Fact Finder: Sandra G. Silver 3/1/88 FF MSU-Lib

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

IN THE MATTER OF:

LEELANAU COUNTY BOARD OF COMMISSIONERS,

County,

-and-

Case No: G86 C-311

AFSCME, COUNCIL 25, LOCAL 1079,

Union.

/



Leelanau County

FACT FINDER: Sandra G. Silver

APPEARANCES:

| County | Union |
|---|---|
| Fred B. Schwarze, Attorney | Leonard Defenbaugh, Staff Representative, Council 25 |
| John Shelly, Attorney | Dale Latta, Staff Supervisor, AFSCME, Council 25 |
| Duane Beard | Michelle Crocker |
| | Lester Dolehanty |

FACT FINDING HEARINGS:

Pre-Trial: October 13, 1987
Hearings: November 23, 1987 and December 19, 1987

## BACKGROUND

Leelanau County is in the northwestern tip of Michigan's Lower Peninsula. Although covering 334 square miles, it has only a population of 14,007 persons. There are 11 townships and 3 villages within the County. The economic base of the County consists primarily of agriculture and resort and travel. Industrial activity represents only 4 percent of the tax base, the remaining taxes being primarily residential and 10 percent agricultural. The County millage rate presently stands as 5.6500.

The ruling body of Leelanau County is the County Board of Commissioners, consisting of 7 members. A "County Coordinator" oversees all County operations. There are 4 other elected officials:

Treasurer;

Clerk;

Register of Deeds; and,

Sheriff.

There are an additional 79 County employees.

On March 11, 1986, AFSCME, Michigan Council 25 was certified by MERC as the collective bargaining agent for the general employees in Leelanau County. Negotiations for a first contract began in July, 1986. The parties sought the services of a mediator, but these attempts failed. The Union then petitioned for fact finding. Sandra G. Silver was selected as Fact Finder. Hearings were held on November 23, 1987 and December 19, 1987.

Exhibits and sworn testimony were admitted into evidence; both parties submitted briefs.

Certification of Michigan Council 25 included both the general unit and the supervisory unit. A tentative agreement was reached with the supervisory unit on August 5, 1987, which agreement was rejected by the Union membership. Thus, certain issues remained resolved between the supervisory unit and others, rejected by the membership, were placed before the Fact Finder.

Because this is a first contract between the parties, there is no history on which to base findings. For this reason too, a larger number of issues than usual is before the Fact Finder. The non-economic issues will be discussed by this Fact Finder first, and then a finding will be made on the direct economic and wage issues. Information submitted to the Fact Finder concerning comparable counties will be discussed with each issue, and the Fact Finder will not make a determination that either the Union's or the County's set of comparables will be solely determinative.

## AGENCY SHOP

UNION PROPOSAL: Agency shop.

COUNTY PROPOSAL: Employees shall be free to join or not join the Union. The County will agree to dues check-off.

Allegedly, the County Commissioners are absolutely opposed to any agency shop provision. Unlike the situation in southeastern Michigan, it is true that agency shop provisions are not the general rule in northern Michigan. The Union has submitted comparables which show that Grand Traverse County, Otsego County, Roscommon County and Cheboygan County all have contracts with agency shops. The County has pointed out that AFSCME has entered into non-agency contracts with such counties as Kalkaska.

The basic issue underlying all agency shop questions is whether employees, whom the Union must represent, are entitled to a "free ride", or whether they should, through their dues, pay the cost of this representation. This is and has been a valid argument since the origination of collective bargaining. The County argues that in the supervisory unit, that hiring might become more difficult if perspective employees knew they would have to be members of the Union. This argument falls of its own weight since those same employees would be circumscribed from bargaining for themselves as the Union is the exclusive bargaining unit. Since the Union must act for these persons, membership in the Union would not really be a reason for refusing employment.

The Employer pointed out in its brief that the labor market in the conjoining geographic area is one of the determining factors in the negotiation of an agreement. Although Grand Traverse County is much larger than Leelanau, and its wage rates might be skewed as a comparable, on the non-economic issue of an agency shop, the proximity of Grand Traverse County rather than its size would be determinative. Grand Traverse County does have an agency shop agreement. The Fact Finder is also persuaded by the fact that the Sheriff's Department with an agreement with the Teamsters, under the employ of Leelanau County, has an agency shop provision in its contract. It is extremely difficult for the Fact Finder to understand why an agency shop is absolutely out of the question for the AFSCME bargaining unit, but acceptable for the Sheriff's Department. Such differences within the same governmental unit lead to dissatisfaction and dissension within the general employee group of Leelanau County. The County has presented no valid reason for rejection of the agency shop clause other than philosophic disagreement.

## FINAL STEP OF GRIEVANCE PROCEDURE

UNION PROPOSAL: Arbitration of all disputes.

COUNTY PROPOSAL: Final step to be the County Board of Commissioners.

The County is opposed to arbitration as the final step to the grievance procedure because of a concern that the Union could take every small grievance to arbitration at great expense to the County. This is a possibility, but opposition to arbitration is primarily based on the fact that a third party's decision is binding, and this undercuts the authority of the Commissioners themselves.

The Union position is that arbitration is the fairest way to handle disputes between the parties. The comparable contracts submitted to the Fact Finder provide in large part for arbitration.

In negotiating the tentative agreement for the supervisor's unit, a compromise was reached that provided for arbitration of all discharges. Internally, the probate court employees have no arbitration clause. A reasonable compromise on the arbitration issue could provide for policy grievances to go to arbitration, as would discipline, or discharge, involving loss of wages or benefits in excess of three days.

Third party disposition of such disputes has proven to be a satisfactory method of resolving disputes without major disruptions and work. The Employer has pointed out that since arbitration was traditionally the quid pro quo for no-strike provisions in the contract, and public employees are prohibited

from striking, that there is no quid pro quo. The response to this is obviously that the statutory prohibition against striking for public employees requires a contractual method for resolving grievances. Since the employees cannot strike in protest against any action of the Employer, there must be a procedure by which grievances are resolved. The majority of contracts provide for this in both the public and private sector because it has been useful.

## SUBCONTRACTING

UNION PROPOSAL: Prohibition against subcontracting any work that is regularly performed by members of the bargaining unit.

COUNTY PROPOSAL: The County has the ultimate right to subcontract following consultation with the Union.

The subcontacting issue became a problem when the County laid off its parks maintenance worker and subcontracted those services with an outside firm. The park maintainer had received a salary of $21,000, and the contracted-for services were obtained at a cost of $5,000. This issue is presently the subject of an unfair labor practice before MERC.

Subcontracting has legally always been a part of management's right to conduct its business. In recent years, with concerns about job security and cheaper foreign labor costs, it has become a major issue in negotiations in private industry. However, in most cases, the basic right to subcontract has remained a management right.

The Union's own comparables overwhelmingly provide no restriction on the County's right to subcontract. The Union has taken the position that since there had been a previous problem (that of the park maintainer), then there must be a prohibition against all subcontracting. Thee was no evidence offered this Fact Finder in support of the Union's position. The fact that the County had already agreed to subcontracting languages with the supervisory unit is further evidence that the Union has recognized this right. If the adopted language provides that the matter must first be discussed with the Union but that it is

ultimately a management decision, the concerns of both parties could be adequately met.

## LAYOFF AND RECALL

UNION PROPOSAL: Layoff by departmental seniority with bumping rights based on bargaining unit seniority and ability to perform, plus a 60 day trial period.

COUNTY PROPOSAL: Layoff by seniority within classification with right to bump into equal or lower rated classification if previously held.

Both parties have agreed in principle to layoff in inverse order of seniority and recall by seniority. How these principles are to be applied is the question which separates the Union and the County. The County has agreed to layoff within a job classification, although the Union wishes the job classification to be within the department. The Union then reverses itself and asks for bumping rights, bargaining unit wide, and a 60 day trial period. None of the comparables submitted by either party support the Union position except that of Grand Traverse County. This Fact Finder finds that the much larger total of employees in job classifications in Grand Traverse County make their contract workable. As applied to Leelanau County, it is impractical.

The Union position provides the opportunity for an employee to obtain a promotion because of the layoff of another. That gratuitous benefit based on another bargaining unit member's misfortune has unfair implications which could lead to later dissension.

Similarly, the County's position that no bumping rights can be exercised without having previously held the position, is a way of eliminating all bumping rights with a work force as small

as that of Leelanau County. It is most unlikely that a senior employee will have held a position for which they might be qualified. This would require a trial period if seniority based bumping rights are to have any meaning. Other contracts provide for such a trial period, although 60 days appears to be very lengthy. A median of those comparables would be a 30 day trial period for a senior employee bumping into an equal or lower rated classification.

Accepting the principle of seniority at work and layoff and recall is a hurdle which has been met by the parties. For bumping rights of a senior employee to have any meaning requires that it not be limited to prior experience in the same job classification. Bumping into a position which is equal or lower would avoid the possibility of profiting from the layoff of a fellow bargaining unit member.

## JOB DESCRIPTIONS/JOB CLASSIFICATIONS

UNION PROPOSAL: Require that the County have negotiated job descriptions for all positions.

COUNTY PROPOSAL: Agree to classifications only for purposes of wage negotiations and not for summaries of duties and responsibilities.

At present, there are no written job descriptions for the employees in Leelanau County. Since there are a small number of employees to be covered by this collective bargaining agreement, the County argues that everyone knows what their job is, and there is no confusion on the issue. The main concern expressed by the County is that work assignments which might not be included in the job description could be grieved by the Union.

Although it is certainly clear on a day-to-day operating basis what everyone's job is, the Union argues that job descriptions and classifications are necessary in relation to compensation. Thus, if the duties and responsibilities of a person's job have expanded beyond the description, then some adjustment and compensation would be necessary.

Job descriptions are inextricably interwoven with questions of promotion, compensation and vacancy. When a vacancy or promotion is posted, the minimum requirements and duties and responsibilities are described. That, in effect, becomes a job description in itself. When the wages for a position are negotiated, a comparable wage being paid in the area for that job is frequently an issue. If the job has no description or classification, then no such discussion is possible.

The County has argued concerning wages that the job classifications are not clear and in flux. This lack of job description then becomes a basis for rejecting wage demands on a job-by-job basis. The Fact Finder finds that the Employer, by refusing to provide and negotiate job descriptions, has then used a lack of job descriptions to reject Union wage demands. Even in a bargaining unit as small as that of Leelanau County where the lines between jobs may blur, such tactics can only lead to labor strife and the lack of a negotiated settlement.

## PROMOTIONS

UNION PROPOSAL: Vacancies to be filled on the basis of seniority and qualification, with the position being awarded to the most senior applicant that meets minimum qualifications with a trial period.

COUNTY PROPOSAL: Promotions to be based on seniority and qualifications with seniority the deciding factor when qualifications are deemed equal.

The Union is arguing for promotions being made primarily on the basis of seniority whenever an applicant has filled minimum qualifications. The Union also is demanding that the person filling the vacancy be given a trial period.

The County's position is that seniority shall only be an issue when there are two equally qualified persons. One of the problems inherent in this issue is the fact that elected officials will do the hiring and are responsible to the electorate. This seemingly argues for qualifications being the deciding factor. However, this is not always the case, and the inclusion of seniority considerations protects the employees in the bargaining unit from nepotism and favoritism. Those were the traditional bases by which provisions such as seniority came to be part of the collective bargaining agreement.

This Fact Finder is not willing, nor has any compelling reason been placed into evidence, to require an employer to hire persons less qualified than those available. It is possible that a compromise can be reached between the parties on this matter if some preference is given to bargaining unit members over those

outside the bargaining unit. Seniority should certainly control where persons have similar qualifications.

## FUNERAL LEAVE

UNION PROPOSAL: Three days paid leave for death in immediate family, and five days for out-of-state. Add grandparents to immediate family.

COUNTY PROPOSAL: Three days paid leave adding grandparents to immediate family.

The present policy existing between the parties is to provide a three day paid funeral leave for death in the immediate family. The immediate family has been defined as father, mother, sister, brother, child, wife, husband, mother-in-law, father-in-law, step-parent, step-child, step-brother, step-sister, and dependents living in the home. In the tentative agreement, grandparents were added and the three day paid leave stayed in place. That compromise appears sensible to this Fact Finder, and neither party has offered any evidence mandating a change.

## HOLIDAYS

UNION PROPOSAL: To add one additional holiday, that of the employee's birthday.

COUNTY PROPOSAL: Maintain current number of holidays at 10.

The parties agree on the maintenance of the ten holidays already in effect being provided the current employees of Leelanau County. The Union has proposed the addition of the employee's birthday as an 11th day. All of the comparables submitted by the Union have more holidays than that provided by Leelanau County. Grand Traverse County has 13; Otsego County has 13; Roscommon County has 12; and Cheboygan County has 11.

The County argues that another paid day off increases the fiscal burden on the Employer. This is unquestionably so. However, Leelanau County is presently providing fewer paid holidays than the other comparable counties. The addition of one day paid holiday (the employee's birthday) is appropriate compared to those in surrounding county governmental units. Of course, the employees have the choice of giving up that added benefit for some other economic benefit from the County.

## VACATION

UNION PROPOSAL:

1 through 2 years - 5 days;
3 through 5 years - 10 days;
6 through 10 years - 15 days;
10 through 15 years - 18 days;
16 or more years - 20 days.

COUNTY PROPOSAL:

1 year but less than 2 - 5 days;
2 years but less than 5 - 10 days;
5 years but less than 15 - 15 days;
15 years or more - 18 days.

The parties did agree to a revised vacation schedule for supervisory personnel as 1 year but less than 5 - 10 days; 5 years but less than 20 - 15 days; 20 years or more - 20 work days. The Union, on rejection of that tentative agreement, made the same demand for all employees.

The comparable vacation benefit provided by other counties as submitted to the Fact Finder have vacation schedules that vary widely. The largest county, Grand Traverse County, provides the greatest vacation benefit. All others vary widely. The variation, however, is not terribly wide, all providing a minimum 5 day vacation to a maximum 20 day. This is well within the range that has been negotiated between the parties.

The variation between the Union and County position is the same through the 10th year of work. The Union interjects a 4 step of 10 through 15 years receiving 18 days vacation that is not provided for in the County's proposal. The County offers a maximum of 18 work days for anyone who has worked 15 years or more.

The provision of additional days at the furthest end of the seniority scale recognizes service to the County, and a further goal and reason to stay with the County. Very few of the counties provide vacation days of 20 days or more. The position of the County appears to be more in line with that presented by both the comparables from the County and the Union.

## HOSPITALIZATION

UNION PROPOSAL: Continuation of full premium and the present health insurance coverage.

COUNTY PROPOSAL: Modification of current coverage to raise the amount on prescription drugs, set a maximum premium, and no hospitalization for new hires for 3 months.

The County has complained that the increasing costs of the Blue Cross insurance presently in effect has skyrocketed in cost. There is no dispute that this, in fact, has occurred. The County wishes to place some cap on what it pays in premiums and reduce the cost.

The problem of increasing costs of health insurance benefits is common to every industry, both public and private. Many new plans have been created to meet this need, and it is unrealistic for the Union to expect that the same coverage will stay in effect on precisely the same terms without there being an economic cost to be borne by both Employer and employees. No comparables were submitted to this Fact Finder on this issue. No facts were disputed by either party.

The question is, can the Employer set forth a new plan providing basic or similar coverage, and make efforts to reduce the cost, or at the very least, maintain them at their present levels? The Fact Finder finds that the modifications which the County has requested are within the realm of reasonableness and present little increased costs to bargaining unit members. Raising the co-pay on the drug prescriptions from $2.00 to $5.00 will not place any great burden on the employees. It will,

however, help reduce the premium cost to the Employer. A similar argument can be made for requiring a second opinion on surgical procedures. This, too, is no great burden on the employee, but does help control the cost of the premiums.

The County also wishes to hold back provision of health insurance for new hires for a period of 3 months. Since there is very often a waiting period to obtain health insurance from the carrier itself, the 3 month period might be, as a practical matter, the length of time it would take to have coverage in place. If, however, the County would wait 3 months before it applied, leaving someone without health insurance for possibly a 6 month period, then that would be unreasonable. Working out a time frame within the limits imposed by the carrier should not be difficult for the parties to reach.

## HOURS OF WORK
## (Supervisory Unit Only)

The County and the Union reached agreement on this issue in the tentative agreement of August 5, 1987. The only unresolved issue is the Union's demand for compensatory time for department heads. This demand had been withdrawn at the signing of the tentative agreement.

Neither party has submitted any comparables or argument on this issue. The demand applies to department heads only who frequently must work additional time for which they are not compensated. The accrual of compensatory time to reflect this is one way of handling the extra duties supervisory personnel frequently are required to work. The Union demand for 60 hours of compensatory time appears to this Fact Finder to be excessive. Supervisors are paid greater salaries to reflect their increased responsibilities and duties. Some reflection of compensatory time between 20 and 30 hours to be taken as additional days when approved would be reasonable.

## LONGEVITY

UNION PROPOSAL: The 5th through 10th year - $600.00; 11th through 15th year - $800.00; 16 or more years - $1,000.00.

COUNTY PROPOSAL: After 5 years - $150.00; after 6 years - $180.00; after 7 years - $210.00; 16 years and over - $480.00.

The County proposal is the longevity pay presently in effect. The comparables submitted by both parties show longevity pay below the levels presently being paid by Leelanau County. The only support for the Union's position is the fact that the same benefit schedule being demanded by the Union is being paid employees of the Leelanau County Sheriff's Department.

Almost all of the evidence submitted provides strong support for the County's position on this issue. Longevity pay is frequently tied to the wage schedule itself. Since we do not know what the employees in the Sheriff's Department bargained away in order to obtain the richer longevity pay schedule, it is impossible to have that unit's payment determinative of this matter.

All of the counties under consideration are presently paying less in longevity pay than is Leelanau County. This even applies to the larger and richer county of Grand Traverse. For those reasons, this Fact Finder finds that the County proposal is reasonable and well within the parameters of other persons in the similarly situated employment.

## WAGES, RETROACTIVITY AND LENGTH OF CONTRACT

The Fact Finder has lumped these three issues together in discussion because they are inextricably bound together in this particular set of circumstances. The entire wage package for both the general and supervisory units has remained open since 1986.

The County had commissioned a study known as the Yarger study concerning job classification and rates of pay. The County never adopted this proposal, arguing that it was hopelessly flawed. Nothing was done in this respect until negotiations began with the Union. The Union has endeavored to change some of these classifications and tie them to rates of compensation. This Fact Finder has discussed the job classification problem earlier in this decision. The County has argued that a new study has been commissioned with Plante, Moran and wishes an interim wage settlement at this time pending receipt of the classification study.

It is understandable that the Union is extremely skeptical of accepting the County's present position with a wage reopener in 1988 to adjust pay scales in accord with the study. Neither party, of course, wishes to be bound to that study without reviewing it first. It should be completed within the year, and for that reason the Fact Finder finds that this contract should extend only for a periof of one year, in the hope that the Plante, Moran study will provide a rational basis for setting wages and classifications. This should apply both to the supervisory and general unit. The parties could negotiate this

as a wage reopener only, but that leaves both parties with little leverage to bargain when other issues are excluded. For this reason, a one year contract would serve the interests of both parties. Such a deadline would also make more certain that the study is completed, thoroughly reviewed, and will be present as a basis for negotiations in the next round. The foot dragging that has taken place in the past would be impossible.

It is impossible for the Fact Finder to determine which party has been primarily responsible for the lack of progress in reaching a settlement. The Union has argued that the County was unwilling to set negotiation sessions with any frequency, making it impossible to reach an agreement. The County has similarly argued that the Union has been recalcitrant, and its rejection of a tentative settlement of the supervisory unit has complicated matters making settlement very difficult.

The fact is that these parties have had no contract and the employees have hence had no agreed-upon wage schedule or raises in these two years. Inflation alone would account for employees having lost ground since AFSCME has become the certified bargaining unit. The contract reached by the parties as to wages should reasonably be retroactive to January 1, 1987. The first 9 months of 1986 could be considered a reasonable time for negotiations on a first contract. The County argues that the award of retroactivity relieves the pressure to reach an agreement. This argument has some validity, but the fact of accrual under retroactivity also applies pressure on the County to quickly reach an agreement.

As to the wages themselves, it is extremely difficult for this Fact Finder to make certain determinations when the job classifications themselves are in dispute. Since this problem can be resolved by entering into a 1 year contract with retroactivity (making it essentially a 2 year contract) the Fact Finder will consider wages under those terms.

Under the comparable data submitted, it is obvious that the Union's demand for wages is tied to the wage levels of Grand Traverse County. The Fact Finder has difficulty in accepting this since the conditions in Grand Traverse are so obviously different from those in Leelanau County. The wage scale is higher, the employee force is much larger, and the actual conduct of County business much more diverse. When the wage levels are compared to counties closer in size and structure to Leelanau, the Union demand is far above that in those counties. It may well be that the wage demands are not unreasonable when compared to the top of the scale in the other counties presented.

The County proposal of awarding a one-time lump sum payment for those persons presently making more than the County offers is a reasonable way to handle that particular issue while classification and entry level wages are being restructured. In no event should any employee be made to suffer a reduction in pay. New entry level hires' wages would be open for negotiation based on the study.

The weight of the evidence submitted to the Fact Finder supports the County position on wages. The probate court employees have received no increase in wages for several years,

and the increase allotted to elected officials still leaves them far below the average pay in the area. With retroactivity, the employees in both the supervisory and general unit will receive substantial increases under the County proposal.

At no time has the County ever argued inability to pay. For that reason, it is extremely difficult for this Fact Finder to understand why it has been so difficult to reach an agreement on wages. The Union must also understand that the County's income has been reduced with the loss of revenue sharing and the tax bond purchase. Adoption of the County proposal will represent increases in cost to the County, with retroactivity, without total depletion of the equity fund balance.

## CONCLUSION

This Fact Finder has not made absolute recommendations to the resolution of a contract between these parties. The statute provides only for the Fact Finder making known the positions and conditions of the parties. Where possible, this Fact Finder has made an effort to demonstrate a term, with the evidence presented, that would be a reasonable solution to the differences between the parties. The hard work of bargaining is still ahead, and nothing presented in this decision is binding on the parties. It is hoped that this will assist them in reaching an equitable collective bargaining agreement.

Sandra G. Silver P26115
Fact Finder

Dated: March 7, 1988