

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING REPORT

**LOCAL214, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**
UNION,

- and -

CASE No. D08 B-1102
FACT FINDER: MICHAEL P. LONG

BEECHER METROPOLITAN DISTRICT
EMPLOYER.

FACT FINDER'S DECISION AND RECOMMENDATION

BACKGROUND

Pursuant to Public Act 176 of 1939, the Michigan Employment Relations Commission appointed Michael P. Long as Fact Finder in this matter regarding a contract dispute between Local 214 of the International Brotherhood of Teamsters and the Beecher Metropolitan District. Fact Finding proceedings were commenced and a hearing was duly held on March 24, 2009, wherein the parties were provided all the rights of parties to a fact finding proceeding under the law, including the opportunity to present arguments, submit sworn testimony, cross-examine witnesses, and offer exhibits into evidence. Appearing on behalf of the Union is Les Barrett, Teamsters' Business Representative. Appearing on behalf of the Employer is Hiram Grossman, Attorney at Law.

The Beecher Metropolitan District ("Employer" or "Beecher") is a water district just north of Flint, Michigan that supplies water to local communities. Local 214 of the International Brotherhood of Teamsters ("Union") was certified as the exclusive collective bargaining agent of the Employer's three clerical employees on June 5, 2007.

The primary duties of these clerical employees include; billing Beecher's customers, collection of payment and answering questions and complaints from Beecher's customers. Beecher's operations & maintenance employees are in a separate bargaining unit that is also represented by Teamsters Local 214. Beecher and Teamsters Local 214 representing the operations & maintenance employees are parties to a separate collective bargaining agreement, which covers the period from January 1, 2007, through December 31, 2009.

The Union and Employer entered into negotiations regarding the clerical employees in 2008. There were eleven negotiation sessions followed by two more mediation sessions. After the last mediation session was concluded on October 10, 2008, the Union filed for fact finding requesting that the remaining six (6) issues be reviewed and a recommendation be provided to the parties to assist in finalizing the first labor contract for the Clerical employees.

A Pre-Fact finding Conference was held on January 6, 2009. The parties stipulated that the six identified issues were properly before the fact finder. These issues are:

Item A - ARTICLE 13- PICKET LINE	
<p>The Union proposes</p> <p>Section 1. It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute or refuses to go through or work behind any primary picket line, including the primary picket line of Union's party to this Agreement, and including primary picket lines at the Employer's place of business.</p> <p>Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.</p>	<p>The Employer does not agree to the inclusion of this language.</p>

Item B - ARTICLE 22 - LIFE INSURANCE AND HEALTH AND ACCIDENT INSURANCE	
<p>The Union proposes</p> <p>Section 1. The Employer shall continue the life insurance and sickness and accident insurance coverage of Forty Thousand Dollars (\$40,000.00) and sickness and accident benefits of either Five Hundred and Seventy-Five Dollars (\$575.00) per week or sixty-six and two-thirds percent (66 2/3%) of a weekly wage whichever is less. * * *</p>	<p>The Employer proposes</p> <p>Section 1. The Employer shall continue the life insurance and sickness and accident insurance coverage of Forty Thousand Dollars (\$40,000.00) and sickness and accident benefits of either Four Hundred Dollars (\$500.00) per week or sixty-six and two-thirds percent (66 2/3%) of a weekly wage whichever is less. * * *</p>
Item C - ARTICLE 22 - LIFE INSURANCE AND HEALTH AND ACCIDENT INSURANCE	
<p>The Union proposes</p> <p>Section 4. The Employer shall pay to each employee that is eligible for health care coverage but has coverage from another source the amount in cash of six hundred dollars (\$600.00) on a monthly basis.</p>	<p>The Employer proposes</p> <p>Section 4. The Employer shall pay to each employee that is eligible for health care coverage but has coverage from another source the amount in cash of three hundred dollars (\$300.00) on a monthly basis.</p>
Item D - ARTICLE 29 - TERMINATION OF AGREEMENT	
<p>The Union proposes</p> <p>Section 1. This Agreement shall be in full force and effect from June 1, 2007 to and including May 31, 2010 and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration. * * *</p>	<p>The Employer proposes</p> <p>Section 1. This Agreement shall be in full force and effect from June 1, 2007 to and including December 31, 2009 and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration. * * *</p>

Item E - SCHEDULE A - OVERTIME AND HOURS OF WORK	
<p>The Union proposes</p> <p>Section 1. The regular work week is established as eight (8) hours a day, five (5) days a week from Monday through Friday. The regular work day shall commence at 8:00 am. and end at 4:30 p.m. daily with a one-half (1/2) lunch period. Lunch periods may be exchanged by mutual agreement between employees and notification to the Employer.</p>	<p>The Employer proposes</p> <p>Section 1 Work Week The scheduled work week is forty (40) hours per week Monday through Friday. The work day is eight (8) paid hours with a one half (1/2) hour unpaid lunch. The starting time will be from 7:00 a.m. to 9:00 a.m. and conclude eight and one half (8 1/2) hours later between 3:30 p.m. to 5:30 p.m. depending on business needs and requirements. Between Memorial Day and Labor Day, a summer schedule of four (4) ten (10) hour days with a one half (1/2) hour unpaid lunch may be scheduled; during that period of time the work week would either be Monday through Thursday or Tuesday through Friday. The employee's starting time will be determined by the Employer; whenever there is change in the employee's starting time, the Employer will provide at least two (2) weeks advance notice of the change except in case(s) of an emergency. This section does not provide a guarantee of the number of hours of work, nor pay an employee will earn or receive per day or week. The employee will be paid for each hour worked.</p>
Item F - SCHEDULE B - CLASSIFICATIONS AND WAGES - MUNICIPAL CLERK	
<p>The Union proposes</p> <p>Effective June 1, 2007 Pastor/Chapman/New Graham \$18.54 Rate \$19.46 Rate</p> <p>Effective June 1, 2008 Pastor/Chapman/New Graham \$19.47 Rate \$20.43 Rate Plus \$771.26 Lump Sum \$809.54 Lump Sum</p> <p>Effective June 1, 2009 Pastor/Chapman/New Graham \$19.86 Rate \$20.84 Rate Plus \$404.98 Lump Sum \$424.94 Lump Sum</p>	<p>The Employer proposes -</p> <p>6-1-07 to 5-31-08 - \$500.00 Lump Sum Payment</p> <p>6-1-08 to 5-31-09 - \$500.00 Lump Sum Payment</p> <p>6-1-09 to 12-31-09 - \$500.00 Lump Sum Payment</p>

FINANCES

The proofs as to the finances of the Employer were presented by Beecher's sole witness, Administrator Richard Wurtz. Wurtz testified he became Beecher's Administrator in 2001; prior to that Wurtz had represented Beecher as its attorney for several years. It is un rebutted that the number Beecher's active customers has been diminishing from 2003 through 2008.

Fiscal Year	Active Customers
2003	4118
2004	4073
2005	3997
2006	3900
2007	3800
2008	3716

Census data indicates that approximately 1% of the district's customer base has been lost each year. Figures found in the annual audited report of Plante and Moran indicate that there has been a general decline in Beecher fund balances beginning with fiscal year ending June 30, 2004, through fiscal year ending June 30, 2008.

Fiscal Year Ending	Fund Balance
2004	2.304 million
2005	1.743 million
2006	1.547 million
2007	1.619 million
2008	1.578 million

Wurtz's testimony revealed the fund balance as of June 30, 1999 had been 4.2 million. Further, Wurtz's testimony revealed there are no unrestricted accounts; Beecher's entire fund balance is used for operational purposes.

Additionally , figures found in the annual audited report of Plante and Moran indicate that beginning with the fiscal year ending June 30, 2004, through June 30, 2008, Beecher had incurred operational losses in each year.

Fiscal Year Ending	Amount of Loss
June 30, 2004	\$777,151
June 30, 2005	\$739,743
June 30, 2006	\$356,237
June 30, 2007	\$ 32,449
June 30, 2008	\$181,163

Administrator Wurtz testified the maximum amount Beecher can levy, due to the Headlee Amendment and its roll back feature, is 3.5 mills and that is the amount Beecher has been levying.

The Employer introduced an exhibit showing the date of hire and seniority date of the three clerical employees in the bargaining unit:

Name	Date of Hire	Seniority Date
Nita Graham	7-22-02	3-14-03*
Victoria Smith	4-01-04	7-05-04
Doris Chapman	4-05-04	10-04-04**

* Ms. Graham was originally hired as a part time employee.

** Ms. Chapman's seniority date was adjusted due to circumstances not relevant to this proceeding.

Currently, Victoria Smith and Doris Chapman are paid \$18.54 per hour; currently, Nita Graham is paid \$19.46 per hour. The last pay increase the clerical employees received was in 2006.

COMPARABLES

The comparable communities aside from Beecher offered by one or the other of the parties include:

Township of Flushing
City of Flushing
City of Rochester
Township of Fenton

Township of Milford
Village of Milford
City of Davison
Township of Grand Blanc

Township of Davison
City of Burton
Township of Flint

Comparables are helpful in determining the equitable worth of work in a general sense. Comparables indicate what the competition is paying for similar work, and their use helps the parties set wages, hours and working conditions so as to keep employees from being attracted to other employers. Equity theory principles establish that the wages and benefits should be set at a level that help motivate employees to perform at satisfactory levels. The theory of “you get what you pay for” works both ways for employers and employees.

The Union contends that the most significant comparable that the fact finder should rely upon is the internal comparable of the labor contract entered into between Teamsters Local 214, Maintenance unit and the Beecher Metropolitan District covering 2007 through 2009. Much of the language, benefits and wages of the operators; collective are similar if not identical to the Union's proposals for the clericals.

There are, of course, other factors that influence the relationship, such as the economic health of the employer and community in general.

There was much discussion in the testimony and exhibits presented at the hearing as to the appropriateness of some of the comparables, especially the City of Rochester and Village of Milford. Both parties used Grand Blanc, Flushing, Flushing Township, Davison, Davison Township and Burton to justify various proposed portions of the open issues.

Comparables can be viewed in different ways. Some aspects may be seen as similarities to be duplicated and others may be seen as differences to justify differences. Keeping that in mind, I will consider all the comparables suggested by the parties.

ITEMS IN DISPUTE

Item A - ARTICLE 13- PICKET LINE	
<p>The Union proposes</p> <p>Section 1. It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute or refuses to go through or work behind any primary picket line, including the primary picket line of Union's party to this Agreement, and including primary picket lines at the Employer's place of business.</p> <p>Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.</p>	<p>The Employer does not agree to the inclusion of this language.</p>

Union Position

The Union's Proposal is a mirror image of the wording contained in the maintenance worker's contract with Beecher Metropolitan District. This language has appeared in the

maintenance contract for over twenty years. The Union states that there has never been a closing of the Employer's facility nor kept the work from being completed. It asserts that the language allows for alternative methods of reporting; it only prohibits the discipline of employees for refusing to cross a union picket line; and that the language does not allow the Union members of Beecher Metropolitan District to create a picket line for themselves and then refuse to cross their own picket line. The Union argues that the contract is clear that public employees do not have the right to strike, and that the law is clear that public employees do not have the right to strike. But, it says, neither the law nor the contract should prohibit a public employee from honoring the picket line of a worker who does have the right to strike. It urges the fact finder to rely on the internal comparable on this issue and recommend that the Union's proposal be adopted for the contract.

Employer Position

It is the Employer's position the Union's language on this Article has no place in a contract where the employees and Union are prohibited from striking by the PERA Statute.

The statute that grants collective bargaining rights to public employees in Michigan also regulates the process. Provisions of the Michigan Public Employment Relations Act, Act 337, 1947 as amended pertinent to this proposal are:

Section 1 MCLA 423.201 Definitions

Section 1 (i) As used in this act.

(i) "Strike" means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment. * * *

MCLA 423.202 Strike by public employee; lockout by public school employer.

Sec. 2, A public employee shall not strike and a public school employer shall not institute a lockout. * * *

23.203 Public employees; persons in authority approving or consenting to strike prohibited; participating in submittal of grievance.

Sec. 3.

No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

It is Beecher's position that failure or refusal to cross a picket line by its employees is a cessation and withholding of the employee's services and thus a strike. Beecher's concern with the clerical unit would apply to situations where Beecher is being picketed by a Union representing its employees at its place of business, but the more likely scenario would be picketing at its place of business where construction or renovation work is taking place at the Beecher facility.

RECOMMENDATION:

It is clear that absenting oneself from the full, faithful and proper performance of duties for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment is prohibited by law. A refusal to cross picket lines under the language proposed could well be in violation of the statute. Employees reading only the collective bargaining agreement may be led to believe that their actions in refusing to report for work are protected. As the Employer is prohibited from authorizing, approving or consenting to such actions by its employees, any contract provision between the Employer and Union constituting a waiver of the statutory prohibition would most likely be held invalid, and, subsequently, the employees, to their detriment, would not be protected. Therefore, it is recommended that the Union's proposal be denied.

Item B - ARTICLE 22 - LIFE INSURANCE AND HEALTH AND ACCIDENT INSURANCE	
<p>The Union proposes</p> <p>Section 1. The Employer shall continue the life insurance and sickness and accident insurance coverage of Forty Thousand Dollars (\$40,000.00) and sickness and accident benefits of either Five Hundred and Seventy-Five Dollars (\$575.00) per week or sixty-six and two-thirds percent (66 2/3%) of a weekly wage whichever is less. * * *</p>	<p>The Employer proposes</p> <p>Section 1. The Employer shall continue the life insurance and sickness and accident insurance coverage of Forty Thousand Dollars (\$40,000.00) and sickness and accident benefits of either Four Hundred Dollars (\$500.00) per week or sixty-six and two-thirds percent (66 2/3%) of a weekly wage whichever is less. * * *</p>

The Union proposal bases the maximum amount of coverage on what the highest paid member of this bargaining unit will make during this contract if the Union's proposal is adopted. It states that under its proposal, two of the three employees in this unit will make a lower maximum amount than the Five Hundred and Seventy-Five Dollars.

The City of Flushing provides eighty percent (80%). The Township of Flushing provides two-thirds (2/3). The City of Davison provides for a maximum of Six Hundred Dollars (\$600). The Township of Davison provides a maximum of Eight Hundred Dollars (\$800). The City of Burton provides up to a maximum of Seven Hundred and Sixty-Nine Dollars (\$769). The Township of Flint provides two-thirds (2/3) with no cap. The Township of Fenton provides a maximum of Six Hundred Dollars (\$600). There is only one of the Employer's proposed comparables that provides a lower maximum in benefits than that proposed by the Union. The Employer indicates that its maintenance employees currently receive short term disability benefits of \$390.00 per week. The formula calls for payment of 2/3 of their base wage or \$400.00 per week whichever is the lesser.

RECOMMENDATION:

Both the Union and the Employer agree on sickness and accident benefits of sixty-six and two-thirds percent (66 2/3%) of a weekly wage. It is the cap that is in dispute. The

highest hourly rate being paid under the current wage scale is \$19.46 per hour. That, times 40 hours, equals \$778.40 per week. 66.67% of that equals \$518.95 in benefits.

In light of all the information provided, it is recommended that sickness and accident benefits be set at either Five Hundred and Fifty Dollars (\$550.00) per week or sixty-six and two-thirds percent (66 2/3%) of a weekly wage whichever is less.

Item C - ARTICLE 22 - LIFE INSURANCE AND HEALTH AND ACCIDENT INSURANCE	
The Union proposes Section 4. The Employer shall pay to each employee that is eligible for health care coverage but has coverage from another source the amount in cash of six hundred dollars (\$600.00) on a monthly basis.	The Employer proposes Section 4. The Employer shall pay to each employee that is eligible for health care coverage but has coverage from another source the amount in cash of three hundred dollars (\$300.00) on a monthly basis.

Union Position

The Union argues that its proposal strikes a reasonable balance between a savings for the Employer and an incentive to the employee not to have duplicate coverage that is not needed. It states that the \$300.00 proposed by the Employer provides an 84.45% savings from the cost of the family coverage in 2009. The \$300.00 amount in 2003 provided the Employer a 69.26% savings.

The Union's Proposal of \$600.00 provides the Employer a savings of 68.93%. This is only .0033% less savings (on a percentage basis) to the Employer than the rate saved in 2003. The Union states that the Employer has been receiving an excess rate of savings from 2003 through 2009 by keeping the reimbursement at the lower rate of \$300.00.

The Union indicates that the comparables of Flushing and Davison provide a greater amount of participation monies to the employees than that being proposed by the Union. Flushing provides 25% and Davison provides one-half (1/2) of the rate to each party in lieu of insurance. The Union computes that using the one-half (1/2) formula, the amount of savings to Beecher would almost be nineteen percent (19%) less than what the Union is proposing for this contract.

Employer Position

The Employer maintains the current \$300.00 per month payment is more than generous than most of Beecher's and Local 214's comparables. The Employer's supporting data is found by an examination of the eight comparables, which shows that six of the comparable communities pay its employees substantially less per month or year for their employees whom the comparable communities do not provide and pay their employees' health insurance. Three of the six comparable communities pay \$100.00 per month, one community pays \$125.00 per month, one community pays 1/12th of the yearly premium and one community pays \$2,000.00 per year.

Beecher maintains the remaining two communities, Flushing and Flushing Township, can only be explained as aberrations. Flushing pays ½ the cost of the health insurance premium based on a family unit of two and Flushing Township pays ¼ of the cost of the health insurance premium based on a family unit of two.

RECOMMENDATION:

The Union's argument is based on the fact that the Employer saves too much, and that the savings should be more evenly split between the parties. The formula, however, acts as an incentive for employees who have health insurance coverage elsewhere to forgo coverage with the employer – thus, saving the Employer from paying for a benefit

that is not needed by the employee. Based on all the proofs, it is evident that the buyout price of \$3600.00 per year is working for the parties here and is not sub standard as to most of the other comparable districts. For that reason it is recommended that the amount remain at \$300.00 per month.

Item D - ARTICLE 29 - TERMINATION OF AGREEMENT	
The Union proposes Section 1. This Agreement shall be in full force and effect from June 1, 2007 to and including May 31, 2010 and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration. * * *	The Employer proposes Section 1. This Agreement shall be in full force and effect from June 1, 2007 to and including December 31, 2009 and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration. * * *

Union Position

The Union proposes that there be at least one (1) year before negotiations restart for a successor agreement. The Union's Proposal would provide for longer labor peace and the opportunity to see if the results of these negotiations are workable solutions to the issues.

It states that this group of employees has never had the ability to negotiate their own wages, hours and conditions of employment before this contract. The Employer's proposal would keep them from doing so by having all the contracts expire at the same time. Since the same Union is representing both groups, the position of the Employer in each negotiations will be known and can be used in the negotiations of the other group to establish a pattern or to obtain a greater benefit than that being discussed in the other group.

It is recognized that a three (3) year contract length is not unreasonable. MERC even suggests that this is an appropriate length based on its election recognition rules. The Union is proposing a three (3) year contract. The Employer is proposing a two and one-half (2 1/2) years contract. A three (3) years duration is the best way to resolve this issue for the parties.

Employer Position

Beecher argues that it will be negotiating with Local 214 over the maintenance employee's contract that expires December 31, 2009. Beecher has proposed to Local 214 that represents Beecher's supervisory employees a contract that expires December 31, 2009. Beecher wants to avoid having its contracts with Local 214 expire at different times to avoid being exposed to being whip sawed by Local 214 and having Local 214 using a contract it has negotiated being used as the floor for ensuing negotiations with Beecher for the next unit Local 214 is negotiating with Beecher. In effect Local 214 would be able to ladder its negotiations with Beecher by having its contracts expire at different times, whether the expiration is six (6) months or a year (1) apart.

Beecher is not proposing all three bargaining units would meet together to negotiate, but that the negotiations for all three bargaining units would be taking place in the same time frame. Although for certain parts of the negotiations, pertaining to contract language or Local 214's proposed changes to certain economic benefits, such as holidays, vacations, health insurance, or retirement, Beecher maintains all three units could participate in those negotiations together, and that the factors of efficiency and economy support adoption of its proposal on this issue.

RECOMMENDATION:

Whipsawing and/or pattern bargaining can occur no matter when contracts of different bargaining units expire in relation to each other. It is important that the employees in the different bargaining units have the opportunity to take part in negotiations that will establish patterns and ultimately affect them. Based on all the facts and arguments, it is recommended that the agreement be in full force and effect from June 1, 2007 to and including December 31, 2009.

Item E - SCHEDULE A - OVERTIME AND HOURS OF WORK	
<p>The Union proposes</p> <p>Section 1. The regular work week is established as eight (8) hours a day, five (5) days a week from Monday through Friday. The regular work day shall commence at 8:00 am. and end at 4:30 p.m. daily with a one-half (1/2) lunch period. Lunch periods may be exchanged by mutual agreement between employees and notification to the Employer.</p>	<p>The Employer proposes</p> <p>Section 1 Work Week The scheduled work week is forty (40) hours per week Monday through Friday. The work day is eight (8) paid hours with a one half (½) hour unpaid lunch. The starting time will be from 7:00 a.m. to 9:00 a.m. and conclude eight and one half (8 ½) hours later between 3:30 p.m. to 5:30 p.m. depending on business needs and requirements. Between Memorial Day and Labor Day, a summer schedule of four (4) ten (10) hour days with a one half (1/2) hour unpaid lunch may be scheduled; during that period of time the work week would either be Monday through Thursday or Tuesday through Friday. The employee's starting time will be determined by the Employer; whenever there is change in the employee's starting time, the Employer will provide at least two (2) weeks advance notice of the change except in case(s) of an emergency. This section does not provide a guarantee of the number of hours of work, nor pay an employee will earn or receive per day or week. The employee will be paid for each hour worked.</p>

Union Position

The Union indicates that it is proposing the identical language that appears in the maintenance contract with Beecher Metropolitan District. The Employer's policy manual uses similar language as that proposed by the Union.

The Employer's proposed outside comparables are similar to language proposed by the Union. The City of Flushing uses similar work week and times for the work day that is contained in the Union's Proposal. The Township of Flushing treats the issue in this same manner.

Beecher's office hours and hours of operations in the maintenance unit have been the same for the entire time the Union has been negotiating this labor contract. The flexibility the Employer seeks has not been utilized except for the ten hour day which existed by mutual agreement between the parties for over twenty years. The Union states that its proposal does allow for mutual agreement to modify schedules if the operation of the Employer changes. This will also allow for the employee's concerns to be addressed if the time of operation changes. This seems fair and equitable.

Employer Position

The Employer argues that even though Local 214's proposed language is the same language currently in the maintenance unit's contract and Beecher has operated a regular work schedule Monday through Friday eight (8) hours a day beginning at 8:00 a.m. and concluding at 4:30 p.m., Beecher's proposal provides the Employer with the necessary flexibility to adopt alternate starting times and day ending times to accommodate changes in its customer's requirements to make payments, ask questions or to make complaints. Under the Employer's plan, the end of the work day would be set 8½ hours after the employee's work day begins. Before a change in starting time can occur the language requires the Employer to provide at least two (2) weeks advance notice of a time change. An additional benefit of Beecher's proposal is that it would not require Beecher to meet and discuss with Local 214 before it adjusted the starting time for this unit. With Local 214's language, Beecher would have to request Local 214 meet, negotiate and agree to start time changes prior to

implementing the starting time change. Beecher points out its proposal would change the starting time one (1) hour before or after the current 8:00 a.m. starting time.

Beecher's proposal addresses two other matters not specifically addressed in Local 214's proposal. The first deals with the employees working four (4) ten (10) hour days per week between Memorial Day and Labor Day. Generally such a request ordinarily would emanate from the employees. The benefit of Beecher's language is it would permit implementation without negotiations with and agreement by Local 214. In the past Beecher's clerical employees have worked four (4) ten (10) hour days during the summer.

The remaining issue addressed by Beecher's proposed language is as a result of Local 214's position that its language guarantees the clerical employees either 40 hours work or 40 hours pay. Needless to say this is not the Beecher's position and to avoid all confusion over this matter, Beecher has proposed the last two sentences of Section 1. Local 214's position succinctly stated is Beecher can always lay off bargaining unit employees to avoid the guarantee of 40 hours work or pay. It is Beecher's position that layoff is not the only choice it has; Beecher's position is its obligation is to pay each of its employees for each hour worked, recognizing there are other contract provision obligating Beecher to pay its employees for time not worked such as holidays, vacation, sick days, bereavement time, etc.

RECOMMENDATION:

People have responsibilities outside of the workplace. It is of great benefit for them to have stability in terms of the scheduling of work, including the length of the work day. To allow the Employer and individual employees to negotiate special schedules without approval of the exclusive bargaining representative causes the Union to waive its right to confer over "hours" of employment with the Employer during the term of the contract

and undermines the effectiveness of the representative to assist in achieving impartial treatment of all bargaining unit members.

Based on all the evidence and arguments, it is recommended that the contract include the following language in Schedule A, Section 1:

The regular work week shall be forty (40) hours per week Monday through Friday. The work day shall be eight (8) paid hours with a one half (1/2) hour unpaid lunch. The regular work day shall commence at 8:00 a.m. and end at 4:30 p.m. daily. Lunch periods may be exchanged by mutual agreement between employees and notification to the Employer.

It is agreed that between Memorial Day and Labor Day, a summer schedule of four (4) ten (10) hour days with a one half (1/2) hour unpaid lunch may be scheduled by agreement between the Employer and Union.

This section does not provide a guarantee of the number of hours of work, nor pay an employee will earn or receive per day or week. The employee will be paid for each hour worked.

Item F - SCHEDULE B - CLASSIFICATIONS AND WAGES - MUNICIPAL CLERK	
The Union proposes	The Employer proposes -
Effective June 1, 2007 Pastor/Chapman/New Graham \$18.54 Rate \$19.46 Rate	6-1-07 to 5-31-08 - \$500.00 Lump Sum Payment
Effective June 1, 2008 Pastor/Chapman/New Graham \$19.47 Rate \$20.43 Rate Plus \$771.26 Lump Sum \$809.54 Lump Sum	6-1-08 to 5-31-09 - \$500.00 Lump Sum Payment
Effective June 1, 2009 Pastor/Chapman/New Graham \$19.86 Rate \$20.84 Rate Plus \$404.98 Lump Sum \$424.94 Lump Sum	6-1-09 to 12-31-09 - \$500.00 Lump Sum Payment

Union Position

The Union indicates that the employees in this unit in the past have always received the exact same wage and benefit modification that was negotiated for the maintenance unit until 2006. At that time, the Employer provided no wage increases to the employees in this unit. The Employer did not provide any benefit modifications for this unit after the maintenance contract was negotiated. There have been no wage increases for these employees in 2007, 2008 or 2009. During this period this cost-of-living has increased by 7.1%.

The maintenance employees from 2006 to 2009 have increased their wages by 2% in 2007, plus a 1 % cash incentive, by 2% in 2008, plus a 1% cash incentive, and by 2% in 2009, plus a 1% cash incentive. During these three years, the wages have increased by approximately 6.2%, plus 3% in cash incentives. The Union's proposal for this unit provides for no increase in 2007; a 5% increase in wages in 2008, and a 2% wage increase in 2009.

This matches the cost-of-living increase from 2006 through 2009. There is also a cash incentive of 2% in 2008, and 1% in 2009, for a total of 3%, which matches the cash incentives received by the maintenance employees during the same period. Even though the clerical employees have had to wait for two to three years to receive this same amount of money.

The comparison of the maintenance unit to its top comparable units shows that they are second. This is the case for all the years of their 2007 - 2009 contract. Using the top comparable for the clerical classification, the same relationship exists. The increases received by the maintenance unit keep it second as does the increases proposed for this unit keep them second compared to the top comparables.

It is not unusual that the comparables of the clerical unit are different than the comparables of the maintenance classifications. It is also not unusual that the two groups would share in identical comparable communities. Some communities do not have the same classifications as each other, as in this case.

The Employer's witness, Mr. Wurtz, clearly testified that there was money to provide the maintenance employees their negotiated wage and benefit changes in 2007 - 2009 as there is currently money to provide similar wage and benefit increases for the clerical employees. These are difficult times for Michigan communities, but Mr. Wurtz clearly pointed out that they have been able to maintain a positive fund balance by making choices throughout the years based on the priorities established by the Board. The Employer throughout the fact finding hearing did not claim that it had an inability to pay. The total cost of the Employer's wage proposal for the three person clerical unit would be \$4,500.00.

Employer Position

Beecher points out its three clerical employees are and will be the highest paid clerical employees amongst Beecher's comparable communities. Beecher offer has provided three lump sum payments of \$500.00 to each of the three clerical employees. Although the hourly wage rate remains the same for each, Smith and Chapman at \$18.54 per hour and Nita Graham \$19.46, these employees are the highest paid clerical employees doing similar and comparable work to the eight comparable Genesee County communities that Beecher has selected.

In further support of its position, Beecher points to the Local 214's comparables. Local 214 uses the City of Flushing as one of its comparables; Local 214's Exhibit under tab 26 contains a letter from Flushing's City Clerk and Treasurer. The letter states it pays its utility billing clerk \$15.63 which is substantially less than Beecher pays its three clerical employees. This is supported by Beecher's Exhibit 4 page 1 which contains a

letter and a signed affidavit of Flushing Clerk Treasurer attesting to the hourly wage paid its utility billing clerk.

Local 214 listed as a comparable the City of Grand Blanc. Under tab 25 of Local 214's Exhibits is a document provided by Grand Blanc's Personnel Director; it shows the water sewer clerk's 2008 salary to be \$42,826.00. What Local 214's exhibit does not show is a letter from Grand Blanc's personnel director and a signed affidavit following, which was obtained by Beecher. The affidavit states the water utility clerk has been employed by Grand Blanc for 20 years and there are other clerical employees who take payments and answer residents' billing questions; the hourly rate for these other employees is substantially less than what Beecher pays its three clerical employees. Nita Graham, the highest seniority clerical will have seven years seniority as of July, 2009, some thirteen years less than Grand Blanc's water sewer clerk and Chapman and Smith will have five years seniority in April of 2009. Thus, the pay aberration of Grand Blanc is explained by the length of time the water utility clerk has worked for Grand Blanc.

Beecher maintains an examination of the City of Rochester response to Local 214 F.O.I.A. request states a salary range for the utility clerk from \$39,910.00 to \$46,359.12. The letter does not say what is the salary of the utility clerk; nor does it state whether the Utility Billing Clerk is being paid \$46,359.12. It does not state the number of utility clerks Rochester employs. Additionally, Beecher's rebuttal Exhibit I a-c and Exhibit II the supporting data for Exhibit I a-c reveal and supports Beecher's position that economically and financially, Rochester is not in many ways comparable to Beecher. Similarly an examination of the village of Milford in response to Local 214's inquiry shows its utility billing clerk is paid \$20.21 per hour. However, the employee is also the Villages Deputy Treasurer and has additional responsibilities and duties as Deputy Treasurer which makes up a portion of the \$20.21 hourly wage for those additional duties and responsibilities. From Milford Village clerk's response it appears there is only one employee that performs the utility billing clerk's duties. With Beecher there are

three employees that are performing these duties. Also, Milford's response does not indicate the length of time the employee has been employed.

Local 214's final comparable is Beecher's maintenance employee's contract with Local 214. It is true an internal comparable should be given weight and consideration by the Fact Finder in his Report and Recommendation, however, Beecher maintains the maintenance employee's contract was negotiated at a time when the economic and financial situation was not as dire. Additionally, the wages negotiated for the maintenance employees unit kept them comparable with other DPW or Public Works Departments in Genesee County; those wage increases did not exacerbate a disparity between existing wage conditions where Beecher's maintenance employee's wages would be made even greater than those of the comparable communities DPW or Public Works employees. However, in the case of Beecher's clerical employee unit that is not the case. An examination of Beecher's comparable Exhibit I (c and d) clearly demonstrates that Beecher's clerical employees are and have been the highest paid utility billing clerk employees in Genesee County with the exception of the City of Grand Blanc.

RECOMMENDATION:

The proofs show that while the Beecher Metropolitan District is not broke, it has been losing customer base and money since at least 2003. From 2003 through 2008, through no fault of its own, it lost 402 (over 9%) of 4118 active customers. The Fund Balance decreased from \$2.304 million in fiscal year 2004 to \$1.578 million in fiscal 2008 (over 31% loss). Operating losses have totaled \$2,086,743 from fiscal year 2004 through fiscal year 2008. Although 72% of those occurred in fiscal years 2004 and 2005, the district continues to lose money each year. Less lately than in the past, but, nonetheless, it continues to lose money.

The employees, however, have also lost position in terms of comparison to their co-workers in the operation division of Beecher Metropolitan District, and in comparison to the general cost of living. During the period from 2006 to the present this cost-of-living has increased by 7.1%.

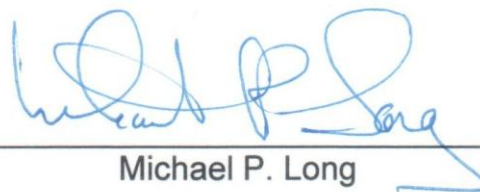
The maintenance employees from 2006 to 2009 have increased their wages approximately 6.2%, plus 3% in cash incentives. The wages of the three clerical employees have remained the same. A small raise to sustain morale and assist the employees in maintaining their standard of living is justified. Based on all the proofs and arguments of the parties it is recommended that the wage package be the following:

For the year from June 1, 2007 through May 31, 2008 1% raise;

For the year June 1, 2008 through May 31, 2009 1% raise plus a five hundred dollar (\$500.00) lump sum payment;

For the year June 1, 2009 through the end of the current contract, no across the board raise and a fifty dollar \$50.00 per month lump sum payment.

September 17, 2009



Michael P. Long