

MICHIGAN EMPLOYMENT RELATIONS COMMISSION**LAPEER COUNTY**

MERC Fact Finding Case No. D09 D-0573

-and-

TEAMSTERS LOCAL 214

Kathleen R. Opperwall, MERC Fact Finder

FACT FINDING REPORT AND RECOMMENDATIONS

A fact finding hearing was held on May 30, 2012, in Lapeer, Michigan, under the provisions of Michigan's Labor Relations and Mediation Act (MCLA 423.25). Lapeer County (hereafter the Employer or the County) was represented by attorney Howard L. Shifman. Teamsters Local 214 (hereafter the Union) was represented by its president, Joseph Valenti. The purpose of the fact finding procedure is to provide factual findings and non-binding recommendations to assist the parties in reaching agreement on a new contract.

The bargaining unit is commonly referred to as the Teamsters General Unit. The County has a nine other bargaining units, plus one non-union group. The other bargaining units generally cover employees of a particular department, such as the Health Department, Community Mental Health, District Court, Friend of the Court, or Sheriff's Department. The Teamsters General Unit, in contrast, covers employees who work in a variety of different departments. This includes the departments which are overseen by the following five elected officials: County Clerk, Drain Commissioner, Prosecuting Attorney, County Treasurer, and Register of Deeds. There is a wide range of job positions in the bargaining unit, such as, clerk/typists, secretaries, account clerks, court clerks, maintenance workers, animal control officers, property appraisers, and a variety of coordinators, technicians, and specialists.

The parties' previous contract was a four-year contract which covered the period from January 1, 2007 through December 31, 2010. The parties were able to reach tentative agreements on some contract changes for a new contract. However, they were not able to reach agreement on all issues. The Union filed a fact finding petition on December 5, 2011.

The fact finding hearing was held on May 30, 2012. The parties filed their post-hearing summaries/briefs on August 29, 2012.

Findings of Fact

The County relies heavily on property taxes to fund its general operations. During the last five years, the County Equalized Value (CEV) of property in Lapeer County has fallen substantially, from a peak of \$4.3 billion in 2007, to \$2.9 billion in 2012. Taxable value has also fallen significantly, although somewhat less dramatically, from a high of just under \$3.2 billion in 2008, to \$2.6 billion in 2012. It is the taxable value which is used for calculating the actual property taxes. The County's operating millage rate has remained constant through this period, at 3.7886%. The result is that the County's tax revenues have decreased substantially. The County's projected budgets for the next few years show the decline in tax revenues as continuing, although at a slower pace. Some of the County's departments, most notably Community Mental Health, receive significant revenue from other sources besides property taxes. Nonetheless, the overall impact is that the County is projecting annual operating deficits of more than \$2 million per year over the next few years (Employer Exhibit 8).

The County has substantially reduced its employee count over the last ten years, mostly through attrition. In 2002 the County had 446 FTE (full time equivalent) employees,

of whom 46 were in the Teamsters General Unit. The County currently has a total of 371 FTE employees, of which 36 are in this bargaining unit (Employer Exhibit 8).

The other bargaining units have all settled their contracts with the County. They all agreed to 0% wage increases over the periods of their most recent contracts. This includes the following bargaining units:

- Community Mental Health - Teamsters Local 214 (2010 & 2011)
- District Court - Teamsters Local 214 (2010 & 2011)
- Friend of the Court - Teamsters Local 214 (2010 & 2011)
- Health Department - AFSCME (2010, 2011, 2012, & 2013)
- Sheriff's Dept., Corrections Sergeants - POLC (2010, 2011 & 2012)
- Sheriff's Dept., Deputies Unit - POAM (2010, 2011 & 2012)
- Sheriff's Dept., Corrections Officers and Deputy Clerks - POAM (2010, 2011 & 2012)
- 911 Dispatchers - POAM (2010, 2011 & 2012)
- 911 Supervisors - MAPE (2010, 2011, 2012, 2013)

The other bargaining units also all agreed to the County's change in its health plan, and to a new holiday schedule.

This Teamsters General Unit has been asking for a wage increase: a total of 4% over the three year life of the contract, with 2% upon ratification, and the other 2% effective January 1, 2013. The County has proposed a 0% wage increase over the three year life of the contract, namely calendar years 2011, 2012, and 2013.

The County has not been asking for economic concessions - either in wages or in employee contributions for benefits. Bargaining unit members are not required to contribute toward their retirement; and, employees who choose Option 1 of the health plan options do not pay any portion of the health insurance premiums.

The main reason the contract has not settled has been non-economic issues. The County has sought greater flexibility in hiring, laying off, and transferring employees. The

Union has strongly resisted these changes, based on its concern for protecting the job security of its members. The specifics will be addressed later in this report.

Recommendations

Wages. It is my recommendation that this bargaining unit agree to the 0% wage increases which have been agreed to by the other bargaining units and by the non-represented group.

Reasoning: The County is still experiencing declining property tax revenues, and that is likely to continue through the end of this three-year contract, i.e. through the end of 2013. It is very significant that the other bargaining units have agreed to 0%. These “internal comparables” should be given great weight. The contract years do not exactly match for all the bargaining units. However, all of them cover 2011, most of them cover 2012, and some of them cover 2013. It would be disruptive of orderly labor relations to give this bargaining unit wage increases after all the other units have agreed to no increases. It should also be considered that the County is continuing to cover the full cost of the two most expensive employee benefits - health insurance and retirement. This is at a time when many employees in the private and public sectors are being required to contribute significantly toward their health insurance and retirement benefits. A 0% increase without concessions is not a bad economic package under current economic conditions.

Hours of Work/Reduced Work Week. The Employer proposed adding a new provision to Article XII, which would give it broad authority to modify work schedules “in its sole discretion,” and to reduce the work week “in lieu of layoffs or other economic conditions at its discretion.” The Union strongly opposed these changes. There was no evidence that other bargaining units had been asked to agree to this type of language.

It is my recommendation that the parties adopt a furlough provision similar to that included in the Friend of the Court/ Teamsters contract, instead of the County's reduced work week proposal. That would allow the County to implement up to 8 unpaid furlough days if that became necessary. It would provide the County with additional flexibility in the event of further economic deterioration, while being more consistent with what has been done with other bargaining units.

Hospitalization/Medical Insurance. The only remaining dispute between the parties on the hospitalization/medical insurance issue is that the Union wants a "me too" clause, so that if benefits are changed for any other bargaining unit, those changes would also be applied to this bargaining unit. It is my recommendation that the Union drop this proposal for a "me too" clause.

Reasoning: It is complicated enough to be dealing with ten represented bargaining units without having "me too" clauses in the contracts. Also, a "me too" could become detrimental to the bargaining unit if it were applied during a time when benefits were being decreased.

Domestic Relations Secretary Position. This position is in the Prosecutor's Office, but has historically been included in the Friend of the Court/Teamsters bargaining unit rather than this General Unit. The parties indicated that the Friend of the Court bargaining unit did not object to moving this position over to this bargaining unit. It is my recommendation that this position be moved into this bargaining unit, as proposed by the Employer. The Recognition Clause in Article II of the existing contract indicates that employees of the Prosecutor's Office are generally included in this bargaining unit.

Article II, Section 4. The Employer proposed adding new language to Article II, Section 4, which would include a statement that the rights of all Elected Officials and Co-Employers “will supersede any provision in the contract to the contrary.” The parties’ contract already contains a provision at Article VII, Section 1, which provides that: “nothing in this Agreement can restrict, interfere with or abridge any rights, powers, authority, duties or responsibilities conferred upon or vested in the County, or any of its elected or appointed officials, by the laws and constitution of the State of Michigan or of the United States of America.”

It is my recommendation that the proposed new language not be adopted. It is not clear what the impact of the proposed additional language would be. It might lead to additional disputes. There was no evidence that the current language in Article VII was inadequate.

Article VII – Management Rights – Subcontracting. The Employer proposed new language which would allow it to subcontract bargaining unit work “at its sole discretion.” Article VII, Section 2, of the current contract allows the Employer to subcontract bargaining unit work “as long as it does not result in the layoff of bargaining unit members.” The evidence indicated that none of the other bargaining units had been asked to agree to the Employer having complete discretion to subcontract bargaining unit work.

It is my recommendation that the Employer not pursue this proposed change. The Employer already has some discretion for subcontracting. It is highly unlikely that the bargaining unit members would agree to subcontracting language which gives the Employer complete discretion. In my experience, such language would be very unusual in a collective

bargaining agreement. Also, the fact that none of the other units have been asked to agree to such language needs to be given great weight.

Layoff and Recall – Article XI. Article XI, Section 1.d. currently includes a provision which permits laid-off employees to exercise bargaining unit seniority to bump into another job position (of equal or lower pay rate), provided the Employer determines that the employee is capable of performing the work. The Employer has proposed limiting bumping to the employee's own department. The Union opposes this change.

Employees of this bargaining unit work in some thirteen different departments of County government. This includes five departments which are headed by the following elected officials: County Clerk, Drain Commissioner, Prosecuting Attorney, County Treasurer, and Register of Deeds.

Many of the job classifications have only one employee. For example, pay grade 4 includes one clerk/typist in the prosecuting attorney's office, one clerk/typist in the drain commissioner's office, one secretary in the county clerk's office, one administrative secretary in veterans affairs, one clerk typist in community development, one deputy county clerk, and two secretaries in the MSU extension service. There could be a considerable learning curve if an employee from a different department bumped into one of these positions. The elected officials in particular have expressed concern that the functions of their departments could be jeopardized by mandatory bumping.

It is my recommendation that the County be given some additional flexibility on this issue, by limiting bumping to positions in the employee's own department and positions which the employee has previously held.

Reasoning: this bargaining unit contains an unusually large and diverse number of job classifications, and there is only one employee in most of the job classifications. This means the departments do not have the extra “cushion” of other employees performing the same job duties to keep the department functioning well while the “bumping” employee gets up to speed with the new department and the new job duties.

Job Posting and Bidding – Article XLV. The Employer proposed amending Article XLV, entitled Vacancies, to basically allow it to fill vacancies in its discretion, without giving any preference to current employees. The Union opposed this. The current contract gives first consideration to employees within the same department. It also gives preference to current employees who apply for a vacancy, and only allows the County to hire from outside if there are no qualified applicants among current employees.

Recommendation: Retain the preference given to employees within the same department. If there is no qualified applicant within the department, allow the County to hire from the outside if the outside candidate is more qualified than any of the other employees who have bid for the position. However, do not eliminate the employee’s right to grieve over whether the outside candidate is more qualified.

Reasoning: As discussed above, there are many different job positions in the bargaining unit. Working in one position in one department does not necessarily provide skills which readily transfer to a different position in a different department. It is possible to strike a balance which gives some recognition to the interests of both sides. Granting preference for vacancies within a department gives employees an avenue for promotion, and should be positive for retention and morale. If there is no qualified applicant from within the department, the Employer should have the option of hiring the most qualified applicant.

Grievance Procedures – Article IX. The Employer proposed amending the grievance procedure to specify that the following issues could not be grieved: (A) the termination of a probationary employee; (B) any matter which the contract states is in the discretion of the Employer; and, (C) any decision by an elected official or co-employer concerning filling of vacancies, promotions, hiring, bumping or layoff. The contract defines “employees” as permanent full-time seniority employees “who have completed their probationary period...”

Recommendation: Accept the Employer’s proposal on (A), and specify that the termination of probationary employees is not subject to the grievance procedure. Do not amend the contract to include items (B) and (C).

Reasoning: Item (A) is reasonable in view of the purpose of the probationary period. For items (B) and (C), while dealing with grievances can be time consuming, the grievance procedure does provide a method for resolving contract disputes. The contract between the parties is a legally binding document. Normally, parties who have a contract dispute can resolve it by way of a court action. The grievance procedure is an alternative which provides a quicker and simpler process than court litigation. The purpose of the contract, as stated in Article I, Section 1, is to promote orderly and peaceful labor relations for the mutual benefit of the County and the employees. Making significant portions of the contract off-limits for grievances would not, in my opinion, promote that fundamental purpose.

Part Time Employees. The Employer proposed adding a new provision to Article XLV to specifically state that it can fill positions with part time employees. It is my recommendation that the Employer withdraw that proposal. This is similar to the Hours of Work/Reduced Work Week issue already discussed, above.

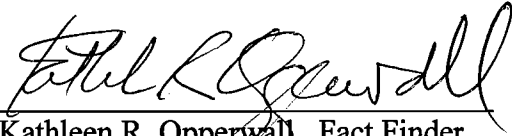
Soil Erosion & Sedimentation Control. The Employer proposed language which would allow it to determine who will perform this work, and to utilize other county or agency employees, or to contract with another agency. The evidence showed that the County has been repeatedly cited by the Michigan Department of Environmental Quality (DEQ) because the County's soil erosion and sedimentation control program has not been meeting the DEQ's minimum standards (Employer Exhibit 9). The Employer is not proposing removing the Soil Erosion and Sedimentation Control Supervisor position from this bargaining unit. Instead, the Employer wants the flexibility to be able, for example, to assign sanitations who are in the health department's bargaining unit (represented by AFSCME) to perform some of the soil erosion and sedimentation control duties.

It is my recommendation that the Union agree to this. It is not altogether clear to me that this is the fundamental problem with this program. It is clear that the DEQ is insisting that the program be improved. Considering how long this has been going on, I think it is reasonable to give the County the additional flexibility it is requesting.

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In conclusion, the Employer made a strong case that this bargaining unit should not expect a better financial package than what was received by the County's other bargaining units. By the same token, the County should not expect this bargaining unit to make drastic non-economic concessions which go well beyond what was asked of other units. This fact finding report assumes that the parties will also adopt the other changes which they previously reached agreement on, including those issues which the parties indicated at the fact finding hearing had been essentially resolved.

Dated: September 28, 2012


Kathleen R. Opperwall, Fact Finder