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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

AFSCME COUNCIL 25,
LOCAL 1677.02 - 1677.04

-and-

MERC Fact Finding
Case Nos. L09 K-1002
L09 K-1004
L09 J-9006

KALAMAZOO COUNTY

Report

Thomas L. Gravelle, Fact Finder

February 24, 2011

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing was held on December 15, 2010 in Kalamazoo, Michigan.

The County is represented by attorney Barry R. Smith. County Financial Director Tracie Moored and Airport Director Cliff Moshoginis testified at the hearing in behalf of the County. The Union is represented by attorney Kenneth J. Bailey. Union representative Stacie Dineen testified at the hearing in behalf of the Union.

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

The parties' presentations and arguments in this case were well done.

FACT FINDING LAW

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.

Neither the LMA nor the MERC rules contain factors for reviewing the record and making recommendations in fact finding. However, a non-binding analogue does exist: The factors set forth in Section 9 of Act 312 PA 1969, which is the Michigan interest arbitration statute for police and fire fighters.

Section 9 states several factors to be considered by an Act 312 arbitration panel, including the following:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest 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.
- (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 in 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.

These factors are appropriate for consideration in fact finding.

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.

DISPUTED CONTRACT ISSUE

The only issue remaining in dispute between the parties is wages.

On April 29, 2010, AFSCME requested fact finding for its three bargaining units.

For the General Unit and the Juvenile Unit, AFSCME explained the parties' positions on wages as follows:

- The Union is proposing to change the current step schedule to reflect the step schedule that has been implemented effective 2010 for the TOPS, Managers and Professionals. (Elimination of the ½ step and add steps E, F, G, and H in yearly increments on the employee's anniversary date, an increases in wage commensurate with steps.)
- The employer is proposing a 0% wage increase for 2010.

For the Airport Unit (expired CBA), AFSCME explained:

- The Union is proposing to change the current step schedule to reflect the step schedule that has been implemented effective 2010 for the TOPS, Managers and Professionals. (Elimination of the ½ step and add steps E, F, G, and H in yearly increments on the employee's anniversary date), and the adoption of the entry and max table as presented on 02-01-2010, with step increments equally distributed.
- The employer is proposing a 0% wage increase for 2010.

FINDINGS

AFSCME represents the following three bargaining units in the County:

- *The General Unit* – AFSCME represents 41 employees ranging from custodians to electricians. The 2009-2012 CBA contains a 2% across the board wage increase for 2009 and also states:

If the County of Kalamazoo (not including the Airport Authority) agrees to and implements an across-the-board wage increase for 2009 in excess of two percent (2%) for any other bargaining unit other than one representing employees of the Sheriff's Department, that same across-the-board wage increase will be extended to members of this bargaining unit. The parties shall have the opportunity to reopen this Agreement to negotiate changes in wages and benefits effective January 15, 2010 and January 15, 2011.

On December 7, 2009, the County made the following wage proposal to the General Unit for 2010: "No across-the-board pay increases. Step increase payments to continue."

- *The Juvenile Unit* – AFSCME represents 20 employees at the County Juvenile Home. The 2009-2012 CBA contains a 1.26% ¹ across-the-board wage increase effective March 1, 2009 and also states:

¹ The Juvenile unit obtained a retirement multiplier enhancement in lieu of the full 2% wage increase the County had offered.

If the County of Kalamazoo agrees to and implements an across-the-board wage increase for 2009 in excess of two percent (2%) for any other bargaining unit other than ones representing employees of the Sheriff's Department or in the Airport bargaining unit, that same across-the-board wage increase will be extended to members of this bargaining unit.

On December 7, 2009, the County made the following wage proposal to the Juvenile Unit for 2010: "No across-the-board pay increases. Step increase payments to continue."

- *The Airport Unit* – AFSCME represents 6 employees at the Kalamazoo/Battle Creek International Airport. Its CBA, which expired on December 31, 2009, states:

Effective the first full pay period starting on or after February 1, 2009, the pay rates for each classification covered by this Agreement will be increased by two percent (2.0%). If the County of Kalamazoo agrees to and implements an across-the-board wage increase for 2009 in excess of two percent (2%) for any other bargaining unit other than one representing employees of the Sheriff's Department, that same across-the-board wage increase will be extended to members of this bargaining unit.

This agreement also was "TA'd" on November 16, 2009.

On November 16, 2009, the County made the following wage proposal to the Airport Unit for 2010: "No across-the-board pay increases. Step increase payments to continue."

AFSCME initially proposed across-the-board wage increases for its three bargaining units.

In 2009, the County's non-uniformed bargaining units were offered and accepted 2% annual wage increases.

In the fall of 2009, the County reviewed its projected budget for 2010 and decided against across-the-board wage increases for 2010. For 2010, the County proposed a

wage freeze which the other non-uniformed UAW and FOP bargaining units agreed to. These CBAs include some form of a “me-too” clause providing automatic wage increases if the County were to agree to wage increases for non-uniformed bargaining units. For example, the 2010-2012 UAW Circuit Court employees CBA states:

In the event that the County negotiates a wage increase with any other Unit (excluding the Airport, Head Start I or II, Sheriff employees and sheriff Command Officer Units) or if the County grants an across the board wage increase to non-union employees (not related to the conversion to the banding system) during calendar year 2010, the same percentage increase will be automatically applied to the wage scales in the Agreement on the effective date of that other increase. There will be a wage and benefit re-opener for 2011 and 2012. . . .

For the period 2003-2009, virtually all non-uniformed County employees have been given or received the same wage increases. (Employer Ex. 22). During this period, some employee classifications have been modified. In the parties’ current negotiations AFSCME has proposed improving the compensation of one classification – Maintenance Worker in the General Unit. (Employer Ex. 2-B).

Most of the County’s non-uniformed employees are not represented by a union. These include general technical and office employees, managers and professionals. (Employer Ex 17).

For the County’s non-union employees it takes far longer to reach the top wage scale than for the AFSCME units.

AFSCME is proposing new wage scales similar to the new wage scales resulting from a lengthy internal “equity” review of non-union employee functions and wage rates.

On April 27, 2010 the parties engaged in one MERC mediation session.

On April 29, 2010 AFSCME petitioned for fact finding (quoted above).

To better understand AFSCME's position, the following review is undertaken:

In 2007, the County decided to engage in a comprehensive review of the functions and wages of its non-union employees. For this purpose, it retained the services of The Hay Group, which specializes in employee compensation. Tracy Moored, the County Director of Finance, explained that the County was concerned about differing wages being paid to employees doing comparable work. The Hay Group provided training in evaluating employees. In addition, an elaborate appeal process was set up to address employee challenges to tentative changes in wage rates.

This evaluation process (including appeals) began in 2007 and continued through much of 2009. For this time, the non-union employees' classification descriptions were frozen. Ms. Moored explained that in 2010 – upon completion of the evaluation process – employees were placed on the new scale at a level which would give them either no wage increase or the lowest possible wage increase. In its post-hearing brief, the County has explained:

The overall result of this process on wages paid in 2010 was explained and is shown in several exhibits. The large majority of employees in the non-union ranks were not yet paid at the top rate in 2010 (Exhibit 21) Indeed, only about 7.5% of the total non-union work force was at the top rate. Thus, much of the increase they received was instead of the step increase expected anyway. The spread from 72% start to top rates over 8 years creates an expectation of a step increase of about 3.5% per year. Anyone who received less than this increase was less well off under the new system in 2010. While only about 25% of employees received an increase above that number, nearly one third received less than 1.5%. (Exhibit 18) Seventy five individuals were clearly hurt by the new system, losing a total of \$51,740 for the year. (Exhibits 23, 25) In addition, fifteen individuals had their job downgraded to the point where their top wage level is permanently lower than they currently make. (Exhibit 25)

Repeating a point made above, the AFSCME employees are either already at the top rate or received an increase above that received by the vast majority of non-union employees in the transition. (General 5.3% average, Juvenile 4% average; well above all but 20% of the non-union group (Exhibits 17, 18, 21).

In its post-hearing brief, AFSCME has explained:

While the Union wishes to stress what it sees as a substantial wage disparity between its own members and those of the comparable communities, it is clear that the central issue of the hearing was the recent wage study and resulting changes to the banding structure and wages of the non-union employees.

...

In all, over 400 [non-union] positions were evaluated, but the testimony indicated that not one of these employees had their hourly wage reduced in any way, though some were frozen, apparently in order to keep their wage within the appropriate salary band. In fact, the data indicated by Employer Exhibit 18 shows that 517 employees' wages were affected by the new banding structure. Of those 517 employees, only 20 did not receive some form of wage increase as a result of their new placement: that is less than 4.5% of the non-union employees.

On the other hand, 110 employees received between 0 and 1% increase, 84 employees received between a 1 and 1.99% increase, 111 employees received between a 2 and 2.99% increase, 93 employees received between 3 and 3.99% increase, 78 employees received between 4 and 4.99% increase, and 21 employees received at least a whopping 4.99% wage increase. This means that of 517 total employees affected by the new salary banding structure, 497 or 96% received wage increases. It bears noting that the exhibit stops at greater than 4.99%; it is unknown what the actual percentage wage raises were for those 21 employees.

...

... The Union's proposals would require the Employer to incorporate similar changes to Union wage structure by placing the classifications in bands and also by increasing the number of steps to maximum rate for all represented classifications from three to seven, bringing them in line with the number of steps permitted the non-union employees and achieving some semblance of wage equality.

Both parties have cited Employer Exhibit 18, which explains the 2010 implementation of the County's non-union wage scale results:

2010 Banding implementation – placement statistics

| % Increase | # of Emps | % of whole |
|-------------|-----------|------------|
| 0 | 20 | 3.9% |
| < 1% | 110 | 21.30% |
| 1.0 - 1.99% | 84 | 16.20% |
| 2.0 - 2.99% | 111 | 21.40% |
| 3.0 - 3.99% | 93 | 18.00% |
| 4.0 - 4.99% | 78 | 15.10% |
| > 4.99% | 21 | 4.10% |

32.5% of employees received less than 1.49% increase

At the fact finding hearing, AFSCME representative Stacie Dineen explained that the County was willing to apply this process to the employees represented by AFSCME. By the time of the parties' MERC mediation on April 27, 2010, Ms. Dineen stated that the County was no longer willing to do so. While the process was going on, AFSCME decided not to participate in it.

On September 25, 2009, the County Office of Administration published its 2010 budget message for the County Commissioners. (Employer Ex. 19). It includes the following:

. . . In short, we are facing the most significant economic restructuring this generation has ever witnessed, and no one can forecast with certainty what the so-called "New Normal" will be.

. . . Statewide and locally, we have seen a decline in property values and projected property tax revenue. A mid-year budget reduction in 2009 of approximately \$1.2 million was adopted to eliminate a projected \$1.8 million deficit for this year. Based on five-year projections we are forecasting that in the year 2011, Kalamazoo County may need to make additional operational cuts of nearly \$2.0 million. The State government faces insolvency with an estimated structural deficit of nearly \$3 billion in 2010. At the time of crafting this communication and recommendation of the Kalamazoo County budget, we remain uncertain of how the State budget will be resolved. We face a potential reduction of nearly \$2.5 million dollars in state funds, which would have an

immediate impact on County government. Nearly 70% of our revenue comes from the State.

The County has submitted Exhibits 12, 13 and 14 comparing the wage increases for five comparable counties ² beginning in 2009. For the AFSCME General Unit the comparison shows:

| County | Contract | 2009 | 2010 | Mean |
|---------------------------------|--------------------|-------|-------|--------------|
| Kalamazoo | 1/15/09 – 1/14/12 | 2.00% | 0.00% | <u>1.00%</u> |
| Berrien | 1/1/07 – 12/31/09 | 0.00% | 0.00% | 0.00% |
| Calhoun | 1/1/09 – 12/31/11 | 1.50% | 1.50% | 1.50% |
| Jackson | 01/1/10 – 12/31/11 | 1.00% | 0.00% | 0.50% |
| Muskegon | 7/25/05 – 12/31/08 | 0.00% | 0.00% | 0.00% |
| Saginaw | 10/1/08 – 9/30/12 | 0.00% | 0.00% | 0.00% |
| Mean increase without Kalamazoo | | 0.50% | 0.30% | <u>0.40%</u> |

For the Juvenile Unit, the AFSCME members had a mean increase for 2009 and 2010 of 1% whereas the mean increase for the above comparables was 0.65% for these two years. For the Airport Unit, the AFSCME members had a mean increase for 2009 and 2010 of 1% whereas the two comparable county airports was 1.625%.

AFSCME has submitted an exhibit listing current hourly wage ranges and steps of 19 classifications using Jackson, Saginaw, Kent and Washtenaw Counties as comparables. According this exhibit, the County is the lowest in almost all instances.

² These are among the counties found comparable in the Act 312 Arbitration panel decision in *Kalamazoo County - and - Kalamazoo County Sheriff's Deputies Association*, MERC Case No. L-07-J4013 (Aug. 27, 2009). (Employer Ex. 27). Two counties proposed by AFSCME – Kent and Washtenaw – were not included in the above case but were included in a 1988 fact finding report, *Kalamazoo County Juvenile Home - and - AFSCME Local 1677* (Oct. 27, 1988). (Union Ex. B-8). For the Airport Unit, the parties have agreed to the two comparable airports.

Further, Kent and Washtenaw Counties easily being the highest payers. These two counties appear significantly wealthier than Kalamazoo County

RECOMMENDATIONS

I recommend that the County's position of no wage increase for 2010 be adopted.

I also recommend that during any bargaining pursuant to this Report the parties review whether any adjustments for individual classifications should be made.³

For the Airport bargaining unit I also recommend that a wage re-opener clause for 2011 and 2012 be adopted.

REASONS

Factors appropriate for consideration in fact finding include "[t]he lawful authority of the employer, . . . [t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs." A local unit of government's lawful authority is constrained by state law, which requires that it balance its budget

As with many local units of government in Michigan, the County's financial condition has been perilous in recent years. This is especially so today in light of recent state revenue sharing proposals, and ongoing declining real estate values.

³ Here, I am assuming that if the parties were to agree that one or more job classifications should receive a higher hourly wage it would not trigger additional wages for other County bargaining units including the UAW Circuit Court bargaining unit.

As I understand it, AFSCME's position is that (a) all classification steps would be increased as a reflection of the non-union employee steps, and (b) all employees would receive raises under the increased steps.

For the following reasons, I am not recommending this.

First (and foremost), it does not appear that the County could afford this at this time.

Second, AFSCME decided not to participate in the lengthy process which resulted in the revised wage scales for non-union employees. The record does not show that if it had participated in the process all its members would have benefitted. Nor does the record show how any particular AFSCME classification would have benefitted based on a comparison with the functions and duties of all County employees. (On this point, it may be added that AFSCME negotiated its members' classification rates, whereas the non-union employees had not negotiated their classification rates.)

Third, other non-uniformed County bargaining units have agreed to a wage freeze for 2010 and there is a history of uniform hourly wage increases (or freezes) by agreement with the County. This is an Act 312 factor "normally or traditionally taken in consideration in the determination of wages."

Fourth, under wage re-openers and "me too" language in other County CBAs, if the County were to agree to AFSCME's proposal it undoubtedly would be faced with the same issue with its other bargaining units. In other words, a financial cascade could result.

With respect to external comparable counties, even using the County's comparables only, several AFSCME classifications have somewhat lower negotiated hourly wage rates. However, the overall compensation of these comparables has not been argued. Nor does the record indicate the underlying myriad decisions (including overall compensation trade-offs) that went into negotiating these hourly rates.⁴ In addition, the issue AFSCME submitted to fact finding in its MERC petitions was expressly based on the new step schedule for the County's non-union employees.

No one wants a wage freeze because of the effect of inflation, *i.e.*, money loses its value. An Act 312 factor (quoted above) is "cost of living." The Consumer Price Index ("CPI") published by the federal Bureau of Labor Statistics shows that in recent years the CPI's increases have been somewhat low and in 2009 actually declined. The CPI annual increase for 2010 was only 1.6%. Viewed in this light, a 2% wage increase for these two years has slightly outpaced changes in the CPI.

As to my recommendation regarding adjustments for individual classifications, at page 14 of its brief the County has written that "[t]here is some record of the County being willing to make individual job adjustments . . . following open negotiations."



Thomas L. Gravelle,
Fact Finder

⁴ In seeking to make sense of external comparable counties, because there are many different job classifications with variables in job duties in the present case, a comparative analysis is extremely difficult.