

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

ANN ARBOR DISTRICT LIBRARY

- and -

MERC CASE NO. L10 D-1002

AA DISTRICT LIBRARY STAFF ASSOCIATES

ANN ARBOR DISTRICT LIBRARY

- and --

MERC CASE NO. L10 D-1003

AA DISTRICT LIBRARY LIBRARIAN ASSOCIATION

RECEIVED
2011 JUN 23 AM 11:05
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

Report

Thomas L. Gravelle, Fact Finder

June 20, 2011

FINDINGS, RECOMMENDATIONS AND REASONS

On November 2, 2010, the Ann Arbor District Library (“the Library” or “the Employer”) filed petitions for fact finding for its two bargaining units referred to above (“the Union”) after negotiations and mediation had failed to result in agreement on all disputed issues.

I conducted a pre-hearing conference on February 25, 2011 at 10 A.M. The parties agreed that there are three unresolved issues:

- Health insurance: Both units.
- Duration: Both units.
- Rotation: Associates unit.

On April 15, 2011, the fact finding hearing was held at the Ann Arbor Public Library.

The Employer is represented by attorney James P. Greene. Health benefits consultant Thomas Huntzicker, compensation consultant Edmund Ura and Library CFO Kenneth Nieman testified at the hearing in behalf of the Employer. The Union is represented by Uniserv Director Donnie Reeves. Union representatives Glen Modell and Graham Lewis testified at the hearing in behalf of the Union.

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

The major disputed issue is health insurance.

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.
 - (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 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.

Although non-binding, the above factors relevant to a disputed issue in fact finding may be helpful.

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.

FINDINGS

In 1995 the Library was established by the Ann Arbor Public Schools and the City of Ann Arbor. The Union has represented the two bargaining units since that time.

- *The Librarian Association Unit* – This bargaining unit is composed of 15 “regular full-time and regular part-time librarians . . . who are regularly assigned to work an average of twelve (12) hours or more per week for a period in excess of three (3) consecutive months.” Librarians’ CBA Article II, Recognition.

● *The Library Staff Associates Unit* – This bargaining unit is composed of 29 “regular full-time and regular part-time clerical and secretarial employees . . . who are regularly assigned to work more than nineteen (19) hours or more per week.” Staff Associates’ CBA Article II, Recognition.

In addition, the Library employs 59 non-bargaining unit employees.

Over the years, the parties in the present case have had four pairs of collective bargaining agreements (“CBAs”). The most recent CBAs were for the period June 1, 2008 to June 30, 2010.

Because of the passage of time without new CBAs, the period in dispute begins on July 1, 2011.

*

An important factor in the parties’ bargaining history has been parity with the Library’s non-union employees. For example, Article XVI of the Librarians’ CBA states:

A. Base Salaries. Except as otherwise provided in this Agreement, the base salaries of new hires, and changes in base salaries of current librarians, shall be as provided for in the Employer’s compensation program governing non-bargaining unit employees.

B. Merit Plan. Librarians shall be entitled to participate in the Employer’s merit plan, subject to the provisions hereinafter provided and such other terms, conditions, and limitations as the Employer may, from time to time and in its sole and exclusive discretion, establish for participation in said plan . . .

Article XVII of the Associates’ CBA states:

A. Base Salaries. Except as otherwise provided in this Agreement, the base salaries of new hires, and changes in base salaries of current employees, shall be as provided for in the Employer’s compensation program governing non-bargaining unit employees.

B. Compensation Adjustments.

1. Effective July 1, 2002, and each July 1st thereafter throughout the term of this Agreement, the Staff Associate salary schedule will be adjusted to coincide with the salary schedule for non-bargaining unit employees.

2. In addition, Staff Associates shall be entitled to participate in the Employer's merit plan, subject to the provisions hereinafter provided and such other terms, conditions, and limitations as the Employer may, from time to time and in its sole and exclusive discretion, establish for participation in said plan.

At pages 5 and 7 of its brief, the Employer explains its health insurance proposal as follows:

The Library has proposed three health plans for the Staff Associates and Librarians:

1. Priority Health – Health by Choice 2 HMO plan with Prescription Drug Rider \$10.00 generic and \$40.00 brand co-pays, with contraceptives.
2. Blue Care Network (BCN) Healthy Blue Living 2 HMO Plan with Prescription Drug Riders \$5.00 generic and \$30.00 brand co-pays (Enhanced) and \$10.00 generic and \$40.00 brand co-pays (Standard), with contraceptives.
3. Blue Cross-Blue Shield Community Blue PPO3 Plan with Prescription Drug Rider \$10.00 generic and \$40.00 brand co-pays, with contraceptives.¹

These plans are identical to the plans adopted for the Library's larger non-bargained for work force effective October 1, 2010.

...

Following the hearing, the Library's administration and its broker redesigned the plan to keep its cost more affordable. This revised plan, the Blue Cross-Blue Shield Community Blue PPO Plan 3A w/C1, PCDE, OV30, PD-CM, and Preferred RZ-TTC with \$10 Generic/\$40 Formulary Brand/\$80 Nonformulary Brand RXCM (Open Formulary) riders, has since been made available to the Library's non-bargained for employees. A description of the

¹ The parties agree that this plan has become prohibitively expensive and has been modified to make it more affordable.

revised plan and its costs was also provided to the Librarians and Staff Associates for their consideration. (See Attachment A).

In their proposal of May 6, 2011, the Librarians and Staff Associates request that they be provided access to the newly revised Blue Cross–Blue Shield PPO plan that is being provided to the library’s non-bargained for employees. However, they want this coverage at lower employee premium contributions levels.

For the above plans, the Employer has proposed cost sharing as follows:

The specific annual contribution that the Ann Arbor District Library propose it pay through June 30, 2011, is as follows:

Single	\$ 4,700.00
Two Person:	\$10,700.00
Family:	\$12,200.00

The Library’s contribution for eligible Part-Time staff members will be 50% of the contribution for Full-time staff members.

Effective July 1, 2011, the Ann Arbor District Library’s contribution will be the greater of the referenced annual contributions or 80% of the premium of the lowest cost plan for the level of coverage selected, e.g., Single Two Person, Family.

The Union’s May 6, 2011 insurance proposal includes the revised PPO and a BCN 5 HMO plan. The Union’s Librarians’ proposal states in pertinent part:

Section A, paragraph 1.1.

- 1.1 Effective July 1, 2011, the Employer agrees to provide each regular librarian who has a standard work schedule of thirty (30) to forty (40) hours per week his/her choice of coverage under either:
 - a. A Blue Cross/Blue Shield of Michigan Community Blue PPO – Plan 3A w/CL, PCD, OV30 and Preferred Rx – TTC \$10/\$40/\$80 – RXCM (Open Formulary. (See Benefits-at-a-Glance at Appendix C).
 - b. A Blue Care Network BCN 5 HMO Plan, OV30, ER100, UR50, and Blue Care Network \$10.00 generic/\$40.00 brand name copay prescription drug rider with contraceptives (See Benefits-at-a-Glance at Appendix C).

Coverage under the above plans is subject to the terms, conditions, exclusions, limitations, deductibles, co-payments and other provisions of such plans.

Coverage shall commence on the first day of the month following the librarian's 30th day of continuous employment. Regardless of the plan selected by the librarian, the Employer shall pay 85% of the lowest cost plan offered to the Librarians by the employer, excluding, where applicable, 50% of the cost of the family continuation rider. The librarian shall pay, through payroll deduction, the balance of the premium cost of such coverage including, where applicable, 50% of the cost of the family continuation rider.

The Union's Associates' proposal is the same.

Additional findings are as follows:

- The Employer has managed its finances well and is not experiencing an inability to pay.

- A salary study prepared by compensation consultant Edmund Ura shows that librarians and staff associates are paid salaries typically above salaries paid to outside "comparable" employees. For example, a comparison of the salaries of Ann Arbor librarians (2008) with the salaries of the Detroit Suburban Librarians Roundtable (2011) ("DSLRL") shows:

	Minimum	Midpoint	Maximum
DSLRL	\$39,111	\$46,685	\$54,605
Ann Arbor	\$48,747	\$54,163	\$59,579

The Library's associates enjoy similar salary spreads.

- A survey prepared by health benefits consultant Thomas Huntzicker shows that librarians and staff associates would receive better benefits and pay lower contributions for the Employer's proposed HMOs than employees (a) in the Midwest, (b) in

Government employment, and (c) working for employers having between 10 and 499 employees. Further, under the revised PPO plan the employees' cost sharing would be higher than under an HMO plan; but still similar to outside comparables (and the same as for the Library's non-union employees).

RECOMMENDATIONS

I recommend:

A. For the period beginning July 1, 2011, the Employer's percentage factor of the premium of the lowest cost plan be 80%.

B. The Union's proposed health plans (plus, if the Union wishes, a third plan from the Employer's proposal) be adopted.

C. The new CBA have an expiration date of June 30, 2013.

D. On the rotation issue, the Union's position be adopted that "[t]he Staff associates will accept the Diane Dahlem memo date August 8, 2010 with the understanding that the Employer will notify the staff Associates leadership prior to any changes or the elimination of the August 8, 2010 memo."

REASONS

On the issue of health insurance, the key difference between the parties is whether the Employer's liability should be "80% of the premium of the lowest cost plan" (as proposed by the Employer) or "85% of the lowest cost plan" (as proposed by the Union). I say this because the Employer has written:

“[T]he Fact Finder may wish to consider a recommendation that, for the duration of their collective bargaining agreements, the Librarians and Staff Associates be given the health care coverage options they have proposed in their e-mail of May 6, 2011, subject to their agreement that the Library’s contribution to such coverage be limited to that which it contributes toward non-bargained for employee health care.

In deciding this issue, factors appropriate for consideration include those set forth in Section 9(c), (d), (f) and (h) quoted at pages 3 and 4 above.

The Union’s position is based on the (c) factor of “ability to pay:”

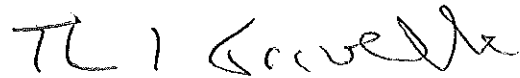
It cannot be contested; that the Employer has the ability to pay. In fact, the Employer stated at the hearing that the ability pay is not an issue (Association Exhibit 59.) Therefore, it comes down to the best health care plan for the parties. The components of the plans are of great concern for the Association, along with cost, because the Associations and the Employer are sharing the costs.

The Employer’s position is based on factors (d), (f) and (h), and primarily on comparability with its non-union employees. This is a factor (h) “normally or traditionally taken in consideration” in determining compensation issues. As cited above, this factor finds linguistic support in the parties’ CBAs and in the history of the Employer’s non-union and Union employees being treated equally. The Employer also relies on the employees’ “overall compensation” (h) which includes “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.” In addition, the Employer relies on evidence of compensation in the public and private sectors (d).

All health plans proposed by the parties are very good. The Employer has agreed that it would be appropriate for the fact finder to recommend the Union's plans (subject to the Employer's proposed 80% cap). I agree, – and would add that the Union might wish to add a third plan from among the Employer's proposed plans to give its members more choice. Based primarily on internal comparability, the 80% cap is reasonable. This recommendation is also supported by the Union members' overall compensation, and favorable salary and health care comparisons with outside employees.

I have recommended an expiration date of June 30, 2013 for the new CBA, *i.e.*, three years after the expiration of the 2008-2010 CBA. I believe the Union has proposed this expiration date; and the Employer has agreed to it (subject to the 80% cap). Further, this is a reasonable period for the new CBA.

The rotation issue has been resolved by the parties to their satisfaction.



Thomas L. Gravelle,
Fact Finder