2458

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

BEFORE DON R. BERSCHBACK, FACT FINDER

GARY A. FLETCHER, EMPLOYER DELEGATE

KENNETH J. BAILEY, UNION DELEGATE

IN THE MATTER OF:

ST. CLAIR COUNTY / 72ND DISTRICT COURT,
Petitioner – Public Employer,

and

MERC CASE NO. D12 D-0677

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,
LOCAL 1518.15
Respondent – Labor Organization

FINAL FACT FINDER'S REPORT, FINDINGS OF FACT, AND RECOMMENDATIONS

Background Information

The bargaining unit represented in this case by AFSCME Local 1518 ("Union") represents fulltime and regular part-time employees in St. Clair County's 72nd District Court ("Employer"). The parties have had a bargaining relationship for a number of years; their most recent Collective Bargaining Agreement ("CBA") was effective from June 1, 2008 and expired on June 30, 2012. Bargaining unit employees essentially conduct the day-to-day operations on behalf of the Court and interact with the public, including court reporting and other essential functions on behalf of the Court.

Both parties recognize that they have been working on trying to resolve this contract for a long period of time; including mediation before a third-party neutral mediator appointed by the Michigan Employment Relations Commission. Despite all these efforts, the parties were unable to reach full agreement on all outstanding issues and, on or about January 15, 2013, the Employer filed a petition for fact finding with MERC.

Fact Finder's Note: Even though the initial petition for fact finding was filed on January 15, 2013 and on or about February 22, 2013 the Fact Finder was appointed based on a

miscommunication between MERC and the Fact Finder, this fact finding process did not begin until May 23, 2013 when the Fact Finder finally received his appointment.

Initially, the Employer's fact finding petition listed seven outstanding issues:

- Agreement – Emergency Manager language.
- Article 13 – Maintain layoff by qualifications language.
- Article 25 – Sick days and disability insurance – language clarification on short/long term disability.
- Article 13 - Healthcare and dental insurance – PP 8w/20% Employee's premium share.
- Article 36 – Retirement – language clarification.
- Article 41 – Salary schedule – 0% 2012, 0% 2013.
- Article 42 – Termination of Agreement – through June 30, 2014.

The parties exchanged exhibits on or about July 23, 2013 and the Fact Finder received them and subsequently reviewed them in detail. After review of the exhibits and issues, the parties agreed to request that the evidentiary hearing be waived and requested that they submit the outstanding issues to the Fact Finder on the exhibits and post-hearing briefs. Said post-hearing briefs by agreement between the parties and the Fact Finder were received by the Fact Finder on August 23, 2013.

Upon receipt and review of the post-hearing briefs by both parties, it was clear that the Bargaining Unit had agreed to the Employer's proposals regarding the following issues:

- Agreement – Emergency Manager language.
- Article 25 – Sick days and disability insurance – language clarification on short/long term disability.
- Article 36 – Retirement – language clarification.
- Article 42 – Termination of Agreement- through June 30, 2014.

Those issues are being memorialized by the Fact Finder as follows:

AGREEMENT – EMERGENCY MANAGER LANGUAGE

Section 1 This Agreement entered into on this _____ between the 72nd Judicial District Court and the St. Clair County Board of Commissioners, the legislative body of said Court (hereinafter referred to respectively as the "Court" or the "County") and the St. Clair County District Court Employees, Chapter of Local 1518, affiliated with Michigan Council #25, AFSCME, AFL-CIO (hereinafter referred to as the "Union").

THIS AGREEMENT IS SUBJECT TO THE TERMS OF THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT MCL 141.1501 TO 141.1531, AND AS A RESULT IF AN EMERGENCY MANAGER IS APPOINTED HE/SHE SHALL HAVE THE RIGHT TO REJECT, MODIFY OR TERMINATE THIS COLLECTIVE BARGAINING AGREEMENT AS PROVIDED IN THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT.

INCLUSION OF THE LANGUAGE REQUIRED UNDER SECTION 15(7) OF THE PUBLIC EMPLOYMENT RELATIONS ACT DOES NOT CONSTITUTE AN AGREEMENT BY THE UNION TO THE SUBSTANTIVE OR PROCEDURAL CONTENT OF THE LANGUAGE. IN ADDITION, INCLUSION OF THE LANGUAGE DOES NOT CONSTITUTE A WAIVER OF THE UNION'S RIGHT TO RAISE CONSTITUTIONAL AND/OR OTHER LEGAL CHALLENGE (INCLUDING CONTRACTUAL OR ADMINISTRATIVE CHALLENGES) TO THE VALIDITY OF: (1) APPOINTMENT OF AN EMERGENCY FINANCIAL MANAGER; (2) PA 4 OF 2011 (LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT); OR (3) ANY ACTION OF AN EMERGENCY FINANCIAL MANAGER WHICH ACTS TO REJECT, MODIFY, OR TERMINATE THE COLLECTIVE BARGAINING AGREEMENT.

IF THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT, MCL 141.1501 TO 141.1531 IS RESCINDED OR IN ANY WAY MODIFIED, THEN ANY AND ALL CHANGES MADE TO ANY AND ALL ARTICLES OF THIS CONTRACT AS A RESULT OF THIS ACT SHALL IMMEDIATELY BE REINSTATED TO THE ORIGINAL CONTRACT WORDING.

ARTICLE 25 – SICK DAYS AND DISABILITY INSURANCE

Section 1 Full time employees shall be credited with one (1) sick day upon each monthly anniversary to be used for the purposes provided by this Agreement. Any sick day use other than provided by this Agreement shall be considered a misuse and abuse, such as a pattern of unexcused absences but excluding preapproved absences.

Section 2 An employee shall be eligible to use sick days after completion of the probationary period.

Section 3 Full time employees shall be entitled to accrue sick days to a maximum of forty (40) days.

Section 4 In the event of a serious illness to the spouse, parent, child, step-child or spouse's parent, the employee shall be entitled to use up to a maximum of ten (10) sick days per incident as approved by the Court Administrator or the Court's designee. The Court Administrator or the Court's designee may extend this to an additional twenty (20) sick days.

Section 5 The Court Administrator or the Court's designee may require proof of serious illness or death prior to approval of any sick day use. Employees who attempt to use or use sick days for reasons other than provided herein shall be subject to discipline.

Section 6 An employee shall not be entitled to use more sick days than have been accrued or in advance of days to be credited.

Section 7 Proof required status shall mean the employee must provide a statement from their attending physician indicating the nature of the illness in order to be eligible for sick day pay. An employee who uses six (6) days in a ninety (90) day period or three (3) days in a thirty (30) day period without a statement from their attending physician indicating the nature of their illness shall be on a "proof required status". An employee shall be on proof required status for up to five (5) months at the discretion of the Court. The employee who fails to provide appropriate medical verification shall be subject to

discipline. The Court Administrator or designee may choose not to place the employee on proof required status if the employee has not exhibited a questionable attendance pattern during the preceding one (1) year.

Section 8 Sick days may be taken in place of normally scheduled work days, excluding holidays. Sick days used during an approved vacation shall not result in deduction from vacation accumulation but rather from sick day accumulation. The Court Administrator or the Court's designee shall have the right to require the employee to provide a physician's statement verifying an illness during a vacation.

Section 9 An employee shall be eligible for salary continuation when an illness or injury extends beyond twenty (20) consecutive work days. Compensation shall commence on the twenty-first (21st) work day and shall provide two-thirds (2/3) of the disabled employee's normal pay before all payroll deductions including taxes and F.I.C.A. **Short term disability** salary continuation shall be for a period of **six (6) months.** Verification of a continuing medical disability may be required by the County in order to provide salary continuation. Salary continuation shall be offset by benefits derived from the County's Retirement Plan, Social Security and/or Worker's Compensation.

Section 10 The County shall provide the disabled employee salary continuation from the twenty-first (21st) work day to the one hundred and eightieth (180th) calendar day from disability. During the period that the County provides the disabled employee salary continuation, the employee shall be entitled to continuation of the fringe benefits which shall be provided consistent with the employee's reduced salary. In other words, all benefits based upon salary shall be computed upon the reduced salary.

Section 11 The disabled employee shall not be ineligible for salary continuation for refusal to accept an offer of work in a classification other than the classification held at the time of disability.

Section 12 Commencing the one hundred and eighty-first (181st) calendar day **long term disability** salary continuation shall be provided by an insurance carrier of the County's choice or by the County at the County's discretion. At such time the disabled employee shall not be eligible for fringe benefits. Be It provided, however, that the disabled employee shall be entitled to obtain group health insurance through the County in accordance with the following safeguards and conditions:

a. The disabled employee shall be entitled **to** six (6) months of health care coverage provided the employee pays fifty percent (50%) of the premium costs.

b. After the six (6) months period stipulated in the preceding Section a, the employee is responsible for one hundred percent (100%) of the premium cost.

c. The County shall require prepayment of all premium costs.

Section 13 The employee shall be entitled to select either of the following options to the core salary continuation (disability) plan:

A. CORE OPTION
* 66 2/3% of base salary
* 5 years from date of disability * $4,000 monthly maximum

B. OPTION I
* 70% of base salary
* Benefit to age 65
* $6,000 monthly maximum

The employee electing Option I shall pay by bi-weekly payroll deduction, the difference in premium between the Core Option and Option I at the County's group rate.

Section 14 Nothing shall prohibit the County from offering the employee a redemption in lieu of salary continuation. Be it provided, however, the employee shall have sole responsibility to accept or reject a redemptive offer.

Section 15 The employee shall be eligible to supplement **short term** disability compensation with vacation or sick days on a ratio of one (1) vacation day or one (1) sick day to three (3) days of absence in order to remain at full normal gross salary. The employee must supplement on a continuous basis commencing the twenty-first (21st) work day and shall not be entitled to supplement on an intermittent basis.

Section 16 When an employee's illness or physical condition raises the question of fitness to perform normal duties, or if the employee exhibits questionable attendance, the Court may require the employee to submit to a physical examination and the Court shall pay the expenses incurred.

Section 17 An employee on an approved disability leave using sick days, salary continuation or disability insurance, shall be subject to all the provisions of Article 21 - Leave of Absence.

Section 18 The employee must promptly notify the Court Administrator or the Court's designee of an absence or be subject to discipline.

Section 19 Upon termination of employment for any reason other than gross misconduct, an employee with accrued sick days shall be entitled to receive compensation to a maximum accrual of thirty (30) sick days based upon the following graduated schedule of months of service:

Months of Service	% of Accrual
12 to 24	20%
25 to 36	30%
37 to 48	40%
49 to 60	50%
61 to 72	60%
73 to 84	70%
85 or more	80%

Section 20 Employees subject to another sick day policy other than that which is provided herein shall upon entry into this Unit be compensated for sick day accruals as follows:

a. The employee shall retain accrued sick days to a maximum of thirty (30) days.

b. The employee shall be paid off at a rate of fifty percent (50%) of the remaining value of the sick days.

ARTICLE 36 - RETIREMENT

Section 1 All full time regular employees shall, upon their date of **full time** hire, participate In the St. Clair County Employees Retirement Plan. Specific terms and conditions of retirement not herein defined are subject to the terms and conditions provided by the Retirement Plan custodians and shall not be subject to nor require separate union approval.

Section 2 The Defined Benefit Pension and the retiree Health Care Plan are completely separate Retirement Plan programs with separately designated methods for funding set forth in this Agreement. The assets of the separate programs may be commingled for investment purposes but shall be and are separate funds for accounting and actuarial purposes.

Section 3 The St. Clair County Retirement System provides full time regular employees **(hired full time before August 19, 2009)** with a Defined Benefit Pension Plan. A defined benefit plan is a retirement plan that establishes an annual and monthly pension amount based on an employee's years of service and final average compensation. Participation in the Defined Benefit Plan is mandatory upon full time regular employment. Terms and conditions of the Defined Benefit Plan are addressed in the Retirement Plan booklet. Employee and Employer contributions are as follows.

A. The employee shall contribute five percent (5%) of his or her eligible bi-weekly wage as defined In section 13 of this article.

B. **The County shall determine the level of funding necessary to assure and maintain the financial stability of the system. The County shall contribute the remaining contribution determined necessary.**

Section 4 The St. Clair County Retirement System provides full time regular employees **(hired full time before August 19, 2009) the** opportunity to prefund retiree health care coverage by contributing to a Health Care Trust Account. Employee participation in the Health Care Trust Account is optional. The option is exercised upon date of eligibility to participate in the retirement plan and once exercised is Irrevocable. A description of the retiree health care coverage is provided in the Retirement Plan booklet. Eligibility for retiree health care coverage is as follows.

A. An employee subject to the original plan must have eight (8) or more actual years of service contributions in the Retirement Plan to be entitled to health care coverage at no premium cost as a retiree.

B. An employee subject to the modified plan must have twenty (20) or more actual years of service contributions in the Retirement Plan to be entitled to health care coverage at no premium cost to the retiree.

C. An employee that chooses not to participate in the prefunding of retiree health care or that does not meet the actual years of service contributions stipulated In the preceding subsections A and B, shall be entitled to purchase retiree health care coverage based on the following conditions.

[i] The employee shall have eleven (11) or more actual years of service contributions to the Retirement Plan.

[iI] The employee, as a retiree, shall be required to pay the entire premium

cost determined by the County on a month-to-month basis as a deduction from his or her monthly pension payment.

[Iii] The employee with credits accrued in his or her Health Reimbursement Account (HRA) shall pay for the premium cost as a deduction from their HRA. When the HRA is depleted of credits the provisions of the preceding [ii] shall apply.

[iv] The employee with contributions in the Health Care Trust Account shall be entitled to pay the health care premium costs from his or her contributions. While contributions are depleted the retiree shall be subject to the preceding [ii].

[v] The employee upon making an application for retirement employee must choose to purchase or not purchase health care coverage. The employee, as a retiree, may not choose to purchase health care at a later time. In other words, the employee, as a retiree, must participate in the purchase health care coverage upon initial retirement or he or she shall be forever ineligible for health care coverage.

[vi] The employee, as a retiree, shall not be entitled to purchase health care coverage intermittently from the Retirement Plan. Failure to pay the monthly premium, whether intentionally or unintentionally disqualifies the retiree for health care coverage. In other words, the retiree shall not be entitled to discontinue and later re-enroll for health care coverage.

Section 5 Contributions to the Health Care Trust Account shall be calculated on **the first $50,000 of** an employee's eligible bi-weekly wages as defined in section 13 of this article. The employee and employer shall contribute to the Health Care Trust Account as follows.

Effective Date	**Employee Contribution**
07/01/12	**2.5%**

Section 6 Effective January 1, 2008 an employee shall have the option to contribute to a 457 Deferred Compensation Plan rather than contribute to the Retiree Health Care Trust Fund Account. An employee that contributes to the 457 Deferred Compensation Plan shall not be entitled to retiree health care paid by the Retirement System upon retirement. The employee shall be entitled to the contribution provided by the County to either the 457 Plan. Terms and conditions of the 457 Deferred Compensation Plan follow.

A. Effective upon the earliest possible date following ratification of the agreement by the parties, an employee shall be entitled to select one of the following contribution options to be matched by the County.

Employee Contribution	County Contribution
2.0%	1.0%
3.0%	1.5%
4.0%	2.0%
5.0%	2.5%

B. "ALL CONTRIBUTIONS" to the 457 Deferred Compensation Plan shall mean the contributions of the employee and the County. Contributions shall mean all

contributions except as otherwise defined.

C. Upon retirement the employee may at his or her discretion use contributions to the 457 Deferred Compensation Plan to purchase retiree health care from the Retirement System provided the employee has a minimum of eleven (11) or more years of contributed service in the Retirement System.

D. Upon separation of County employment the employee with eight (8) or more years of service is entitled to retain and may rollover all contributions and investment earnings into a qualified plan account contingent upon the terms, rules, regulations and conditions determined by the IRS.

E. Upon separation of County employment the employee with fewer than eight (8) years of service is entitled to retain and may rollover only that portion of the contributions made by the employee including its investment earnings contingent upon the terms, rules, regulations and conditions determined by the IRS.

F. An employee must elect or not elect to contribute to the 457 Deferred Compensation Plan upon full time regular employment with the County. The election once executed Is Irrevocable.

G. An employee that contributes to the Retiree Health Care Trust Fund Account and the 457 Deferred Compensation Plan at the same time shall not be entitled to any contribution from the County. An employee shall have the option to contribute to a 457 Deferred Compensation Plan account rather than contribute to the Retiree Health Care Trust Fund Account and shall be entitled to the contribution from the County. An employee that contributes to the 457 Deferred Compensation Plan shall not be entitled to retiree health care paid by the Retirement System upon retirement.

H. An employee that contributes to the 457 Deferred Compensation Plan shall only be entitled to the contribution from the County for that plan.

Section 9 An employee shall only be entitled to withdraw his or her contributions to the Defined Benefit Plan upon termination of employment separation of membership in the retirement system. Separation of membership shall mean that membership in the retirement system has been terminated for at least ten days; or the individual has been laid off for at least thirty days.

A. An employee is not required to withdraw his or her contributions upon termination of employment.

B. Contributions left in the plan are deferred until such time as the former employee is eligible to *receive* a pension.

C. The employee that withdraws his or her contributions shall terminate all right to *receive* a pension benefit from the plan.

D. The employee that withdraws his or her contributions shall be entitled to a rate of interest on the contributions determined by the Retirement Board which shall be consistent with the interest rate attributed to all employee accounts regardless of union affiliation.

Section 10 An employee shall only be entitled to withdraw his or her contributions to the Health Care Trust Account upon termination of employment separation of membership in the retirement system. Separation of membership shall mean that membership in the retirement system has been terminated for at least ten days; or the individual has been laid off for at least thirty days.

A. An employee is not required to withdraw his or her contributions upon termination of employment.

B. Contributions left in the plan are deferred until such time as when the former employee shall be entitled to a retirement pension.

C. The employee that leaves his or her contributions in the Health Care Plan Trust Account shall only be entitled to health care *coverage* in conjunction with receiving a pension.

D. The employee that withdraws his or her contributions shall terminate all right to *receive* health care *coverage* from the plan at no premium cost to the retiree.

E. The employee that leaves his or her contributions in the Health Care Trust Account but who has insufficient actual years of services to qualify for coverage shall be entitled to purchase coverage when meeting all the conditions stipulated in Section 4 of this article.

34.13: If an employee was a full time contributing member of the Defined Benefit Plan prior to July 1, 2012, subsequently becomes a part time ineligible member and thereafter returns to full time employment without a break in employment, such an employee will remain eligible for participation in the Defined Benefit Plan upon meeting the following conditions:

A. The member must have left their accumulated contributions in the plan.
B. The same elections they had previously made will continue to apply.

If an employee was a full time contributing member of the Retirement Health Care Trust Account prior to January 6, 2011, subsequently becomes a part time ineligible member and thereafter returns to full time employment without a break in employment, such an employee will remain eligible for participation in the Retirement Health Care Trust Account upon meeting the following conditions:

A. The member must have left their accumulated contributions in the plan.
B. The same elections they had previously made will continue to apply.

If an employee, upon becoming an ineligible member, applies for and receives a refund of their Defined Benefit Plan and/or Retirement Health Care Trust Account contributions, they shall terminate all future right to receive a benefit from either plan.

Section 11 A retiring employee subject to the original retirement plan shall be entitled to a multiplier of two percent (2%) for each year of employment. The multiplier shall not exceed sixty-four percent (64%) upon attaining thirty-two actual years of service, including purchased military service time. Final average compensation shall be calculated on the best three (3) years of the last ten (10) years of eligible compensation.

Section 12 A retiring employee subject to the modified retirement plan shall be entitled to final average compensation multiplied by years of service in accordance with the following schedule:

Years of Service	Annual Multiplier
1 through 10	1.75% - accumulative
11 through 19	2.00% - accumulative
20 through 24	2.00% - retroactive to date of hire
25 and above	2.40% - retroactive to date of hire

Upon attaining the twentieth (20th) year, the multiplier shall be retroactive to the first year. The multiplier maximum accrual shall not exceed seventy (70%) percent for employees hired on or after July 1, 2006. The multiplier maximum for employees hired prior to July 1, 2006 shall not exceed seventy-five percent (75%). The final average compensation shall be calculated on the best three [3] years of the last ten [10] years of eligible compensation.

The Union and the County agree that if the provisions of the Employee Compensation Best Practices Requirements are implemented by the State, the County and the bargaining unit will meet and confer in an attempt to establish the specifics of a hybrid pension plan to meet the provisions as identified in order to continue to receive EVIP payments (formerly known as Statutory Revenue Sharing).

Section 13 An employee shall be eligible for early retirement as follows:

A. The employee's combined years and months of actual service and age equal eighty (80) years/ provided the employee shall also have completed twenty-five (25) actual years of service.

B. The employee has attained the age of sixty (60) years with eight (8) actual years of service contributions.

C. The employee has attained the age of fifty-five (55) years with twenty-five (25) years of service/ including reciprocity and/or purchased military service.

D. Actual years of service shall mean that period of time employed and contributing to the St. Clair County Employees Retirement Plan and excluding/ by way of example/ reciprocity through other retirement plans or the purchase of military service time.

Section 14 Retirement shall be computed on the base salary only and shall not include compensation from;

A. Overtime or compensatory time payoff.

B. Vacation accrual payoff upon separation from employment for any reason.

C. Sick day accrual payoff upon separation from employment for any reason.

Section 15 A bargaining unit member who elected not to participate In the County's retiree health care program and has/ therefore/ not paid into the Retiree Health Care Trust Account/ will be given the opportunity to participate in the County's retiree health care program in the event a need for such health care arises due to unforeseen circumstances such as/ by way of example/ divorce from a spouse through whom retiree health care

would have been provided. In the event of such an unforeseen situation as described herein/ the bargaining unit member shall notify the County in writing of the circumstances and shall request participation in the County retiree health care system.

If a qualifying event has occurred, in order to participate in the retiree health care program the member shall be required to pay the County an amount equal to all contributions the member would have made to the Retiree Health Care Trust Account had the member not opted out plus 2% interest on such contributions compounded annually commencing at the end of the first year the member would have started contributing. The member shall also be required to reimburse the County the 457 Plan match contributions received while opting out of the retiree health care program, and shall not be eligible for future match contributions once participation In the retiree health care program is accepted.

The amounts due under this paragraph are due within 90 days of the County's acceptance of the member's application. If such amounts are not paid, the member will not be permitted to opt back into the County retiree health care program.

Section 16 Full time employees hired on or after the ratification of this agreement **(August 19, 2009)** shall not be eligible for a Defined Benefit Plan; instead, these employees shall be entitled to a Defined Contribution Retirement Plan.

The Defined Contribution Plan has distinct differences from the Defined Benefit Retirement Plan: there is no guarantee of a specific benefit, only what the employee decides to withdraw upon termination from employment the employee chooses how to direct his or her investment. The employee should fund this plan with the goal to cover both pension and retiree healthcare needs. The benefit is portable.

The employee may contribute up to **the IRS maximum elective deferral (contribution) limit** of total wages through payroll deduction each pay period. Wages is defined as W-2 compensation less fringe benefits, bonuses, overtime, off schedule payments and longevity, etc. **Employees wishing to adjust their employee contribution election amount, may do so in accordance with the terms of the 457 Plan and applicable County policy.**

The County will match the employee contribution dollar for dollar up to a maximum of 8% of total wages.

Retirement age: Age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the employer, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age.

ARTICLE 42 – TERMINATION OF AGREEMENT

This Agreement shall be in effect and become operative on _____ 1, 20___ and shall continue in operation and effect through June 30, 2014. If either party hereto desires to terminate, modify, or amend this Agreement, it shall at least sixty (60) days prior to June 30, 2014, give notice to the County and the Court or to the Union as the case may be of its intention to terminate, modify, or amend this Agreement. If neither party shall give notice to terminate, modify, or amend this Agreement as provided, the Agreement shall continue in operation and effect after July 1, 2014 subject to termination or modification, thereafter by either party upon sixty (60) days written notice.

Fact Finder's Note: The Agreement would become operative on the date that it is ratified by both parties. It would end on June 30, 2014.

REMAINING ISSUES

The parties having settled four of the seven outstanding issues, the Fact Finder now focuses on the three remaining open issues Article 13 – Layoff and Recall; Article 31 Healthcare and Dental Insurance; and Article 41 – Salary Schedule.

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral, can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. In reaching recommendations, a Fact Finder is guided by certain criteria. Essentially, these criteria addressed the cost of living, the financial ability of the government unit to fund the award, comparables - both internally and with other similarly situated public and private employers in the geographical area involved. Section 9(h) references additional criteria followed by fact finders. Bargaining history is one of those additional criteria. Bargaining history not only involves the current bargaining history between the affected parties (an extensive period of time) but also the parties' previous bargaining history as well as the bargaining history among employees of the employer and other represented bargaining units. All of these factors have been considered in the Fact Finder arriving at his final conclusions. The Fact Finder's function is to attempt to present the guidelines to resolve the dispute. The Fact Finder notes that the parties, through their efforts, have resolved four of the seven open issues prior to the Fact Finder issuing his opinion. They are to be commended for those efforts.

FACT FINDER'S RECOMMENDATIONS FOR UNRESOLVED ISSUES

ARTICLE 13 – LAYOFF

The Employer has proposed an amendment to Section 5 and Section 9 of Article 13. This issue primarily involves a change proposed by the employer in Section 5. The current CBA language reads as follows:

> In the event two or more employees of equal seniority, layoff shall be by employee payroll number. The Employee(s) with the highest employee payroll number shall be considered to have the least seniority.
>
> The Employer proposes the following languages:
>
> In the event two or more employees have equal seniority, layoff shall be **at the discretion of the Court**.

The language in Article 13, Section 5 is relatively straight forward. The language of Section 5, in part, provides: "Employee(s) shall be laid off in seniority order from the least to the most senior, provided that the most senior employee(s) qualify to perform the job shall be retained". The issue raised by the Employer in Section 5 is that the subject language of the current CBA would expire with the previous collective bargaining agreement or with a change in the current Chief Judge. The Employer, in particular the Court, has proposed striking the last sentence so that the subject language will remain. In essence, the Employer's proposal would then have the last sentence of Section 5 read as follows:

> "The Court shall have the right to determine an employee is not qualified to perform the job based upon the employee's substantial disciplinary record within the last three (3) years and poor performance evaluations."

The Employer's argument is that "the pertinent language (second to the last sentence of paragraph 5) "already exists in the CBA and the Employer is just seeking to retain the existing language". Additionally, the Employer argues that in these days of layoffs due to budget constraints it is certainly reasonable for the Court to be able to consider an Employee's "substantial disciplinary record" and "poor performance evaluation" in determining whether an employee is qualified to do a job.

The Union's position is that the current contract language (including the last sentence) should be retained. The Union, in its post hearing brief, noted that the final two sentences of Section 5 became invalid when, "upon information and belief", there was a change in the chief judge during the term of the most recent CBA. Unfortunately, due to the waiving of the hearing on these issues, there was no record of "a change in the current chief judge".

NOTE: The Fact Finder takes judicial notice that the 2013 Michigan Bar Journal lists the Honorable John D. Monohan as Chief Judge Pro Tem although a telephone call to the State Court Administrator's office indicated that the Honorable Daniel J. Kelly was the Chief Judge of the District Court (listed in the Bar Journal as Chief Judge of the 31st Circuit Court).

The Fact Finder has reviewed the entire language of Section 5 and recommends that the current contract language be retained. There is an overwhelming preference for seniority to control when determining an order of layoff. Most, if not all, of the internal and external comparables offered by the Union utilize seniority when determining layoff. Seniority has, for the most part, been the cornerstone of the Union's position on most contractual language that affects employees in that regard.

The Fact Finder would lean toward the ability of the Court to properly discipline an employee (including discharge) if the employee is not qualified to perform the job or based upon the employee's substantial disciplinary record. The Fact Finder does acknowledge that the discipline and/or discharge of an employee by the employer is a serious occurrence. The discharge of an employee has serious consequences and the employer always retains the right to terminate an employee based on an inability to perform the job or the existence of a substantial disciplinary record.

ARTICLE 13 – LAYOFF – SECTION 9

Section 9. Basically, the Employer proposes altering Section 9 to permit the Employer to determine which employee is retained in the case that two employees have equal seniority. In essence, the language provides that the employee to be laid off in the case of a "seniority tie" would be at the discretion of the Court. The Union would indicate that in the case of a seniority tie the lowest payroll number (i.e. the first person hired on a given day) would control while the employer's position on this issue is that "there could be nothing more arbitrary than a payroll number in making this kind of an important decision". The utilization of the payroll number is the most objective criteria and would not enable the employer to make "arbitrary decisions" as to which person would be laid off in case of a seniority tie.

The Fact Finder is persuaded that the Union's proposal which would retain the current CBA language should be adopted. While the record does not indicate whether or not this is even an occurrence that would occur (before this would happen, two employees in the Court system would have to have been hired on the exact same date in

the past) it is simply a case of not having enough information to warrant a change in the current CBA language with respect to this particular issue

ARTICLE 31 – HEALTHCARE AND DENTAL INSURANCE – PPO8W/20% EMPLOYEE PREMIUM SHARE

The Employer's proposal is for a Blue Cross Blue Shield PPO8 for which the County is self insured. The employee contribution pursuant to Public Act 152 (see MCL Section 15.561) is a 20% employee share based upon a Resolution which was passed by the County Board of Commissioners pursuant to the terms Public Act 152. The third tab in the Employer's Exhibit Book reflects the internal comparables. There was a listing of all of the Collective Bargaining Agreements with respective expiration dates. It is noted that a number of the internal groups are still in negotiations. However, every group is already subject to BCBS PPO 8 except the District Court employees AFSCME group that is the subject of this Fact Finding. It is clear from the exhibits that the only groups that are not paying the 20% are the ones that are either in negotiations (as is the Union in this case) or had a contract in place before the 20% went into effect. The Employer posits that the only change it is requesting with regard to the Union is to change from the Community Blue Plan Two to the Community Blue Plan 8 which is what every bargaining unit has except the Sherriff's Department Corrections Command Group which is currently in negotiations along with this Union.

The Employer's position is that the Union's request would completely go against what all the other internal comparables for St. Clare County have accepted. As such, that proposal would be completely unacceptable to the County and it would require the County to run a healthcare plan for one group and another plan for everyone else. (Noting the exception of a Corrections Command Group).

The Union asserts that over the past few years, the chief issue which has prevented the parties from reaching a complete agreement has centered on health insurance, in this case, for active employees. The current language includes a Community Blue PPO option 2 program. The Union's post hearing brief asserted that the employee co-share would increase each year by the same percentage amount that the County illustrated rate increased.

Understandably, the Union has referenced the Republican Governor and the Republican dominated Michigan Legislature for the significant changes to public employees (PA 152). The Union indicated that the Employer has "seized upon this opportunity" and has decided to follow the mandated PA 152 despite having the opportunity to opt out of the requirements of the statute and govern its own affairs. Essentially, the Employer's proposal would, in the Union's view, more than double the employee contributions to the health insurance while offering a less beneficial health plan and when combined with no offering of a wage raise to offset at least some of the costs, would not be acceptable to the Union.

The Fact Finder has analyzed all of the exhibits proposed by the Employer and the Union in reaching his conclusion that there are justifiable and significant reasons for adopting the Employer's proposal – Community Blue PPO Option 8 with the following provisions (among others) noted in the Employer's exhibits:

- Annual Deductible: $500/Employee; $1000/Family
- Co-Pays: 80% Plan Approved Charges; 20% Employee
- Max Out of Pocket: $3000/Employee; $6000/Family

- Office Visit Co-pay: $20

In addition, in accordance with PA 152 of 2011, it would require that employees pay a premium cost co-sharing amount equal to 20% of the County's illustrative rate. These co-shares calculate as follows:

- Single: $866.75 annually or, $33.34 per pay period
- Two Person: $2,128.15 annually, or $81.86 per pay period
- Family: $2660.21 annually, or $102.32 per pay period

The Fact Finder notes that the Union members have benefited by the "better" Community Blue PPO Option 2 during the time period of negotiations and continuing past the initial termination of the current CBA of June 30, 2012.

ARTICLE 41 – SALARY / SCHEDULE.

The Fact Finder has opted to discuss his recommendation on wages as the last issue. The Fact Finder notes that the current CBA expired on June 30, 2012; well over one year ago. Additionally, even if the parties agree on all of the three issues remaining, the implementation, if any, would only extend until June 30, 2014. The Fact Finder now turns his attention to the more salient criteria regarding wages.

Ability to Pay

Both parties agree, through their post-hearing briefs and/or their exhibits, that the economy in Michigan and, more specifically, in St. Clair County, has declined for a number of years. The economic history and information submitted by the Employer through its exhibits shows a budget shortfall for 2013 at approximately $1.6 million dollars. The projections for calendar year 2014 are substantially reduced although it includes a number of assumptions and budget balancing. The Union brief indicates the County has found a number of ways to save money and the overall balance fund has increased each year since 2008 (UN-23). While the Employer's exhibits demonstrate a trend toward an increase in taxable values they are, for all practical purposes, de minimus until 2016 and beyond. While it is possible for the Employer to improve its budget, it will be difficult for the remaining months of this particular contract as proposed.

External Comparables

The post-hearing briefs submitted indicate that there are a number of ways to assess comparability. During these proceedings, the parties did not, in reality, dispute comparables. The external comparables proposed by both parties indicate that only two external comparables are relevant to an external comparable decision. They are Livingston County Circuit Court and Office of the Friend of the Court, Probate Court of Livingston County and the 53rd District Court of Livingston County and the Michigan Association of Public Employees and the 1st Judicial District Court for the County of Monroe and 1st District Court Employees Association (Unit 1). The Fact Finder has reviewed the exhibits in that respect and, for the most part, has placed greater emphasis on other relevant factors.

Internal Comparables

Over the most recent history of collective bargaining, arbitrators have reasoned

that external comparables becomes less and less relevant as the financial situation of the relevant entity (Employer) becomes worse. As external comparables becomes less relevant, the manner in which the Employer treats other groups of employees, both represented and unrepresented becomes more important. In this context, both the Employer and the Union agree on all of the internal comparables within St. Clair County as included in the exhibits. However, many of those bargaining units are still in negotiations.

It is the recommendation of the Fact Finder that the Employer's position as to a wage freeze through June 13, 2013 be adopted. However, that being said, the Fact Finder would urge the parties (especially the Employer) to provide some type of nominal increase in wages during the next negotiation sessions for the contract which would begin July 1, 2014. Employees in this bargaining unit (as well as other bargaining units throughout the State of Michigan), have suffered significant increases in the healthcare benefits that they previously enjoyed and, hopefully, this Employer (as well as others) will see fit to take whatever steps are necessary to provide employees with a modest increase in wages.

Respectfully submitted,

DON R. BERSCHBACK
MERC Fact Finder

Dated: Sept 27, 2013