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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING
BETWEEN:

CASE NO. L76-H-660

LENAWEE MEDICAL CARE FACILITY

-and-

LOCAL 79, SEIU, AFL-CIO

Mario Chiesa /

Lenawee Medical Care Facility

## 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 adequate notice, the hearing was commenced at 10:00 a.m. at the offices of the Michigan Employment Relations Commission, on March 28, 1977.

Lenawee Medical Care Facility shall hereinafter be referred to as the Employer, while Local 79, SEIU, AFL-CIO shall hereinafter be referred to as the Union.

The undersigned, Mario Chiesa, is the Fact Finder herein.

## APPEARANCES

EMPLOYER:

Henry Earle, Attorney
Millard W. Hoffman, Administrator

UNION:

Paul J. Policicchio
Kenneth A. Davis
Lonnie G. Stone
Louis Garnsey
Lena Girdham
Wynola Schwab
Ama Colley

## HISTORY

In the application for Fact Finding, the unit herein is described as follows:

> "All full-time and regular part-time and regular part-time non-office clerical employees, non-professional employees, non-technical employees including Practical Nurses, Nurse Aides, Laundry and Dietary employees, housekeeping employees and maintenance employees, EXCLUDING Registered Nurses, Licensed Practical Nurses, Professional employees, Supervisors and intermittent and casual employees."

There are approximately 94 employees in the unit.

The prior Collective Bargaining Agreement had a term of two years terminating on November 14, 1976.

## ISSUES

The Union maintains that the following issues are in need of resolution:

(a) Duration

(b) Schedule

(c) Wages

(d) Retroactivity

The Employer takes the position that on November 24, 1976 there was a tentative agreement reached by the two bargaining committees which would have settled the entire contract. The Employer states that the tentative agreement was initialed by the two committees and that it polled the Union's committee and asked whether it would recommend ratification of the agreement. The Union's committee said that it would. When the agreement was presented for ratification, the membership failed to ratify. Thus, the Employer takes the position that there are no issues in

contention because the dispute had been tentatively settled.

DISCUSSION AND RECOMMENDATIONS:

DURATION

The Employer proposes that the parties execute a Collective Bargaining Agreement that has a duration of three years.

The Union takes the position that the new Collective Bargaining Agreement should have the duration of only two years.

The Employer argues that a Collective Bargaining Agreement with a duration of three years will increase the time in which the parties will enjoy labor peace. Further, the Employer states that the bargaining committees had agreed to a Collective Bargaining Agreement that had a duration of three years.

The Union points out that a three-year Collective Bargaining Agreement is not supported by the history regarding the instant parties. It maintains that there has been only one three-year agreement in all the prior agreements that existed between these parties.

The evidence shows that the prior two Collective Bargaining Agreements that existed between these parties had a duration of two years. In fact, all the prior Collective Bargaining Agreements were of a duration of two years except for one, which had a duration of three years. Evidence introduced by the Employer shows that out of 20 facilities in the State of Michigan 6 have a one-year agreement, 8 have a two-year agreement and 6 have a three-year agreement.

After considering all the evidence, the Fact Finder recommends that the parties adopt a three-year Collective Bargaining Agreement. There can be no denying the fact that a

three-year Collective Bargaining Agreement will extend the time in which the parties will enjoy labor peace. Further, if the agreement contains the appropriate language, the parties are afforded adequate protection against radical changes in the economic climate. Apparently, the agreement concerned with herein provides such protection. Further, a three-year agreement is not unusual within the 20 facilities cited by the Employer. It could safely be concluded that out of the 20 facilities mentioned by the Employer, as many have a three-year agreement as they have two-year and one-year agreements. Also, while the majority of prior agreements that existed between the parties herein have been of a two-year variety, there was one agreement which had as its term three years.

SCHEDULING

The Union takes the position that the new Collective Bargaining Agreement should contain language which guarantees that nurses aides will have every other weekend off.

The Employer takes the position that it is impossible to guarantee that the nurses aides will be allowed every other weekend off. However, the Employer has proposed new language which contains a weekend differential. The Employer proposes that in the first year of the agreement the nurses aides shall be allowed three (3%) percent paid differential for weekend work. In the second year of the agreement, this would increase to four (4%) percent, while in the third year, it would increase to five (5%) percent.

The evidence shows that Local 79 is involved with approximately 100 Collective Bargaining Agreements regarding nursing

homes. Out of the 100 agreements, approximately 28 contain language directed at providing nurses aides with every other weekend off. Also, the testimony shows that the Collective Bargaining Agreement regarding the Chelsea facility, which is located 30 miles north of Adrian, contains language which mandates that nurses aides shall have every other weekend off. Further, the agreement regarding Hillhaven, which is four miles from Lenawee, contains the provision that states that nurses aides shall have every other weekend off consistent with patient care and availability of employees. Twelve miles from Lenawee is the facility called Herick; its Collective Bargaining Agreement contains a mandatory provision wherein nurses aides are granted every other weekend off. Further, the testimony shows that the Provincial facility, which does not have a Collective Bargaining Agreement, has a provision in its personnel policy which provides for every other weekend off.

Further, the evidence shows that a special committee was created comprised of five nurses aides and two members of management. It created a schedule wherein every other weekend off would be granted. The schedule was presented at the bargaining table and was rejected by management on the basis, inter alia, that adoption of the schedule would require the hiring of 18 additional personnel on the day shift. Apparently the second and third shifts would be immuned from the requirement of adding personnel.

Further, the evidence shows that the Employer was willing to consider a proposal regarding every other weekend off if the proposal did not increase the number of employees, the amount of overtime, and did not increase hours of work of part-time employees.

The record further shows that in October and November of 1976, the Employer conducted a survey of 38 county facilities regarding the matter of guaranteeing every other weekend off. The survey shows that 26 had experimented with the schedule and found that it was unworkable. Eight of 38 were making a serious attempt to provide every other weekend off, while 4 were trying to use the schedule on a limited basis. The reaction to the proposition of every other weekend off was almost completely negative.

Further, the record showed that if every other weekend off were guaranteed, the Employer would need 33 part-time nurses aides and would have to put a substantial amount of full-time aides on part-time status. The record further shows that in 1971 the Employer attempted to operate under a schedule which guaranteed every other weekend off. Apparently after the third week of operation, the part-time employees would not come in to work. In conclusion, the Employer stated that the attempt was futile. The Employer stated that 1971 would have been the most appropriate time for the schedule to succeed, because one entire wing of the complex was closed down and the number of patients in 1971 was less than at the present time. Further, 13 of the patients were substantially self-care. Also, the aide-patient ratio was higher than currently exists.

The record indicates that the Employer contends that the proposed schedule was rejected because it didn't account for 1,700 absence days.

The record further shows that one of the problems that would be faced if every other weekend off were guaranteed would be the necessity of recuiting additional staff. The Employer contends

that it would be very difficult to recuit the additional staff. Also, the Employer maintains that the increase in cost caused by increased benefits and training time would make the schedule untenable. Further, the Employer maintains that if the additional staff were added, it would be in a position of having to accept a lower quality part-time nurses aide.

The evidence shows that the laundry and maintenance personnel do have every other weekend off. In fact, the Employer states that both other bargaining unit employees and non-bargaining unit employees have every other weekend off. Further, whenever possible everyone is provided with weekends off. The evidence also shows that the dietary staff are not guaranteed every other weekend off. They have a weekend off approximately every third week. The nurses aides are also provided with a weekend off approximately every third week. The LPNs and the RNs are provided, as nearly as possible, with every other weekend off. The Employer maintains that this is possible because much of an LPN's and RN's time is spent doing paperwork and that it can be done Monday through Friday. Also, the Employer maintains that LPNs and RNs are much more dependable and since they are not absent as frequently as other employees, it is easier to provide every other weekend off.

After examining all the evidence and evaluating all the arguments, the Fact Finder recommends that the Employer's proposal regarding the paid weekend differential be adopted. Further, the Fact Finder cannot recommend that the new Collective Bargaining Agreement contain language directed at every other weekend off.

The evidence shows that the vast majority of facilities that are signatories to a contract wherein Local 79 represents the

employees, do not have Collective Bargaining Agreements which contain language directed at guaranteeing or attempting to provide for every other weekend off. Further, it is very difficult to justify the addition of a substantial amount of staff on the basis that certain facilities which are geographically close to Lenawee provide their employees with every other weekend off. Further, the evidence does establish that presently nurses aides are provided with approximately every third weekend off. In addition, the record establishes that when every other weekend off was guaranteed, back in 1971, the schedule was untenable and had to be abandoned.

WAGES

The Union is seeking a 30 cent per hour increase in the first year of a two-year Collective Bargaining Agreement and an additional 30 cents per hour increase for the second year.

The Employer proposes a 27 cent per hour increase in the first year of the Collective Bargaining Agreement and a 22 cent per hour increase for each of the subsequent two years.

The evidence shows that among the medical care facilities in Michigan, Lenawee ranks 12th in size, having 136 beds. The county ranks 18th in population and 19th in state equalized valuation. The record further establishes that if the Employer's wage proposal were adopted, last Fall the medical care facility would have ranked 10th in the state when compared on the basis of nurses aides' salaries.

The evidence further shows that in 1969 the average wage increase for this bargaining unit was 28 cents. In 1970, it was 14 cents; 1971 14 cents; 1972 13 cents; 1973 15 cents; 1974 30 cents; 1975 30 cents. The average wage increase during the period of

time the unit has been organized calculates to 21 cents.

Further, Employer Exhibit 2 is a summary comparing the wage rate that would have been paid at the Lenawee Medical Care Facility if the Employer's proposal were adopted with the wage rates in force at Hillhaven Convalescent Center and Provincial House. The exhibit appears as such:

| Classification | Lenawee Medical Care Facility* | Hillhaven Convalescent Center | Provincial House |
|---|---|---|---|
| Nurse Aides | $3.47 | $2.50 | $2.45 |
| Kitchen Helper | 3.24 | 2.50 | 2.45 |
| Laundry Helper | 3.31 | 2.50 | 2.45 |
| Housekeeping Maid | 3.24 | 2.50 | 2.45 |

*Agreed upon by Union Committee and Employer

After examining all the evidence and considering the arguments made, the Fact Finder recommends that the Employer's wage proposal be adopted. First, the current level of wages paid by the Employer is much higher than paid by the private medical care facilities located within the approximate area of Lenawee. Secondly, when the increase is expressed in terms of a percentage, the calculations show that over three years the highest paid member of the bargaining unit would receive an increase of 18.2% while the lowest paid member of the bargaining unit would receive a increase of 24%. Both figures represent a substantial increase in the wage rate. Thirdly, adoption of the Employer's wage proposal would rank Lenawee in the area of nurses aide in about the middle of the other medical care facilities.

RETROACTIVITY

The Union takes the position that the first year wage rate should be retroactive to the date the prior Collective

Bargaining Agreement expired, i.e., November 14, 1976.

The Employer takes the position that the new wage rate should not become effective until the agreement is ratified.

The Union has argued that employees have followed all the applicable statutory procedures and have not engaged in any work stoppages and have always bargained in good faith. Further, the Union maintains that this was done even in light of the failure of the employees to ratify the tentative agreement on two separate occasions.

The Employer argues that it was willing to make the first year wage rate retroactive to November 14, 1976, if the employees had ratified the agreement before a certain date. Further, the Employer states that after the initial agreement was rejected, it offered a limited retroactive provision if the agreement were ratified within a new time limit. The Employer states that while it had made these proposals in the past, the failure to ratify the tentative agreement and the subsequent Fact Finding procedure has cost the Employer fees and expenses that it would not have otherwise incurred had the agreement been ratified.

Often, employers argue that retroactivity should not be granted because to do so would prolong the bargaining process. They rationalize that if the labor organization knew that any wage adjustment would be made retroactive, the labor organization would have no incentive to settle the agreement for it would have nothing to lose. Conversely, labor organizations argue that if retroactivity is not granted, employers will prolong the bargaining process because employers will realize that every day that passes represents an increase in savings.

Additionally, the one item that must be remembered is that the Employer by not having to pay the wage increase at the time

the prior agreement expired, has had the use of the funds that would have otherwise been expended for wage increases over the period of time that exists subsequent to the expiration of the prior agreement up to the date of ratification of the new agreement. Thus, in one sense the Employer saves money even if full retroactivity is recommended.

This Fact Finder feels that it would be unwise to create a general policy that would recommend retroactivity in every case where the parties have followed the statutory procedure. Retroactivity should be an item that is decided based upon the facts in each particular case. If this procedure is followed, retroactivity can be a very useful tool in promoting early settlements.

After analyzing all of the evidence and the arguments present, the Fact Finder recommends that the first year wage settlement be paid retroactively to November 14, 1976. The Fact Finder makes this recommendation based upon the following factual conclusions: First, there is no indication that either party prolonged the bargaining process. Secondly, while each of the Employer's proposals were recommended herein, this does not indicate that there was not in fact a good-faith dispute regarding the issues. There is no indication that anything but good faith existed when the request for Fact Finding was made. Thirdly, the Employer has had the use of the funds that would have otherwise been expended as wage increases.

CONCLUSION

The Fact Finder has carefully considered the evidence before making the recommendations contained herein. He believes that the recommendations can serve as a basis for settlement.

Dated: April 25, 1977

MARIO CHIESA