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STATE

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING BETWEEN:

GENESEE COUNTY

-and-

COUNCIL 29, AFSC&ME

CASE NO. D74 12888

Mario Chiesa

INTRODUCTION

Pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. Pursuant to an agreement between the parties and adequate notice, the hearing was held at 10:00 in the forenoon at the County Administation Building, 1101 Beach Street, Flint, Michigan, on January 20, 1976. Post-hearing briefs were to be submitted by March 15, 1976. The undersigned, Mario Chiesa, is the Fact Finder.

Genesee County shall hereinafter be referred to as the County and Council 29, AFSC&ME shall hereinafter be referred to as the Union.

APPEARANCES

GENESEE COUNTY

Edward P. Joseph, Attorney

Raymond Knott, Personnel Director

COUNCIL 29, AFSC&ME

Allen J. Nelson, Attorney

C. Edward Hunt

COUNCIL 29, AFSC&ME (continued)

Ronald Conklin

Donald W. Kutchey

Michael L. Morey

Chester W. Toge

HISTORY

Prior to the time it was determined that the Circuit and Probate Courts were employers of their respective groups of social service workers, (see Judges of the 74th Judicial Dist v Bay County 385 Mich 710, 190 NW 2d 219, 78 LRRM 2503 (1971)) the three units involved herein comprised one unit. Since the determination, the single unit has been divided as follows:

A. Genesee County - approximately 8 social service workers

B. Probate Court - approximately 18 social service workers

C. Circuit Court - approximately 42 social service workers

For the purposes of this hearing, the three separate units have been considered as one. There are approximately 68 employees involved in this dispute.

In order to understand the issues that were presented for resolution, a historical analysis of the problems is necessary.

Prior to April 1, 1972, each adult probation officer, Circuit Court unit, the majority of Friend of the Court case workers, and one social service worker in Corporation Council's Office, Genesee County unit were assigned cars to use during working hours and to drive to and from work. The caseworkers in the Probate Court unit and those employed

in the Citizens Probation Authority, Genesee County unit were given an insurance allowance of $150.00 per year, plus 11 cents per mile for driving their own cars for business purposes.

On April 1, 1972, the County formed a car pool and stocked it with vehicles that had been previously assigned to social service workers, etc. The practice of assigning vehicles to a specific employee was eliminated as was the insurance allowance. However, the mileage allowance was still paid to individuals using their own vehicles for county business.

The Union filed a charge with MERC stating that the County had committed an unfair labor practice by refusing to bargain in good faith regarding the issue of use of motor vehicles. The charge was filed on January 2, 1973. The scope of the hearing was restricted to one point: whether the question of assigned automobiles for unit employees, rather than use of a county car pool, was a mandatory subject of bargaining within the meaning of PERA. Mr. Kurtz, the Administrative Law Judge, in a decision rendered on February 8, 1973, held that it was. A Supplemental Recommended Order was issued on June 5, 1973. This Order contained a cease and desist provision in addition to recommending affirmative action. The Charging Party had requested a return to the status quo prior to April, 1972 and reimbursement of the employees affected by the employer's unilateral change. However, the six month provision (MCL 423.23; MSA 17.454 (25)), prevented implementation of the remedy sought by the Charging Party. The Commission adopted the Order on June 29, 1973.

Subsequent to the June 29, 1973 Order, the parties did negotiate, reaching impasse on July 25, 1973. The parties agreed to submit the issue to binding arbitration. The hearing was set for June 25, 1974.

Immediately prior to the commencement of the hearing, the parties reached an agreement (Appendix 1). The County interprets the agreement to mean:

> "Paragraphs One (1) and Two (2) of the agreement disposed of the monetary claims by the affected union members up to July 25, 1973. Paragraph four (4) left to further negotiations certain insurance allowance claims made by other union members arising between April 1972 and July, 1973.
>
> "Paragraph three (3) of said agreement left to further negotiations the matter of further claims regarding the instituting of the car pool.
>
> "The claim except as to insurance allowance, arising from the car pool arrangement, up to July, 1973 was satisfied as agreed to by a lump sum cash payment to the affected employees.
>
> "As to all other claims the employer made no commitment other than to bargain in good faith."

The Union interprets the agreement as follows:

> "After the arrival of the arbitrator, but before the hearing, the parties reached an agreement that basically awarded $750.00 per year pro rata for each person that had been assigned a car. The agreement covered the period from April 1, 1972 (when the car pool was formed) until July 25, 1973 (when impasse occurred), which made the maximum paid to an individual slightly less than $1,000.00. The employer/employees also agreed to negotiate with AFSCME for the period from July 26, 1973 for those individuals assigned cars and to negotiate from April 1, 1972 for those individuals that had been paid $150.00 per year for insurance."

The parties have negotiated the problem and have also enlisted the aid of a state mediator.

The Union filed its application for Fact Finding on September 16, 1975.

ISSUES

The Union initially listed as an issue the question of whether the County has bargained in good faith pursuant to the agreement dated June 25, 1974. The failure to bargain in good faith is an unfair labor practice and being such is beyond the jurisdiction of the Fact Finder. A Fact Finding hearing is a procedure which tries to eliminate impasse situations by allowing both parties to submit evidence with the Fact Finder issuing an opinion based thereon, with the hope that the opinion will serve as a basis for agreement. The evidence is generally comprised of comparison studies, cost studies, practicality studies and information regarding ability to pay or perform.

Thus, the undersigned will not make any decisions regarding whether the County has bargained in good faith.

The issues will be confined to the following:

1. What value, if any, did the assigned cars represent to those individuals that initially had them?

2. What value, if any, did the insurance subsidy represent to those individuals that initially were paid the subsidies?

3. What is the most equitable way to settle the matter?

DOCUMENTARY EVIDENCE

UNION

Exhibit 1: Copy of a letter dated 12/29/72 from Union's Attorney to Michigan Department of Labor, along with a copy of the unfair labor practice charge.

Exhibit 2: True copy of Trial Examiner's Decision and Recommended Order, dated February 8, 1973.

Exhibit 3: Letter from Union's Attorney to Michigan Department of Labor dated February 26, 1973, with attached Flint Journal articles dated February 13, 1973 and February 16, 1973, requesting an expedited decision by the Employment Relations Commission with the Flint Journal articles reflecting employer's

position to ignore said Exhibit 2.

Exhibit 4: Decision and Order from Employment Relations Commission dated June 29, 1973, along with Supplemental Recommended Order dated June 5,1973.

Exhibit 5: Letter dated November 2, 1973, wherein the parties request the Michigan Employment Relations Commission to assign an arbitrator.

Exhibit 6: Letter dated December 28, 1970 from then County Personnel Director, James E. Cherry, indicating that value of an automobile has been equated at approximately $1,500 per year.

Exhibit 7: Agreement reached by the parties on June 25, 1974.

Exhibit 8: Flint Journal article dated August 28, 1974.

Exhibit 9: Letter dated March 27, 1975 to department heads from Union Attorney making a demand for bargaining.

Exhibit 10: Letter dated April 14, 1975 from department heads and Personnel Manager to Union Attorney.

Exhibit 11: Letter dated December 10, 1974 from Personnel Director, Raymond C. Knott, to Michael Morey, President, social service workers.

COUNTY

Exhibit 1: General documentation of past negotiations, offers and other information.

Note: The parties were to provide the Fact Finder with various lists enumerating numerous items. The only list received was one which listed the employees that received compensation pursuant to the June 25,1974 agreement.

DISCUSSION

It should be understood that this Opinion is being rendered in an effort to resolve the impasse that has been reached subsequent to negotiations that have taken place pursuant to the June 25, 1974 agreement. It is not an attempt to circumvent the six month statute of limitations that exists in PERA and which was stated in Judge Kurtz's

Supplemental Recommended Order as the reason why the cars could not be returned. There is no question, and it is agreed, that the County committed an unfair labor practice when, on April 1, 1972, it unilaterally created the car pool, thus, eliminating the employee possessed vehicles and insurance allowance. The action taken by the County was unilateral and involved a mandatory object of bargaining. Notice to the Union and bargaining, if requested by the Union, should have preceded any change in status.

However, this Opinion is directed at the current impasse and not at providing a remedy for the County's past unfair labor practices. The Fact Finder does not have the jurisdiction to decide unfair labor practice charges, nor does he possess the power to provide a remedy for same. The remedy is only available from the Commission. What the Fact Finder can do and must do is to render an opinion, based upon evidence, that hopefully will lead to a resolution of the impasse situation.

At this point, the County has made the following offer:

1. Payment of $112.50 to those with insurance claims.
2. Increase mileage allowance to those who drive their own vehicles from 11 cents per mile to 14 cents per mile.
3. Form a car pool committee to study entire car pool situation.

The Union's offer appears as follows:

1. Return cars to individuals that originally were assigned cars, or;
2. $750.00 pro-rata for the remainder of 1973, $750.00 for 1974 and $750.00 for 1975.
3. For those who previously received an insurance allowance; $150.00 pro-rata for the remainder of 1972 and until July 26, 1973, the date of impasse, then $200.00 per year.

The County justifies its offer by relying on its financial position. It maintains that it has suffered severe financial setbacks and currently is realizing severe financial problems. Mr. Knott, the County's Personnel Director, testified that the County is in a layoff situation with over 400 people out of work. He testified that this figure included CETA employees, along with 145 permanent employees. He further testified that since 1973 the County has been using its net fund equity to sustain operations. The testimony stated that the current net fund equity was about five to seven million dollars, all of which is committed to various contingencies. The County is expecting more CETA funds and if they are realized, then the County may be able to call back the layed off employees. Because of certain financial problems, including liability on issued bonds, hospital suits, equalization problems, unemployment insurance and possible expenditures in the mental health field, the County would have been "broke" if it had not layed off employees. The testimony also established that the present car pool arrangement, which includes 60-70 vehicles, makes a car available to almost every County employee. Of course, there have been some problems. Mr. Knott further testified that the car pool arrangement saved the County money.

The Union's evidence established a number of points. The evidence clearly established that the County was guilty of an unfair labor practice. Further, that the cars did have a monetary value to the employees that were previously assigned one. The Union established that the existence of assigned cars was used by the County during negotiations to justify a lower wage offer. Also, since the elimination of assigned

cars, all wage increases and increases in benefits have been agreed to on a unit wide basis with no adjustment for the loss of the cars. Further, the Union's evidence establishes that at times employees have problems securing a car from the car pool. Further, the evidence shows that the individuals that were receiving an insurance subsidy prior to the existence of the car pool have received nothing except mileage reimbursement subsequent to the establishment of the car pool. The Union has failed to introduce any evidence, with the exception of cross-examining Mr. Knott, directed at the County's ability to pay.

Through the testimony of Mr. Conklin, the Union established that some of the employees, that were hired prior to April 1, 1972, were promised assigned cars when they became available. The record also establishes that these employees never received the vehicles.

Neither party introduced cost analysis, budgets or comparative data.

In argument, the County maintained that it should not be forced to pay an endless penalty for its past unfair labor practice. It maintains that it can't afford to return the vehicles and that wage increases have more than exceeded the value of an assigned vehicle. Further, it states that it has properly negotiated all claims that have been presented and that it is not compiled by law to agree to return to vehicles.

The Union maintains that the employees involved in this matter have been denied a benefit by unilateral action and even though the parties

agreed to negotiate the claims, the County has failed to live up to its agreement. Further, the Union states that there is no doubt that if it had timely filed its unfair labor practice, the cars most assuredly would have been returned. The Union states that the County itself has set the value of the vehicles at $1,500.00 per year. The Union also states that the car pool has presented problems and thus vehicles are not always available when needed by employees. The Union implies that the expense involved is not so great that the County cannot afford to return the vehicles and re-institute the insurance subsidy.

RESOLUTION

There can be no doubt that the availability of a motor vehicle to drive to and from work, as well as having it available during business hours, is a considerable benefit. Union Exhibit 6 indicates that the value of such an arrangement has previously been equated to equal $1,500.00. The value was established by the County, or at least adopted by it. Further, during prior negotiations, the County has always used the existence of assigned vehicles as a counter to wage demands.

However, it is impossible for this Fact Finder to place an exact dollar and cents figure on the value of an assigned vehicle. The County's figure seems as accurate as possible under the circumstances and if a solid figure is needed, then the $1,500.00 figure should be adopted.

Just as the assigned vehicles were of value to the employee, so was the $150.00 insurance subsidy.

After analyzing all the evidence, the Fact Finder has arrived at certain resolutions.

The evidence does not allow the Fact Finder to recommend that the vehicles be returned to those employees that enjoyed assigned vehicles before the car pool was created. The Fact Finder fully understands that the vehicles were unilaterally withdrawn and, thus, making the County guilty of committing an unfair labor practice. However, that aspect is for the Commission to handle and not for Fact Finding. Evidence concerning the cost of returning the vehicles, the practicality of returning the vehicles, the County's ability to return the vehicles and comparative employer's practices is not in this record.

If the present car pool is functioning correctly, all employees should have adequate access to a vehicle during working hours as the need arises. The evidence does show that this is not always the case. In order to try and achieve this goal, it is recommended that the County's offer be adopted, i.e., the formation of a car pool committee comprised of members from the Union and the County. The committee should examine the workings of the car pool and make recommendations that may be necessary to remedy any shortcomings. It is suggested that the committee be comprised so as the Union and the County shall have equal representation. A neutral member, acceptable to both parties, should also be appointed.

There is nothing in this record to support any type of recommendation regarding those employees that were promised cars when available. The promise may well have been a term or condition of employment, but at this point, there is nothing in the record that would justify a recommendation. Hence, the Fact Finder cannot make one.

If the car pool were working as expected, employees should have a car available for their use in order to perform the duties imposed by their job classifications. Thus, it may be assumed that the employees that previously had assigned vehicles must now drive their vehicles to and from work. There can be no denying the fact that having a vehicle to drive to and from work is a substantial benefit. The Union is seeking $750.00 per year for each year since the unilateral taking of the vehicles with exception of that period of time covered by the June 24, 1975 agreement. The Union's entire argument is based upon the unilateral taking and the failure of the County to bargain in good faith. Again, that evidence is not persuasive at this type of hearing. It is for the Commission to decide whether or not the County has bargained in good faith. There is no relevant evidence on which the Fact Finder may base a recommendation. Morally, the employees may very well be entitled to that payment and perhaps even more; however, based on the state of the record, a recommendation cannot be made. The same comments must apply to those individuals that were receiving insurance subsidies with the exception that the County's offer of $112.50 should be adopted. The County's offer is being adopted because it is the only one in this area that is remotely related to the record. If the record presented a different picture, the result may very well have been different.

The Fact Finder takes judicial notice of the fact that IRS provides a 15 cent allowance for each mile a vehicle is driven for a business purpose. The County has offered 14 cents per mile. In this area, the Fact Finder recommends that the 15 cent figure be adopted. The higher

figure should provide the County with enough incentive to insure the institution of workable solutions to the problems that exist with the current car pool. Even with the financial difficulties, the County is experiencing, it is felt that the one cent increase is affordable.

CONCLUSION

The Fact Finder assures the parties that he has considered all the evidence in this matter before making the above recommendations.

/S/
MARIO CHIESA

April 23, 1974

APPENDIX 1

AGREEMENT

MERC Arbitration Case No. 348 having been set for hearing on June 25, 1974 and the parties, prior to said hearing being commenced, on said date having discussed the possibility of arriving at an amicable settlement of their differences and as a result of said discussions the parties agree as follows:

1. That each of the employees affected (approximately 20-25 in number and further identified as those employees to whom a car had been assigned within the bargaining units involved herein) shall receive the sum of $750.00 per year to be paid pro-rata for the period between April, 1973 (specifically the date upon which the car pool was instituted) and July, 1973 (specifically the date upon which the Employer ~~[illegible]~~ employee ~~[illegible]~~ ~~[illegible]~~

2. That said sum shall be paid in a lump sum and shall be in full satisfaction of any and all claims for or accrued during the period for which payment is made as described above.

PROPOSED EXHIBIT 7

3. That the employer shall negotiate with the Bargaining unit relative to any further claims ~~for~~ allegedly accruing from and after July, 1973 as provided for in the Memo of Understanding signed by the parties and dated May 1, 1973. In relation to this provision the Employer agrees to no commitments other than to bargain in good faith said question.

4. That as the result of the distribution of the Car Pool in April, 1972 certain other employees within the Bargaining units affected herein, who were required to use their vehicles in the performance of their duties and who were given certain insurance benefits by way of subsidy towards insurance premiums, had said subsidy stopped, that the Employer shall negotiate with the Bargaining Units involved as to such employees relative to their claims for sums due from April, 1972 to July, 1973 (as identified in paragraph one herein) In relation to this provision the Employer agrees to no commitment other than to bargain in good faith said question.

5. That the parties hereto recognize that each shall be required to return to their respective units for ratification and that each shall recommend ratification by their respective units.

Allen Nelson

ALLEN NELSON
REPRESENTING THE
UNION

DATED: June 25, 1974

Edward P. Joseph

EDWARD P. JOSEPH
REPRESENTING THE EMPLOYER

Dated June 25, 1974