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STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACT FINDING RECOMMENDATION

In the matter of Fact Finding /

TEAMSTERS LOCAL 580

-and-

MERC Fact Finding
Case No. L09 L 9001

VILLAGE OF STOCKBRIDGE \

Appearances:

For the Union

Douglas Withey, Business Agent, Trustee

For the Employer

Steven O. Schultz, Esq.

Date of the Report: February 8, 2011

Background

The Village of Stockbridge (the Village) is a rural village in the southeastern part of Ingham County. As of the 2000 Census Bureau date, its population was approximately 1,300. At the time of the hearing, the Village employed 6 full-time employees. These include a Village Manager, a Clerk, a Treasurer, a Chief of Police and two Department of Public Works (DPW) employees. The DPW provides water and sewer services, street, parks, building, and cemetery maintenance. The DPW is also responsible for brush and leaf removal.

Procedural History

The Village and the Teamsters Local 580 (the Union) have been involved in contract discussions since January of 2009. The parties met with MERC mediator Jim Corban at least

three times during 2010, but were unable to come to final agreement. After efforts at negotiation reached an impasse, the Union filed a petition for Fact Finding. The undersigned Fact Finder was appointed by MERC to hold hearings and make recommendations in this matter.

The Fact-Finder and the parties met in conference call on December 9, 2010. At that time the parties stated that their major concern was with the *at will* versus *just cause* provisions conflict respecting discipline and grievance procedures. The hearing was held in the Stockbridge Village Offices on January 17, 2011. At that time the perspectives of both sides were succinctly presented by able representatives, Douglas Withey, Business Agent and Trustee for Teamsters Local 580 and Stephen O. Schultz, Esq. for the Village, who had the full opportunity of presenting testimony and exhibits. Although several items were initially listed in the petition, the representatives acknowledged that the primary issue in conflict remained the matter of *at will* versus *just cause*. Two witnesses for the Union and one for the Village testified. No rebuttal testimony was offered. This matter is now ready for the Fact Finder's recommendations.

Parties' Positions

The Union's position is that the *just cause* provision regarding discipline and grievance procedure is a central component of bargained agreements. Moreover, the Union considers this provision as one of the cornerstones of the contract. It emphasizes that the Village was unable to present one union group with an At-Will standard. The Village's position is that At-Will employment is the standard in Michigan, even for public employees. It stresses that all Village employees are protected from discrimination in discharge or discipline actions by state and federal laws, and therefore, additional protection the Union seeks under the *Just cause* provision is unnecessary. The Village sees the *Just cause* standard as potentially burdensome, time consuming and expensive.

Testimony and Exhibits

Joel Gutzki (Gutzki) testified that he started with the Local in 2007. His duties include organizing and bargaining contracts. He represents numerous public employees. Of the 30 some contracts he has been involved with, none have been without the *just cause* provision. Gutzki stated that union membership in these contracts have ranged from a low of two to approximately 1200 members. He further testified that non-union employees do not affect bargaining, but instead, they are sometimes used for comparisons. He has never known an employer to bring up *ust cause* at a mid-year contract review, and has never experienced the *just cause* provision ever being an issue with a small group membership. In fact, one group has adopted the *just cause* standard for limited application to issues such as suspensions and discharge only.

Mike Parker (Parker), a principal officer with Teamsters Local 580 stated that he has been representing private and public sector employees for 17 years. Parker testified that the none of the Teamsters contracts are without *just cause* provisions and that, in fact, the Teamsters will not recommend that its membership accept a contract without a *just cause* provision. Parker conceded that it is up to the Employees to make the final decision on this issue through the ratification process. He went on to explain the process. The Business Agent is first required to sign off on proposed agreements prior to it going to the membership. Parker stated that his recommendation would be that the Business Agent not agree to a tentative agreement that did not include a *just cause* provision.

According to Parker, the primary and secondary reasons for having the *just cause* provisions relate to indiscriminate discipline and/or firing and concerns of discrimination by management. Parker stated that he was familiar with situations where members had been

“reinstated under a *just cause* provision” who would not have been restored under a legal process.

Village Manager Daniel Dancer (Dancer) testified that as of the date of the hearing he was a full-time Village employee, but that his position is currently budgeted to become part-time. Dancer described the past three years as having been “very tight”, stating that it was as if they were continuously “burning cash.” Dancer stated that the Village is basically being run on a cash basis just now. He stated that the 2011-2012 draft of the budget, proposed a general fund budget balance of approximately \$700. Although the Village takes in about \$500,000, it also expends roughly \$500,000. Dancer explained that those numbers are based on assumptions there will be only slight decreases in state revenue sharing appropriations. Additionally, built in to the assumptions is that employees would work a 32 hour week as opposed to a 40 work week. Dancer described the two overhanging issues as payroll and debt. He concluded that the Village cannot support two 40 hours per week DPW employees.

Dancer explained that a fundamental concern for the Village respecting a *Just cause* provision is that the related grievances would or could place an undue hardship on it. He conjectured that a future grievance “would create a lot of havoc.” Dancer stated that the only suspension or discipline that has occurred since he has been with the Village concerned a half-day suspension for a failure to report a sick day. Dancer testified that the DPW employee who was awarded the rank of supervisor at one time eventually declined to continue fulfilling the responsibilities of that position. He further testified that it would be unrealistic to presume that the Village’s portion of the state revenue sharing would be the \$95,000 it was last year. Dancer feels certain that this year’s amount will be less. He stated that with respect to overtime pay, the current practice is that hours over 40 hours per week are considered overtime. The Union’s

proposal of counting any hours over 8 hours per day as overtime for that day would cripple the Village's already strained, tenuous financial position, especially when the necessary long winter hours and emergencies are taken into consideration.

When asked on cross-examination when the last time was that anyone in the DPW worked more than 8 hrs a day, Dancer stated that he was unaware of that having occurred in the past. When asked if he was aware of any discharges of employees within the last 10 years, Dancer acknowledged that currently there is a lawsuit pending for wrongful discharge. Additionally, Dancer recalled that there had been some previous discharges in management, but he did not know whether or not any legal actions had been filed. Dancer stated that if legal actions are filed against the Village for matters such as alleged wrongful discharge the litigation costs as usually around \$35,000. However, the Village is covered by insurance for those kinds of losses.

Dancer allowed that there had been discussions in the parties' negotiations respecting a proposed teamsters' insurance plan, and recalled that the Teamster's plan had projected a 30-40% reduction in health insurance costs. Dancer testified that while the Village's insurance coverage covers employment practice claims, such as those related to alleged wrongful discharge, he was unsure whether or not coverage was extended to Arbitration proceedings. On re-cross the Union inquired into the contracts with the Village Manager and Police Chief which both have *At-Will* contracts. Dancer was unsure whether or not the insurance currently covers breach of contract matters. Dancer conceded that he was involved with negotiating the contracts for both the Chief of Police and himself.

Criteria for Recommendations

Although no clear criteria dictates what Fact Finders must look to in order to adequately formulate recommendations, many Fact Finders use the criteria established in Article 9 of Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire Departments as a guide. These criteria are commonly used in fact finding proceedings involving public employers and police and fire unions, and this Fact Finder finds them to be a useful guide in assessing the issues presented by the parties in fact finding proceedings. The applicable factors to be considered as set forth in Article 9 are as follows:

- a) *The lawful authority of the employer.*
- b) *Stipulations of the parties.*
- c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - i. *In public employment in comparable communities.*
 - ii. *In private employment in comparable communities.*
- e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Centering on the testimony presented at the hearing in light of these criteria, the Fact Finder takes particular note of paragraphs *d* and *h* above. Paragraph *d* references comparables and focuses attention on comparisons of wages, hours and conditions of employment of other

employees performing similar services in public or private employment in comparable communities. Paragraph *h* is a catch-all provision which leads toward “such other factors. . . which are normally or traditionally taken into consideration in determining of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties.” This report focuses first on the comparables offered by the parties and then on testimony and exhibits pointing to the “*such other factors*” the Fact Finder found helpful in this analysis.

Comparables

Comparables were introduced through the parties’ Exhibits. None overlap with those of the other side and, not surprisingly, the parties oppose each other’s submissions. The Union offers the Collective Bargaining Agreements from the cities of Dewitt, Ionia and Williamston and from the Village of Middleville (Middleville). Dewitt, Ionia and Middleville have *just cause* provisions for discipline and grievance procedures specifically set forth in their Collective Bargaining Agreements. The city of Williamston and AFSCME interpret their contract as including the *just cause* standard although neither *at will* nor *just cause is* expressly listed in the agreement. The Village objects that the Union’s comparables are “cities whose populations are two to eight times greater than that of the Village [of Stockbridge] and whose taxable values and SEVs are up to four times greater than that of the Village.”

The Village argues that the more appropriate evaluations are made by comparing the Village [of Stockbridge] to villages with populations much closer to the Village of Stockbridge, such as the Villages of Saranac, Bellevue, Grass Lake, Nashville and Concord. Aside from being close in population size to Stockbridge, the Village highlights that each of its comparables employ either the same number of DPW workers as Stockbridge or at most only 2 more than

Stockbridge. The Union objects that the Village inappropriately includes non-union employees of the Union's comparables when comparing those numbers to the two employees in the Village's DPW department. Additionally, Union urges that the Villages comparables respecting *at will* versus *just cause* be dismissed on the grounds that "there is no comparable between Union and Non-Union in this area.

Fact Finder's Analysis of Parties' Comparable

The parties' comparables were instructive. The rub comes in how each side interprets the phrase "similarly situated" and the weight and importance they attribute to their own measures for what constitutes proof of likeness or similarity. For all practical purposes, both sets of comparables include cities or villages with similar provisions respecting a) department services, b) the work week and overtime, c) annual paid time off, and d) wages. Correspondingly, none of those four issues are particularly contentions for the parties. Moreover, like the Village of Stockbridge, each of the Union's comparables has the MERS retirement plan in place. The comparison of insurance coverage was less instructive, as coverage among both sets of comparables varies significantly. The comparison linchpins are the importance the Union places on whether or not the DPW employees from other villages or cities are Union employees, and the correspondingly high value the Village places on the size and population of the villages or cities which employ the workers.

The Fact Finder finds the Union's arguments more persuasive with respect to these two last mentioned points. The Village emphasizes that it could identify no other village of similar size with a union contract and the resulting *Just cause* provision. However, Middleville appears to fit the description in a number of ways. Although the Village indicates that Middleville has a population of approximately 2700, more than twice the population of Stockbridge, its 2000

Census data may be a little off currently. Middleville's current webpage describes itself as a village of only 2000 residents. If this is the case, Middleville is a village much closer to the size of Stockbridge, whose DPW employees are unionized. Moreover, when the non-union employees are subtracted from Middleville's DPW department, the comparison is also close. In this instance, the assessment would be that Middleville has 3 full-time Union employees and the Village of Stockbridge has 2 full-time Union employees. Given that Middleville meets the main parameters of both parties' accounts of what constitutes an appropriate comparable, and also aligns with the previously discussed considerations of services, work week wages, etc, the Fact Finder views Middleville an appropriate and persuasive basis for the purposes of making recommendations to the parties.

Other Factors Traditionally Considered

Both Union witnesses stressed the integral role the *just cause* provision has played over the years in all the contracts with which they have associated. Gutzki testified that of the more than 30 contracts with which he has been involved, all have included *just cause* provisions. Parker, likewise, was adamant in his testimony that the *just cause* provision has been core to all contracts with which he has been acquainted during his 17 years of union association. Testimony further underscored that this provision has been utilized over the years to challenge and overturn alleged wrongful discharges. Against this backdrop, the Village's strongest argument against including the *just cause* provision in the parties first contract is couched in its worry and concern over what could or "might possibly happen" if the provision is included. Manager Dancer warned that, because of the small size of the DPW department, a single Grievance could effectively paralyze the entire department.

Fact Finder's Analysis of Other Factors

Here, too, the Fact Finder is more persuaded by the Union's testimony and exhibits than by the Village's evidence. The Fact Finder sees no indication that the Union is either unmindful or unsympathetic to the Villages concerns with the need for fiscal responsibility. Indeed, the parties referenced, but did not offer testimony about, anticipated continued discussions bearing on mutually beneficial ways to address some of their apprehensions about financial affairs. The Village's unease (regarding signing on to costly contract provisions when operating without a well-cushioned emergency fund) is understandable. But, for it to reject all Union overtures regarding inclusion of *just cause* without compelling reasoning, when a fair evaluation of proper comparables indicate otherwise, is not prudent.

Recommendations

A careful consideration of the issues in light of the very thorough presentation by the parties leads the Fact Finder to the following recommendations:

1) *At Will* versus *Just cause* provision regarding Discipline and Grievance Procedure

The Fact Finder recommends that **the Union's proposal that Just Cause provisions respecting Discipline/Discharge standards and Grievance Procedures be adopted and included** in the parties Collective Bargaining Agreement.

2) Wages

The Fact Finder recommends that **the Village's proposal of a single hourly wage rate of \$22.64 for both DPW employees be adopted** by the parties.

3) Work Week

The Fact Finder recommends that **the Village's proposal to define a full-time, standard work week of 30 or more hours per week, with fringe benefits to be included for full-time employees be adopted** by the parties.

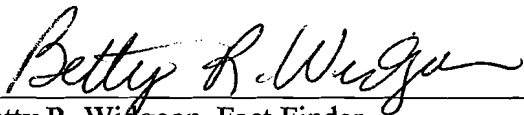
4) Overtime

The Fact Finder recommends that **the Village's proposal which limits overtime pay to over forty hours worked in a work week be adopted** by the parties.

5) Paid Leave

The Fact Finder recommends that **the Village's proposals regarding paid leave, including holidays, vacation and sick days (based on the Village's current practice) be adopted** by the parties.

Date: February 8, 2011


Betty R. Wiggeon, Fact Finder