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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

STATE OF MICHIGAN
EMPLOYEE RELATIONS COMMISSION
DETROIT OFFICE

1991 APR 25 AM 9:40

In the Matter of the Impasse between

Bay-Arenac Community Mental Health/
North Bay Activity Center

MERC Case No. L88 K-0873

Fact Finder: Sol M. Elkin

-and-

Michigan Council 25, American Federation
of State, County, and Municipal Employees

FACT FINDER'S REPORT AND RECOMMENDATIONS

Introduction

The membership of the subject bargaining unit consists of 21 Program Aides employed at the North Bay Adult Activity Center in Bay County. The Aides serve clients classified as Mentally Retarded/Mentally Ill (MR/MI), ages 26 and over. The clients are brought to the facility daily for a variety of programs, Monday to Friday, largely from group homes and institutions.

The parties have been unable to reach agreement on all the terms of their first collective bargaining agreement, despite the assistance of a State-appointed mediator who met with the parties on two occasions. Their mutual intent was to enter into a contract of three years duration. Upon reaching impasse, the Union petitioned the Michigan Employment Relations Commission for fact finding on the unresolved issues. Following appointment as Fact Finder by MERC, the undersigned met with the parties on November 30, 1990 and February 5, 1991, during which sessions agreement was reached on a number of previously unresolved issues. On February 27, 1991, a fact finding hearing was held on the remaining issues in dispute, as identified below.

The Employer was represented by Douglas J. Winnie, Consultant; the Union by Roger Smith, Staff Representative for AFSCME, Council 25.

The Issues in Dispute

- (1) Article 9.4 -- Reporting Pay
- (2) Article 9.7 -- Wages
- (3) Article 10.6 -- Unpaid Lunch

Bay-Arenac Community Mental Health / North Bay Activity Center

- (4) (a) Article 12.1 -- Vacation Levels
(b) Article 12.2 -- Vacation Scheduling
- (5) Article 13.2 -- Sick Leave
- (6) Article 15.9 -- Co-Payment on Insurance

(1) Article 9.4 -- Reporting Pay

Union's Proposal:

If the facility is closed on a regular work day for any reason, employees will be paid for the day or provided work.

Employer's Proposal:

A full-time employee who reports for work at the time scheduled by the employer shall be entitled to his/her scheduled hours of work, unless the employer is unable to provide work for reasons beyond its control.

In the case whereby adverse weather or other conditions beyond the control of the employer causes the facility to be closed, then the employee shall be paid for actual hours worked, unless the facility is closed for a full day and such action is pre-announced via radio announcement, then the employee shall not be eligible for payment of any scheduled work hours.

Discussion and Recommendation: The Union asserts that there is currently no written policy on this matter and that its proposal is the same as current practice.

The Employer insists that it is reasonable to pay employees only for time worked and it should not have to pay when work is not available for reasons beyond its control.

The Fact Finder recommends adoption of the following provision:

A full-time employee who reports for work at the time scheduled by the employer shall be paid for his/her scheduled hours of work if the employer is unable to provide work for any reason.

In the case where adverse weather or other conditions beyond the control of the employer causes the facility to be closed and such action is pre-announced via radio announcement, then the employee shall not be eligible for payment of any scheduled work hours.

(2) Article 9.7 -- Wages

Current Wage Scale for Program Aides, effective October 1, 1986:
(Union Exh. 6)

Entry	1 Year	2 Year	3 Year	4 Year	5 Year
\$12,000	\$13,000	\$14,000	\$15,000	\$16,000	\$17,000

Union's Proposal:

1. A four percent increase for each of the three years of the proposed contract, retroactive to October 1, 1989.
2. Retention of current step levels.
3. Movement of all employees to step level they belong and retroactive payment of all step increases.

Employer's Proposal:

The Employer offers an increase of one percent for the second year and two percent for the third year of the contract.

Discussion and Recommendation: The Union offered into evidence Consumer Price Index data showing that for 1988, 1989, and 1990 (through October), the Index rose 4.1 percent, 4.8 percent, and 6.3 percent, respectively. (Union Exh. 5)

Also offered into evidence by the Union were collective bargaining agreements from several nearby municipalities to show that employees in these units doing work comparable to Bay Arenac Program Aides are paid much more.

The Union asserts that in October, 1989 and October, 1990, the years for which the Union is seeking retroactive increases of four percent annually, the non-Union employees at Bay/Arenac received pay increases that totaled 8.9 per cent for the two years.

The Employer asserts that Bay/Arenac Program Aide salaries compare favorably with salaries paid in nearby counties. (Employer Exh. 1) It notes that the personal property value of Bay/Arenac counties is much less than several other counties in the region. The Employer also introduced evidence to show that for the past eight years the average yearly increase in funding to the Agency was 1.5 percent. (Employer Exh. 10) The Employer argues that this history is the best indicator of future revenues and that its wage offer is therefore rationally based on its anticipated funding for the term of the proposed contract.

With respect to retroactivity, the Employer directs attention to an agreement executed by the parties during the course negotiations, dated October 23, 1989, which the Employer construes as barring the retroactive step increases sought by the Union: (Employer Exh. 2)

Notwithstanding the Union's right to propose that direct wages be made retroactive during negotiations of economic issues for the Program Aides . . . , it is hereby reaffirmed that economic issues between the parties are deferred for discussion until tentative agreement is reached between the parties on all non-economic issues and that there shall be no decrease or increase of Program Aide salaries below or above the salary levels enjoyed as of September 30, 1989, except through negotiated settlement by the parties.

Discussion and Recommendation: With respect to comparisons with other counties, both parties offer examples favorable to their respective positions. There are serious questions, however, as to whether these selected communities and the job descriptions of their Program Aides are in many cases reasonably comparable to the subject group. These municipalities vary widely in their ability to pay. Likewise, the qualifications for the classification of Program Aides and their job duties in many cases differ substantially from the qualifications and responsibilities of Bay/Arenac Program Aides. Working conditions and fringe benefits are also far from uniform. The salaries paid to these other groups, therefore, offer little guidance in resolving the wage issue at hand.

A more meaningful comparison is to recent increases granted by the Employer to employees other than Program Aides. It is not disputed that the Program Aides have received no wage increase since 1986 while other classifications received increases in October, 1989 and October, 1990, for an average total increase calculated by the Union to be 8.9 percent. Also, for the same period the CPI exceeded the four percent increase that the Union is seeking. Notwithstanding the small projected increase in revenues to the Employer of only 1.5 percent, the four percent increase requested by the Union is reasonable under all of the circumstances.

With respect to retroactivity of wages increases and retroactive movement to the appropriate step, the prior written agreement between the parties (Employer Exh. 2, above), relied upon by the Employer, is arguably ambiguous. It can reasonably be construed as an agreement to defer discussion of retroactive increases only until agreement is reached on all non-economic issues. It does not permanently bar agreement after settlement of non-economic issues "through negotiated settlement by the parties." To deny retroactivity would cause Union members to bear the entire penalty for the parties' failure to reach agreement on the contract within a reasonable period of time. The four percent pay increase and movement to the appropriate step should be retroactive to October, 1989.

In sum, the Fact Finder recommends acceptance of the Union's wage proposal in its entirety.

(3) Article 10.6 -- Unpaid Lunch

Union's Proposal:

15 minutes of paid lunch period and two five-minute breaks during the

course of the work day. (Current practice)

Employer's Proposal:

There shall be a one-half (1/2) hour unpaid meal period and two (2) fifteen (15) minute paid rest periods during the course of a regular work day.

Discussion and Recommendation: The Employer points out that all the employees except the Program Aides who work in the same building now have a one-half hour unpaid lunch period and two 15 minute breaks, as now proposed for the Program Aids. Moreover, the Employer is not aware of any other similar facility in the region that provides paid lunch time to its employees.

The Union responds that the work location is in an isolated area with no nearby restaurants. The unit members assert that they have no place to go for an unpaid lunch. Currently, they eat their lunch with the clients during a 15 minute lunch period, as the clients must be constantly supervised.

As all the other employees in the same building have an unpaid lunch period, and as the Employer is willing to relieve Program Aids of the responsibility for their clients during lunch, the Fact Finder recommends acceptance of the Employer's proposal.

- (4) (a) Article 12.1 -- Vacation Levels
- (b) Article 12.2 -- Vacation Scheduling

The current practice is shown below: (Union Exh. 9)

Full-time employees can accrue up to two weeks of annual leave during their first year of employment and four weeks thereafter. One additional week can be accrued after ten years of service. Annual leave for regular part-time employees will be pro-rated on the basis of forty (40) hours per week.

Regarding the use of vacation time, the current practice is to permit the use of vacation time in increments as small as one-half hour.

Union's Proposal:

Continue current vacations levels, as well as the practice of permitting the use of vacation time in increments of one-half hour or more.

Employer's Proposal:

- (a) Employees with less than three (3) years of service shall earn vacation in the amount of 80 hours per year.
- (b) Employees with three (3) years of service but less than five (5) years of service shall earn vacation in the amount of 96

hours per year.

(c) Employees with five (5) years of service but less than ten (10) years of service shall earn vacation in the amount of 112 hours per year.

(d) Employees with ten (10) years of service but less than fifteen (15) years of service shall earn vacation in the amount of 128 hours per year.

(e) Employees with fifteen (15) years of service but less than twenty (20) years of service shall earn vacation in the amount of 144 hours per year.

(f) Employees with twenty (20) and more years of service shall earn vacation in the amount of 160 hours per year.

With respect to minimum increments for taking vacation time, the Employer proposes that vacations be taken in increments of not less than eight hours.

Discussion and Recommendation: The Employer notes that its proposed vacation schedule is the same as for the Saginaw County Mental Health Center and is equal to or better than schedules enjoyed by employees in other facilities in the geographic area. The Union responds by stressing that its proposal represents only a continuation of the vacation benefits now in force, and, most importantly, which will continue for all Agency employees except Program Aides, if the Employer's proposal is incorporated into the Agreement. It urges that for Union members to have fewer vacation benefits than all the other employees of the same Employer would be very unfair.

Comparison with other employees in the same Agency is obviously more meaningful than comparisons to any other group. There is no reason why Program Aides should have fewer vacation benefits than their co-workers in other classifications and, therefore, the Fact Finder concurs with the Union's proposal to retain the current vacation levels and its use in small increments.

(5) Article 13.2 -- Sick Leave

Currently, all Agency employees receive 16 sick leave days per year. The Union proposes to continue this policy unchanged for Program Aides, while the Employer would reduce the number to 12.

Discussion and Recommendation: The Employer asserts that its proposal compares very favorably with similar facilities in the geographic area. It notes that its proposed number of days is equal to Midland/Gladwin and Saginaw Counties; five more than negotiated by AFSCME for Genesee County; eight more than provided to Michigan Community Service program aides, and one less than Tuscola County program aides. (Employer Exh. 4) The Union, on the other hand, believes that because all other employees in the Agency are getting 16 days it would be discriminatory to reduce the number of days for Union

members.

While 16 sick days per year is more generous than offered by most public agencies in the area, in the Fact Finder's opinion the most important comparison group is the other employee's in the same Agency. There is no reasonable rationale for reducing this benefit for Union members while other employees in the same facility continue to enjoy a greater number of sick days. For this reason, the Fact Finder recommends that the number of annual sick days permitted remain unchanged at 16.

(6) Article 15.9 -- Co-Payment on Insurance

Union's Proposal:

Continue current practice of providing health insurance fully-funded by the Employer.

Employer's Proposal: With respect to the insurance coverages designated in Section 2 of this Article (15.2), the employer shall pay a maximum monthly premium of \$140.91 for individual coverage, \$312.90 for two person coverage, and \$337.93 for family coverage.

It is agreed that the employee shall pay all monthly premium costs in excess of the maximum limits paid by the employer including the additional cost of sponsored dependent riders. Employee payments for their health insurance plan shall be deducted on the last payroll period of each month.

Discussion and Recommendation: The Employer asserts that with its proposed cap it is probable that on the effective date of the agreement unit members will not be liable for any part of the premium, but assuming that rates will continue to rise in the future employees will then assume some obligation. The Employer notes that co-payment of health insurance is becoming a necessary cost containment approach throughout the country.

The Union responds that as no co-payment is required of other employees in the Agency, it would be unfair to require it of Unit members.

In the Fact Finder's view, while the Employer's proposal is not unreasonable, as long as the same obligation to share health costs is not imposed equally on all employees of the Agency, it is patently unfair to impose such costs on Union members only.

The Fact Finder recommends that the Employer continue to fully fund health insurance costs.

SUMMARY OF RECOMMENDATIONS

(1) Article 9.4 -- Reporting Pay: (a) If the Employer is unable to provide work for any reason to a full-time employee who reports for work at the time scheduled by the employer, that employee shall be paid for all of his/her scheduled hours of work. (b) When adverse weather or other conditions beyond the control of the employer causes the facility to be closed and such action is pre-announced via radio announcement, the employee shall not be eligible for payment of any scheduled work hours.

(2) Article 9.7 -- Wages: (a) A four percent increase for each of the three years of the proposed contract, retroactive to October 1, 1989, (b) Retention of current step levels, and (c) Movement of all employees to the step level they belong and retroactive payment of all step increases.

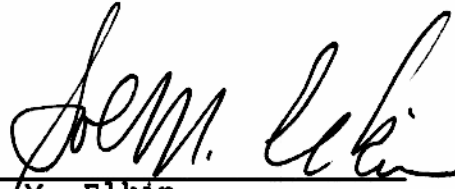
(3) Article 10.6 -- Unpaid Lunch: One-half hour of unpaid lunch period plus two 15 minute breaks, both without responsibility for supervising clients.

(4) (a) Article 12.1 -- Vacation Levels: Retention of current vacation levels.

(b) Article 12.2 -- Vacation Scheduling: Retention of current practice of permitting use of vacation time in small increments.

(5) Article 13.2 -- Sick Leave: Retention of 16 days of annual sick leave.

(6) Article 15.9 -- Co-Payment on Insurance: No co-payment on health insurance.


Sol M. Elkin,
Fact Finder

April 23, 1991
Ann Arbor, Michigan