher charges to employees in non-ratifying bargaining units.

. On May 15, 2009, Teamsters business representative Michael Landsiedel notified the County that the employees in the Circuit Court/FOC bargaining had voted again and ratified the earlier pattern agreement.

The County rejected this ratification because of its position that it should have been ratified earlier.

The County made a counter-offer of the same terms as in the pattern agreement provided that prompt agreement be reached, except that the County was now offering PPO Plan 3.

The Teamsters rejected this proposal.

The County then requested fact finding.

POSITIONS OF THE PARTIES

The County proposes: If a new agreement can be ratified and implemented by August 1, 2009, it will agree to all terms of the pattern agreement except for the BC/BS PPO Plan 6. Instead, it will provide the BC/BS PPO Plan 3 (the same plan the County Commissioners implemented for themselves). In support, the County argues that its economic conditions continue to deteriorate and that the Teamsters' failure to ratify the Agreement in February 2009 has caused the loss of anticipated health care savings. In its post-hearing position statement, the County states that "two (2) other bargaining units that failed to ratify in February, 2009 recently ratified the latest Mediator proposal (which is the prior ratified agreement plus BC/BS PPO Plan 3. These units are in the Juvenile Justice Center and Probate Courts."

The Teamsters Union proposes: With the exception of life insurance, the Mediator's January 2009 recommendations should be adopted. However, if that is not possible, the Teamsters Union proposes (1) the same health care coverage (i.e., BC/BS PPO Plan 6) as earlier ratifying Unions have obtained; (2) the same level of life insurance provided to all the other unions; (3) six docked days per year for 2009 and 2010; and (4) the Mediator's January 2009 recommendation on longevity. As to the major issue in dispute – health care coverage – the Union argues that its ratification was close in time to the ratifications by the second tier of unions and if the County had accepted the Union's May 2009 ratification its reduced savings would have been minimal. On this point, the Union states that "[h]ad the County said because of this delay, an additional docked day was necessary – that would be understandable."

However, the higher co-pays and deductibles are permanent and contrary to what other County employees are receiving. In addition, the Circuit Court/FOC employees represented by the Teamsters already have lesser compensation and benefits than many other County employees.

RECOMMENDATIONS

I recommend a compromise between the parties based on estimating what the the County's health insurance loss was from June 1, 2009 caused by the Union bargaining unit's delayed ratification and then using some form of "recoupment" (other than PPO Plan 3) – perhaps increased dock days or reduced paid vacation days – to bridge the gap.

REASONS

The Teamsters' bargaining unit rejection of the tentative agreement negotiated by its own union until May 15, 2009 has prejudiced the County financially; and the County is in financial trouble.

On this point, if other bargaining units represented by the coalition unions also had rejected the tentative agreements attained by their unions, financial chaos could have ensued.

Having said this, bargaining units are made up of individuals who sometimes overplay their hand. I think that if this bargaining unit had ratified the tentative agreement belatedly but at the same time as the ratifications by the non-coalition unions, it would have been proper to "cut it some slack" with it receiving the same terms as the non-coalition unions. Primarily this would have included the Plan 6 health coverage to be effective on June 1, 2009, *i.e.*, after ratification by the County and after sufficient time for employees to exercise their new enrollment option.

If it promptly can be avoided by compromise, my recommendation would be preferable to imposing on this bargaining unit a lesser health insurance plan than that enjoyed by most County employees.

*

On the issue of life insurance, the status quo should be maintained. The County cannot afford an increase.

Thomas L. Gravelle,
Fact Finder