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MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)

INERMATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 876
Labor Organization, Petitioner

MERC Fact Finding Case # L13 K-1052
Fact Finder: C. Barry Ott

-and-

MICHIGAN SOUTH CENTRAL
POWER AGENCY
Employer, Respondent

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APPEARANCES:

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FINDINGS, OPINION AND RECOMMENDATIONS

The Michigan South Central Power Agency (MSC) is a joint power agency created in accordance with Act 448 of the Public Acts of Michigan of 1976 The agency is governed by a board of commissioners appointed by the governing body of each member of the Agency, the cities of Coldwater, Hillsdale, Marshall and the villages of Clinton and Union City. Each entity appoints one commissioner to serve on the Board of Directors. MSC provides electric power to the five member communities. Initially MSC operated a single generating plant utilizing coal fuel. All of the bargaining unit employees of SMC work at the plant and are considered public employees subject to the state statutes governing public employees.

In 2012 and 2013 SMC initiated a program to supplement the coal-fired boiler system with a new process utilizing discarded or scrap auto and truck tires. Since the new process required the installation of new equipment and operating staff, MSC created three new classifications; FTF Operators, FTF Attendants, and Tire Unloaders. In the initial phase of the tire burning operation SMC engaged workers through an employment agency to perform the work of the three newly created position. These employees were not included in the bargaining unit and were paid by the employment agency. In February of 2014, the parties agreed to include the workers employed as FTF Operators and FTF Attendants in the bargaining unit. Those workers employed, as Tire Unloaders were not included in the unit and remain employees of the employment agency. SMC has indicated that they are exploring the possibility of utilizing an automated tire unloading process and if by January 1, 2015 the Tire Unloaders are not replaced by an automated system they will be placed in

the bargaining unit. As of May 20, 2014, the bargaining unit consists of 43 employees, 31 work in the coal generating plant and 12 work in the tire tower as FTF operator and FTF Attendants.

The most recent labor agreement between the parties expired on December 31, 2013. The parties commenced negotiations on a successor agreement in the fall of 2013 and the Union filed a petition for fact finding on February 18, 2014. The Michigan Employment Relations Commission (MERC) appointed the undersigned as the fact finder on April 10, 2014. A pre-hearing conference was held on May 12, 2014 and the hearing was held on July 17, 2014. Post hearing briefs were submitted on August 29, 2014.

ISSUES IN DISPUTE

The parties have identified some eleven issues in dispute as follows:

1. Definition of the bargaining unit.
2. Dues deduction check off language.
3. Wage rates for the new classification of FTF Operators and FTF Attendants.
4. Medical insurance.
5. Pension.
6. Duration of agreement.
7. On call duty.
8. Wages for the current bargaining unit.
9. Holidays.
10. Sick Leave.
11. Personal Leave.

COMPARATIVE DATA ANALYSIS

This case is somewhat unusual in that MSC is, as the parties agree, unique; there is no other agency like MSC in the state. MSC was created by the five public entities to generated electrical energy that is than sold by the five communities to their respective

residents. The costs associated with the production of electrical energy is the responsibility of the five communities. The Employer has submitted collective bargaining agreements from the five public entities that created MSC and have representatives on the Board of Directors. However, the Employer argues that its bargaining proposals are not to be evaluated or compared to those in the five separate jurisdiction but are submitted to establish the background and mindset of the Board of Directors in negotiations and the foundation of the positions it has taken in this case. Moreover, the Employer argues that fact finding procedures are governed by Section 25(1) of the State Labor Relations and Mediation Act (MCLA423.25) that in relevant part states: "...It shall become apparent to the Commission that matters in disagreement between the parties might be more readily settled if the facts involve in the disagreement were determined and publicly known the Commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public." The Employer asserts that the statute does not suggest or compel the Fact Finder to examine the matters in dispute in this case and compare them to like issues with similar or private corporations or public entities. According to the Employer, only the facts in dispute in this case, are the only statutory focus for exam by the Fact Finder. Therefore comparable community or employment data is not a relevant consideration.

The Union agrees with the Employer that MSC is unique in the State of Michigan and perhaps throughout the Midwest. However, the Union contends that MSC is an electrical energy production plant and as such is part of an electrical industry and it is appropriate to evaluate the respective proposals with those found among comparable entities

in the industry. Consequently, the Union has submitted contractual data from the following private electrical generation and distribution companies: Duke Power, Consumers, Wisconsin Electric Power, Lansing Board of Water and Light, Indianapolis Power, Cloverland Electrical Cooperative, Great Lakes Energy Cooperative, Midwest Energy Cooperative, Presque Isle Electric and Gas Cooperative, Homeworks Tri-County Electric Cooperative, and Wolverine. The Union argues that the collective bargaining agreements of the five agency members are not comparable because they do not perform similar or identical work to that performed by MSC and therefore do not present any basis to look to those communities for purposes of comparison. The Union points out that many fact finders utilize Section 9 factors of Act 312 in evaluating proposals and making recommendations.

The Employer is correct that the statutes do not compel the Fact Finder to examine the disputed issues in this case and compare them to like issues with similar private corporations or public entities. The Union is also correct that many fact finders have employed comparative data of wages, hours, and other terms and conditions of employment of other employees performing the same or similar work in comparable communities as well as private employment. While nothing in the statute specifically directs such comparisons, there is nothing in the statute that prohibits or restricts a fact finder from considering such comparisons or any other factors that the fact finder deems appropriate. MSC is as the parties agree, unique and as such it does not readily lend itself to the usual methods of comparative analysis. However, the employees of MSC are public employees and as such are supported by the sale of electrical energy to the five communities that comprise the Agency and subsequent sale of that energy to the residents of those communities. As such

MSC cannot reasonably be compared to the some of the large corporations with multiple-state operations. The employees of these entities are private employees subject to the National Labor Relations Act and as such have the right to strike, a right that is denied to the public employees of MSC. That difference affords the private employees with significantly greater economic bargaining power that often results in higher wage and benefit levels.

The fact-finding process is intended to review the facts as presented at the hearing with the realization that the report and recommendations are not binding upon the parties but may assist the parties in reaching a negotiated agreement. In this case we have a bargaining history that began in 1991, resulting in the present level of wages and benefits agreed to by the parties. In the opinion of this fact finder, that is the appropriate starting point and the respective proposals of the parties should be evaluated on what the parties can reasonably expect to achieve through the bargaining process, keeping in mind that Section 423.1, Section 1 of the Act provides, in part, that the interests and rights of the consumers and the people of the state, while not direct parties, should always be considered, respected and protected.

ISSUE # 1- DEFINITION OF BARGAINING UNIT

The Employer proposes to change Section 1 of Article 1, as follows:

Section 1. Pursuant to a certification of the Michigan Department of Labor issued in Case No. R90 K-264 on March 7, 1991, the Employer recognized the Union as the sole and exclusive collective bargaining agent with regard to wages, hours and other terms or conditions of employment for all Boiler Room Operators, Scrubber Operators and

Attendants, Material Handlers, Store Attendants, Instrument Technicians, Instrument Information Technicians, Power Plant Oilers, Repairmen, FTF Operators, FTF Attendants, and Facility Maintenance. Excluding temporary and seasonal employees, Supervisors, Administrative Personnel, Office and Plant Clerical employees, Shift Foremen, Maintenance Foremen, Plant Guards and all other employees including employees unloading tires. Should the Agency employ persons unloading tires after January 1, 2015 these employees shall be included in the bargaining unit.

The Union objects to the exclusion of the employees that unload tires until January 1, 2015, and proposes to include the titles of FTF steel handlers and FTF tire handlers in the bargaining unit upon ratification but no later than October 1, 2014.

There really is no dispute over the concept of the inclusion of the workers unloading tires into the bargaining unit, only the date of inclusion and perhaps specific job titles. The Employer claims it needs the time to explore the feasibility of utilizing an automated system in which case there would be no further need for these workers. The Union argues that under the terms of the expired contract they could have insisted that all of the employees working at the tire tower, including the tire unloaders, be included in the unit and the Employer has had sufficient time to explore the issue of an automated unloader.

By the time this report is issued and subsequent negotiations are concluded, October 1, 2014 will have been past. Indeed, there is no assurance that an agreement on a successor agreement will be reached by January 1, 2015. The Union is correct that this issue is a permissive subject of bargaining and unit determination issues are subject to MERC jurisdiction. However, both parties have made proposals on this issue and neither party has

raised an objection to the review and recommendation of the matter by this fact finder. Given the time factors involved, I recommend that the parties enter into a separate unit determination agreement to include the tire handler workers in the bargaining unit as soon as the Employer resolves the automation question, but not later than January 1, 2015. Moreover, I will make a recommendation concerning the wage rate for the position, as it presently exists to take effect as of the date of contract ratification. If an automated system is installed at some time in the future the parties will have to evaluate just what if any job classification is warranted at that time.

ISSUE #2 – UNION SECURITY AND DUES CHECKOFF

The Employer proposes to eliminate Section 1 and Section 2 of Article III – Union Security of the expired contract and replace them with the following:

Section 1. Union membership and/or the payment of union dues, initiation fees and/or union representation fees of any kind shall not be required of any employee. Employees shall be allowed to resign union membership and the payment of union dues and initiation fees at any time. Employees shall be allowed to join the union at any time. Membership or non-membership in the union shall not affect the employment status of any employee.

Section 2. Employees choosing to remain members of the union or who choose to join the union during the term of this agreement and who desire to have union membership dues and initiation fees deducted from their pay and remitted to the union, the Employer shall make said deduction in accordance with the following conditions.

(a) An employee may cancel his/her deduction for union dues and initiation fees at any time by giving the Employer's Human Resources Department thirty (30) days written notice.

(b) The employee must execute a written authorization form authorizing the Employer to deduct union dues and fees prior to any deduction being made.

(c) The Employer shall deduct from the pay of each employee who has executed such form the sum designated by the Union on the second payday of each month, except that dues which are based on a percentage of the employee's wages shall be deducted each pay period, and shall deliver the sum so deducted to the Financial Secretary of the Local Union with a list showing the employees for whom deductions have been taken and the amount deducted from the employee's pay by the twentieth (20^{th}) day of the month following the month for which said dues were deducted. The Union agrees to indemnify and save the Employer harmless against any and all claims, suits or other forms of liability that may arise out of or by reason of action taken in reliance upon individual authorization furnished to the Employer by the Union or by reason of the Employer's compliance with the provisions of this Section.

Section 3 and Section 4 of Article III shall remain unchanged.

The Union proposes to eliminate Section 1(a), (b) of Article III of the expired contract and to amend Section 2 to read as follows:

Section 2. During the life of this Agreement, the Employer agrees to deduct Union membership dues and initiation fees levied by the Union, in accordance with the

Constitution and by-Laws of the Union, from the pay of each employee who executes an Authorization Check-off form. A properly executed copy of such Authorization for Check-off form for each employee for whom the Union membership dues are to be deducted shall be delivered by the Union to the Employer before any payroll deductions are made. The Employer shall deduct from the pay of each employee who has executed such form the sum designated by the Union on the second payday of each month, except that dues which are based on a percentage of the employee's wages shall be deducted each pay period and shall deliver the sum so deducted to the Financial Secretary of the Local Union with a list showing the employees for whom deductions have been taken and amount deducted from the employee's pay by the twentieth (20^{th}) day of the month following the month for which said dues were deducted. The Union agrees to indemnify and save the Employer harmless against any and all claims, suits and other forms of liability that may arise out of or by reason of action taken in reliance upon individual authorization furnished to the Employer by the Union or by reason of the Employer's compliance with the provisions of this Section. Nothing contained in this Article shall require any employee to become a member of the Union.

Sections 3 and 4 of Article III shall remain unchanged.

Both parties agree to eliminate the existing provisions of Section 1 and 2 of Article III of the expired contract. The real issue in dispute is over the Union's proposal to require the Employer to "deduct union membership dues and fees levied by the Union, in accordance with the constitution and bylaws of the Union from the pay of each employee who executes an authorization check off form "and whether or not an employee has the right

to revoke at will their dues authorization card regardless of its contractual terms. Both parties recognize an employee's right to resign their union membership at any time.

The Employer asserts that Michigan's new right-to-work statute at Section 9(1)(a) of the Public Employment Relations Act set forth certain rights given to public employees, including the right to join a labor organization. Section 9(1)(b) gives public employees the right to refrain from the activities enumerated in Section 9(1)(a). Section 9(2) provides that: no person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following: (a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative. Section 10(3) enumerates specific acts a public employer cannot do; these include compelling an employee to become or remain a member of a labor organization or bargaining representative, pay any dues, fees, assessments or other charges or expenses of any kind or amount or provide anything of value to a labor organization. Section 10 provides a cause of action against any employer who violates subsection (3). According to the Employer, their proposal fully notifies each employee of their rights under Sections 9 and 10 of PERA as amended, including the right to resign union membership at any time and to cancel their dues deduction authorization at any time after giving the Employer thirty (30) days notice.

The Employer objects to the Union's proposal that requires the Employer to "deduct union membership dues and fees levied by the Union, in accordance with the constitution and by laws of the Union from the pay of each employee who executes an authorization check off form" on the grounds that the Employer has no knowledge of the constitution of

the Union or whether it is legal and it does not allow an employee to terminate dues check off at will. The Union's proposal provides for a window period based on a one (1) year anniversary date to revoke the dues authorization card or upon expiration of the contract, with a ten (10) day notice requirement.

The Union has cited numerous NLRB and court decisions that support their contention that a reasonable limitation on an employee's right to withdraw his /her dues deduction authorization such as is proposed by the Union is legal. The Union also cites West Branch-Rose City Education Association and Michigan Association, 17 MPER 25 (2004). All of the cited cases predate the adoption of PA 349 that added the "right to refrain" language to PERA. The Employer has not cited any case law to support their contention that an employee who voluntarily signed a dues check off authorization card can unilaterally revoke that authorization at will or that continued deduction of dues after an at will resignation of Union membership constitutes a violation of Section 9(2)(c) and Section 10(c).

On September 2, 2014, Administrative Law Judge Julia C. Stern issued a Decision and Recommended Order in a series of cases involving certain provisions of Sections 9 and 10 of PA 349. (Saginaw Education Association and Michigan Education Association and four charging parties, (Case No. CU13 I-054, CU13 I-055, CU13 I-056, CU13 I-057, CU13-058, CU13 I-059, Cu13 I-060, CU13 I-061). The decision in these cases was issued after the filing of briefs in this fact-finding case. While the facts and circumstances involved differ from those in this case, the decision does shed some light on the issue of whether an employee has the right to revoke his/her dues authorization at will contrary to the terms of

the authorization card under the terms of Section 9(b) of PA 349. At page 22 of her decision, Judge Stern stated:

"As discussed above, I find that when the Legislature added the right to refrain language to Section 9 of PERA, it incorporated into PERA the right to refrain as it has been interpreted under the NLRA, I find that under Sec.9(b) of PERA employees have a right to resign their union membership at will. I conclude that any union rule or policy, including the MEA's August window period policy, which limits or restricts that right violates Sec.10(2)(a) of PERA.

I also find that, under the principal of "voluntary unionism," a member can agree to limitations on his right to resign his "financial core" membership, i.e., his obligation to pay dues and fees, at least if that restriction is reasonable. I conclude that Respondents could lawfully condition admission to membership on an individual's written agreement to limit his right to resign his "financial core" membership at any time. However, I find that this agreement, as a waiver of individual statutory rights, must be clear, explicit, and unmistakable."

At page 19 of her decision Judge Stern reviewed the decision of the NLRB in International Brotherhood of Electrical Workers, Local 2088 (Lockheed Inc.), 302 NLRB 322 (1991), regarding waivers. "Explicit language within the check-off authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union

during the entire agreed-upon period of irrevocability, even if the employee states he or she has had a change of heart and wants to revoke authorization."

In the instant case, the Dues Deduction Authorization card contains the statement that: "This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for the purposes of collective bargaining, and this authorization is not conditioned on my present or future membership in the Union. This authorization shall be irrevocable for a period of one year from the date hereof or until the termination date of said agreement, whichever occurs sooner, without regard to whether I am a member of the Union during that period, and I agree that this authorization shall be automatically renewed and irrevocable for successive periods of one year unless revoked by written notice to you and the Union within the ten (10) day period prior to either the anniversary of this authorization or the termination of the agreement."

In my opinion such language constitutes a valid waiver and obligates an employee to continue to pay dues even after termination of his/her union membership until such time as the authorization is terminated in accordance with the provisions outlined above. Moreover, such provision does not violate the provisions of Section 9 and 10 of PA 349.

RECOMMENDATION.

I agree with the Employer that fully informing employees of their rights under Sections 9 and 10 is appropriate for inclusion in their proposal. I recommend the parties adopt the Employer's proposal with the following modifications:

Section 1. Union membership and/or the payment of union dues, initiation fees and/or union representation fees of any kind shall not be required of any employee. Employees shall be allowed to resign union membership at any time and may revoke their Dues Deduction Authorization by giving written notice to the Employer's Human Resources Department and the Union within the ten (10) day period prior to either the anniversary of the authorization or the termination of the Labor Agreement, which ever is sooner. Employees shall be allowed to join the union at any time. Membership or non-membership in the union shall not affect the employment status of any employee.

Section 2. (a). Delete as proposed.

Section 2. (b) and (c) to be included as proposed.

Sections 3 and 4 of Article III shall remain unchanged

ISSUE #3 – WORK ASSIGNMENTS, HOURS OF WORK AND HOURLY RATES FOR FTF OPERATORS AND FTF ATTENDANTS.

The parties agreed to include the classifications of FTF Operators and FTF Attendants in the bargaining unit in February of 2014 and the Employer established an hourly rate of pay and work schedules. The Employer proposes the following language be added to the expired contract:

The Employer has created the job classifications of FTF Operator and FTF Attendant. The Employer will add these classifications to the bargaining unit. Employees occupying these classifications will be assigned work schedules and hours of work, which best meet the job requirements and needs of the Employer; and these may be changed during the term of this Agreement. Employees who occupy the FTF Operators classification shall be paid a rate of seventeen ($17.00) dollars per hour. Employees who occupy the FTF Attendant classification shall be paid sixteen dollars and thirty-four cents ($16.34) per hour. As noted earlier, it is recommended that the employees working as Tire Unloaders be included in the bargaining unit not later than January 1, 2015.

The Union proposes to establish a four-step wage scale for the FTF Operator starting at $21.00 per hour with a maximum rate of $22.95 and a starting rate of $19.00 per hour for FTF Attendants with a maximum rate of $20.76. In addition, the Union has proposed two new classifications to replace that of the Tire Unloader: a FTF Steel Handler starting at $17.00 per hour with a maximum rate of $18.58, a FTF Tire Handler starting at 16.00 per hour with a maximum rate of$17.48.(Union; Exhibit 25B)

The Employer has based it's proposal upon the premise that the two existing FTF classifications are entry level positions and prior to their creation the positions of Laborer and Custodian were considered entry level and therefore the Agency assigned the same starting rate to the FTF Operator as that of the Laborer and starting rate for the Custodian to that of the FTF Attendant.

Since I have recommended that the Tire Unloader employees be placed in the unit when the tire handling automation question is resolved, but not later than January 1, 2015,

the Union's proposal for two new classifications is premature. As I indicated, if the Agency installs an automated system to handle tires, the parties will have to determine what classifications are required at that time. Consequently, I will make a wage recommendation for the three FTF classifications as they presently exist.

In evaluating the parties respective wage proposals regarding the classifications of FTF Operator, FTF Attendant and Tire Unloader it is most appropriate to compare the job duties required to those classifications within the Agency's organization that are closely related. The job description for the FTF Operator position (Union Exhibit 27G) and that of the coal Plant Operator (Union Exhibit 27E) are very similar and in many respects are identical. The Employer has established the rate and equated the FTF Operator position with that of a Laborer. The Employer has assigned a wage rate of $17.00 per hour without steps while the Laborer position has a starting rate of $17.00 per hour and four steps to a maximum hourly rate of $19.32. The starting wage rate for a coal Plant Operator is $24.80 per hour and four steps to a maximum hourly rate of $28.38.

The FTF Attendant position description (Union Exhibit 27F) has many duties that are quite similar to that of the coal plant Attendant (Union Exhibit 27A), which is paid a starting rate of $21.20 per hour with four steps to a maximum of $23.85. There is also some similarity in duties to that of the Materials Handler position, which is paid starting rate of $19.32 per hour with four steps to a maximum of $22.04.

Since the FTF classifications are unique to the operations of MSC, there are no appropriate external comparables.

RECOMMENDATION

Based upon a review of the wages and duties of other classifications within the organization, I recommend the following pay schedules to be effective as of the date of contract agreement and ratification:

1. FTF Operator - $21.00 $21.65 $22.30 $22.95
2. FTF Attendant - $19.00 $19.58 $20.16 $20.76

In the event that the Employer does not automate the tire unloading operation by January 1, 2015, I would recommend the following pay schedule for the Tire Unloader position to be effective as of the date of contract agreement and ratification:

1. Tire Unloader - $16.00 $16.47 $16.84 $17.48

In the event that the tire unloading operation is automated the parties will have to evaluate just what classifications are required at that time.

ISSUE #4 – MEDICAL INSURANCE AND EMPLOYEE CONTRIBUTION TO PREMIUM

The Employer has proposed alternative medical plans and employee contribution rates together with variable wage increases depending upon which insurance plan is selected. The Union has proposed to maintain the current plan.

It isn't necessary to review the merits of the alternative insurance plans at this point since the proposals do agree that continuing with the present insurance plan with the

Employer paying 90% of the premium and the employees paying 10% is acceptable. However, I will make a separate recommendation regarding wages.

RECOMMENDATION

I recommend that the parties continue with the present insurance plan as provided in the expired agreement, including the Employer's proposal regarding the reopener provision contained at Article XXXX with the date changes.

ISSUE #5 – PENSION

The Employer proposes that employees hired after January 1, 2014 shall be placed in the MERS Defined Contribution Pension Plan. Employees hired before January 1, 2014 would remain in the current MERS defined benefit plan. The Employer would pay eight percent (8%) of the employee's regular straight time earnings into the defined contribution plan.

The Union is opposed to a two tier pension plan and proposes to continue with the defined benefit plan for all bargaining unit employees.

The Employer argues that the defined contribution plan requires an Employer contribution of 8% while the defined benefit plan Employer contribution rate varies from year to year, currently 7.49%, and since the employees are not required to contribute to the plan, the cost is the sole responsibility of the Employer. In the public sector many employers have switched over to define contribution plans in an effort to fix their cost to a certain amount, particularly for new employees hired after a certain date. In many such cases the

employer is motivated by the substantial accrued unfunded liability associated with defined benefit plans and the resultant burden the funding requirements have on their available financial resources. Moreover, the defined contribution plan immediately vest the employee with the amounts contributed by the Employer and allows portability and the ability to roll the plan over into a new plan should the employee leave the employ of the Agency.

The Union argues that among the electrical generation industry many of the employers have defined benefit plans and there is no consistency among the municipal comparables offered by the Employer. (See Union Exhibit 10) The Union points out that the Employer has not advanced an ability to pay argument and the current defined benefit plan contribution rate is less than that proposed by the Employer for the defined contribution rate.

The main difference between plans is that the defined benefit plan provides the employees with a guaranteed pension level, while the defined contribution plan provides an amount of cash at the time of retirement. Both have advantages and disadvantages.

There is nothing in the record in this case to demonstrate that the existing plan is in any financial difficulty or that the Employer has an insurmountable unfunded liability or other financial problems that would raise an ability to pay argument.

The Employer has argued that there really are no comparables to the unique character of the Agency operations. As to the municipal members of the Agency, there are no comparable jobs and the data on pension plans is variable. The only comparable factor is that the Agency's employees are public employees.

In my opinion, there is no compelling evidence to support the establishment of a defined contribution plan for employees hired after January 2014.

RECOMMENDATION

I recommend that the parties adopt the Union proposal to maintain the status quo and continue with a defined benefit plan for all employees in the bargaining unit.

ISSUE #6 – DURATION

The Employer proposes that Section 1 of Article XXXX – Duration of Agreement be changed as follows:

Section 1. This agreement shall become effective as to the date of its execution and shall remain in full force and effect until 12:01 a.m. on the 1st day of January 2017 and from year to year thereafter, unless either party hereto serves upon the other a written notice of desire to amend or terminate this Agreement at least sixty (60) calendar days prior to the expiration date or sixty (60) calendar days prior to the expiration of any subsequent automatic renewal period.

Article XIX, the Employers' insurance policy plan year is open December 1, 2014; therefore insurance shall be open for negotiations upon request of the Agency made to the union at least thirty (30) days prior to November 30, 2014, 2015, and 2016. If the Agency opens insurance negotiations the provisions of Section 1 of Article XIX shall no longer be binding upon the Agency effective December 1, 2014, 2015, and 2016.

The Union is in favor of a two (2) year contract term primarily on the grounds that a two year term would allow the parties to get back to the bargaining table if there are any unforeseen results in the tire tower operation or to negotiate any employer unilaterally implemented terms of the contract.

The Employer argues that historically the parties nearly always had a three year agreement with the exception of the current expired contract which was shortened to expire just prior to the health insurance plan expiration date of December 31. Indeed, since most of 2014 has expired, the real effective time period involved is two years.

RECOMMENDATION

There is no need for any detailed discussion on this issue. By the time this fact finding recommendation is issued and the parties have had an opportunity to continue the negotiations, the year 2014 will be history. Given the statutory restrictions on retroactivity, the practical effect is that the term of the contract will be two years. Therefore, I recommend the parties adopt the Employers' proposal as outlined above.

ISSUE #7 – OFF DUTY CALLS TO WORK

The Employer proposes to apply the off duty calls to work procedure provided in Section 2(a) of Article VI of the expired contract to the employees of the Maintenance Department. The provisions of Section 2(a) have applied to the employees of the Operations Division successfully for many years. The employees of the Operations Division agreed to the provisions of Section 2(a) in return for the implementation of a twelve hour work shift. The first sentence of that section specifically states that: "The availability of on-call personnel to fill unexpected or expected vacancies on a given shift is essential to the success of this new twelve (12) hour schedule." None of these maintenance employees are paid for keeping themselves available when on-call and are paid only for hours actually worked.

Maintenance Department employees work an eight (8) hour shift and are not subject to the provisions of Section 2(a). The Employer asserts that some employees of this division are never or very often not available for calls to work overtime and that experience has prompted the Employer to propose the application of Section 2(a) to the Maintenance Division.

The Union is agreeable to this proposal but only with the additional condition that all employees subject to on-call or standby duty shall receive ten (10) hours straight time pay for one week of standby assignment.

RECOMMENDATION

It is unfortunate that some employees of the Maintenance Division have failed to meet their contractual obligations as agreed to at Section 6, Article VI that states, in part: "As a condition of continued employment, employees must make themselves reasonably available for overtime work assignments including calls to duty outside of the employee's regular scheduled work hours" The record evidence is slight as to the extent of the problem experienced by the Employer. If only one or two employees of the division are guilty of never or very often not available for call-back work, I suggest that those specific employees be reminded of their contractual obligation and if the problem persists, appropriate disciplinary action be taken. The Union also has a responsibility to assist the Employer to insure that the terms of the contract are being honored by all of the employees. It should not be necessary to include the incentive pay proposed by the Union for the Employer to get employees to meet their obligations under the terms of the agreement. I recommend that the

parties make a joint effort to secure compliance and to maintain the status quo regarding the terms of Article VI.

ISSUE #8 – WAGES

The Employer has proposed two alternative wage offers linked to which insurance plan is selected, i.e., $1.00 per hour increase for the first year, effective the first full pay period following ratification of the Agreement. The second year of the Agreement, i.e., January 1, 2015, a $0.45 per hour increase and a $0.45 per hour increase for the third year effective January 1, 2016. Since I have recommended the status quo on the insurance plan, the first option is no longer under consideration.

The second alternative maintains the present insurance plan and provides for a $0.45 per hour increase effective the first full pay period following ratification of the Agreement and $0.45 per hour increase on January 1, 2015 and January 1, 2016.According to the Employer this package works out to approximately 5.85% increase to the average hourly rate of $22.69 per hour as of July 17, 2014, The calculation does not include any roll-up cost.

The Union has proposed a 4% wage increase on October 1, 2014, with a $1,000.00 off step stipend upon ratification for the first year of the contract and a 3% wage increase on January 1, 2015 in the second year of the contract. The stipend and percentage increases would also apply to the FTF Operator, FTF Attendant, and FTF Tire Unloader. The Union supports the proposal based upon they view that the wage rates are low when compared with the data for other energy generation plants offered as comparables.

RECOMMENDATION

As is the case in most wage disputes, equity is often found somewhere between the positions of the parties, and I find such to be true in the instant case. The Union argument that the wage level at SMC are somewhat low when compared to other electrical energy generating employers has some basis in fact. However, as the Agency points out the parties have negotiate for years without making such comparisons that have resulted in the present wage levels. It is also true that the employees of such entities are private employees and as such have the right to strike which gives them greater economic bargaining power, an advantage not enjoyed by public employees. It is also true that many of the private employers offered by the Union as comparables are very large with multiple state operations and have a much larger consumer base than that of SMC. Under such circumstances I find it to be inappropriate to make such comparisons now or to place too much emphasis on the rates of pay prevalent in that industrial sector. In my opinion the level of increases occurring in both the public and private sector in the general labor market area and the increase in the cost of living should be given greater weight. It is also noted that Section 15b (2) of PERA specifically prohibits the parties from making any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement. In application this provision results in lost income to the employees from the date of contract expiration and the ratification of a new agreement, unless an adjustment is made going forward under the new contract.

The rise in the cost of living for 2014 and projected rate of increase for 2015 appears to be between two and three percent. Public sector wage increases among the five Agency

municipal members ranged from one to three percent and the limited wage increase data for some of the private sector comparables ranged from zero to two and one quarter percent.

The parties have submitted their respective cost analysis of their proposals and while they vary, they do provide this fact finder with a reasonable grasp of the cost consequences that in the end must be met by the Agency members and in turn by the resident consumers of electrical energy.

Based on the record evidence, and arguments of the parties I reached the following conclusions. In my opinion the Union's proposal exceeds that which I feel they could reasonably have expected to achieve through the collective bargaining process and the Employer's proposal falls short of the same expectation. Keeping in mind the cost to the consumer, I believe that the following schedule of increases is appropriate.

1. Effective on the first full pay period following ratification of an agreement all classifications in the bargaining unit should have their respective wage range increased by $0.60 per hour for the first year of the agreement.
2. Effective January 1, 2015 an additional increase of $0.50 per hour should apply to the wage ranges of all bargaining unit classifications.
3. Effective January 1, 2016 and additional increase of $0.45 per hour should apply to the wage ranges of all bargaining unit classifications.

I have elected not to recommend any signing stipend as the prohibition on any retroactive wage or benefit increases is not the fault of the Employer or the Union but the result of the application of the law. In my opinion such a provision runs contrary to the spirit of the law if not the letter of the law.

ISSUE # 9 – HOLIDAYS, #10 – SICK LEAVE, #11 – PERSONAL DAYS

1. The Union has proposed the addition of two new holidays, Veterans Day and the employee's birthday to the existing list of nine designated holidays.
2. The Union proposes to allow each employee to accrue up to 12 days of sick leave per year, earned at the rate of 1 day per month of service.
3. One additional 8 hours of personal leave for a total of 24 hours per year.

The Employer opposes all of the Union's proposed additional leave days, and argues the present nine holidays falls within the range of that offered by nearly all of the proposed comparables. On the issue of holidays, I agree with the Employer, there is no strong support for the Union's proposal regarding holidays.

On the issue of paid sick leave, the Employer is opposed on the grounds that at one time in the past the Agency had a sick leave plan similar to the one now prosed by the Union, but negotiate the elimination of that program in favor of a sickness and accident insurance policy as outlined in Section 2 of Article XIX at page 19 of Employer Exhibit #11. I agree with the Employer's position on the sick leave issue. It is my opinion that if the Union wishes to pursue a sick leave benefit as proposed, equity would require that the sickness and accident insurance program be eliminated.

On the issue of personal leave, I find that the present benefit falls with the range of that provided by the proposed comparables. Therefore I recommend the Employer's position on this issue.

Respectfully Submitted.

C. Barry Ott, Fact Finder Dated: September 22, 2014