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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Factfinding between:

**KALAMAZOO COUNTY PROBATE COURT,**  
**and the COUNTY OF KALAMAZOO,**  
Employer,

-and-

**KALAMAZOO COUNTY JUVENILE HOME EMPLOYEES CHAPTER OF LOCAL #1677,**  
**COUNCIL #25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL**  
**EMPLOYEES, AFL-CIO,**  
Union.

MERC Case No. G 87 J-936.

**REPORT OF THE FACTFINDER,**  
**BENJAMIN A. KERNER**

10-27-88

Appearances:

For the Employer:

John G. Manske, Esq.  
Don Nitz  
Deborah Corbeil  
Nancy Donovan  
Mary Jo Case-Murray

For the Union:

Dale D. Latta  
Diane Haggerty  
William M. Farmer  
Thomas Lockhart  
Gregory L. Harrison  
Karen Stedman  
Donna K. White  
Lorina Fletcher

STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
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*Kalamazoo County Probate Court*

October 27, 1988

LABOR AND INDUSTRIAL  
RELATIONS COLLECTION  
Michigan State University

**INTRODUCTION.**

On June 6, 1988, the Michigan Employment Relations Commission, pursuant to its authority under Section 25 of the Labor Mediation Act, M.C.L.A. 423.25, determined that the labor dispute currently pending between these named parties would be more readily settled if the facts involved in the dispute were determined and made publicly known. The Commission appointed Benjamin A. Kerner, Attorney at Law, as its factfinder and agent to conduct a hearing and issue a report with respect to the matters in disagreement.

The factfinder held a conference with both parties and their representatives on August 11, 1988, in Kalamazoo, Michigan, to identify the issues in dispute, and to work towards informal resolution of those issues. Agreement was not reached. Then, on October 20, 1988, I convened a hearing in Kalamazoo, Michigan. Each party was afforded full opportunity to present any and all evidence deemed by it to be relevant to the issues in dispute. Having had the chance to review the twelve exhibits which were introduced and the testimony of those individuals whose names are noted on the title page, I am now ready to issue my report of findings and recommendations.

The general reader should be apprised that the American Federation of State County and Municipal Employees (hereafter called the "Union") represents a bargaining unit of 23 employees who are in the classifications of Cook and Juvenile Guidance Worker. The County is responsible for a juvenile home, which is administered by a Superintendent who reports to both the County Board of Commissioners and the Probate Court for the County of Kalamazoo (which are together called the "Employer").

**BACKGROUND.**

The parties have traditionally bargained a one-year contract and neither party has suggested changing the term of the contract. Bargaining for the 1988 calendar-year contract began in November 1987. A mediation session was held in January 1988. By April 1988, the Union was convinced that bargaining was at an impasse, and filed its petition for factfinding. The petition identified 8 issues in dispute. In part through the efforts of the factfinder, the parties have reached substantial agreement on two of those issues: hospitalization (Article 24) and minimum staffing (Article 29). Evidence was received on the remaining 6 items in dispute.

## ISSUE #1: WAGE INCREASE.

The Union demands a wage increase of 20% across the board. In support of this demand the Union presented three sets of figures. One set of figures were the Bureau of Labor Statistics [B.L.S.] figures showing changes in the consumer price index for 1988. The most recent figures available indicate a cost of living increase (nation-wide average) for 1988 in the 3.7--3.9% range.

A second set of figures provided by the Union were the salaries of "Youth Specialists" positions in the State system, i.e. youth workers who are employed in State training homes. The salaries paid to such workers based on the assumption of a 2080 hour work year, are \$20,633 (entry-level Youth Specialist III) to \$24,794 (top of the scale for Youth Specialist III). These are salary figures, not on January 1, 1988, but as of October 1, 1988 (the beginning of the State fiscal year).

The third set of figures provided by the Union were salaries paid to "Child Care Facility Attendants" by 8 county governments in the State, which counties are considered by the County of Kalamazoo to be comparable counties.

The Employer has offered a wage increase of 0.5% across-the-board for this contract year. The Employer has provided the following data in support of its offer.

The Employer points out that there are two other units of employees of this County represented by Michigan Council #25 of the American Federation of State County and Municipal Employees: the Airport unit and a custodial /maintenance / parks unit. In the Airport unit, a wage increase of 3.0 % was negotiated for 1988. This figure included step-increases and longevity increases, so that the effective across-the-board increase for the Airport-AFSCME unit was considerably less. In the custodial /maintenance / parks unit, likewise, a wage increase of 3.0 % was negotiated for 1988. This figure included step-increases and longevity increases, so that the effective across-the-board increase for these employees was just over 1.0 %. The Employer has left the factfinder to draw the inference that a 0.5 % increase is adequate, when other regularly due step-increases and longevity increases are included in the computations of the over-all wage bill.

In addition, the Employer points out that other units have experienced an increase in hospitalization premiums paid for increased coverages which have been negotiated. In the other units, employees participate in the cost of health care premiums, whereas in the juvenile court unit, the Employer pays the full premium.

Next, the Employer has presented evidence to show that in the non-unionized work force of Kalamazoo County (approximately 450 of 800 employees) the salary averages are low. The benchmark used by the County for its non-unionized employees is a study conducted by

the Hay Consulting Group about 4-5 years ago, in which the consultants assisted the County in establishing a point-rating for each job classification, and provided data on national averages paid to persons in like classifications. Detailed information on this consulting report was not provided to the factfinder, but the general picture of the County's response to it was as follows: For its Technical, Office, Paraprofessional and Service classifications, the County established salaries which are in fact 23% below the low-line of the Hay national data. For the Professional grouping of employees, the County established salaries which are in fact 28% below the low-line of the Hay national data. And, for the Managerial grouping of employees, the County established salaries which are in fact 25% below the low-line of the Hay national data.

The above information was provided, it appears, as context for interpreting the information offered by the Union in regard to the 8 counties considered to be comparable. The Employer agrees that the 8 counties shown in the Union's data are considered by the County to be comparable communities for many salary and benefit purposes. The group includes the 4 immediately larger counties (in population size), and the 4 immediately smaller counties (in population size).

#### **FINDINGS.**

##### **(a) DATA**

The factfinder spent considerable efforts with the parties developing accurate figures for the job classifications of Cook and Child Guidance Worker in the 8 counties which both parties agree are appropriate comparable communities. The corrected, up-dated, and agreed-to figures are as follows:

<b>COUNTY</b>	<b>Cook</b>		<b>Child Guid. Worker</b>	
	<b><u>entry-level</u></b>	<b><u>top</u></b>	<b><u>entry-level</u></b>	<b><u>top</u></b>
Berrien (87)	12,365	17,416	13,649	19,230
Muskegon (88)	11,998	14,739	15,266	18,886
Jackson (87)	12,578	14,371	15,417	17,462
Ottawa (86)	12,272	12,272	15,489	17,984
Saginaw (88)	13,352	15,287	16,180	18,910
Washtenaw (87)	16,547	23,314	17,102	21,054
Kent (88)	14,435	19,073	17,222	22,900
Ingham (88)	13,950	16,370	17,370	20,675
<b>8-County Ave.</b>	<b>13,437</b>	<b>16,605</b>	<b>15,962</b>	<b>19,638</b>
<b>Kalamazoo</b>	<b>12,243</b>	<b>14,468</b>	<b>13,515</b>	<b>19,623</b>

Based on these figures, I find that the entry-level salaries for Child Guidance Workers in Kalamazoo are 15.3% below the 8-county average. [ $\$15,962 - 13,515 = 2447$ ;  $2447 / 15,962 = 15.3\%$ ]. The entry-level salary for Cooks is 8.9 % below the 8-county average. [ $\$13,437 - 12,243 = 1194$ ;  $1194 / 13,437 = 8.9 \%$ ].

(b) STANDARDS FOR SETTING WAGES.

I find further that the 8-county group of comparables is an important standard to be utilized in assessing appropriate salaries for Kalamazoo County Juvenile Court employees. This is the standard which the County itself uses in reviewing salary and benefit plans for other employees, including other unionized and non-unionized employees.

Of further relevance is the wage settlement that AFSCME achieved for its two other groups of County employees. This is because the wage settlement achieved by the parties voluntarily sets a benchmark for other collective bargaining between the same parties. It should be noted that the factfinder was not given any information regarding wage settlements for other unionized employee groups or average salary increases for the non-unionized work force.

Of additional relevance is the increase in the cost of living, expected to be by year's end (1988) approximately 3.8 %.

Of no relevance is the data offered on County salaries vis a vis national averages developed by the Hay group. There are two reasons why this evidence is not relevant. First: a large proportion of all the jobs in the County system have been studied on the Hay point-classification system; however, the Child Guidance Worker and Cook classifications in the Juvenile Home were not included in that study. Therefore, its conclusions, referencing other jobs rated nation-wide on the point system, do not offer any guidance to me in setting rates for these workers.

Secondly, and most importantly, if Hay criteria were applied to the salaries of Child Guidance Workers in the other 8 counties, we might find that they, too, are under-paying Child Guidance Workers in comparison to equivalent jobs in the private and public sectors all over the country. The factfinder is not suggesting that the other 8 counties are under-paying. He is suggesting that to compare the Kalamazoo Managerial salaries, for instance, with a national average (showing that Kalamazoo managers are 25% below the Hay low-line), and then to compare Kalamazoo Child Guidance Workers with workers in those same classifications in other Michigan counties, and then to argue that--relative to managers--Child Guidance Workers are well off because they are only 15 % under the 8-county average is comparing apples to oranges. Thus, the factfinder must reject the Hay data as a valid standard of comparison in this case.

Regarding the State's position of "Youth Specialist III," the factfinder does not have sufficient data to feel comfortable in accepting the salary range for that classification as a standard for comparison with the Kalamazoo County job. The bare job descriptions do not tell me whether the two jobs are truly comparable. On the other hand, the Child Care Facility Attendants in other counties, because they work in juvenile homes very similar to the one in Kalamazoo, are administered by the Probate Courts, and have programs for adjudicated delinquents are accepted as comparables.

Thus, in summary on this point, there are three relevant standards for comparison: what other comparable counties pay their workers in these classifications; what other unionized workers were able to bargain with this Employer in 1988; and what the cost of living is in 1988.

(c) APPLYING THE STANDARDS.

For Kalamazoo workers to achieve parity with the 8-county average, their salary increase would have to be in the range of 18 % at the entry-level. [  $\$15,962 - \$13,515 = 2447$ ;  $2447/13515 = 18\%$  ]. At the top of the salary range, Kalamazoo workers are currently paid at parity with the other 8 comparables. For cooks, at the entry-level, an increase of 9.7 % would be needed to achieve parity with the 8-county average. [  $\$13,437 - \$12,243 = 1194$ ;  $1194/12,243 = 9.7\%$  ]. For cooks at the top of the salary range, an increase of 14.7 % would be needed to achieve parity.

**Ideally**, as the above table and my calculations reveal, Kalamazoo workers should receive large increases, particularly at the entry-level. It is ironic that the County policy-makers apparently consider the identified 8 counties as good comparables--and then are satisfied to place their workers at the low end, below even cash-poor Berrien County and rural Ottawa County. The reasoning implicit in picking the comparables suggests that Kalamazoo County would want to aim for the middle of the comparable pack.

But, this is not an ideal world. The factfinder would be abusing his mission to suggest that 9, 10 or 18 % salary increases are appropriate here, when the County has been able to settle with other workers for 3.0 %. My mission is to suggest a reasonable settlement **in view of all the relevant circumstances**.

Any reasonable person can see that the increases achieved by other unionized County employees and the B.L.S. cost-of-living figures support a salary increase in the range of 3-4 % for these workers. The Employer has argued for 0.5 % across-the-board pay increases, and has budgetted another 1.5% to cover the step increases and longevity increases. This is unconscionably low. The factfinder suggests that 3.0 % is adequate, but with step increases and longevity increases added on top of the 3.0 %. Thus, these employees, if they receive the full amount of the 3.0 % increase

plus step increases averaging 1.5 %, will receive just marginally more than the expected cost of living increase for 1988. Any less than this amount would not be defensible under all the circumstances shown here.

(d) RETROACTIVITY.

A final comment is necessary regarding the payment of any finally negotiated wage settlement. The factfinder was informed in no uncertain terms that it is the policy of the County of Kalamazoo to deny retroactive pay increases to workers whose contract does not settle at the beginning of their contract year. The intent of this policy, obviously, is to encourage early, or timely settlements and perhaps to discourage hard bargaining.

That policy may have worked in the past. However, there are three compelling reasons why this policy should not be applied here, if it is not abandoned altogether.

First, the workers do, after all, need **some incentive to settle** their contract. In a situation such as these workers face today, with Employer proposals which represent a diminution in some working conditions, what incentive can be left, when the Employer offers 0.5% as a wage increase, and will not make it retroactive to the beginning of the contract year ?

Secondly, when the public employer says that the price of holding out for higher settlements is denial of any retroactive pay increases, this can have a **devastating effect on morale** and productivity in the unit. And, although the measure of productivity here may not be so simple as it is in the case of cars or pharmaceuticals, there is no doubt that the effect of this Employer's policy has been felt in the unit, in terms of morale, staff--manager relations, and productivity. As a practical matter, it is time now to mend the weak fabric of employee morale.

Thirdly, and most significantly, **the community's sense of fairness** would counsel against applying the "no retroactive pay increase" policy here. It is generally conceded (at least in good times, and certainly in public employment) that every employee is due a yearly increase, for having gained a year's experience and for having lived to pay this year's higher prices. The fact that the employees' union and the employer cannot agree on the amount of an increase does not properly justify the employer's preventing the increase from applying. In effect, what would happen here if the Employer applied its policy is that the Employer would cause the employees to forfeit a large part of their yearly increase. There is no sense or fairness to penalizing employees this way.

For these reasons, I urge the County Commissioners, the Probate Court Judges, and the citizens of Kalamazoo to endorse my recommendation of paying the full amount of the proposed wage increase to these loyal employees, for the past-due year, if and when they ratify a proposed agreement.



### **RECOMMENDATION.**

I recommend that the parties adopt the following wage settlement: 3.0 % across-the-board plus all regularly due step increases and longevity increases. I recommend that these amounts be paid for the weeks in 1988 which have passed, as soon as the parties reach agreement on a 1988 contract.

### **ISSUE #2: LONGEVITY INCREASES.**

The Union proposes to increase the amount of longevity pay from \$20 per year to \$40 per year. Thus, if an employee has worked 8 years, such employee would receive \$ 320 under the Union's proposal. Currently, an employee reaching his or her 8th year of employment in the unit would receive \$ 160, as longevity pay.

The Employer proposes to keep the status quo on this subject.

### **FINDINGS.**

The table shown above on wage increases for the 8-county comparable group has applicability here. The most important point is that workers at the top of the Child Guidance Worker classification receive wages on a par with the 8-county group of comparables. The situation is not the same for Cooks, however, and the factfinder has searched for a way to remedy this imbalance between the employees who compose a majority of the unit (Child Guidance Workers), and the few who perform the important function of Cooks. The evident way for dealing with this imbalance is to grant Cooks a higher longevity rate for a few years, until the imbalance is righted.

Thus, in sum, the factfinder is not convinced, based on the findings contained in the previous section, that any increase in longevity pay is warranted for Child Guidance Workers. I am convinced, however, that the amount requested by the Union is justified in the case of Cooks.

### **RECOMMENDATION.**

I recommend that the parties adjust the longevity payments called for in Appendix A by adopting the Employer's position for Child Guidance Workers (\$20 per year longevity payments), and by adopting the Union's position for Cooks (\$40 per year longevity payments).



### **ISSUE #3: EXTRA PAY FOR M.J.I. TRAINING (APPENDIX A).**

The Union has proposed some form of premium pay for workers who complete the Michigan Judicial Institute [M.J.I.] course. In support of its position, the Union says that social workers in the Juvenile Court have an incentive system, providing for approximately 10% premium pay for additional training such as is provided through the M.J.I.

The Employer proposes to keep the status quo, which provides for premium or "Tier II" pay for those workers who attain such positions. The pay range for Tier II is 5.8% higher than for Tier I workers. The requirements for Tier II positions are positive evaluations from management and either a bachelor's degree or completion of M.J.I. training.

#### **FINDINGS.**

The Union has presented an innovative and forward-thinking idea in this proposal. However, there is little data to support the need for premium pay as an incentive to get Child Guidance Workers to complete M.J.I. training. Rather, the incentive appears to come from the fact of eligibility for promotion to a Tier II position. Thus, given the state of the record on this subject, the Employer's position appears reasonable, that Tier II pay should be reserved for those persons who are actually appointed to the positions.

#### **RECOMMENDATION.**

I recommend that the parties adopt the Employer's position on this issue and maintain the status quo.

### **ISSUE #4: WORKING HOURS AND SHIFTS.**

#### **(a) ARTICLE 15, Section 2:**

The Union proposes a change in Section 2 to provide assistance to the Cook and /or Head Cook when one of the scheduled morning cooks is absent due to sickness, vacation, or personal business time.

The 1987 contract provides specifically that the Employer need not hire a substitute cook in these situations.

#### **FINDINGS.**

The Union's position was supported by testimony from Karen Stedman, part-time cook, concerning the regular schedule of work in the kitchen and the havoc which results when one cook is absent, and no one is hired to fill that position.

The evidence on these difficulties was convincing to me that the Employer's usually-scheduled complement of 2 cooks in the morning (3 at mid-day) is needed to run the operation smoothly. It seems appropriate, in view of the bargaining history on minimum staffing in other functional areas of the Juvenile Home for the Union to insist that the Employer staff the kitchen in accordance with the usual schedule at all times, if possible.

#### **RECOMMENDATION.**

The factfinder recommends that the parties remove Section 2 (a) from their next contract and substitute the following language:

The Employer shall staff the kitchen with 2 cooks at all times when the kitchen is in operation, if at all possible; and shall provide a substitute cook on those days when it has notice of the sickness, vacation time, or personal business time of one of the regular cooks.

#### **(b) ARTICLE 15, Section 1;**

The Employer proposes to change the regular schedule of Child Guidance Workers so as to require weekend work. Some staff would be assigned Sundays; and other staff would be assigned Saturdays on a regular basis.

The current staffing pattern provides for 8-hour days, 5-day weeks (no weekends) for all regular staff, with optional weekend work. Staff who opt for weekend work are paid at overtime rates. The Union would like to see this schedule continued.

#### **FINDINGS.**

The Employer supported its proposal with the testimony of its Superintendent. He said that in earlier days, the bargaining unit employees were required to work weekends. In February 1985, with the full agreement of this Union, the scheduling of Child Guidance Workers was changed to the current system, using a pool of part-time workers to fill on the weekends, supplemented by voluntary overtime by regular employees.

The Employer has experienced more than one major security or safety problem over the last year, as well as troublesome and persistent administrative problems, such as:

- low job commitment from part-timers;
- high administrative overhead in recruiting, selecting, training, and monitoring part-time workers;
- increased behavioral difficulties by the residents, due to "testing" of part-time weekend workers;
- difficulties in scheduling part-timers.

The seriousness of these problems cannot be under-estimated. They have apparently been part of the background informing breakaways and serious criminal activity by Home residents. Less dramatically, the regular discipline-and-reward behavioral routines for residents are disturbed every weekend by the inconsistency between staffing over the weekend and regular week day staffing.

It is clear to me that the seriousness of these problems is a shared concern of Union and management witnesses, alike. The Union, however, would rather see some other mechanism for solving these problems, other than giving up the cherished 5-day schedule, with ample overtime opportunities.

The Employer's proposal is a contentious proposal for the Union. This was one area where the factfinder worked valiantly to assist the parties in reaching a mediated solution, because it is important that both parties "buy into" a change in their working arrangements as basic and far-reaching as this scheduling change portends to be. However, in the end his efforts were unsuccessful.

I therefore revert to my statutory role of recommending a settlement. I must advise that the Employer's proposal has merit. The need for it--both to protect the public and to implement appropriate behavioral control over the residents--is clearly shown by the evidence in this record.

#### **RECOMMENDATION.**

The parties are urged to adopt the Employer's last best offer on this subject, as shown on Exhibit # 12, page 1.

#### **ISSUE # 5: ADDITIONAL COMPENSATION FOR TRAINING DUTIES (Article 29)**

The Union proposes to add extra pay for workers who are assigned to undertake training of college students and other part-time weekend workers. The union witnesses on this subject point out that training takes time from regular duties; that regular duties have expanded in recent years, to include monitoring the residents while they are in school and regularly conducting room searches (a duty which was done formerly, as needed, not regularly).

The Employer proposes to maintain the status quo on this subject.

#### **FINDINGS.**

The main need or reason for seeking additional compensation for time spent training is related to the large number of hours which must be devoted to bringing part-time workers "up to speed" on their responsibilities before they are assigned weekend duty. This need will evidently be reduced under the new schedule which the Employer anticipates implementing, either at impasse or through contractual agreement. There will then be fewer part-timers. In

view of this likelihood, the factfinder is not convinced that there is any demonstrated need for awarding additional compensation for time spent by senior Child Guidance Workers training part-timers.

#### **RECOMMENDATION.**

I recommend that the parties adopt the Employer's position on this subject and maintain the status quo.

#### **ISSUE #6: PROPOSAL ON TIME-OFF DUE TO ASSAULT BY RESIDENT.**

The Union proposes to add a section to defer use of sick time when an employee is injured by a resident. As drafted by the Union, this proposal would be added to Article 25 and would say:

Employees who are injured as a result of assault by a resident shall be compensated at their regular rate of pay for time not worked because of injury. Compensation will be in effect from the date of injury until covered by Workers Compensation. If the injury is not of sufficient duration to be compensable by Workers Compensation, compensation will be granted for days absent because of injury. There shall be no deduction from an employee's accumulated sick leave for compensation paid in accordance with this Section.

The Employer has proposed retaining the status quo on this subject. The Employer says that its employees are amply covered by the State's workers' compensation laws and Article 25 of the contract, which allows employees the option to supplement workers' compensation entitlements by drawing sick pay.

#### **FINDINGS.**

The Union points out that a similar provision applies to State workers who work in residential care facilities, per an act of the Michigan Legislature. The Union witnesses have given several illustrations of assaults on workers which result in loss of work time. On those occasions, presently, workers must use their accumulated sick leave to cover their time off, just as they would for any other illness. Of additional interest was the testimony of Gregory Harrison showing that assault on staff was the largest category of "incident reports" in a 9-month period earlier this year.

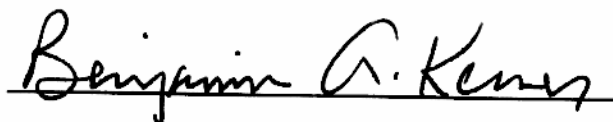
The Union's proposal responds to one of the particular hazards of working in a residential facility. The proposal recognizes the reality that there will be times when an employee is injured, due to working conditions which are beyond the control of either the employee or the Employer, in this case, the autonomous aggressive acts of residents. Although the State's Workers' Compensation Act is designed to cover any disabling injury sustained while on the job, there are occasions when a gap is created by the non-coverage of the Act for minor or non-disabling conditions, which may nevertheless require medical attention. The proposal of the Union

addresses these occasions, and is narrowly focused to provide employee relief only when the cause of the injury is assault by a resident.

The factfinder is persuaded that the proposal has merit, and should be adopted--with one qualification to protect the Employer against excessive use of time off. The factfinder recommends adding a provision limiting the use of paid time off under this section to 5 working days per employee in any one calendar year.

RECOMMENDATION.

The factfinder urges the parties to adopt the language offered by the Union as Article 25, Section 2, with the limitation above-stated.



Benjamin A. Kerner  
Factfinder

October 27, 1988  
Ann Arbor, Michigan.