

Fact Finder: C. Keith Groty

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ARBITRATION OPINION AND AWARD

In the matter of the arbitration between:

CALHOUN COUNTY ROAD COMMISSION

and

TEAMSTERS LOCAL 214

Case No. L87 B-78-E

FACT FINDER - C. KEITH GROTY

Appearances:

Employer

Darrel Jacobs, Attorney
Richard Walsh, Maintenance Superintendent
Kenneth King

Union

Henry J. Muller, Business Agent
Edward J. Weiss, Steward
William D. Wilson, Steward
Steve Swofford, Steward

Hearing Held: March 9, 1988

Time: 10:00 a.m.

Place: Road Commission Officer
Marshall, Michigan

Closing Arguments Filed: March 25, 1988

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Calhoun County Road Commission

FINDINGS AND RECOMMENDATIONS

Issue Number One - Length of Contract:

The Union seeks a settlement retroactive to April 1, 1987, and a duration of two (2) years from that date. It is argued that without retroactivity the Union is penalized for utilizing the process set forth by statute and the Michigan Employment Relations Commission regulations.

The Employer, while agreeing to a three (3) year term, believes that retroactivity poses a hardship on the Employer since all time and over-time will have to be recalculated and, as a matter of principle, the Employer has bargained in good faith. Employer argues that it was the Union's demand to change the pension plan that tied up negotiations, forcing the long delay.

Fact Finders Recommendation:

The length of the contract is dependent on the parties settlement of the wage program. Since the parties have had a history of cooperation, the fact finder recommends that the parties seek a four (4) year agreement, the first of which would be retroactive to April 1, 1987. This extended period provides approximately three (3) years prospectively and one (1) year retrospectively for the time already worked by the bargaining unit members.

Issues Two and Three - Holidays:

The Union seeks to preserve its present holidays, and eligibility, including the holidays of "Fair Day" and the employee's birthday. It is argued by the Union that these holidays were granted when they gave concessions in the past and they wish to maintain these holidays as part of their total compensation package.

The Employer seeks to repurchase these holidays for 7.5 cents per hour each. The Employer argues that this repurchase of the two holidays provides a current worth that is twice what the holidays are worth. In addition, they argue that this would still leave the County with ten (10) holidays which is above the average of 9.5 holidays in other county road commissions surveyed by the Employer.

Fact Finders Recommendation:

The fact finder is not inclined to disturb the present holiday program. While the offer of the Employer appears generous to repurchase these days, the time, rather than the cash, is of greater value in the bargain.

Issue Number Four - Wages:

The Union proposes a two-year agreement from April 1, 1987, with a .41 cent per hour increase in the first year, and a .41 cent per hour increase in the second year. While stating that a third-year agreement would be possible, no specific amount other than that proposed in the first and second year was provided to the fact finder.

The Employer offers a three-year wage agreement with a .30 cent per hour increase in each year, effective with the ratification of the contract. This .30 cent per hour is conditioned on the deletion of the Fair Day and employees birthday. In the alternative, the Employer offers .25 cent per hour for each year of a three-year agreement.

Fact Finders Recommendation:

The Union argues that the .41 cent per hour is justified by comparison with the Road Commissions in the immediate area, and the 4.5 percent general increase received by county employees in Calhoun County.

In defense of their wage offer, the County argues that by comparison to the average salary of their comparable counties, this bargaining unit is already paid more per hour. This, they contend, makes retroactivity for the first year unjustified. It is also argued that the pension agreement already adds .20 cents per hour in the first year and as much as .45 cents in the second and third year, which should not be forgotten in making additional hourly increase recommendations.

The fact finder, however, seeks to find a position which is equitable to both parties and can be used as the foundation for a multi-year settlement. Therefore, he recommends a retroactive increase to April 1, 1987 of .25 cents per hour, an increase of .30 cents per hour April 1, 1988, an increase of .35 cents per hour effective April 1, 1989, and an increase of .41 cents per hour effective April 1, 1990.

Issue Number Five - Subcontracting:

The Employer seeks to change the subcontracting language of the contract to state affirmatively that the Commission may subcontract work normally performed by the bargaining unit when it is deemed appropriate by the Commission, so long as the subcontracting does not result in the direct layoff of present bargaining unit members. This proposed language would replace the present provision which states that the Commission will not subcontract work normally performed by bargaining unit employees when, in the Commission's judgment, the necessary work can be performed by the available manpower using proper equipment and within the required amount of time such work is performed efficiently and economically. Language also states that it is not the Commission's intent to subcontract with a result of laying off present bargaining unit members.

The contention between the parties arises not over incidences which have occurred within their agreement and practices, but as a result of problems in Kalamazoo County where the language of the contract was the same as that contained in the present agreement. The Employer now seeks to have the language changed to that which was agreed upon following the dispute within Kalamazoo County.

Fact Finders Findings and Recommendation:

Neither the language of the present agreement nor that proposed by the Employer prohibits the Employer from subcontracting some of the work of the bargaining unit. However, the present contract language places greater restrictions upon the Employer to show that the present workforce is unable to perform the work efficiently and economically because of a lack of manpower, equipment or time. Both the present language of the contract and the proposed language would prohibit subcontracting if the result were the layoff of present bargaining unit employees.

The fact finder is not inclined to recommend a change in the present contract language since the parties have not experienced any difficulty in operating under the present agreement. It is recommended that the parties continue the present language of their contract.

Issue Number Six - Disability Insurance:

The Union is asking for an increase in the disability insurance to maintain its ratio to income for purposes of protecting employees during their disability. They are requesting that the present \$140 per week amount be raised in 1987 to \$160, and in 1988 to \$180.

The Employer argues that the parties have not experienced utilization of this insurance by bargaining unit members. The increases, as

proposed by the Union, would increase the amount paid by the Employer for the insurance by approximately \$674,000 over a three (3) year period. Therefore, since it is an additional cost without apparent need within the unit, it is argued that it is an unnecessary additional cost.

Fact Finders Finding and Recommendation:

While the fact finder is mindful of the increased cost, it is important that this type of benefit improve from time to time to maintain its replacement value. At some future date, if this is not done, the discrepancy between actual wage and amount of replacement will be so great that it is a burden to correct it to its original status. Therefore, it is recommended that the amount be increased to \$150, effective April 1, 1988; \$160 April 1, 1989; and \$170 April 1, 1990.

Issue Number Seven - Pension:

Following the submission to fact finding and prior to the hearing, the parties resolved the pension matter. It was withdrawn from fact finding.

Issue Number Eight - Call In Time:

The Union proposes that the agreement be changed to provide employees time and one-half for all the hours paid when on call-in. The Employer proposes to maintain the present contract language which provides a minimum four hours of call-in for which time and one-half is paid only for the actual worked hours with the balance of unworked hours paid at straight hourly rate.

Fact Finders Findings and Recommendations:

The four-hour minimum call-in appears generous in comparison to other similarly situated units. The provision of straight time for the

unworked hours provides a guarantee which is greater than a unit having two hours minimum call-in at time-and-one-half. The fact finder believes that the present provision of the contract is adequate and should not be changed.

Issue Number Nine - Appendix "A":

Appendix A contains a series of premium pays for operation of certain equipment, certain manning levels for the operation of equipment, and the ability to supplement workers compensation through the use of sick leave. At Section A of Appendix A, the Union asks that all back hoe operators be paid a .15 cent per hour premium in addition to their regular hourly rate for all hours worked if they are receiving the truck driver rate. The present practice is to have one (1) operator assigned to one of the large back hoes and paid the .15 cents premium rate. The other large machine does not have a regularly assigned operator; when it is operated the person is paid the additional .15 cent per hour premium. The third back hoe is a smaller machine whose operator is paid the .15 per hour premium pay while it is operating. The Employer proposes no change from this present practice.

Fact Finders Finding and Recommendation:

The fact finder finds no reason to change the present practice of paying the regularly assigned operator the .15 cent premium on all hours worked and the operators of the other two (2) machines the .15 cent premium for the hours when they are operating the machine.

Appendix A - Section B:

The Union asks that operators of the brush hog be paid .15 cents in addition to their regularly hour for all hours worked. The Employer

currently pays .10 cents per hour in addition to the operators hourly rate while the brush hog is being operated. This practice of paying for brush hog operations appears to be unique to this County.

Fact Finders Finding and Recommendation:

Fact finder recommends that the brush hog operators be paid .15 cents per hour in addition to their regular hourly wage for the hours while they are operating the brush hog. This .15 cent premium for the operating hours is consistent with the premium paid for the back hoe operators under Section A.

Appendix A - Section C:

The Union is seeking to have a premium pay on all the hours during a seasonal period when certain seasonal pieces of equipment are or could be used. The present practice is to pay the premium while the equipment is being operated but not for vacation days, sick days, rainy days, or break-down days. The Union argues that paying a premium time on rainy days and break-down days is appropriate since, during those times, the employee is working to maintain the equipment and this should be premium pay work.

The Employer contends that premium pay is for the operation of equipment and is adequate compensation. It is contended that the payment of premium for non-work time defeats the very reason for providing premium pay.

Fact Finders Findings and Recommendation:

It is recommended that premium pay be reserved to time when equipment is in actual operation. The payment of premium for operations of seasonal equipment when that equipment is not in use changes the original

intent and becomes a seasonal pay premium as opposed to an equipment operation premium.

Appendix A - Section D:

The Union demands that two (2) operators be assigned to the sander shaker machine as a minimum manning requirement necessary for the safe operation of this equipment. While the Employer is opposed to negotiating minimum manning requirements for this equipment, it has always been the practice of the Employer to assign an operator who is responsible for the machine and received a .10 cent per hour premium, and a helper who works under the operators direction. The Employer agrees to continue the assignment of an operator and a helper, even though this is a unique premium pay by comparison to other comparable road commission operations.

Fact Finders Finding and Recommendations:

It is recommended that the parties finalize an agreement to operate the sander shaker with an operator receiving a .10 cent per hour premium and a helper working at straight hourly rate.

Appendix A - Section E:

The Union contends that the Flow Boy Operator be paid heavy equipment rate (Job Group I) at all times. The Employer contends that the proper rate is truck driver under Job Group III. The Employer concedes, however, that since the equipment was purchased during the pending negotiations, it has paid the Job Group I rate while the equipment is in operation. The Employer concedes that the Flow Boy has unique problems associated with its use. Therefore, it is critical that the Employer have the right to select the most responsible driver to operate the piece of equipment.

Fact Finders Finding and Recommendations:

This unique piece of equipment has characteristics which can be found in both the Job Group III truck driver classifications and the Job Group I heavy equipment operator rates. Therefore, the fact finder recommends that the Job Group I rate be paid to the operator of the Flow Boy equipment whenever that equipment is in operation. The individual need not be reclassified from the Job Group III, since the individual should operate under that classification whenever the Flow Boy equipment is not in operation. The parties should agree that the person selected to operate the Flow Boy must be qualified by training and/or experience.

Appendix A - Section F:

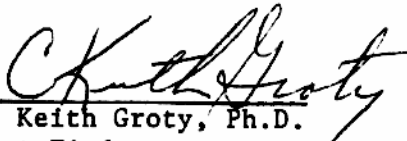
The Union proposes that sick leave be available for use to supplement workers compensation. The Employer argues that since worker compensation benefits are not taxable, permitting an employee to use sick leave to supplement workers compensation provides the employee more than 100 percent of compensation. This, it is argued, provides a disincentive for the employee to return to work.

Fact Finders Finding and Recommendation:

The fact finder is sympathetic with the Employer's argument that to allow full supplementation of workers compensation provides a disincentive for an employee to return to work. Yet, however, an employee should not be disadvantaged because they are injured on the job. Therefore, the fact finder recommends that the employee be able to use sick leave accumulation to recover up to 50 per cent of time not covered by workers compensation.

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The fact finder wishes to thank the representatives of the parties for their able representation and assistance in understanding the complexity of the issues and the positions of the parties. He prays that these recommendations may serve to settle the issues in disagreement.


C. Keith Groty, Ph.D.
Fact Finder