

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
TEAMSTERS LOCAL 214

and

RESPONDING PARTY:
MANISTEE COUNTY ROAD COMMISSION

MERC CASE NO.: L16 C-0241



FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A.176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A.336 of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

Betty R. Widgeon

Advocates

Employer Advocate: Craig W. Lange
Union Advocate: Robert V. Donick

PETITION(S) FILED:	October 31, 2016
FACT FINDER APPOINTED:	December 20, 2016
SCHEDULING CONFERENCE HELD:	January 5, 2017
HEARING DATE(S) HELD:	March 27, 2017
POST HEARING BRIEFS RECEIVED:	May 18, 2017
POST HEARING DISPUTE RESOLVED:	May 29, 2017
REPORT ISSUED:	June 30, 2017

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WITNESS LIST

1. Mark Sohlden, Manager, Manistee County Road Commission
2. Anthony Radjenovich, Regional Manager, MERS

1. INTRODUCTION AND BACKGROUND

The Manistee County Road Commission (“Commission”) is comprised of five appointed residents of the County. The 25-member bargaining unit consists of “all equipment operators, truck drivers and survey crew members, excluding engineering personnel, office personnel and supervisors, of the Manistee County Road Commission” and is represented by Teamsters, Local 214 (“Union”). The collective bargaining agreement between the Commission and the Union expired June 30, 2016.

According to the Petition for Fact Finding filed by the Union on October 31, 2016 (Emp. Ex. 2) there were two mediation sessions between the parties: one held on September 1, 2016, the other on November 1, 2016.

2. STATUTORY CRITERIA

This fact finding was held pursuant to Michigan Labor Mediation Act (PA.176 of 1939 as amended) [MCL 423.1, et seq], and Public Employment Relations Act (P.A.336 of 1947 as amended) [MCL 423.201, et seq]. Issues a, d, and e are deemed non-economic. Issues b and c are deemed economic.

3. STIPULATIONS AND PRELIMINARY RULINGS

During the March 27, 2107 Fact Finding hearing, the parties agreed that the issues of (1) Group Leader Pay, (2) Boot Allowance, (3) Retiree Health Care, and (4) Cooperative Education had been tentatively agreed to and would not be before the Arbitrator. Initially, the Union withdrew the following four issues (1) short term disability leave, (2) longevity pay increase, (3) increase in personal days off, and (4) increase in life insurance. At the hearing, the Commission

stated that it had just received a new proposal from its insurer regarding short term disability costs. Neither side presented evidence at the hearing on short term disability. After some discussions following the hearing, the parties contacted the Fact Finder and agreed that the issue of Short-Term Disability was not in dispute. The Fact Finder's Recommendations incorporates by reference all Stipulations and Tentative Agreements of the parties as well as all agreed upon "clean-up" and undated language and Preliminary Rulings.

4. COMPARABLES

The parties agreed to the following comparables:

- Antrim County Road Commission
- Benzie County Road Commission
- Lake County Road Commission
- Leelanau County Road Commission
- Mason County Road Commission
- Mecosta County Road Commission
- Newaygo County Road Commission
- Wexford County Road Commission
- Other public sector bargaining units in Manistee County for "internal comparables" when and where appropriate

5. ISSUES BEFORE THE FACT FINDER

A. Length of Contract - Non-Economic

At the hearing, the parties informed the Fact Finder that they were not in agreement regarding the length of the contract. The Commission proposes a three-year contract, consistent with the terms of the Tentative Agreement. The Union proposes a four-year contract but did not

provide persuasive testimony as to why a 4-year contract would be preferable. Neither side offered substantive details or arguments in support of its position on this issue.

Recommendation: Absent compelling and persuasive evidence of the necessity of deviating from the status quo and moving to a 4-year contract, the Fact Finder recommends a three-year contract to be effective upon ratification. Therefore, her recommendations below presume a 3-year contract.

B. Wages - Economic

The Commission proposes an increase of 2% in the first year, 1% in the second year, and 1% in the third year of a 3-year contract for a total wage increase of 4%. The Union proposes a \$0.40 increase each year of a 4-year contract for a total wage increase of between 6.0% and 6.5% at the end of 3 years, depending on the position of the employee, and a total wage increase of between 8.3% and 8.7% at the end of 4 years.

The Commission's proposal puts the bargaining unit in a position just above average among the comparable road commissions for 2017, just as it has been for the duration of the previous contract. The Union's proposal would put the bargaining unit at the top of the list of comparables. The Fact Finder takes into account the fact that employee contribution to retirement benefits is also an issue before the Fact Finder. The Fact Finder further also takes into account the Commission's ability to pay, including its current revenue, budget, and the need to have an adequate amount of money in reserve to fund upcoming essential projects.

Recommendation: Based on the proofs admitted into evidence, the Fact Finder recommends a 3-year contract with a 2% wage increase the first year, a 1.5% wage increase the second year, and a 1.0% wage increase the third year.

C. Pension - Economic

Currently, Employees hired after July 1, 2009 contribute 5% of their salary toward the pension plan; however, most of the 18 employees who hired before July 1, 2009 contribute nothing. The Commission proposes that employees hired before July 1, 2009 contribute 2% of their gross wages effective July 1, 2017 and an additional 2% effective July 1, 2018 for a total of 4% contribution by the end of the contract.

The Commission also proposes that employees hired after the ratification of the agreement receive a lesser annual pension multiplier of 2% (compared to the multiplier of 2.5% being received by all current employees). These new employees will, like all employees hired after July 1, 2009, contribute 5% of their salary toward the pension plan.

The Union proposes that the employees hired before July 1, 2009 contribute 0.5% toward the pension plan in the first year and an additional 0.5% in each consecutive year for a total contribution of 2% at the end of a 4-year contract. The Commission presented testimony that 3/4 of its members with a defined benefit plan contribute to help fund the plan and that the statewide average is 6% member contribution.

As it stands, the members who were hired before 2009 reap the benefits of the pension plan, but they contribute nothing to it. Given the high proportion of employees hired before 2009, the pension plan is not sustainable without contribution from those members. The Union does not dispute these figures but argues primarily that, because the Commission's financial situation did not develop overnight, the employees should not bear the burden of correcting the situation overnight (or even over the term of a single Bargaining Agreement). The Fact Finder is persuaded by the unrefuted testimony of the Commission's witnesses and a review of the

contributions currently being made by bargaining unit members of the mutually accepted comparables that a phased-in contribution by those hired before July 1, 2009 is necessary and reasonable.

Recommendation: The Fact Finder recommends for the impacted group a 2% contribution in the first year, a 1% increase in the second year, and a 1% increase in the third year for a total of 4% contribution at the end of a 3-year contract. The Fact Finder also recommends that employees hired after the ratification of the agreement receive an annual pension multiplier of 2.25%.

D. Strike and Lockout Language - Non-Economic

The current contract language states that “during the terms of the contract, there will be no strikes or lockouts.” The Commission proposes the following language: “Section 1. The Employer shall not discharge or suspend any employee without just cause, but in respect to discharge or suspension, shall give at least one (1) warning notice of the complaint against the employee to the employee, in writing, and a copy of the same to the Union, except that no warning notice need be given to any employee or the Union before he/she is suspended or discharged for a major offense. The warning notice herein provided shall not remain in effect for more than a period of 18 months from the date of said warning notice.

The Union proposes that the contract language remain the same. The Commission, for its part, argues that the current language is insufficient to prevent employees from engaging in concerted failures to report for duty, to absence themselves from their position, or abstain in whole or in part from the full, faithful, and proper performance of their duties in order to

influence collective bargaining. The parties disagree about whether the employees have done so in the past.

While there were two occasions in which Bargaining Unit employees were unavailable for overtime winter maintenance work, the Fact Finder found the Commission's proofs insufficient to support its allegation that the employees' unavailability was related to collective bargaining negotiations. The Union hotly disputed the allegation and grieved the Commission's disciplinary response to the absences. Considering the totality of the evidence presented by both sides, the Fact Finder did not find that testimonial and documentary evidence that was admitted into the record provided a compelling basis to change the current contract language.

Recommendation: The Fact Finder recommends the status quo.

E. 4-10 Hour Work Schedule - Non-Economic

It has been the customary practice of the Commission to use a 4-day, 10-hour work schedule ("4-10") during the summer; however, the current contract requires the Commission to secure the Union's agreement in order to institute this schedule. The Union did not give this permission in the summer of 2016, so the Commission was unable to utilize the 4-10 schedule that year. For the current contract, the Commission proposes the addition of the following language:

The Employer reserves the right to institute a four-ten (4/10) hour work schedule for bargaining unit employees and the following conditions will apply:

A. The workday will be ten (10) hours.

- B. The workweek will be from Monday through Thursday however the Employer reserves the right to have some First Shift Employees work from Tuesday through Friday at their discretion.
- C. The Employer will determine when to begin and when to end the four-ten hour work schedule. The Employer agrees to give two (2) week notice to the Union prior to starting and to give one (1) week notice to the Union prior to ending the schedule.
- D. First Shift Employees workday will begin at 6:00 a.m. and end at 4:15 p.m. daily. Lunch break (unpaid) will be from 11:30 a.m. to 12:00 noon, with a morning break from 9:00 a.m. to 9:10 a.m.
- E. Afternoon (second) Shift Employees workday will begin at 3:00 p.m. and end at 1:00 a.m. daily. Lunch break (paid) will be from 6:00 p.m. to 6:30 p.m.
- F. When working ten (10) hour days the Employer reserves the right to adjust the start times and stop times for the First Shift regular day by up to one (1) hour to take advantage of daylight hours. The Employer agrees to give one (1) week notice to the Union prior to changing start times and stop times.
- G. Any hours worked during the Regular workweek in excess of ten (10) hours per day (not counting Lunch Break as hours worked), and any call in hours after 4:30 p.m. for the First Shift Employees or call in anytime on days beyond the Regular workweek, will be considered Overtime and will be paid at one and one-half (1 1/2) times the employee's regular rate of pay. Call in procedures during the four-ten hour work schedule will follow the same standard as shown in this Agreement.
- H. When taking Vacation, Comp-Time, Sick or Short Term Leave or Personal days off throughout the rest of this time period will result in ten (10) hours to be deducted from the employee's reserve paid day off bank.
- I. For workweeks that contain a paid holiday(s), the workday will revert back to eight hour days for the week and the paid holiday(s) will be paid at eight (8) hours per day. The workday for First Shift Employees will begin at 6:00 a.m. and end at 2:30 p.m., and the workday for Afternoon (Second)

Shift Employees will start at 3:00 p.m. and end at 11:00 p.m. Vacation, Comp-Time, Sick or Short-Term Leave, Personal, Funeral or Jury Duty days taken during this week will be paid in eight (8) hour increments.

- J. If the Employer determines that it is necessary to have some First Shift Employees work on Friday due to various work activities, the employer reserves the right to establish a Regular workweek of Tuesday through Friday each week for some employees, with Monday being the scheduled day off. The Start and End times and breaks for First Shift will be as stated above and will also have the same holiday schedule as stated above.

Management will determine the number of employees and classifications that will be needed for the Tuesday through Friday Regular work week and will post the positions for the Tuesday through Friday Regular workweek schedule for not less than five (5) working days.

Bids shall be on a bid sheet and will be awarded within five (5) working days after the five (5) days posting period and filled according to seniority and ability, provided, however, the employee's physical qualifications and ability are adequate in the opinion of the Employer. If there are no applicants for such assignments, the Commission may order the least senior employee in each classification to fill such assignments.

The Union proposes that the language stay the same. Within the past 3 years, the Union has declined to implement the 4-10 schedule on 3 occasions. The Commission presented solid testimony that, overall, the summer 4-10 schedule has been a "win-win" proposition for both sides. The Fact Finder found the Commission's rationale persuasive in several aspects, including practical, efficient and effective scheduling; cost savings; the fact that the actual implementation of the 4-10 schedule is not an issue over which the parties disagree often in practice, and the fact that in all but one of the comparable road commissions, the Union's agreement is not required.

Recommendation: Based on the evidence submitted, the Fact Finder recommends that the language proposed by the Commission be adopted.

6. SUMMARY OF RECOMMENDATION

ISSUE	SUMMARY OF RECOMMENDATION
Contract Length	A 3-year contract effective upon ratification
Wages	Increase of 2% in the 1st year, 1.5% in the 2nd year, and 1.0% in the 3rd year.
Pension	Pension contribution increase for employees hired before 2009:2%; 1%; 1%. Multiplier for employees hired after ratification of contract: 2.25%.
Strike/Lockout Language	No change to current contract.
4-10 Schedule	Commission's proposed language is recommended.

Date: June 30, 2017
June 30, 2017


Betty R. Widgeon, Fact Finder