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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF
THE FACT FINDING BETWEEN:

MERC Fact Finding
Case No: D84 L-3073

BERLIN TOWNSHIP

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 547, AFL-CIO
Ildiko Knott /

INTRODUCTION

Pursuant to Section 25 of ACT 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding pre-hearing took place on June 12, 1985, and hearings were held regarding matters in dispute between the above parties on August 23, 1985, and October 11, 1985, at the M.E.R.C. offices in Detroit, Michigan. The undersigned, Ildiko Knott, is the Fact Finder herein.

The employer, Berlin Township, shall hereinafter be referred to as the "Employer", and the International Union of Operating Engineers, Local 547, as the "Union".

Berlin Township

APPEARANCES

FOR THE EMPLOYER:

Gary R. Danielson,
Industrial Relations, Inc.

Gabriel D. Hall,
Industrial Relations, Inc.

Mary C. Wanca,
Township Clerk

Howard D. Lambrix,
Township Supervisor

FOR THE UNION:

Robert Inman,
Business Rep., Int.
Union of Operating
Engineers, Local 547
AFL-CIO

Margaret Billadeau,
Chief Steward

BACKGROUND

In April of 1983, the Union petitioned the Michigan Employment Relations Commission for an election to represent some Berlin Township employees and proposed to include them into a bargaining unit composed of sewage plant operators, water maintenance employees, assessor/clerical, water sewer clerks, and building inspectors. The Employer challenged the inclusion of the assessor and ultimately appealed MERC's decision to the Michigan Court of Appeals. The Court found for MERC and the Union and an election was held on January 5, 1984, at which time the majority of the employees within the bargaining unit voted to be represented by the Union.

The Union was certified on January 16, 1984, as the exclusive bargaining agent representing sewage plant operators/water maintenance employees, water/sewer clerks, assessor, building inspectors, and ordinance enforcement officer.

Berlin Township is located in south-eastern Michigan, in Monroe County. It is a small, primarily agricultural community of some six thousand five hundred (6,500) residents. The Township's main industries are the water and sewage treatment plant and a quarry. The Township has a volunteer fire department and contracts the services of county law enforcement.

The Township employees' current conditions of employment are detailed in the Berlin Township Personnel Policy manual (Joint #4).

The Union requested negotiations to commence in January of 1984. After considerable delays, the parties first met on March 22, 1984, to begin negotiations of their initial contract. Employer proposals were not presented until June of 1984. Subsequently, apparently nine (9) negotiations sessions took place between July, 1984, and January, 1985. Progress was made resulting in a comprehensive written package of tentative agreements (Joint #2). However, the parties were unable to reach settlement on the major wage items and came to impasse on six (6) issues (attached later herein).

The last negotiation session was held on January 7, 1985, in which the Employer's last offer (Joint #1 and #3) was rejected by the Union. Apparently, no movement occurred on any of the other outstanding issues. The services of a State Mediator were used on February 19, 1985. Again, no agreements were reached. The Union then filed a Petition for Fact Finding on February 20, 1985. The Fact Finder received notice of her appointment on May 20, 1985.

A pre-hearing took place on June 12, 1985, at which the parties agreed that the issues to be submitted to the Fact Finder were those specified in "Employer's Answer To Petition For Fact Finding" dated April 25, 1985, lettered a through f (Joint #1).

The first hearing was conducted on August 23, 1985, to take testimony and evidence with regard to the disputed issues. Each side had full opportunity to be heard and to place on the record material and factual evidence to advance their case. The parties waived post hearing briefs and did not desire detailed analysis of the recommendations for findings and recommendations.

After considerable deliberations of the record, the Fact Finder was not satisfied that she had been given enough information on which to base an intelligent and objective recommendation. Mindful of the fact that the parties had rejected her request made in the pre-hearing for specific information which included comparables and financial data, the Fact Finder communicated with the parties that additional information and clarification was being sought on matters before her. A list of specific questions was sent to the parties and a second hearing was scheduled for October 11, 1985.

SPECIAL NOTE ON CRITERIA USED

Fact Finding is most productive when the Fact Finder can reach objective results based on evidence marshalled and produced by the parties themselves. The parties can best advance their cause by presenting a variety of factual information which have become widely accepted standards in Fact Finding. Some of these are comparisons of prevailing practices of similarly situated employees in comparable communities, ability to pay, productivity, past practices, living standard, and bargaining history. To enable the Fact Finder to make recommendations which will be conducive to an acceptable settlement, the burden falls on the participants to support their positions with materials such as these to aid the Fact Finder to formulate carefully weighed findings.

Claims based solely on the reasonableness of a position or demand, without rationale, are not very persuasive. As both parties were in agreement that comparable models should not be used, the Fact Finder was restricted to focusing inward: on the parties' internal history, totality of the proposed settlement, and rationale for their positions. The Fact Finder did take notice of cost-of-living and settlement trends and projections. Additionally, the moving party desiring change from the status quo, whenever that occurred, was held responsible for having to put forth supportive evidence to bolster its claim to prevail. Also, when claims or exhibits were left unrefuted or

unchallenged, this was noted and taken into account by the Fact Finder where appropriate.

LIST OF ISSUES IN DISPUTE

A. Effective date of the collective bargaining agreement
B. Duration of the collective bargaining agreement
C. Wages
D. Retroactivity of wages
E. Classification groupings
F. Number of holidays

CLASSIFICATION GROUPINGS

During the course of the hearing of August 23, 1985, this item was resolved. The parties had a chance to present in detail their positions on the Employer proposed classification groupings which would place all existing bargaining unit classifications in either group A., General Workers, or group B., General Clerical. It appeared that the proposal had not really been explored in depth before. It became apparent to the Fact Finder that the Union was not adverse to granting the Employer some flexible utilization of employees which the Employer desired; but, was opposed to a merit system which the Employer attempted to link with the classification proposal. After full discussion of all concerns, the Employer withdrew proposals for a merit plan and agreement on the classification grouping was reached. The groupings are as follows:

Group A. General Workers	Group B. General Clerical
Assessor	Water/Sewer Clerks
Maintenance Technician	All other clerks
Waste Water Treatment Plant Operator	Assessor
Waste Water Treatment Plant Trainee	
Building Inspector	
Utility	
Miscellaneous	

Essentially, it was agreed that the Employer would be allowed to interchange employees within each classification on an ongoing basis as is deemed necessary. Such utilization would be restricted by licensing requirements for a job or the physical requirements of a job. Further, wage differentials would be maintained within each group and the employee would be paid at their own job rate regardless of the job they are asked to perform within that group.

This agreement recognizes legitimate employer needs for more efficient and productive utilization of its workforce and the elimination of rigid lines of demarcation of individual classifications particularly troublesome in a small, currently seven (7) position, unit.

HOLIDAYS

Under the current Personnel Policy, the employees are entitled to ten and one-half (10 1/2) to twelve and one-half (12 1/2) paid holidays per year depending on which day of the week Christmas and New Year Day fall.

It is the Employer's position that the number of paid holidays should be reduced to eight (8). The Employer contends that eight (8) paid holidays are appropriate for an initial contract and that such reductions of paid holidays would allow the Employer more efficient delivery of service to the residents of the Township.

The Union counters that the issue of holidays had already been settled in negotiations. The Union had agreed to reduce the number of paid holidays by one (1); namely, Lincoln's Birthday. This is reflected in the Tentative Agreement, Article XXI (Joint #2). The Union argues that it was only when the Employer changed chief negotiators in January, that the additional two (2) holiday reductions were sought.

The Fact Finder is not persuaded that the Employer's position has merit. Most importantly, the parties had reached tentative agreement after good faith bargaining on this issue sometime in August of 1984. This agreement is reflected in the Tentative Agreement, Article XXI. Specifically, the Union agreed to reduce the number of paid holidays by one (1), Lincoln's Birthday, arguably in hope of quid pro quo considerations in other areas.

It is well established practice in negotiations that tentative agreements are binding (it is indeed for this reason that they are initialed and dated). They are tentative <u>only</u> insofar as they are subject to ratification of the whole package. To treat agreements otherwise would reduce the process of negotiations to chaos. The Union cannot be penalized for the Employer's change in negotiators and apparent change of strategy.

Additionally, the Employer has stated on the record that it was not interested in the approximately one thousand dollar ($1,000) savings which would result from an additional two (2) days reduction of paid holidays; rather, that eight (8) days were sufficient for an initial contract. The Fact Finder does not believe that the employees should be penalized for unionizing.

When parties are engaged in their initial negotiations, it is widely accepted practice to incorporate existing conditions. Unionization should not create a basis for withdrawal of benefits previously in effect, nor make them any less justified.

Absent any other supportive evidence or argument by the Employer, especially how the community would be better served, the Fact Finder recommends that the tentative agreement be honored.

WAGES

In considering this item, the Fact Finder has thoroughly reviewed the financial information presented to her which consists in the main of the Union's exhibits (Union #1), the Union and Employer responses to the Fact Finder's questions as submitted by the parties on October 11, 1985, with attachments of minutes of township meetings.

In as much as the parties presented their last wage positions in terms of cents per hour increases by individual classification, the absence of any information on prevailing standards or rationale for specific individual raise differentials (including no raise recommendation for one individual) make an objective recommendation by the outside Neutral impossible. Wage differentials cannot be determined in a vacuum. The bargainers must be presumed to have had sound reasons for the differentials they established, and they need not be addressed by the Fact Finder.

In making the wage recommendations, there is no single basis for making determinations; they are based on several interrelated factors and these in turn may be weighted differently depending on the objectives of the parties. These include: comparable position, financial resources, cost-of-living, internal and external pay equity, productivity and performance, and internal history.

In examining the record of the total financial package, two significant cost saving and productivity gains for the Employer should be noted. One, the previously fully paid one (1) hour lunch period was reduced to one-half (1/2) of that lunch hour being paid by the Employer. Two, Lincoln's Birthday was eliminated as a holiday.

The Employer testified that wage increases could be justified if improved productivity could be demonstrated. Both of the Union concessions named above are cost savings to the Employer totaling $6,172.74 per year at present rates. Of course, it is recognized that these productivity factors cannot be made retroactive.

However, these benefits to the Employer will become effective once the agreement is ratified.

Additionally, the Employer has claimed no financial exigency or the inability to pay. Indeed, very handsome raises of approximately thirty percent (30%) each were granted to two township officials in 1984.

Moreover, in the 1984 State of the Township Address the outlook for the Township looked healthy. The Township had realized a surplus, its investments were sound, liabilities were being retired, the quarry was making money, and future developments and extension projects were being eyed.

The Employer's position rests solely on the assertion that after due consideration its offer of one and two-tenths percent (1.2%) average increase per year is reasonable. No supporting data of any kind was offered to further that position.

Based on this record then, and the de facto recognition by both parties that due to the delays in these negotiations their proposals, which were based originally on a starting date of July 1,1984, have to be reconsidered and adjusted, the Fact Finder recommends the following.

SCHEDULE A
SALARY SCHEDULE

Classification	Present Wages	1-1-85	1-1-86	1-1-87
Maintenance Technician	$8.45	$8.85	$9.25	$9.65
Waste Water Treatment Plant Operator	$10.78	$10.78	$11.03	$11.30
Waste Water Treatment Plant Operator Trainee	$6.21	$6.61	$7.01	$7.41
Assessor/clerical	$6.45	$6.85	$7.25	$7.65
Building Inspector	$6.39	$6.79	$7.19	$7.59
Water Sewer Clerk	$6.45	$6.85	$7.25	$7.65

This recommendation for a forty (40) cents per hour increase in five of the six positions slightly exceeds the median first year increase negotiated in 1984 as reported by the Bureau of National Affairs (BNA). In contrast, the amount is slightly less than the BNA reported median forty-five (45) cents per hour wage increase payable in 1985 under contracts already in effect. These raises are further justified by the fact that members of this bargaining

unit have received no wage increase for approximately two and one-half years. Over that period their wages have been steadily eroded by inflation and the recommended amounts, while not restoring the purchasing power or their wages to 1982 levels, will barely offset inflationary increases predicted to be in the five (5) per cent range. While these employees may not experience the same financial demands on their cost of-living as their city brethren, they are hardly exempt for the ravages of inflation and should be compensated accordingly.

RETROACTIVITY OF WAGES

At the heart of the Union's proposal for retroactivity of wages for the unit members is the fact that these employees have not received wage increases since July of 1982. In addition, the Union argues that there is a record of retroactivity of wages in the Township, pointing to a history as reflected in Township minutes going back to 1979. Lastly, the Union asserts that the Employer has deliberately delayed the negotiations process; presumably to avoid payment of new wage scales. Specifically, the Union points out that the start of negotiations was delayed by two (2) months and that no wages were discussed by the Employer until January of the following year.

It was the Union's original demand that wages should be retroactive to July 1, 1983. That demand had been modified to July 1, 1984. The Fact Finder was impressed by the Union's willingness to further compromise on this issue by proposing a final modification of the starting date for retroactivity to January 1, 1985.

The Employer advances the argument that it had never been shown reasons for retroactivity of wages even as the item was on the table for a considerable length of time. The Employer concedes that although some retroactivity has been used in the past, the current administration does not believe in it. In essence, that even it reasons had been shown, the Employer was philosophically opposed to retroactivity.

The Fact Finder quite agrees with the Employer that no entitlement of retroactivity exists. However, in the situation before us, the Union's arguments are compelling.

Retroactivity quite often occurs where negotiations extend past the termination date of an existing contract. One of the main reasons for this is to discourage undue delays and excessively long negotiations. In the case before the Fact Finder, neither a previous contract nor the inducement of a deadline exist. Nevertheless, the principles which give rise to retroactivity are

still applicable, especially if examined in context of other attendant factors.

These are, that the Employer does have a demonstrated history of retroactive wage payments, albeit for shorter duration than desired by the Union. Further, in view of the length of these first negotiations, it would appear that the employees would be penalized rather than benefit from the process if no retroactive wages are granted. In that regard, the Fact Finder notes that wages were frozen by the Township Board from March of 1982 to January of 1984. Based on the past history of the parties, one can conclude that the employees would have received some wage increases had they not been engaged in collective bargaining.

In view of these factors, the Fact Finder believes that the Union position is defensible and recommends retroactivity of wages to January 1. 1985.

LENGTH OF CONTRACT

So that the parties may, without additional delays, take advantage of the mutual gains negotiated in this contract and recommended herein, the Fact Finder further recommends that the effective starting date of this Agreement be January 1, 1985. Moreover, to allow the parties some measure of stability in the formative years of their relationship, it is recommended that a three year contract commencing January 1, 1985, and terminating December 31,1987, be entered into.

It is the sincere hope of the Fact Finder, that this report will serve to provide a basis for a speedy settlement by the parties.

Ildiko Knott
Fact Finder
November 10, 1985