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REPORT AND RECOMMENDATIONS

IN THE FACT-FINDING IN THE MATTER OF

CITY OF BUCHANAN

AND

LOCAL 586, SERVICE EMPLOYEES INTERNATIONAL UNION

Fact-Finder: Jack Stieber, appointed by Michigan Employment  
Relations Commission

Appearances: For the City - William L. Fette, Attorney;  
Gregory E. Buckley, City Manager.

For the Union - James Shelton, President; and  
Bargaining Committee Members

*Buchanan City*

## INTRODUCTION

The undersigned was appointed to serve as Fact-Finder on September 6, 1989, by Employment Relations Commission Member Anne T. Patton in the dispute involving the City of Buchanan/DPW, Parks, etc. and the Service Employees International Union, Local 586. He was requested to prepare a report with recommendations with respect to the issues in disagreement. This was the first contract to be negotiated by the parties.

A Pre-Hearing Conference was held on October 2, 1989, with representatives of the parties. The City was represented by City Manager Gregory E. Buckley and Attorney William L. Fette. The Union was represented by James Shelton, President of Local 586 and members of the Bargaining Committee. By agreement of the parties, meetings were held in Attorney Fette's offices in Kalamazoo, Michigan.

It was agreed at the Pre-Hearing Conference that the Fact-Finding Hearing would utilize the "Draft Contract Language" dated June 9, 1989, which had been developed by the parties, as the principal document in their presentations. The parties were requested to prepare written statements presenting the issues in dispute and arguments in support of their respective positions. The City's presentation was contained in a letter dated October 12, 1989, which referenced a July 19, 1989, letter outlining changes to the proposed contract desired by the City Commission. The Union response was presented at the Fact-Finding Hearing held on November 1, 1989.

Following the Fact-Finding Hearing on November 1, 1989, the parties requested that the Fact-Finder wait until November 15, 1989, before submitting his report, to enable the parties to reconsider their positions in light of the discussion at the Hearing. Not having heard from the parties, I submit the following report and recommendations on the issues in dispute. Contract provisions and quotations refer to the language in the June 9, 1989, draft agreement.

### REPORT AND RECOMMENDATIONS

Each issue in dispute presents the draft contract language, the respective positions of the City and the Union, and the Fact-Finder's Recommendation.

#### 1. Article V - Employer Rights; Contracting Out

The parties to this Agreement recognize the Employer's obligation to provide municipal services that are responsive to community needs, in a manner that is cost-effective. Accordingly, nothing in this Agreement shall limit the right of the Employer to contract or subcontract work done by bargaining unit members at present or at any time in the future. Employer shall not, however, exercise such right for the purpose of undermining the union or discriminating against any of its members. In cases where such subcontracting will result in the lay-off of union members, the employer shall notify the union of its intention to contract or subcontract bargaining unit work in advance of entering into a formal agreement with the contractor, and upon request made not later than seven (7) days from and after the date of notice to the union, shall meet with the Union Bargaining committee for purposes of negotiating the impact of said contracting. In the event such negotiations result in impasse, such subcontracting action shall not be subject to the grievance procedure.

City: Delete first sentence and "Accordingly" in second sentence. Purpose is to eliminate any reference to "cost effectiveness" as the basis for contracting out in order to underscore the City's absolute right to contract out City services.

Union: Wants to be able to argue that bargaining unit members can do work cheaper than outside contractor. Requests that original language be retained.

Recommendation: Leave first sentence in and "Accordingly" in second sentence. It does not restrict the City's right to contract out in view of the second sentence. Union position that it should be given right to argue cost-effectiveness is reasonable. In any event, last sentence says that Union cannot grieve on subcontracting, thus giving the City all the protection it needs to contract out if negotiations fail to resolve the dispute on using outside contractors. The parties agreed to delete "at present or at any time in the future" in the second sentence.

## 2. Article IX - Seniority Termination

Section 4 - Termination of Seniority. An employee's seniority shall terminate for the following reasons:

- (d) If he has been laid off for a continuous period of eighteen (18) consecutive months, or an amount of time equal to his seniority, whichever is shorter.

City: Change 18 months to 12 months.

Union: Originally wanted 30 months, then 24, and agreed to 18 months. Other cities have the following provisions: Otsego - 18 months; Plainwell - 18 months; Charlotte - 18 months; Buchanan Board of Education - 1½ years.

Recommendation: 18 months is prevailing policy among comparable cities. Retain draft contract language.

### 3. Article IX - Seniority; Filling Vacancies

It is recognized by the parties to this Agreement that the Employer must strive in all cases to hire those individuals who, in its judgment, represent the best qualified applicants for any position vacancies. Selection criteria for any position vacancy shall, therefore, be established at the sole discretion of the Employer. The Employer agrees that, in evaluating applicants for City employment, it shall not discriminate against current employees. In cases where one or more current City employees seek a posted vacancy, and meet all qualifications for the position in question, the City shall not hire a non-employee for that position unless that individual possesses job-related qualifications which are superior to those of all internal applicants, in light of the selection criteria established by the Employer.

City: Delete last sentence. City wants to be free to hire from outside. Also, commitment not to discriminate protects bargaining unit members.

Union: Bargaining unit members entitled to preference if they have the necessary qualifications.

Recommendation: Retain last sentence. Bargaining unit members should receive preference if they have the necessary qualifications. City has ample protection to obtain best qualified applicants without hiring from outside when insiders have as good or superior qualifications.

#### 4. Article XIII - Wages and Overtime

Employees shall be granted a step increase if their written performance evaluation rates their performance to be satisfactory or better. In the event that an employee's written performance evaluation results in his performance being rated "unsatisfactory," his step raise shall be denied; however, the Employer shall state in writing the reasons for the "unsatisfactory" rating, and shall perform a second written evaluation of the employee's performance two months thereafter. A satisfactory rating on that second evaluation shall make the employee eligible for this step increase, effective with the date of said second evaluation.

City: If employee receives an "unsatisfactory" rating in his annual performance evaluation, he should be reevaluated two months later only for purpose of determining if he is able to continue in his job (and not be fired). If the employee improves his job performance based on his evaluation two months later, he would still not be eligible for a step increase until a full year has passed since his original evaluation.

Union: Retain language in draft agreement.

Recommendation: An employee who receives an unsatisfactory rating shall be reevaluated three months thereafter. If he receives a satisfactory rating on the second evaluation, he shall be eligible for a step increase effective with the date of the second evaluation.

A reevaluation after three months rather than two months will provide additional time for the employee to improve his performance. Providing for the step increase upon receiving a satisfactory evaluation after three months will give the employee an incentive to improve performance which would not be present if required to wait a full year since the original unsatisfactory

evaluation.

## 5. Article XIV - Vacations

Section 1 - Eligibility and Allowance. Vacation time shall be earned and used on an anniversary year basis. Full-time permanent employees shall be entitled to paid vacation in accordance with the following schedule:

<u>Completed Years of Continuous Service</u>	<u>Vacation Hours</u>
Successful completion of probation period	40 Hours
1 Year	40 Hours
2 - 6 Years	80 Hours
7 - 11 Years	120 Hours
12 or More Years	160 Hours

City: One week's vacation after completion of probationary period should be eliminated.

Union: The City's 1988 Personnel Policy provides for five days vacation after completion of probationary period. This is also prevailing practice in other agreements.

Recommendation: Eliminate provision for 40 hours vacation after completion of probationary period.

While the 1988 Personnel Policy provides for five days vacation after successful completion of the probationary period, this is not the prevailing practice in other contracts submitted by the Union. The contract between the Buchanan Board of Education and Local 586 of SEIU (the same local union as in this case) provides that employees in the custodial, maintenance, and mechanic classifications with one year of service "shall be entitled to ten (10) days vacation after anniversary of continuous employment . . . ." There is no provision for vacation for employees upon completion of probationary period

(Union Ex. 1-D). The Agreement of the City of Buchanan and the Buchanan Policemen's Association provides 40 hours vacation after one year of regular employment. There is no vacation provided after completion of a probationary period (City Ex. 2). Of the three other Agreements submitted by the Union only one, Plainwell and SEIU Local 586, provides for 40 hours vacation after completion of the probationary period (Union Ex. 1-B). The Agreements between Local 586 and City of Otsego and the City of Charlotte do not provide vacation leave after completion of probation (Union Ex. 1-A and 1-C). On balance, the Union request for 40 hours vacation after completion of the probationary period, is not supported by the prevailing practice in comparable agreements.

#### 6. Article XIV - Vacations

Section 4 - Forfeiture of Unused Vacation Leave.  
Unused vacation leave accumulated since 6/30/84 shall be forfeited as of the employee's anniversary date. Unused vacation leave may not be carried over past an employee's anniversary date, nor shall employees receive compensation for unused vacation leave, except as provided for in Section 3 above, and except in instances where previously-approved vacation leave time is cancelled by the Employer within 90 calendar days prior to the employee's anniversary date and it is not possible for the Employer and employee to reach agreement on use of all of the employee's vacation leave prior to his anniversary date. In the latter case, the employee shall be eligible to receive cash compensation for his unused vacation leave, payable on the next regular payday following his anniversary date; or may elect to carry over said unused vacation leave for up to 90 days past his anniversary date.



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City: Is unwilling to buy back unused vacation leave accumulated prior to June 30, 1984. The City might consider buying back unused vacation in a lump sum at the rates in effect on June 30, 1984.

Union: Would accept buying back unused vacation leave accumulated prior to June 30, 1984, at rates in effect on June 30, 1984.

Recommendation: Unused vacation prior to June 30, 1984, is an accrued benefit to which employees are entitled. Payment in a lump sum at rates in effect on June 30, 1984, is recommended.

7. Article XV - Holidays and Personal Leave Days

The draft agreement provides for two (2) personal leave days.

City: Proposes that the following paragraph be added to Section 4:

In order to receive personal leave days, an employee must have completed one full year of employment with the City. Personal leave days shall not, under any circumstances, be converted to cash, and must be used prior to the employees next annual anniversary date or forfeited. Personal leave days may be used in whole or half-day increments.

Union: Accepts City proposal except that employees shall receive two personal leave days upon completion of probationary period.

Recommendation: Employees shall receive one (1) personal leave day upon completion of the probationary period and two personal leave days after one full year of employment. Except for this modification, the City's proposed paragraph is recommended.

Given the diversity of provisions for personal leave days in comparable contracts, this recommendation seems fair and reasonable.

## 8. Article XVI - Sick Leave

### Section 1

(a) It is agreed that employees shall earn and be granted a sick leave of absence with pay under the following conditions and qualifications:

- (1) After completion of six (6) months employment, an employee shall be credited with four and one-half (4.5) days of sick leave and will accumulate sick leave with pay at the rate of six (6) hours day for each full month of employment.
- (2) All payments for sick leave shall be made at the employee's rate of pay when he takes his sick leave.
- (3) In the event of death or termination, an employee or designated beneficiary may convert to cash and draw up to thirty (30) days of any accumulated sick leave. If the employee is terminated for just cause and there is adjudicated just cause termination, or if any employee resigns without giving the Employer two weeks notice, then any accumulated sick leave shall not be subject to payment to the employee.

City: Sick leave accrual should be at a rate no greater than six days per year. Eliminate any reference to payout of up to 30 sick leave days upon employee's death or termination.

Union: Upon completion of six months employment, employee shall be credited with six days of sick leave and will accumulate sick leave with pay at the rate of one working day for each full month of employment. In the event of death or termination,

except as provided in the draft contract, an employee or beneficiary may convert to cash or draw up to thirty days of accumulated sick leave.

Recommendation: Employees shall be credited with six days of paid sick leave after completion of six months employment, and shall accumulate one day of sick leave for each full month of employment. In event of death, an employee's beneficiary may convert to cash and draw up to thirty days of accumulated sick leave. Employees who have been employed for at least ten years, and who terminate or are terminated, except for just cause, shall be paid up to thirty days of accumulated sick leave.

The crediting of one day of sick leave for each month of employment is the overwhelming prevailing practice. There is much less support for paying sick leave to employees who terminate or die. This recommendation considers long term employees and those who die while employed by the City more deserving than those who resign or are terminated after relatively less longevity.

Prevailing practice is summarized below:

1988 Personnel Policy: Six days of sick leave upon completion of six months employment. Accumulation of sick leave at rate of one-half working day for each full month of employment. In event of death or termination, an employee or beneficiary may convert to cash or draw up to thirty days of accumulated sick leave. (City Ex. 1)

Buchanan Board of Education and SEIU Local 586: Employees in custodial, maintenance and mechanic classifications shall receive twelve paid sick leave days per year.

City of Buchanan and Buchanan Patrolmen's Association:  
Six days of sick leave with pay after completion of six months employment. Accumulation of one working day for each full month of employment. In event of death or termination, employee or designated beneficiary may convert to cash or draw up to thirty days of accumulated sick leave. (City Ex. 2)

City of Charlotte and SEIU Local 586: Regular full-time employees entitled to sick/disability leave credit of one working day for each completed month of service. Payment of unused sick/disability leave not to exceed 90 days shall be made to employee or his beneficiary on death or retirement. Payment of 1/2 of the employee's unused sick leave accumulation will be paid to employee upon leaving employment after 10 full years of employment. (Union Ex. 1-C)

City of Ostego and SEIU Local 586: Accumulation of eight hours paid sick leave for each month in which employee has worked for at least 120 hours. Employees hired prior to June 30, 1984, upon retirement, shall be paid for all unused accumulated sick leave. Employees hired after July 1, 1984, shall not be entitled to any sick leave pay off upon retirement. Employees who terminate or have their employment terminated for any reason shall not be entitled to any unused sick leave accumulation. (Union Ex. 1-A)

City of Plainwell and SEIU Local 586: Regular full time employees accumulate sick leave at rate of eight hours per month for each month an employee works at least fifteen days. (No reference to payment of accumulated sick leave on death, termination or retirement.) (Union Ex. 1-B)

In addition to the above provisions, the Union presented a survey of sick leave provisions in nine cities. The number of sick leave days allowed per year was thirteen in two cities, twelve in five cities, and ten in two cities. Information regarding sick leave pay on death, resignation, or retirement was too sparse to be useful for purposes of this case.

9. Article XVII - Insurance

When an employee reaches age 65 or retires, whichever comes first, his life insurance coverage decreases to \$2500 according to the draft contract.

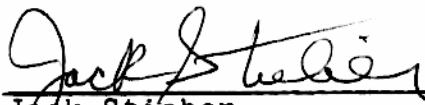
City: Delete language regarding life insurance for retirees.

Union: Provide all retirees with term life insurance coverage in the amount of \$2500.

Recommendation: Provide employees with term life insurance coverage of \$2500 upon attainment of age 65 or retirement.

The \$2500 life insurance coverage represents 50% of the coverage received by full time employees below the age of 65. This recommendation is consistent with the 1988 Personnel Policy of the City. It is not possible to determine the prevailing practice in other contracts. A few provide for maintaining the "present level" of life insurance without indicating what that level is. Others provide for the employer to contribute a specified amount for various insurance coverages.

December 5, 1989

  
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Jack Stieber  
Fact-Finder