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IN THE MATTER OF:

BERRIEN COUNTY CIRCUIT COURT **MERC CASE NO. L97-J-7011**

Employer,

and

TEAMSTERS LOCAL 214

Union.

_____/

Berrien County Circuit Court

FACT FINDING REPORT

By: Carl E. Ver Beek, Fact Finder

INTRODUCTION

A petition for Fact Finding was filed by Teamsters Local 214 on April 24, 1998. Carl E. Ver Beek was appointed as the Fact Finder by an Order dated May 26, 1998. A Fact Finding Hearing was scheduled originally for July 27, 1998, but adjourned by mutual agreement until September 14, 1998.

The hearing was held at the Berrien County Administration Building and attended by the following:

For the Union	--	Richard Divelbiss, Business Representative Deborah Kasper Jinny Mynestra
For the Court	--	R. McKinley Elliott, Esq. Shelley Smith, Labor Relations Manager Sandra Belter, Trial Court Administrator Rosemary Brock, Deputy Friend of the Court

Although the petition for Fact Finding initially listed seven topics, or issues, it was agreed that there are, in fact, ten issues. All of them were thoroughly addressed during the hearing and through documentary evidence regarding the practices of comparable employers.

As specified in Rule 35, the parties ask that the Fact Finder not only list findings but also give reasons for doing so.

COMPARABLES

With regard to comparable employers, the parties did not entirely agree on the list of comparable employers, each listing comparable counties, some of which were the same. For the most part, the Union relied on information from Jackson County, Monroe County, Muskegon County, Saginaw County and Kalamazoo County, selecting those because of the comparable number of Circuit Judges to the number of Judges in Berrien County.

The Court submitted information from Calhoun County, Jackson County, Muskegon County, Ottawa County and Saginaw County. Thus, there was considerable overlap in the comparables. Rather than make an arbitrary ruling excluding some of the information where the parties did not agree on the comparable counties, the Fact Finder has considered all of the information submitted by both of the parties, giving somewhat different consideration to the Kalamazoo County information since that Court's employees are not subject to the collective bargaining process.

DISCUSSION OF ISSUES

The issues will be addressed in the order in which they were presented at the hearing. Each side was offered the opportunity to present evidence and argument with respect to each of the issues in order.

The parties agreed that all facts submitted by each side would be considered correct and admissible unless there was a specific objection made to the admissibility of a particular fact. That format expedited the hearing process considerably.

The current collective bargaining agreement was admitted as Jt. Ex. 1. It was originally dated January 1, 1993, through December 31, 1996, but was extended for the calendar year 1997. The parties have operated without a contract since December 31, 1997. References to the contract are to Jt. Ex. 1.

The facts found to be pertinent to the open issues are as follows:

1. **Supplementary Employment** -- Article 11, Sec. 5(a) of Jt. Ex. 1 permits supplemental employment where "The employee notifies his department head in writing of his supplemental employment." The Employer's position would require that the employee "shall obtain written permission from the Court Administrator prior to accepting such employment." Although there was originally a 12-month renewal requirement proposed by the Employer, the 12-month renewal process was dropped.

The Union has proposed that the existing contract language continue.

Most of the comparable counties have no policy on this topic and those that do, require notice only (not permission).

Although the Court has a legitimate concern about knowing of the supplementary employment (which part (a) requires), it appears that parts (b) and (c) protect the Employer's interest adequately when it has notice of the supplementary employment since these sections establish the criteria for what is or is not acceptable employment. These sections state:

(b) The supplemental employment must not conflict with the employee's hours of Court employment, nor should it interfere or directly conflict with the employee's satisfactory performance of his court duties.

(c) The supplementary employment must not be incompatible or in conflict with the discharge of the employee's Court employment duties or tend to impair the employee's independence of action in the performance of the employee's Court duties.

Based on the foregoing, it would appear that the Union's position regarding continuation of the existing contract language for Section 5(a) should be acceptable.

There was only one actual incident of an employee where the supplementary employment work was questionable, because of the possibility of using court information. That concern is adequately addressed by Section 5 (b) and (c).

2. **Wages** -- The only point in controversy appears to be related to two employees who are paid above the maximum step on the salary schedule. The employer offered a 3% lump-sum bonus payment for them, whereas the Union proposed that they receive a 2% lump-sum payment on January 1, 1998, and another 2% lump-sum payment on July 1, 1998. Currently, the Union is proposing that those two payments be totaled as a 4% payment because we are now past July 1, 1998.

Based on the comparables and on the movement of the cost-of-living index, it does not appear that a 4% increase is justified for persons who are already paid above the maximum of the pay scale. Consequently, the Employer's position of a 3% lump-sum payment to those persons would appear to be the appropriate one.

3. **Wage Retroactivity** -- There is also an issue regarding the retroactivity of the general wage increase. The Court submitted evidence (which was not contradicted) that the County has never paid retroactively. The payment has always been effective as of the beginning of the month in which ratification occurred. The Court indicated that this was an important principle because it help to expedite the bargaining process, since the Union recognizes that a prompt agreement is in its best interest. Although there was some inference by the Union that the Employer had purposely delayed the process in 1998, it is not clear that this has occurred. Since the Union has the opportunity to continue to negotiate for the general across-the-board increase, it can factor the delay into its current request. Consequently, the Employer's view that retroactivity should not be paid is appropriate.

The parties could also consider a lump-sum payment in lieu of retroactivity, if they wish to negate the effect of the delay in 1998. That would not have the effect of raising the future wages artificially simply because of the delay.

4. **Bereavement Pay** -- The Union has proposed that the death of the employee's spouse, child, parent or grandchild should permit five (5) bereavement pay days rather than the contractual three (3) days which appears in Article 18, Section 5 of Jt. Ex. 1.

The Court submitted evidence that three days was the typical amount for immediate family in the comparable counties. The Union submitted evidence that the non-union employees at Berrien County outside of the court system were able to receive five days' pay for the deaths of those relatives.

Article 19, Section 5, of Jt. Ex. 1 in part (c) states:

> (c) If required, an employee may use up to two (2) days of accumulated Sick Leave for extended travel or other circumstances related to the Bereavement Leave.

This recognizes the potential for two additional days from the employee's sick leave bank where the death of a close relative could fall in the "other circumstances" language where the employee is particularly devastated by the death. Further, non-paid time off can also be requested as a personal leave under Article 19. It would appear that the Court's position on this issue is the appropriate one, i.e., the current contract language of Article 19, Section 5, should be acceptable to both parties.

5. **Personal Days** -- Article 18, Section 1(j). The current contract reads as follows:

> (j) Personal Day. An employee may use one Sick Leave day as a Personal Leave Day every twelve (12) months provided that the Personal Leave Day is scheduled in advance with the employee's department head.

The Union proposes to change it from one (1) sick leave day to two (2) sick leave days. The Court proposes no increase, pointing out that the total time available for personal days is competitive because employees are allowed to take vacation time when needed for personal reasons and, consequently, there is no justification for an additional paid day off per year.

Comparisons with the comparable counties are difficult here because the format for many of the counties is a composite Paid Time Off plan combining vacation, sick leave and personal days. In total, it appears that the total current contract time off for personal time, including vacation time, is competitive and comparable. Consequently, it would appear that there is no justification for an additional day. Further, it dilutes the amount of time available for actual sick leave which is

entitled to be available for sick leave emergencies. Thus, the Court's position to continue its existing language appears to be appropriate.

6. **Sick Leave** -- Article 18, Section 1(f) of Jt. Ex. 1 reads:

> (f) Medical/Dental Appointments. With the approval of the department head, accumulated Sick Leave may be used for medical or dental appointments.

The Union previously made proposals relating to paragraphs (a) and (g) but those have been dropped. Thus, the only remaining issue is whether the words "the employee's" should be added to the current language to clarify that it is the employee's medical or dental appointments which sick leave may be used for. Apparently, there have been a few incidents where employees have used, or attempted to use, sick leave for medical or dental appointments for family members.

It appears that part (g) already permits use of time off for emergencies when approved by the Court. The existing contract authorizes the "department head" to do that. The parties have agreed that this function in the new contract should be performed by the "Circuit Court Administrator." The Union seeks to have this extra time as an entitlement, rather than something which is discretionary on the part of the supervision.

Once again, comparisons are difficult because many of the other counties have a composite Paid Time Off plan where it is difficult to distinguish between personal use and actual sick leave. It would appear that the original intention of paragraph (f) was, in fact, intended to relate to "the employee's" medical and dental appointment (not family members) or the language of paragraph (g) would not be necessary. Adding the words "the employee's" to part (f) would not change the meaning of the paragraph, but would rather clarify it. Consequently, it would appear that the Employer's proposal is warranted and consistent with the context of Article 18. It is not entirely

clear that the Court is still proposing this additional language, so long as part (a) is understood to apply only to the employee's illness. It appears that the Court is trying to preclude a contradictory past practice from developing and, thus, adding the additional language might, in fact, assist employees in understanding how Article 18 is to be applied. It should be added for clarity.

7. **No Strike Prohibitions** -- Article 26, Section 4, of Jt. Ex. 1 states:

> Section 4. Penalties. The Court retains the right to discipline or discharge any employee participating in any strike or stoppage, as described in Section 1 and 2, above, after the first twenty-four (24) hours of such strike or stoppages.

The Court proposes to delete the phrase "after the first twenty-four (24) hours of such strike or stoppages." The Union says no change is needed.

The comparable contracts do not have a 24-hour exception. The sister contract between Berrien County and Local 214 of the Teamsters relating to the non-Court employees no longer has the 24-hour exception.

More importantly, the exception appears to violate Section 3 of the Public Employees Relations Act, 423.203 Michigan Compiled Laws. That statute states:

> **423.203 Public employees; persons in authority approving or consenting to strike prohibited; participating in submittal of grievance.**
>
> Sec. 3. No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

If read literally, the implication of the 24-hour language in the current contract would appear to authorize, approve or consent to a strike in a way which is prohibited by the statute. Consequently, the Employer's proposal to eliminate that language appears to be legally required and is consistent with the language of the other county contract and the comparable contracts. The language should be eliminated.

8. **Duration** -- The Employer proposed a 1-year contract to expire December 31, 1998. At the Fact Finding hearing, the Employer proposed that there should be a contract expiring December 31, 1999, implying that by the time negotiations were to resume, 1998 would be essentially over.

The Union indicated that there are 3- to 5- year contracts in other counties, including those who are part of the Court demonstration districts which have consolidated court systems. The Union wants a 3-year agreement.

The comparable contracts in the unionized counties have 3-year contracts. None has a 5-year contract. It would appear that at least a 2-year contract should be considered and a 3-year contract is warranted, i.e., a contract expiring at the end of the year 2000. In practical effect, it would only be a 2-year contract if an agreement were reached in the fall of 1998.

9. **Dental Plan** – The current contract does not have a dental plan benefit of any kind. The Employer has proposed a $400 self-administered reimbursement plan covering any type of dental benefits for either the employee or the employee's dependants. Apparently there are no restrictions proposed on the type of the service or the cost of a particular procedure. The employee would be reimbursed by the county after paying a dental bill.

The Union is proposing a conventional dental insurance program which, it claims, may actually cost less per year than the $400 benefit offered by the Employer. (This assumes, of course, that everyone would use the full $400 per year.) The comparables, other than Jackson County, all have a conventional dental insurance plan either administered by an insurance company or by a third-party administrator of some sort.

The Employer indicated its opposition to having a union-administered plan. It appears that the Union is no longer proposing that the provider of the dental benefit plan be a union-administered program.

It would appear that the Employer should carefully explore available dental insurance plans and, assuming that a plan can be purchased for $400 or less per year, this should be agreed to. The Employer gave no convincing argument for rejecting an insured dental program as a matter of principle or cost.

10. **Wage Steps** -- Article 9, Section 3, states:

> **Section 3. Step Increases.** An employee shall advance from step to step of the salary schedule based upon the employee's anniversary date in his assigned position.

The Union proposes the old contract language be continued. It points out that the comparables (at least those which are unionized) all have step increases based on the employee's length of service, with the possible exception that there may be a withholding or delay of the increase for bad performance in Kalamazoo County (which is not unionized).

The Employer indicates that performance reviews are performed annually using an objective evaluation tool and that there should be some reflection of an employee's performance and that person's escalation on the pay scale.

Although it certainly is understandable why the Employer would like to have merit as the basis for escalation on the pay scale, that is not the prevalent practice in comparable union contracts. Perhaps language which makes the last step on the salary schedule a merit step or language which would permit a delay (but not withholding) of a step increase while performance objectives are reviewed for a particular person might be warranted. Elimination of the step system, as such, does not appear to be warranted by reviewing the comparables.

COMMENT

Fact Finding is a poor substitute for collective bargaining. It is hoped that the parties will return to the bargaining table and reach agreement. It was apparent at the hearing that there is a degree of mutual respect between the representatives of the Court and the Union. There was nothing apparent that would prevent the parties from reaching an ultimate agreement through the "give-and-take" process. Based on the foregoing issues, neither party is entirely correct or entirely incorrect. There would appear to be room for compromise by both parties in reaching a contract which would be representative of those found in comparable counties.

Respectfully submitted,

Date: 11/3/98

By: _____
Carl E. Ver Beek, Fact Finder