**STATE OF MICHIGAN**
**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**



**GENESEE COUNTY and 7th JUDICIAL CIRCUIT COURT,**
Employer,

-and-

**TEAMSTERS LOCAL 214,**
Union.
_________________________________/

MERC Case No. L13 J-0946
(Friend of the Court Supervisors)

Kathleen R. Opperwall
MERC Fact Finder

## FACT FINDING REPORT AND RECOMMENDATIONS

A fact finding hearing was held on January 22 and 23, 2015, under the provisions of Michigan's Labor Relations and Mediation Act (MCLA 423.25). Genesee County and the 7th Judicial Circuit Court (hereafter the Employer or the County) were represented by attorney Richard W. Fanning, Jr. of the law firm Keller Thoma. Teamsters Local 214 (hereafter the Union) was represented by Teamsters business agent Mark T. Gaffney. The record was closed on March 5, 2015, after receipt of the parties' post-hearing briefs.

The purpose of the fact finding is to provide factual findings and non-binding recommendations to assist the parties in reaching an agreement on a new contract. The parties' previous collective bargaining agreement was a three-year contract covering the time period from January 1, 2011 through December 31, 2013.

The bargaining unit includes the supervisors who work at the Genesee County Friend of the Court ("FOC"). The bargaining unit currently includes seven employees in the following job positions: five FOC Casework Supervisors, one FOC Accounting Supervisor, and one FOC Administrative Assistant. The pay rates for the bargaining unit positions range from $22.89 per hour for the lowest step of the Accounting Supervisor pay schedule, to $38.24 per hour for the top step of the Administrative Assistant and Financial Assistant pay schedules. The last pay increase on the salary schedule occurred on April 1, 2010, when salaries were increased by 2.5%. However, under the parties' 2011-2013 contract, salary and benefit concessions were made which more than exceeded this amount. The concessions included 7 unpaid furlough days, which are still in effect. This bargaining unit was not unique in making significant concessions.

Four of the bargaining unit members are already at the top of the "steps" of the salary schedules for their positions. The Union's main proposal was to add two more steps to the salary schedule for all positions. The Union argued that this bargaining unit is separate and different from the bulk of Genesee County employees. The Union emphasized in particular that about two-thirds of the Friend of the Court funding comes from state and federal sources rather than from local property taxes.

The Employer's proposal was to maintain the status quo in most respects, with no salary increases or decreases, but to increase the amount employees contribute to the defined benefit pension plan, and make several other changes to reduce the Employer's benefit expenses.

Altogether, the parties presented eleven issues to fact finding. (Two issues were settled by the Union agreeing to the County's proposals prior to the start of the hearing.)

An underlying issue is whether the Employer's financial condition has improved sufficiently that it can afford some pay increases or can afford to begin scaling back on some of the concessions. The Union did not dispute that the concessions which it and the other unions had made had been necessary at the time.

Because this is a small bargaining unit, the Union's proposed salary step changes would not total a large dollar amount. The Union's proposal would add two steps, of $2,200 each, to the FOC Casework Supervisor position; three of the five FOC Caseworker Supervisors are presently at the top of their salary schedule. The Union's proposal would also add two steps of $2,800 each to the FOC Administrative Assistant position; the FOC Administration Assistant is already at the top of the steps for that position. This means that for these four positions, the Employer's salary expense would increase by $18,800 per year. While this is only a small percentage of the County's total budget, it is a salary increase of over 6 percent for these employees. After a few more years of employment, the other three bargaining unit members could also experience the step increases and resulting 6 percent plus salary increase.

In addition to this FOC Supervisors bargaining unit, the Employer has twelve other bargaining units. Three of these other units in particular include some employees who work at the Friend of the Court and are supervised by members of this FOC Supervisors bargaining unit. These three units are the Professional Court Officers Association (PCOA) unit which includes social workers; AFSCME 496 Chapter 00 which includes general clerical employees; and AFSMCE 496 Chapter 01 which includes professional technical employees. These three bargaining units together include about 425 employees, a portion of whom work at the FOC. The Employer argued that these units, and all the other units, would certainly demand pay raises which matched any raises granted to this FOC Supervisors unit.

The Friend of the Court is a fairly large operation within County government. Its annual budget over the last few years has been about $9 million. Of this amount, about $2.5 million is received as an appropriation from the County's general fund. The largest source of revenue for the Friend of the Court operations has been from the State of Michigan (2014-2015 Budget, p. 36). The testimony indicated that the Friend of the Court currently has about 85 employees. That is down from a high point of about 105 FOC employees before the recession. The total number of County employees has been reduced substantially over the last eleven years, from 2,062 in 2002 to 1,514 in 2013 (Co. Ex. 27).

The County operates on a fiscal year which runs from October 1 to September 30. The financial data presented at the fact finding hearing included the County's adopted budgets for the current year and past two years, and the Comprehensive Annual Financial Reports (CAFRs) for the years ended September 30, 2012 (County Exhibit 32) and September 30, 2013 (County Exhibit 34). The CAFR for the year ended September 30, 2014 was not yet available at the time of the hearing.

The financial documents show that since 2008 the County has experienced a significant decline in property values, and a resulting significant decline in tax revenues. The County has responded to this by reducing its expenditures, including reducing the number of employees, and obtaining significant financial concessions from all its employee groups. The County has been able to maintain a sound financial condition. For the year ending September 30, 2013, the County was able to increase its general fund balance slightly, from $11.7 million to $12.3 million. Of this amount, some $9.4 million was "unassigned," which basically means this is the amount which could be available to fund general operations. This represented about 11% of the County's general fund budget, which was just under $80.4 million (2013 CAFR, p.26 and 77).

County Exhibits 30 and 31 show that the County Equalization Director calculated that the total county equalization value decreased by 2.04% in 2013, and then increased by 2.71% in 2014. County Controller Keith Francis testified at the fact finding hearing that according to the equalization director, property values have "hopefully bottomed out."

The County's 2014-2015 budget projects some increases in revenue compared with 2013-2014. General fund revenues are projected to increase by about $3 million, to a total of just under $83.2 million. This includes an increase in projected property tax revenues of about $1.3 million, to $44.6 million (Co. Ex. 36, p. VIII). Even with this projected increase, the County's property tax revenues will be substantially below where they were five years ago.

The 2013 CAFR shows that over the six years from 2007 to 2013, the taxable value of property in the County decreased from $11.8 billion to $8.6 billion (Co. Ex. 34, p170-171) . This is a loss of about 25% of the taxable value. The County will not be able to recoup this nearly as quickly as it was lost, due to constraints imposed by State law. A key constraint is that under Michigan's "Proposal A," even when property values are rising, the taxable value can only increase at the rate of inflation or 5% per year, whichever is less. Over the last five years, inflation has been averaging less than 2% per year (Co. Ex. 16; Union Ex. A.3.A). Property taxes are the largest source of the County's general fund revenues, accounting for $44.6 million of the $83.2 million revenues for the 2014-2015 general fund revenues per the County's budget (Co. Ex. 36, p.I).

The general fund does not account for the total County budget. Per the 2014-2015 budget, the County also expects to have other revenue of about $74.5 Million. This includes a total of over $23 million in special millage revenues, such as for emergency medical services, and parks and recreation. It also includes over $30 million in grants (Co. Ex. 36, p.I).

The County presented testimony that the Friend of the Court is not at all unusual in receiving part of its budget from sources other than the general fund. Anita Galajda, the Assistant Director of Human Resources, testified that many of the other departments besides the Friend of the Court also received substantial state and federal money. She mentioned as examples the prosecutor's office, the parks department, and the health department.

The County pointed in particular to its high "legacy" costs for pensions and health care benefits. The actuarial valuation of the Genesee County Employees Retirement System as of December 31, 2013 was presented as County Exhibit 38. This defined benefit (DB) pension plan is a multi-employer plan which covers not only Genesee County employees, but also employees who work for a number of other agencies, such as the Genesee County Road Commission. The General and Sheriffs division of the Plan currently covers some 259 County employees. It is no longer available for new hires. The Plan's 2013 year was a fairly good one in terms of its market value and the "smoothed" valuation of its assets. The plan's "Unfunded Actuarial Accrued Liabilities" has decreased somewhat over the last three years, but is still $139 million (p. 7). The General and Sheriffs division accounts for $83.5 million of this unfunded actuarial accrued liability.

The funded ratio for the General and Sheriffs division of the Plan improved slightly during 2013, from 66.9% to 72.8% (p.7). Nonetheless, for 2015, the Employer's contribution rate for this division increased from 52.70% to 54.36% of "covered payroll" (p.6). The resulting County contribution for 2015 was calculated at just under $8.8 million (p.5). Covered payroll for this division of the Plan is shown as $16.2 million (p.36). Employer Exhibit 27 shows that the County's total employee gross wages in 2013 was about $53.2 million. In other words, only about 30% of the County payroll is now used for calculating the DB pension contribution rate. As the number of covered employees has fallen, the contribution percentage has risen (p.6). The General and Sheriffs division of the Plan paid pensions of $24.6 million in 2013 to some 963 retirees and beneficiaries (p.35). The number of persons receiving benefits is almost four times the number of active employees participating in the General and Sheriffs division of the DB plan.

Another major legacy expense is the cost of retiree health benefits. This is sometimes referred to in the accounting documents as OPEB ("other post employment benefits"). The Employer presented the actuarial valuation for the Genesee County Retiree Health Care Plan for the fiscal year ended September 30, 2014. This valuation showed an unfunded actuarial accrued liability of $302 million. About 75% of the accrued liability is for already retired former employees and their beneficiaries. The Employer is not legally required to pre-fund these retiree health benefits (Co. Ex.39). The "annual required contribution" (ARC) to fully fund the OPEB has been about $19 million per year over the last five years (Co. Ex. 26). County Controller Keith Francis testified that the County has been contributing 20% of payroll, which is about half of the ARC.

Controller Keith Francis testified that, historically, it was recommended that the unassigned general fund balance be about two months of expenditures, which would be about 17% of the budget. He testified that in his opinion the County's unassigned general fund balance [currently about 11%] was not large enough. He would like to see a larger "rainy day" fund, of about three months, or 20 to 25% of the budget. He based this higher percentage on the greater restrictions which apply now, the fact that property tax revenues are constrained going forward, and the upward pressure from legacy costs.

The parties agreed that for purposes of the fact finding hearing, the following four counties could be used as "comparables:"

Ingham County
Kent County
Saginaw County
St. Clair County

The parties also indicated, however, that it was difficult to make direct comparisons with the FOC operations in other counties, because they were organized differently and job positions did not directly correspond. I reviewed the information presented concerning these other counties. Very generally, the information shows that Genesee County is within the range of the other counties, for salaries and benefits.

The County's presentation focused heavily on "internal" comparables, namely, the other bargaining units within the County. The testimony and exhibits indicated that all County employees are currently receiving 7 unpaid furlough days (in the form of unpaid holidays for the Act 312 eligible units). The three bargaining units which have the right to binding arbitration under Act 312 have fared somewhat better than the other units, and have not experienced all of the concessions which the non-Act 312 eligible units have experienced.

In my analysis, I looked in particular at the terms of the collective bargaining agreement between the County and seven AFSCME 916 local chapters (chapters 01,02,03,04,08,09,and 10). That contract covers about 45 supervisors who do not work in the Sheriffs Department, and are therefore not eligible for binding arbitration under Act 312. This report will refer to that unit as the General Supervisory unit. I am considering the General Supervisory unit to be a strong "comparable" for this FOC Supervisors unit.

I realize this FOC Supervisors unit finds it frustrating that the County sets a pattern with other, larger bargaining units, and resists making departures from that pattern. While this may be frustrating for this small unit, I think it is an understandable and reasonable approach considering that the County is dealing with thirteen bargaining units.

## Recommendations

This next section gives my recommendations, and summarizes my basic reasons. The Summary Sheet which follows this section (and is a new MERC requirement) includes a summary of the County and Union positions on each issue.

### Union Issues

**Wages.** It is my recommendation to maintain the status quo for this contract, and not add steps to the salary schedule. The current number of steps is not out of line with other County bargaining units, including other supervisors (County Exhibit 60). County revenues have hopefully stabilized after falling significantly over the last seven years. Realistically, the County cannot grant this bargaining unit what are effectively salary increases, unless it is prepared to grant comparable increases to its other employee groups. The fact that the Friend of the Court receives substantial state and federal funds is not a unique factor, and is not a sufficient reason to treat this bargaining unit differently. The Friend of the Court does receive about $2.5 million annually in County general fund revenues; this is about 28% of the FOC budget.

The County does have significant legacy costs, for pensions and retiree health benefits, which the County needs to continue addressing. It is also advisable for the County to increase its unassigned general fund balance. While the legacy costs and fund balance can be addressed gradually, over a period of years, they will be absorbing some of increased revenue which the County is beginning to experience.

**Duration.** I am recommending a three year contract, from January 1, 2014 through December 31, 2016. Three years is the most common length within the County (Co. Ex. 64). Some of the larger bargaining units have contracts expiring in 2015. It would be realistic to negotiate this contract after those contracts. I think a five year contract without any wage increases would be too long, during a time period when financial conditions will hopefully be continuing to improve at least modestly.

**Disability.** I recommend increasing the disability dollar maximums to $580 per week and $2,400 per month (from the present $530 per week and $2,100 per month). The new maximums would match those for the General Supervisory unit, and would be more in keeping with the salaries in this FOC Supervisors bargaining unit.

**VEBA Contribution.** I recommend maintaining this at the present 3%, consistent with all the non-Act 312 eligible bargaining units. The VEBA is under-funded without making any reductions in contributions.

**Vacation Buy-out and Cash-in.** I recommend accepting the County's proposal to maintain the current language from the 2011-2013 contract. This is consistent with the other non-Act 312 eligible units, including the General Supervisory unit.

**Furlough Days.** I recommend retaining the seven furlough days for this contract, but adding a provision that if the furlough days are reduced for either the PCOA bargaining unit or the general clerical bargaining unit, that will trigger a reduction for this bargaining unit. I think the County's improving financial condition could permit beginning to scale back on the number of furlough days. However, I can also see merit in the County's argument that it does not make sense to have the FOC supervisors on site when the employees they supervise are on furlough.

## County Issues

**Disability and FMLA Leave.** I recommend adopting the Union's proposal, which will continue the requirement that employees use all but 28 hours of accumulated personal time, but will not require that they use accumulated vacation time. This is similar to provisions which apply for the County's other supervisory units. I think it is reasonable to retain a somewhat more flexible benefit for supervisors. There was no evidence that allowing retention of vacation days has been a problem for this bargaining unit.

**Defined Contribution Benefit.** I recommend increasing the employee contribution rate to 9%, consistent with most of the other bargaining units. The defined benefit pension benefit is a very expensive benefit. Bargaining unit members hired after July 1, 1996 have not been eligible to participate in the defined benefit plan. One impact of closing the DB plan to new members has been that the required contribution rate for covered employees has increased quite dramatically.

**Educational Reimbursement.** I am recommending that the educational reimbursement remain in effect for this contract. The parties 2011-2013 contract suspended this benefit through December 31, 2012, after which it became effective again. The contract limits this benefit to a maximum of $2,000 per employee per year, and a maximum of $4,000 per year for the whole bargaining unit. I think the County can justify retaining this benefit for this unit, as some recognition of the bargaining members' supervisory status and greater responsibility.

**Vacation Accrual.** I am recommending that the parties retain the current vacation accrual provisions. That is consistent with what has occurred with the General Supervisory unit.

**Health Insurance.** I am recommending that the County's proposal be adopted. That will be consistent with nearly all the other County units, including the Act 312 eligible units. It will also avoid a sudden and significant new expense if PA 152 were to be repealed.

## Summary Sheet

### Union Issues

Issue 1 - Wages. Union proposed adding two steps on salary schedule; County proposed status quo. My recommendation is status quo.

Issue 2 - Contract duration. Union proposed two years, through 2015; County proposed five years, through 2018. My recommendation is three years through December 31, 2016.

Issue 3 - Disability. Union proposed increasing maximum weekly benefit to $630 and maximum monthly benefit to $2,700; County proposed maintaining status quo of $530 weekly and $2,100 monthly maximums. My recommendation is to increase to $580 weekly and $2,400 monthly maximums.

Issue 4 - VEBA contribution rate. Union proposed reducing the employee's contribution rate to 1.5% of salary; County proposed maintaining the current 3% rate. My recommendation is to maintain the current 3% rate.

Issue 5 - Vacation buy-out and cash-in. Union proposed un-doing the concessions made in the 2011-2013 contract, and going back to 100% payment for unused vacation leave upon termination of employment, and 60% cash-in rate. County proposed continuing the 2011-2013 change which pays 100% for the first 200 accrued vacation hours, but only 55% for any hours over 200, and 55% for vacation cash-ins. My recommendation is to maintain the current language from the 2011-2013 contract.

Issue 6 - Furlough days. The Union proposed reducing the unpaid furlough days from 7 to 6. The County proposed maintaining them at 7. My recommendation is to continue the 7 furlough days, with a provision that if furlough days are reduced for the PCOA or general clerical units that will trigger a decrease for this unit.

### County Issues

Issue 1 - Union dues. This issue was settled by the Union accepting the County's proposal.

Issue 2 - Disability and FMLA Leave. The County proposed requiring employees on disability or FMLA leave to exhaust all accumulated time, including vacation time, except for an option of retaining 28 hours of personal time. The Union proposed maintaining the current language, which does not require exhausting vacation time. My recommendation is to maintain the current language.

Issue 3 - Defined benefit plan contribution rate. The County proposed increasing the employees' contribution rate from 7% to 10%. The Union proposed maintaining the 7% rate. My recommendation is to increase the contribution rate to 9%.

Issue 4 - Education reimbursement. The County proposed making the 2-year suspension of this benefit, which occurred as part of the 2011-2013 concessions, a permanent suspension. The Union opposed this. My recommendation is to adopt the Union's proposal, which means allowing the reinstatement of this benefit to continue.

Issue 5 - Vacation accruals. The County proposed eliminating the top accrual rate, for employees with more than 15 years of service, so that the top accrual rate for them would be 21.25 vacation days per year instead of 25 vacation days per year. The Union proposed maintaining the current provision. My recommendation is to maintain the current provision.

Issue 6 – Health Insurance. The County proposed adding language to provide that if PA 152 of 2011 is repealed or held unenforceable, employees will nonetheless pay 20% of the premiums. The Union agreed to take out some language which had been in effect prior to PA 152 , but did not agree to the County's proposal to add the 20% provision. My recommendation is to adopt the County's proposal.

Issue 7 – Direct deposit. The Union accepted the County's proposal on this issue.

Dated: March 24, 2015

Kathleen R. Opperwall
MERC Fact Finder