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STATE OF MICHIGAN
DEPARTMENT OF LABOR

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In re:
Fact Finding Between:

CITY OF FLINT, MICHIGAN

-and-

CITY OF FLINT PUBLIC HEALTH
REGISTERED NURSES ORGANIZATION

George T. Russell 1969 /

FACT FINDER'S REPORT
AND RECOMMENDATION

Appearances:

For the City:
George Duckworth
Deputy City Manager

For the Union:
Mitchell J. Biedul
Staff Services Consultants, Inc.

The Concept of Fact Finding

In order to completely comprehend this Report and its Recommendation, the parties' attention is called to the concept of Fact Finding as applicable in Michigan. Fact Finding is the terminal step in the collective bargaining process in the public employment sector which may be invoked after both collective bargaining and mediation has failed. Fact Finding is designed to be a substitute for a strike in the public sector.

A Fact Finder's Report and the Recommendations contained therein usually follow certain established Fact Finding criteria as guidelines. These include the following:

Flint's City of

- (1) The bargaining history of the parties, both previously, and during the current negotiations.
- (2) Comparisons with employees of other governmental and non-governmental employees.
- (3) The ability of the governmental unit to pay.
- (4) The strike criteria - as a substitute for a strike, a Fact Finding Report should consider what the parties would have agreed to if there had been a strike.
- (5) Cost of living.
- (6) Other factors - this criteria is a "catch all" designed to apply special factors in applicable situations.

It does not necessarily follow that all of these criteria must be applied in each case or must they be given equal weight. Each situation has its own facts which might tend to emphasize some criteria over other criteria. Some of the criteria may not even be applicable.

For a general discussion of these guidelines, see Stern, Fact Finding Under Wisconsin Law (Third Edition, 1966, University of Wisconsin).

The important thing to remember in this situation is what Fact Finding is not. Fact Finding does not mean that the Fact Finder is to automatically accept the union's position and automatically recommend wage and benefit increases. Fact Finding does not and should not involve the Fact Finder's personal convictions or views on a given situation. In other words, what we are saying is that the Fact Finder must rely as closely as possible to the

applicable criteria set forth above. Furthermore, it must be remembered that unions do not necessarily gain everything they seek as a result of a strike. This would also seem to apply to Fact Finding if it is to be a substitute for a strike.

Background

To further comprehend this Report and the rationale of its Recommendation, it is necessary to understand the background involved.

In the City of Flint, Michigan, there were several labor contracts involving several municipal employee bargaining units that expired on June 30, 1970. Among the units whose contract expired on this date were three bargaining units at the City operated Hurley Hospital as well as the unit constituting the some thousand employees employed by the City in departments other than Hurley Hospital. Underlying these expiration dates was the fact that in early fall, 1970, the City was involved in an arbitration with its firemen over their contract pursuant to Act 312 of the Michigan Public Acts of 1969. The police officers and the Flint Police Captains Association contract has also expired.

By the fall of 1970, the City had not entered into any new contracts with these various units. As a result, this Fact Finder began an odyssey through the labor relation maze between the City of Flint and its employees which has taken him to this Fact Finding.

In the fall of 1970, over 800 employees of Hurley Hospital struck. This Fact Finder arrived on the scene as a Fact Finder at Hurley following the fourth week of this strike.

The City of Flint and the unions involved entered into an agreement for binding Fact Finding and the employees returned to work pending Fact Finding. On January 28, 1971, this Fact Finder issued a Report and Recommendations as to the Hurley units which were subsequently implemented by appropriate collective bargaining agreements.

During the period of the Hurley strike and the subsequent Fact Finding period, the general city employees represented by Local 1600, American Federation of State, County and Municipal Employees, AFL-CIO, continued work without the benefit of a new contract. After the Hurley Fact Finding Report and Recommendations were released, Local 1600 advised the City that it would not settle a contract based upon the Hurley Report and Recommendations. Local 1600 took this position because they believed that there were a number of other issues present at their bargaining table which were not present in the Hurley situation. For this reason, Local 1600 applied for Fact Finding and this Fact Finder was appointed.

Local 1600 was correct in that there were a number of issues present in their negotiations which were not present at Hurley and vice versa. On March 22, 1971, this Fact Finder issued his Local 1600 Report and Recommendations which were binding on the parties as they did agree to binding Fact Finding following the Hurley example. The Fact Finder is advised that the City of Flint and Local 1600 have entered into a collective bargaining agreement which in most part incorporates the Recommendations of the Report.

This Fact Finder next appeared on the Flint scene in May, 1971 where he was invited by the City of Flint and the Flint Police Captains Association to be the chairman of an arbitration panel pursuant to Act 312 of the Michigan Public Acts of 1969 to settle the dispute between the Flint Police Captains' Association and the City of Flint concerning their contract. On June 3, 1971 a unanimous Award was issued signed by the Fact Finder as Chairman of the Arbitration Panel. And again, the Fact Finder is advised that the Captains' Association and the City have entered into an agreement based upon the Opinion and Order of said Arbitration Panel.

It is thus clear by the above background, that the City employees in Flint waited as long as nine months or longer before being able to consummate collective bargaining agreements following the agreements that terminate on June 30, 1970 and needed the help of binding Fact Finding and Arbitration to do so.

The City of Flint Public Health
Registered Nurses Organization

Now, this Fact Finder is back in Flint considering problems that have their genesis in the Flint labor situation beginning June 30, 1970. As with the other units discussed above, the contract of the Nurses Organization expired on June 30, 1970. The Nurses still do not have a new collective bargaining agreement.

What has happened is that after not being able to negotiate because the City (1) alleged initially that as it was involved in the Firemen Arbitration hearing, it did not know what funds it had available for other employee units (2) was subsequently involved in the Hurley Hospital situation, and (3) subsequently in the Local 1600 situation. Therefore, the Nurses Organization was not able really

to get to the bargaining table until sometime in spring, 1971.

The result of the bargaining between the City of Flint Public Health Nurses Organization and the City of Flint was the following agreement:

"AGREEMENT

Whereas, the CITY OF FLINT PUBLIC HEALTH NURSES ORGANIZATION and the CITY OF FLINT, have reached the following agreement:

1. That the members of the bargaining unit shall be paid wages and salaries and all other benefits in accordance with the formula stated in the contract between the City of Flint and Local 1600 A.F.S.C.M.E., dated the 3rd day of May, 1971;

2. That the issue in dispute between them, i.e. the time for which the wages for reallocated Junior Public Health Nurse, shall be paid retroactively is to be submitted to binding fact finding.

The term of this agreement shall be for a period of forty-five days from and after the date hereof.

Dated: May 4, 1971

CITY OF FLINT PUBLIC HEALTH
NURSES ORGANIZATION

By /s/ Mary Clippard

By /s/ Mitchell Biedul

CITY OF FLINT

By /s/ George Duckworth

Even after May 4, 1971, the parties continued negotiating without implementing the Fact Finding provisions of the above agreement. Finally, on June 11, 1971, the Nurses Organization petitioned for Fact Finding stating that the issue was "retro-activity of 10¢ per hour from July 1, 1970 to April 13, 1971 in the

classification of Junior Public Health Nurses."

The issue centers bound the bargaining history between Public Health Nurses and the City of Flint, the 1970 bargaining history of other public employee units in the City of Flint and what appears to be the Nurses' "two pronged type" negotiations resulting from the superimposing of collective bargaining on a system of civil service.

The City of Flint Public Health Registered Nurses Organization is a unit of 21 employees. One employee is classified as "Senior Public Health Nurse". Ten are classified as "Public Health Nurse". Ten are classified as "Junior Public Health Nurse". There is little, if any difference, in the duties between a Public Health Nurse and a Junior Public Health Nurse. The only difference apparently in these two classifications is the education and experience requirements prior to obtaining the classification. This fundamental lack of difference between Public Health Nurses and Junior Public Health Nurses and the bargaining history of the parties is the crux of the matter here.

In the past few years, the Nurses Organization has employed two techniques of obtaining wage increases: (1) the discretionary rate increase which was obtained at the bargaining table and (2) the technique of reallocation of classification. The latter, reallocation, is a process whereby the employee or group of employees involved apply to the Flint Civil Service Commission which under the City Charter and the rules promulgated thereunder is responsible for reallocation of employee classifications. The former, discretionary increases represent, in essence the traditional collective bargaining technique of gaining wage increases without regard to classification reallocation.

Thus, with the existence of the Civil Service Commission and collective bargaining, the Nurses were able in past negotiations to "plough two fields" in obtaining monetary benefits., i.e. at the bargaining table and from the Civil Service Commission via reallocation to a higher paying classification.

This is what happened, to some extent in the current negotiation between the Nurses and the City.

The pattern of wage increases for City employees began to take shape with the issuance of the Hurley Fact Finding Report and Recommendations. The subsequent Local 1600 Fact Finding Report and Recommendations to an extent followed the Hurley recommendations. The Local 1600 contract provided for a 15¢ an hour across-the-board increase retroactive to July 1, 1970. On January 1, 1971, an addition of 5¢ across-the-board was to be paid retroactively. Effective July 1, 1971, an addition of 15¢ across-the-board was to be paid. Finally, effective January 1, 1972 an addition of 5¢ an hour across-the-board was to be paid. The Local 1600 Report recommended a two year contract as contrasted to the Hurley recommended three year contract. There was also a recommended change in the cost of living formula.

There was a problem presented in the Local 1600 Fact Finding not presented at Hurley; namely, the problem of employees classified at Level 19 and above. Local 1600 argued that employees in Level 19 or above were skilled and should receive additional increases over employees in classifications below Level 19. The rationale advanced by Local 1600 was that a similar pattern was followed in the GM contract settlement whereby certain skilled employees received higher wage increase per hour than other employees. As a result of this persuasive argument, this Fact

Finder did recommend an additional 10¢ an hour increase effective July 1, 1970 and an additional 10¢ an hour increase effective July 1, 1971 for Level 19 and above employees.

The agreement on May 4, 1971 with the Nurses clearly indicates that as far as their respective levels were concerned they would accept the wage pattern established in the Local 1600 Report and Recommendations which in turn had its genesis in the Hurley Report and Recommendations. But in addition, the Nurses were asking for something else; namely, retroactivity of reallocation which in turn emphasizes the problem of reconciling collective bargaining with a predecessor system of Civil Service still existing.

Even before the Nurses' contract expired on June 30, 1970, the Nurses were clambering for a reallocation of the Junior Public Health Nurses to Level 20 which was the level classification of the Public Health Nurse. There were many suggestions made at the hearing that the Nurses were stymied in their efforts to obtain this reallocation by inaction on the part of City officials including their own department head. The Nurses further suggested that the delay in getting to the bargaining table also was responsible. Nevertheless, on or about April 13, 1971, the Nurses were granted a reallocation for Junior Public Nurses, not to Level 20, but to Level 19. This apparently was acceptable to the Nurses. The only issue was the question of retroactivity of the reallocation as the Nurses claim they were entitled to retroactivity because of the delay in reallocation.

Thus, we have explained the reason for Paragraph 2 in the May 4, 1971 agreement. The request for Fact Finding modified the issue. The issue is not the retroactivity of the reallocation as such, i.e. from Level 18 to Level 19, but a request for 10¢ per hour from July 1, 1970 to April 13, 1971 to cover the lack of an earlier reallocation date. Such a request is less than the difference between the pay of the two reallocated, Levels 18 and 19. The explanation of the Nurses for the modification is just that - a modification of their retroactive demands.

We indicated initially in this Report, the criteria that should be used in Fact Finding. The two most applicable criteria in this situation is the bargaining history of the parties and the special circumstances here, i.e. the pattern of bargaining of other city employees resulting in Fact Finding and the particular relationship between the bargaining process and the Civil Service Commission.

The Public Nurses Health Organization have accepted the benefits of the prolonged and extended Fact Finding involving Hurley Hospital employees and the general city employees. They have agreed to the raises recommended in the Local 1600 report. It is emphasized that the Local 1600 report did not recommend an additional 10¢ for Level 18 employees. Furthermore, that report did not consider whether any particular employee could or should be reallocated. The additional 10¢ per hour recommended applied to those who had reached at the time, Level 19. It obviously applies prospectively to any individual Local 1600 employee who subsequently is allocated to Level 19.

The above comments are the key to the problem here. The Nurses Organization are asking for something more than the Local 1600 recommendation. They in effect are asking that they receive the additional 10¢ per hour at Level 18. There is absolutely nothing wrong with making such a request. The only problem that the Nurses Organization has is that they must be able to support their request by fact and logic.

Note, the Level 19 problem was not considered at Hurley by this Fact Finder because it was not raised there. Note, when raised at Local 1600 that union presented a persuasive case that compared with the General Motors settlement which represented a large portion of the Flint working population, there should be an extra stipend for skilled workers. Local 1600 argued that the skilled cutoff point was Level 19. This argument of Local 1600 was addressed to the comparison criteria which can be used either by making comparison with similarly situated employees in the same city, or other cities.

The problem here is that the Nurses Organization has made no showing that they are entitled to what is in effect an additional 10¢ per hour at Level 18. The Nurses chose to rely on past bargaining history and to some extent current bargaining history. There is little question that there have been attempts to gain additional monies for the Junior Public Health Nurses. These attempts have been unsuccessful. If as the Nurses have suggested they were stymied by inaction of City Official, all we can say is that we can not atone for past deficiencies. The Nurses had available to them the means at which they could have forced the issue, i.e. using their legal remedies before the Michigan Employment Relations or applying for Mediation and earlier Fact Finding. None of this was done. We are not critical of the Nurses, but instead, we make these comments to suggest that perhaps the Nurses were not willing, for whatever reason, to press the issue.

This brings into play another criteria, the so-called strike criteria. The strike criteria is considered a controversial criteria by some. But it would seem that if Fact Finding is a substitute for a strike in public employment then a Fact Finder would be justified in considering what agreement the parties would have reached if there had been a strike. Sometime this is difficult to ascertain. But here the failure of the Public Health Nurses to press the issue of the wage difference between Public Health Nurses and Junior Public Health Nurses indicates that they were not prepared to take the matter to the ultimate test. Further evidence of this is that they in fact settled for Level 19 rather than what they logically believed was the correct approach, i.e. Level 20.

We are not suggesting that the Public Health Nurses should have struck. We are suggesting instead that there were remedies short of a strike (i.e. Michigan Employment Relations Commission remedies, legal remedies, mediation and an earlier application for Fact Finding.) available if in fact they believed their position was in jeopardy. Furthermore, all Flint Public Employee must recognize that strikes of Public Employees do not necessarily accomplished the result desired and do caused undue hardships to all parties as witnessed the Hurley Hospital strike.

Finally, we do mention the Civil Service reallocation procedures. We make no comments about same except to point out that when we served as the chairman of the arbitration panel in the Flint Police Captains Association matter, we were confronted with this seemingly conflict between activity at the bargaining table and the allocation process at the Civil Service Commission. This problem between the two processes may have to be reviewed by both the City and its employees in the future in an attempt to reconcile the two concepts. Here we can say that the Nurses, at least in the past and even in the present, have in fact used both concepts to their best advantage.

It is this dual collective bargaining-Civil Service concept that prevents the Nurses from receiving a favorable recommendation here. The Nurses are not asking for an appeal to the Fact Finder from the Civil Service Commission for they have by their own action accepted a modified allocation, i.e. Level 19 rather than Level 20. The Nurses are not even asking for an allocation between July 1, 1970 and April 13, 1971. They have modified their request to 10¢ per hour. What the Nurses have done is to suggest that while they were at Level 18 after the expiration of their contract and before there was a reallocation, they were entitled to 10¢ an hour more than other City employees at that level, City employees who have gone through two Fact Findings and have not raised the issue as to this Level 18 and in the case of 1600 suggested the additional 10¢ at Level 19. The Nurses have not been persuasive in sustaining their position that their situation is different from that of other City employees as found in the above-mentioned two Fact Finding Reports.

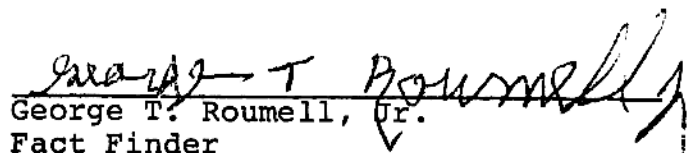
To put it another way, the parties have established a mode of dealing, to-wit: bargain at the bargaining table and at some point apply for reallocation. The bargaining at the bargaining table here for the Nurses was to accept the Local 1600 Fact Finding. They chose not to push for higher rates by bargaining. They also chose to apply for reallocation which the Nurses received. The 10¢ an hour falls in a no man's land and does not justify a favorable recommendation based upon the bargaining history criteria between the Nurses and the City plus the special circumstances of the unusual bargaining history including Fact Finding between the City and its other employees and the superimposing of collective bargaining on Civil Service concepts.

The parties must be prepared to establish their position in Fact Finding through the criteria mentioned herein and other criteria that have been developed by the Fact Finding process. We again emphasize that the Fact Finder has no business giving his personal views or personal observations. It would have been very simple to recommend the additional 10¢ per hour.

This simple way out would have gone a long way to destroying the Fact Finding process. The Fact Finding process must rely on the parties to support their positions. Here, the Nurses did not present a persuasive case consistent with generally accepted Fact Finding criteria.

Recommendations

It is hereby recommended that the Junior Public Health Nurses represented by the City of Flint Public Health Registered Nurses Organization not be granted a 10¢ per hour wage increase retroactive from July 1, 1970 to April 13, 1971.


George T. Roumell, Jr.
Fact Finder

Dated: September 2, 1971