

4/14/83

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State of Michigan
Employment Relations Commission

Fact Finding Case

Regarding: Village of Elk Rapids
-and-
AFSCME-Michigan Council #25
Case No. G81 J-1058

Herbert V. Rollins,
Fact Finder

Representation

Stanley E. Burke, Attorney for
the Village of Elk Rapids

Dennis Nauss, Staff Representative for
AFSCME Council #25

Elk Rapids, Village of

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

BACKGROUND

These proceedings were initiated by a Petition For Facting Finding filed by the union.

During and after the pre-hearing conference the parties negotiated settlements of many of the issues. During the final hearing, the fact finder suggested compromises or acceptances on many items in controversy then remaining, whereupon some additional 21 issues were resolved, TAed and initialed.

The following 8 items remain for the fact finder's decision.

Date of submission, April 14, 1983

ARTICLE 18
JOB POSTINGS AND
BIDDING PROCEDURES

The proposed changes by the village and counter proposals by the union were frangmented during the hearing.

The union, in its brief, alleges that the following sub-paragraphs (a) (b) and (c) were, at the hearing, submitted by the village. Since the union is willing to accept the 3 sub-paragraphs as submitted, I will recommend their adoption. However, my notes indicate that the village proposed a 90 day trial period instead of 45 days. If the village can substantiate that it was firm on the 90 days, I will recommend that the 45 days be changed to 90 days, otherwise it will not be changed.

Since I am recommending the union's proposal for job levels there is no need to include the villages proposed sub-sections of (d) and (e).

The proposed recommended sub-section (a) (b) and (c) are as follows:

ARTICLE 18. JOB POSTINGS AND BIDDING PROCEDURES:

(a) All vacancies or newly-created positions within the bargaining unit shall be filled on the basis of seniority and qualifications. All vacancies will be posted for a period of seven (7) working days, setting forth the minimum requirements for the position in a conspicuous place on bulletin boards in each building. Employees interested shall apply in writing within the seven (7) working days' posting period. The senior employee applying for the position who meets the minimum requirements shall be granted a forty five (45) day trial period to determine:

1. His ability to perform the job.
2. His desire to remain on the job.

(b) Should a Union member apply for a posted job and is denied, he shall be advised in writing as to why he was not selected with a copy to the steward.

(c) The Employer reserves the right to return the employee to his former classification within the forty five (45) day trial period if unsatisfied with the performance with notice and written reasons submitted to the employee and steward. During the trial period, employees will receive the rate of the job they are performing.

In the event the employee disagrees with the written reasons he/she was denied the trial period, or the employee disagrees with the written reasons of being returned to his/her former classification, during the trial period, those written reasons shall be a proper subject for the grievance procedure.

ARTICLE 29

REGULAR PART TIME EMPLOYEES

The present contract provides that all regular-part time employees are covered by all terms of the contract and any benefits would be pro-rated on the basis of the normal hours worked. The village proposed that such employees be paid "at least Level 1, and receive no other benefits..." It argues that to pro-rate benefits for the single regular-part time employee "would entail more expense to administer than the value of the benefits..".

At the hearing I suggested that the proposal, as a matter of fairness to those who may work more than 19 hours per week, be modified. The union has made such a proposal and I recommend its adoption. Since most contracts provide for pro-rata benefits to regular-part time employees, I consider the union's proposal a fair compromise. A worker who only works half time or more should not lose all of his fringe benefits merely because of the modest expense included in computing his benefits.

The recommended provision, as proposed by the union is,

ARTICLE 29

REGULAR PART TIME EMPLOYEES

"Regular part-time employees shall be covered by all of the terms of this contract except that regular part-time employees who normally work nineteen (19) hours or less per week shall only receive the rate of pay for the classification in which they are working. Part time employees who normally work more than nineteen (19) hours per week shall, in addition to receiving the rate of pay for the classification in which they are working, receive all of the benefits provided under this contract on a pro-rated basis."

ARTICLE 37
VACATION AND ELIGIBILITY

The expired contract provided that effective March 1, 1980 employees would be entitled to the following vacations;

"1 year of service - 1 week"
"2-4 years of service - 2 weeks"
"5-9 years of service - 3 weeks"
"10 years of service and over - 4 weeks"

The union agrees with that schedule except that it wished to "clean up the schedule" and have only one, since the prior contract also included a provision covering the preceding year.

The village proposes to limit the eligibility for the 3 week and more vacations until after 10 years of service.

The village argues that the existing schedules would be "detrimental and harmful to the safety and welfare of the village residents. Since the department only has 5 employees it would result in a work force being 1 man short at least 20 weeks of the calendar year at such time as each employee received his maximum vacation eligibility." I agree with the village and find that the "interests and welfare of the Public" (statutory language) would best be served under the village proposal. However, I strongly urge that the parties negotiate some further language into the contract to protect the already earned vacation credits of present employees and that no vacation credits already earned (as of the date of these recommendations) be impaired.

With the foregoing amendments that I urge the parties to include, I recommend the proposal of Article 37 to be the language of the village, viz:

Article 37. Vacation Eligibility
"1 year service - 1 work week"
"2-9 years - 2 work weeks"
"10 years-plus - 2 work weeks"
plus one additional day per
year of service up to a
maximum of twenty (20) days.

ARTICLE 48

TERMINATION AND MODIFICATION

The prior contract was signed on March 1, 1979 and expired at 11:59 P.M. on February 28, 1982 (over a year ago).

The village is asking for a two year contract to commence with the date of execution of the new contract.

The union is also asking for a two year contract, except that it proposes a commencement day of February 28, 1982 (which would mean a termination in about ten (10) months.)

Since this has been such a bitter fight and the parties have been without any contract for over a year, it appears that under these circumstances the union's proposal is closer to an actual sequential 2 year contract, i.e. February 28, 1982 to February 28, 1983 and February 28, 1983 to February 28, 1984. Thus there will be more of a continuity and, at the same time, it should discourage the parties from again taking more than a year to resolve any future contract difficulties. With more expedient resolutions the parties and the public are better served.

Accordingly, I recommend the union's proposal.

ARTICLE 49

EFFECTIVE DATE

The village proposes to have the contract become effective with the date of the new agreement. The union will accept an effective date that corresponds with the employers implementation of its "Work Rules." Such an effective date appears to be proper in order to protect the employees from any wage or vacation reductions unilaterally instituted by the village prior to the activation of the now rates herein recommended.

The fact finder recommends the union's proposal since it assists in maintaining a status quo arrangement pending negotiations.

APPENDIX "B"

JOB LEVEL DESCRIPTIONS

The village is attempting to improve its job description classifications by including more specific descriptions of each and assigning increasing pay schedules to the various levels. Such methods are generally used by most progressive governmental organizations and the idea is commendable. However, while the idea is to encourage an incentive system among the employees, it must be in terms which are realistic and in terms that avoid conflict. Throughout the employer's proposal it refers to completing usually "one course" or "two courses". Such requirements neither specify where the courses are to be taken, or what is required of the applicants other than to "complete" them.

On the other hand, the union's proposal describes the jobs in more detail and instead of requiring the completion of various courses it measure the employee's ability by work they can specifically perform and the licenses they acquire.

I recommend the inclusion in the contract of the Appendix "B" offered by the union.

UNION
APPENDIX B

JOB LEVEL DESCRIPTION

Level I General Laborer assists all other employees; can operate small equipment and drive pick-up.

Level D LIGHT EQUIPMENT OPERATOR

A. Operates pick-up, sewer jet, dump truck without using plow or blade and other small equipment and can maintain and make minor repairs to same.

B. Assist in the service and operation of the sewage collection and water systems, and make minor repairs to same.

Level III HEAVY EQUIPMENT OPERATOR

A. Can perform routine maintenance and minor repair to the water and sewage systems.

B. Can operate dump truck using blade or plow, back hoe, end loader, snow blower, sickle mower, sweeper, and make most repairs, including minor welding, to the equipment.

Level IV WATER TREATMENT ASSISTANT/WASTE WATER TREATMENT ASSISTANT

A. Can operate the Sewer Plant or Water Treatment System and perform all the necessary tests and perform required maintenance/repairs including minor pump repair.

Level V WATER TREATMENT OPERATOR/WASTE WATER TREATMENT OPERATOR

A. Possesses S-3 ^{OR} ~~and~~ D-3 Water System and Well Licenses

~~B. Possesses a minimum Class C Waste Water License, State of Michigan.~~

Level VI SYSTEMS SPECIALIST

A. Possesses S-3, D-3 Water System and Well Licenses ^{OR} ~~and~~ Class C Waste Water License.

Level VII OPERATIONS SPECIALIST

A. Possesses S-3, D-3 Water System and Well Licenses, Class C Waste Water License and can operate heavy equipment.

APPENDIX C

WAGE RATES

The making of a recommendation on wage rates is made difficult in view of the conflicting job levels and descriptions offered by the parties.

In view of the wage proposals, I feel that the union, while it is seeking increases, it has also made fair concessions regarding the cap on COLA and its request for a 25¢ per hour increase in 3/1/83 through 2/28/84. The village has already taken an arbitrary and totally disrespectful consideration of its employees when it unilaterally instituted its new Work Rules.

Since the village continues to seek more and varied responsibilities from its employees, I consider the union's offer fair and reasonable (particularly since the village has not denied its ability to meet the wage demands) and recommend it as follows.

A total wage and COLA freeze using the expired contract's Appendix B as updated to reflect the COLA already rolled in as of March 1, 1982, for the period of March 1, 1982 to February 28, 1983 and that the employees be made whole for any and all losses incurred as the result of the cuts imposed in the implemented work rules. Effective March 1, 1983, through February 28, 1984, a twenty-five cent (25¢) per hour across the board increase with the COLA clause, modified to reflect a thirty-five cent (35¢) annual cap, reactivated.

APPENDIX (F) COST OF LIVING

The present cost of living adjustment provides that for each 4/10ths of an index difference, each hourly employee shall receive an increase or decrease of 1¢ per hour. The intent of the idea is fine i.e. to protect the employees from losing the value of their wages as the costs of goods and services increase. However, without a cap the system can operate in a volital way during times of high inflation, such as the late '70s and early '80s, and cripple the employer's financial position. This is exactly what happened in many cities in Michigan. In Detroit, for example, it is doubtful if that city will ever be able to raise the funds due police and firemen who worked during those periods under unlimited COLA provisions. A change would appear to be mandatory.

The problem is that the village proposes, under one swoop, to go from unlimited COLA to zero! Such a precipitous proposal would be unconscionable.

Reductions in benefits, if they are required, should be made in a gradual way. Since this governmental unit has the ability to pay this type of benefit and so many other similar units continue to do so, I will recommend the gradual reductions in benefits as proposed by the union, viz:

Appendix F

Cost of Living

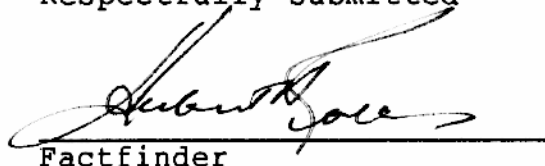
Must be continued, will freeze 82-83, and cap at 35¢
83-84.

(I interpret the phrase "will freeze 82-83" to mean that the wage payable at February 28, 1983, will be the top salary with COLA rolled in for the 1982-1983 term of the contract.)

Retention of Jurisdiction

On several of the articles there was agreement as to portions and not to others. Also the parties were not clear in their positions on retroactivity on several of the items. Therefore it is difficult to make recommendations in some instances which are all inclusive. Accordingly, I will retain jurisdiction for 30 days to either meet with the parties and discuss the problems or discuss them over the phone. Thereafter I will make any further recommendations if they are needed.

Respectfully submitted



Robert H. Gale

Factfinder

Dated: April 14, 1983