MICHIGAN CIVIL SERVICE COMMISSION
EMPLOYMENT RELATIONS BOARD
IMPASSE PANEL

IP 2018-01

IMPASSE PANEL RECOMMENDATION

for the

SECURITY UNIT

CONTRACT TERM
January 1, 2019, to December 31, 2021

November 21, 2018

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A. INTRODUCTION

Civil Service Commission Rule 6-9.4 provides for resolution of impasses between parties negotiating collective bargaining agreements. Requests for impasse assistance were made for the Security Unit by the Michigan Corrections Organization and the Office of the State Employer **(OSE)**.

In SPDOC 18-01, the state personnel director established a schedule to allow impasse assistance and commission review before current contracts expire. The parties submitted proposed language, position statements, and exhibits on matters certified as at impasse. The parties also submitted language for the remaining provisions in the collective bargaining agreement **(CBA)** where they reached tentative agreement.

An impasse hearing was held on October 31, 2018. Both parties presented arguments on the provision at impasse. The panel has considered all testimony and evidence presented in making the following recommendation.

B. IMPASSE ISSUE

The parties certified one provision as at impasse: LOU—Correctional Officer Retention & Professionalism Pilot

C. IMPASSE PANEL CRITERIA

Civil Service Rule 6-9.4(b) establishes the following criteria for the impasse panel to consider in making its recommendation:

(1) Stipulations and agreements.

(2) The interests and welfare of the public.

(3) The financial condition and ability of the state.

(4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.

(5) Appropriate economic indicators and forecasts.

(6) Total compensation, including fringe benefits, presently received by employees.

(7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.

In IP 2000-05, the impasse panel further clarified that:

> At impasse, when one party requests a significant change to current language to which the other party objects, the proponent of change should present concrete evidence of the need for the change, such as inefficiencies in operations, inequitable treatment, hardships, or other convincing justifications for the change.

D. Discussion and Recommendations

The parties agreed upon a 2% base-pay increase effective October 1, 2019. The union has also proposed a new letter of understanding that would create a pilot retention bonus (LOU Pilot Retention Bonus). As proposed, employees in the bargaining unit would receive a lump-sum payment during the first full pay period each November for three contract years. Employees with 1 to 5, 6 to 15, and 16 or more years of seniority would receive $750, $1,200, or $1,750, respectively during each contract year.

A. Position of the Union

The union argues that the Michigan Department of Corrections faces problems due to low recruitment and high turnover. Jobs in the security unit are tough with high risks. Employees must watch over members of society found unfit to live in the outside world. Employees are outnumbered and subject to physical and psychological assaults. The environment contributes to high rates of PTSD and mental-health issues. Because of several failed policies, the number of officers has dwindled recently to dangerously low levels. Around one-third of corrections officers hired since 2012 have left the ranks. There are currently 740 vacancies with 50 officers leaving each month.

Rewarding officers who stay can help fill these vacancies. The LOU Pilot Retention Bonus would encourage employees to stay, reward veteran employees who stayed with the state over the past few years, and incentivize employees to stay until the vacancy crisis is addressed.

Mitchell Bean, former director of the House Fiscal Agency, indicates that the consensus forecasts are not gloomy with revenues outperforming expectations. Positive numbers project to more revenues next fiscal year and beyond. Recent legal developments may also increase state resources by, for example, facilitating collection of taxes on online sales and allowing sports betting. Mr. Bean states that there are clearly enough additional resources available for wage increases and bonuses like the union’s proposal.

The union labels its proposal a win for both sides. The program would help alleviate the vacancy crisis. As vacancies decrease, the need for overtime would decrease and provide savings. The union also notes its willingness to forfeit a 2% lump sum offered by the employer as evidence of its sincerity and the need for its proposal. The union argues that although the first-year cost of the proposal would be $1.5 million more than the 2% lump sum, that is a fraction of the $454 million in additional annual state revenues, and a miniscule portion of the Department's annual budget of over $2 billion. This small cost would incentivize officers to remain, which would stabilize a destabilized workforce.

B. Position of the OSE

The employer notes that the estimated three-year cost for the LOU Pilot Retention Bonus is over $36 million, which is significantly more than the $10.45 million than the 2% lump-sum award offered by the employer would cost.

Retention and hiring are complex issues, but they are nationwide challenges for prisons. While the number of Corrections Officers has dropped, significant decreases in facilities and prisoners account for part of this. The union's proposal grants a bonus simply for being in pay status for one pay period in November, which does not address MDOC's year-round staffing challenges. The MDOC has taken steps to address recruitment, including allowing more flexibility in meeting educational requirements after hire and recognizing military service. While the employer is open to examining other ideas to maintain a stable workforce, it disagrees that the proposed LOU Pilot Retention Bonus would accomplish these goals.

C. Response of the Union

The union argues that the security unit is a unique unit facing a unique crisis in recruitment and retention. The employer has offered irrelevant arguments instead of suggestions to address it. The employer has offered no forecast contrary to Mr. Bean's, which demonstrates a positive economic forecast for revenues. Further, the $36 million cost is a fraction of the MDOC's $2 billion annual budget. The ratio of prisoners to officers has gone from 5.65:1 to 6.42:1 in seven years. Almost 5,000 officers have been lost since 2009 to retirement, resignation, and other departments, which is a striking turnover rate given the roughly 6,500 officers employed now. While the union has assisted the state in its recruitment efforts, retention remains a serious problem that the employer has not taken steps to address.

D. Response of the OSE

The employer is unsure whether and why a monetary reward will improve the work environment for officers as claimed by the union. The union has not explained how its proposal is conceptually different from the existing longevity pay benefit or will lure applicants to positions. The union's proposal will have little impact on employees who leave for retirements, resignations, promotions, expired leaves, and many other causes.

The employer highlights budget uncertainties given the long-term cost of the proposed LOU Pilot Retention Bonus. Information on these concerns was shared at the bargaining table and highlighted at the CCP hearing. This includes revenue uncertainties and budget risks discussed in detail by representatives of the State Budget Office and Department of Treasury.

The employer is willing to reoffer the 2% lump-sum award in lieu of the LOU Pilot Retention Bonus or to redistribute the value of these dollars in another manner, but it is unwilling to commit over $36 million to a pilot that does not address underlying hiring and retention issues. The employer also is concerned with labeling the LOU Pilot Retention Bonus a pilot because it will be difficult for the union to agree to let the program lapse.

E. IMPASSE PANEL EVALUATION AND RECOMMENDATION

The union has powerfully described the difficult working conditions its members face and their effects at and outside work. For several years, the unit has faced a shortage of Corrections Officers, which has been exacerbated recently by a perfect storm of a large cohort of eligible retirees based on hiring booms decades ago, competition from other employers in a strong economy, and a failed experiment of relying on community colleges to train new hires.

The employer acknowledges the roughly 700 vacancies that the union identifies as its primary concern. The OSE highlighted numerous targeted recruiting efforts and other steps undertaken by MDOC that will allow large new-hire academies to begin filling this hole. The MDOC also is investigating policy changes on staff assignment to make conditions of employment more equitable for new hires. These include passing vacation books in cycles so that not just long-term employees can claim prime vacation times and ending a system for overtime scheduling where more senior employees can avoid mandated overtime. The MDOC also reports that its problems are not statewide or unit-wide but are focused in different locations and classifications so a unit-wide program may use limited resources where not helpful in addressing staffing levels.

While the panel agrees with both parties that vacancies are a serious problem, it is unconvinced that the union's proposal adequately addresses its three stated goals of retaining long-term employees, rewarding medium-term employees, and recruiting new employees. The union's proposal appears focused only on retaining with no consideration of attracting. It effectively reallocates a 2% lump-sum award for all employees in other units so that new hires would receive a 0% bonus while the most senior employees receive a 3.3% bonus. The union also simultaneously criticized potential MDOC policy changes to more equitably schedule vacations and mandate overtime across the entire bargaining unit. The panel imagines that not forcing new hires to bear disproportionate shares of mandated overtime or wait a decade to spend Christmas with their families could make the job more attractive to potential candidates.

The panel is skeptical that any single proposal can address the union's three stated interests. Based on comments at the hearing, the proposal was offered late in bargaining. There were apparently unofficial discussions but no negotiations over changes to the initial proposal based on the OSE's preference to limit economic negotiations to one year. The OSE has also pointed out concerns with the union's proposal, including the potential arbitrariness of basing eligibility solely on being in pay status during one pay period.

Recommendation 1:

The panel finds that questions over the union's proposal's design and potential effectiveness outweigh its potential merits. Because the employer only withheld its earlier offer of a 2% lump-sum based on the potential of the adoption of the MCO's proposal, the panel believes that the interests of equity merit a 2% lump-sum award given the flaws of the proposed LOU Pilot Retention Bonus. While both parties have indicated an openness to exploring alternatives, the panel must make a concrete recommendation for the commission to adopt. Accordingly, the panel recommends **modifying** the union's proposal, as shown in Appendix 1, by granting a 2% lump-sum to all employees using the following language in a new LOU:

> At the end of the first full pay period in October 2019, each full-time employee who is on the payroll as of October 6, 2019, and who has accumulated no less than 2,080 hours of current continuous service since October 1, 2018, shall be paid a one-time cash payment of 2% of the annualized base hourly rate of pay in effect as of October 6, 2019, which shall not be rolled into the base wage. For a full-time employee who has accumulated less than 2,080 hours of current continuous service since October 1, 2018, this payment shall be prorated based on the ratio between the employee's actual continuous service hours earned after October 1, 2018, and 2080 hours, times 2% of the annualized base hourly rate of pay in effect as of October 6, 2019.

Recommendation 2:

While the preceding recommendation satisfies its requirement to suggest a resolution to the current impasse for inclusion in the governor's FY 19-20 budget, the panel also recommends **ordering** the parties to continue bargaining over alternative—and potentially better—solutions to the vacancy problem during year one of the economic portion of the agreement.

The parties' disagreement over a one- or three-year focus for economic provisions prevented comprehensive negotiations over the contours of programs to better address vacancies. The panel's role is not to suggest alternative programs. The minimal data cited by the parties over different periods and different areas reveal the need for the parties to share relevant historical and current data and to agree upon frameworks to identify the solutions sought, the relevant data related to those solutions, and metrics for measuring success or failure.

Because previous bargaining appears to have not progressed to this stage, the panel recommends that the commission's bargaining order should require that the parties' negotiations include these important steps to allow proper evaluation of any subsequent agreements. Given both sides' recognition of the importance of addressing vacancies, the panel believes the parties could still jointly work to develop equivalent alternatives to replace the 2% lump-sum recommended above before the start of FY 2019-2020 in time for any necessary approvals. The panel stresses its strong belief that for successful negotiations to be completed concerning a pilot program to address the vacancy problem, the parties *must* agree upon the relevant data necessary to identify the problem to be solved and clearly stated means to determine success or failure.

E. Other Provisions of the Proposed CBA

As part of their impasse submissions, the parties provided proposed text for parts of the CBA that were not at impasse. Civil service staff has reviewed the tentative agreements for provisions that would violate civil service rules on prohibited subjects of bargaining and found no such provisions. The impasse panel concurs and **recommends** that the Civil Service Commission approve those provisions where tentative agreement was reached by the parties.

F. SUMMARY

The panel's recommended text for the CBA appears at Appendix 1. This text reflects the impasse panel's recommendations on the impasse issues for this bargaining unit, as outlined above and the tentative agreements submitted by the parties on articles not at impasse. The impasse panel **recommends** that the Commission adopt the text in Appendix 1 as the CBA for the Security Unit.