

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION**

**KALKASKA COUNTY
ROAD COMMISSION**

MERC Case No. L12 D-0521

-and-

**UNITED STEELWORKERS
LOCAL 8287**

FACT FINDER'S REPORT

The collective bargaining agreement between the parties expired on May 31, 2012. The parties attempted mediation with limited success. Both the Employer and the Union then filed petitions for Fact Finding. The undersigned was appointed Fact Finder by the Michigan Employment Relations Commission on August 22, 2012. Hearings were held at the Kalkaska County Road Commission on November 2 and December 5, 2012. The Union was represented by Tonya DeVore, Staff Representative, United Steelworkers District 2. The Employer was represented by Peter A. Cohl of Cohl, Stoker & Toskey, PC. Post-hearing briefs were submitted and the record closed on January 17, 2013.

The issues before the Fact Finder are:

1. Election of Remedies
2. Super Seniority/ Lay Off by Classification
3. Use of Temporary Employees
4. Work Schedules
5. Pension (Article XI Section 7)
6. Holiday Pay
7. Vacation
8. Sub-Contracting
9. Duration (Article XVII)
10. Wages (Article XI & Appendix A)
11. Health Insurance (Article XI Section 8)

1. Election of Remedies

Employer's Proposal

The Employer proposes to add the following language to Article III – Grievance Procedure:

Section 7. When remedies are available for any complaint and/or grievance of an employee through any administrative or statutory scheme or procedure, in addition to the grievance procedure provided under this contract, and the employee elects to utilize the statutory or administrative remedy, the Union and the affected employee shall not process the complaint through any grievance procedure provided for in this contract. If an employee elects to utilize the grievance procedure provided for in this contract and subsequently, elects to utilize the statutory or administrative remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited.

Union's Proposal

Retain current contract language.

Fact Finder's Recommendation and Reasoning

There is no evidence in the record to support this change. I recommend the Union's proposal.

2. Super Seniority/ Lay Off by Classification

Employer's Proposal

The Employer proposes to modify Article VI - Seniority to eliminate super seniority and to have layoffs by the classifications of mechanics, truck drivers and heavy equipment operators.

Union's Proposal

The Union agreed to eliminate super seniority. It is opposed to layoff by classification.

Fact Finder's Recommendation and Reasoning

The Employer is concerned that a layoff by strict seniority could leave it, for example, with a workforce consisting entirely of truck drivers and no mechanics. I do not believe that is a

realistic fear. The CBA does not provide for layoff by strict seniority. It says layoffs will be by seniority “providing there are employees with seniority who are available and have the then present ability, skills and other attributes to satisfactorily perform the required work.” I find that language provides the Employer with sufficient protection and recommend the Union’s proposal.

3. Use of Temporary Employees:

Employer’s Proposal

The Employer proposes to ~~strike~~ the following language from Article VI Section 2(b):

- (b) The Employer shall be allowed to use temporary and/or seasonal employees without restriction so long as it does not layoff employees and then use temporary or seasonal employees. ~~The maximum number of temporary and/or seasonal employees to be used at the same time shall not exceed 20% of the bargaining unit.~~ Temporary employees shall not be covered by the Agreement.

Union’s Proposal

The Union agreed to modify the Agreement to permit the Employer to use a number of temporary employees equal to 20% of the bargaining unit or four temporary employees, whichever is greater.

Fact Finder’s Recommendation and Reasoning

Protection of bargaining unit work for bargaining unit members is central to the role of trade unions. If the Union agrees to allow unlimited temporary employees to do bargaining unit work, it is difficult to see what would remain of the collective bargaining relationship. I recommend the Union’s proposal.

4. Work Schedules:

Employer’s Proposal

The Employer proposes to add the following language to Article X - Hours of Work, Section 1:

Notwithstanding any contrary provision, the Employer may require employees to work any hours, change the start and quit time, when there are weather problems, emergencies,

staff shortages, or when needed for the completion of projects. Such decision of the Employer shall not be grievable.

Union's Proposal

Retain current contract language.

Fact Finder's Recommendation and Reasoning

None of the comparable road commissions have a completely free hand in determining work schedules. There is no evidence in this record that Kaskaska County shouldn't be able to do as well as they do with the language currently in place. I recommend the Union's proposal.

5. Pension (Article XI Section 7)

Employer's Proposal

The Employer proposes to add the following language to Article XI Section 7:

In addition commencing January 1, 2013, employees will pay an additional 10% towards their retirement costs. The additional 10% shall be used to reduce the unfunded liability of the retirement cost of the bargaining unit. [Total of 13% paid by employees.]

Union's Proposal

Retain current contract language.

Fact Finder's Recommendation and Reasoning

Something has to be done about the unfunded liability in this pension plan. Unfortunately, there are a limited number of places to look. I recommend adoption of the Employer's proposal.

6. Holiday Pay

Employer's Proposal

Quoting from the Employer's brief:

Article XII – Holidays. Employees who work 10 hour days will be limited to receiving 8 hours of holiday pay.

This change would not pay an employee more than 8 hours for holiday pay. For example, if an employee is off work on a holiday and the Employer decides to go to a 10 hour shift during certain months of the year, the employee's holiday pay would be limited to 8 hours of pay and not 10 hours for holiday pay.

Union's Proposal

The Union opposes the change.

Fact Finder's Recommendation and Reasoning

The Employer's argument for this change is that it would save money. That is certainly true. It would save even more money if the Employer paid for four hours, or two hours. I do not find that argument persuasive. If a holiday falls on a ten-hour work day, employees should be paid for ten hours.

7. Vacation

Employer's Proposal

Revise Article XII Section 1 to add and ~~strike~~ the following language:

(d) Employees who, as of the anniversary date of their employment, have completed seven (7) but less than ten (10) years of continuous service since their last hiring date shall be entitled to ~~fifteen (15) days of vacation and their vacation pay shall equal eight (8) hours of pay for each day of vacation at their straight time hourly rate~~ one hundred twenty (120) hours of vacation time. Employees will receive eighty (80) hours of paid vacation time, but is allowed vacation time up to one hundred twenty (120) hours of which forty (40) will be unpaid.

(e) Employees who, as of the anniversary date of their employment, have completed ten (10) or more years of continuous service since their last hiring date shall be entitled to ~~twenty (20) days of vacation and their vacation pay shall equal eight (8) hours pay for each day of vacation at their regular straight time hourly rate.~~ one hundred sixty (160) hours of vacation time. Employee will receive eighty (80) hours of paid vacation time.

but is allowed vacation time up to one hundred sixty (160) hours, of which eighty (80) hours will be unpaid.

Union's Proposal

Retain existing contract language.

Fact Finder's Recommendation and Reasoning

I find no support on this record to eliminate a long-standing, negotiated benefit. Employees are entitled to be paid for the vacation they have earned. I recommend the Union's proposal.

8. Sub-Contracting

Employer's Proposal

Modify Article XV, Section 4 to add and ~~strike~~ the following language:

The Employer will not subcontract work normally performed by the bargaining unit employees if and when, in its judgment, it has the available manpower, proper equipment, capacity and ability to perform such work within the required amount of time, during emergencies or when such work can be performed by bargaining unit employees on an efficient and economical basis. Notwithstanding any other contrary provision in this contract, the Employer reserves the right to subcontract at any time bargaining unit work; to purchase any or all work processes or services when, in the sole determination of the Employer, it does not have the facilities or equipment, or the available personnel, or when it is deemed more economical to have the work performed by others. Prior to subcontracting bargaining unit work, the Employer shall provide thirty (30) calendar days notice to the Union if an employee is to be laid off. Upon request, the Employer or its designated representative shall meet with Union officials to discuss the proposed subcontracting within the above thirty (30) day period. However, the decision to subcontract is not grievable and shall be within the Employer's sole discretion. In the event that the employee(s) scheduled to be laid off due to subcontracting does not find other employment by the third week after being laid off, then under such circumstances, the Employer shall provide two (2) weeks severance pay to that employee(s).

Union's Proposal

Retain existing language.

Fact Finder's Recommendation and Reasoning

I recommend the Union's proposal for two reasons. I find the Employer has sufficient flexibility under the existing language, and adopting the Employer's proposal would undermine the central purpose of collective bargaining.

9. Duration (Article XVII)

Employer's Proposal

One year.

Union's Proposal

Three years.

Fact Finder's Recommendation and Reasoning

I recommend two years.

10. Wages (Article XI & Appendix A)

Fact Finder's Recommendation

I recommend zero increases in each of the two years of the contract.

11. Health Insurance (Article XI Section 8)

Employer's Proposal

A. As soon as practicable on or after January 1, 2013, the primary health insurance to be offered by the Employer will be the PPO12A plan.

Single contribution: \$0
Couple contribution: \$78.36
Family Contribution: \$0
RX: 7/35/70
Annual deductible: 1000/2000

Annual Out of Pocket Maximum: 3500/7000
Copay: 30 doctor's visit and urgent care/150 (waived if admitted)
No reimbursements

Employees will pay anything over the PA 152 cap by payroll deduction.

Employees may buy up to the revised PPO4 plan, by paying the cost above the cap by payroll deduction.

Single contributions: \$0.00
Couple Contribution: \$114.82
Family Contribution: \$39.36
RX: 7/35/70
Annual deductible: 500/1000
Annual Out of Pocket Maximum: 2000/4000
Copay: \$10 doctor's visit and Urgent care/50.00 (waived if admitted)
No reimbursements

B. Employees hired on or after January 1, 2011, shall only receive single subscriber health insurance until they have completed 120 days of active service. If such employee(s) wants to add family members prior to completing 120 days of active service, the employee must pay for that coverage via payroll deduction. This change will commence after execution of this Letter of Understanding and will not be retroactive.

Union's Proposal

Increase the insurance opt out payment from \$275 to \$450.

Fact Finder's Recommendation and Reasoning

I recommend both the Employer's proposal and the Union's proposed increase in the opt out payment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Goldman', written over a horizontal line.

Barry Goldman
January 25, 2013