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In the Matter of Fact Finding
Between:

THE CITY OF LUDINGTON,
MICHIGAN

LABOR AND INDUSTRIAL

and

LOCAL 586 of the PUBLIC EMPLOYEES UNION
S. E. I. U., AFL-CIO

Ludington, City of

REPORT
and
RECOMMENDATIONS

Samuel S. Shaw, Fact Finder

Hearing Held
Municipal Building
Ludington, Michigan

October 18, 1973

Appearances

For the City

John W. Claire, Attorney

For the Union

Neil DeRoche, Repr.

Witnesses

James F. Cartier
William Gregones

Chester Sappee
Donald Johnson
Richard Anes

Pursuant to a petition filed with the Michigan Employment Relations Commission of the Department of Labor, Dated August 24, 1973, the undersigned was appointed as Fact Finder in the matter between the City of Ludington, Michigan (hereinafter referred to as "the City"), and the Public Employee's Union of Southwestern Michigan, Local 586, S.E.I.U., AFL-CIO (hereinafter referred to as "the Union").

Facts and Background

The City of Ludington, Mason County, is located in the west central portion of Michigan's lower peninsula on the east shore of Lake Michigan. It has a population of approximately 9000, and is listed by the Michigan Municipal League with cities in Area No. 3, 4000-9999 population.

The employees of this bargaining unit have been organized for over twenty years, and have been represented by the S.E.I.U. for the past several years. At the present time there are approximately 45 members of this Unit. Their work responsibility is largely maintenance, and includes; streets, water, sewage, cemeteries, parks, some trash and garbage pick-up, plus the operation of the water filtration and sewage treatment plants. The department involved, now referred to as the street department, will soon be known as the Department of Public Works.

The last agreement was dated June 1, 1971, and expired on May 31, 1973. Since that time, although there has been no official agreement, the parties have operated on a day-to-day basis.

Negotiations on a new contract started during the first part of May, 1973, but the parties were unable to reach agreement.

on several issues, and the matter was referred to the Employment Relations Commission for mediation. A mediation meeting was held and the representatives of the parties reached an agreement. However, when the matter was brought to the Union's membership by its Committee, the membership turned it down. Following mediation, the parties met once more, but as they failed to resolve the issues, the matter was referred to Fact Finding.

A Fact Finding Hearing was held in the conference room of the Municipal Building, Ludington, Michigan, on October 18, 1973, before Samuel S. Shaw, who had been appointed Fact Finder by the Employment Relations Commission in accordance with the Fact Finding petition. Both parties were fully represented, and given full and ample opportunity to submit both oral and documentary evidence, and to present arguments in support of their respective positions.

The City's representatives raised the question of whether the Union's representatives had the necessary authority to conclude an agreement, if one could be reached. This question was discussed at some length, with the City contending that although an agreement had been reached in the mediation meeting, it had been turned down by the Membership; to the surprise of the City. The City contended this was not good faith bargaining, as they had been given to understand the agreement was firm. The Union stated it did not, nor never had, the final authority to bind the Union membership, and this should have been understood by the City's representatives. The matter was finally resolved, with the understanding that except for certain minor details, all basic issues were subject to final approval by the principals of the respective Committees.

The parties further agreed, at the suggestion of the Fact

Finder, that his report and recommendations be reviewed by the parties prior to any public release.

The proceedings were tape recorded by the Fact Finder. Neither party elected to file briefs, therefore, the Hearing was closed as of October 18, 1973.

Discussion

The unresolved issues were reviewed in light of the parties' last offers, and as a result it was agreed only three issues remained for consideration of the Fact Finder. These were:

1. The exact wording of the funeral day leave provision.
2. Summer working hours
3. Wages.

After some further discussion with respect to the various ramifications surrounding the appropriate time-off in the event of the death of a close relative, the parties agreed, inasmuch as the intent of the provision was mutually understood, the specific language could be resolved by the parties themselves. Therefore, this issue was withdrawn from Fact Finding.

The matter of retroactivity was also discussed. The City explained its position as it applied to the City's previous offers as follows: As far as the City was concerned, it would accept retroactivity to the expiration date of the previous contract, providing there was no interim work stoppage by the Union. However, if at any time prior to the final resolution of the issues, there was a strike by the Union's membership, retroactivity would become an issue subject to further negotiation.

HOURS OF WORK FROM MAY 31 THROUGH OCTOBER 31.

The Union requested that during the summer period from May 31st through October 31, the contract provide that the starting time for the day be established as 7:00 A.M. and ending at 4:00 P.M.

The Union explained the reasons for its request as a desire by the men to have the additional hour of daylight during the summer months, plus the fact the one hour earlier schedule during the summer was the general practice of the majority of local organizations, both private and public. In addition, it had been the practice in the Street Department for the past several years until the summer of 1973. During the past summer the policy was apparently changed, and the basic starting time for the majority of men was 8:00 A.M. Therefore, the Union felt the matter should become a contractual requirement so as to insure a 7:00 A.M. summer starting time in the future.

The City claimed its policy with respect to summer starting time had not changed, but that in 1973, several situations arose that made it impractical to grant the 7:00 A.M. starting time to as many men as in previous years. The reasons the City cited included the fact that 1973 was the first year that daylight saving time had been applied to Michigan. This made it almost dark at 7:00 A.M. and created a dew problem for the grass mowing of any City property, particularly the parks. In addition, in 1973, the City was involved with over six contractors on the sewer projects whose starting time was 7:30 A.M. In order to coordinate the activities of the Department with these contractors, a starting time of 7:00 A.M. for the Department would have been impractical, and because it would have then required additional overtime by Department personnel,

would have resulted in an increased cost to the City. Further, the City argued, the Department was in reality a service organization, and as such, the city's citizens could not be arbitrarily ignored when scheduling departmental work. Specific reference was made to street repair that might require the use of air hammers, and the flood of complaints that were received by the City when such work was started too early in the day. The City stated it was not opposed to an early summer starting time per se, but because of the many factors involved, the starting time must be left to the discretion of the Administration. Therefore, it could not agree to any contractual provision that would make mandatory a specific starting time.

After reviewing the arguments, it is the opinion of the Fact Finder that the position of both parties have considerable merit. The desire of the men to have an extra hour of daylight during the summer months is understandable, particularly as it is the norm for both public and private organizations. Likewise, the need for the City to have some flexibility in the matter is based upon reasonable and practical considerations. The Department is a service unit, and as such, the wishes of the citizenry cannot be brushed aside as unimportant. Further, the City has an undeniable obligation to realize the maximum from its tax dollar and keep its operating costs to a minimum. Therefore, any requirement that would interfere with, or prevent, the City from meeting this obligation would be unreasonable and irresponsible.

However, despite this conflict in positions, it is the opinion of the Fact Finder that the matter can be resolved if both parties will give fair and earnest consideration to the needs of the other.

On this basis the Fact Finder recommends that a provision

be included in the Agreement that will express the intention of the City to institute an earlier starting time in the summer, except when, after a fair and objective analysis, the City concludes a 7:00 A.M. starting time would be impractical, unreasonable, or inefficient.

A provision such as suggested above should supply the Union with the assurance their preferred starting time request would not be arbitrarily ignored, or that their schedule, once established, would not be subject to change without a valid reason, and only after due consideration of the situation. Neither should such a provision impose a hardship on the Department's administration. The City stated it was not opposed to a 7:00 A.M. summer starting time per se; and had scheduled in the past whenever possible, and would continue to do so in the future. If this statement is accepted as an expression of true intent, reducing it to writing, without denying the City the right of choice under abnormal circumstances, should not prevent the City from meeting its obligation to operate the Department efficiently.

The Fact Finder does not feel it is necessary for him to submit the specific language of such a provision, as both parties are fully knowledgeable in the use and application of contract language, and fully capable of expressing intent without assistance. However, so there will be no misunderstanding as to what the Fact Finder has in mind, language such as the following is recommended: " The normal scheduled summer starting time for the Department shall be 7:00 A.M., effective June 21st through ^{Labor Day} September 30th. The City agrees it will make every effort to maintain this schedule during the period stated, except when situations arise that make a deviation necessary. In such cases this starting time may be adjusted either forward or backward as circumstances dictate, and it shall be the sole

prerogative of the City to determine when such deviations are necessary."

The Fact Finder is aware the above language, giving the City the right to decide when a change in starting time is warranted, will not provide the Union with a guarantee the 7:00 A.M. starting time will be available to all men at all times during the summer period. However, after considering the practical aspects of situations that could arise, and that could require changes in starting time, plus the requirement to give due consideration to the needs of the community, the Fact Finder does not feel the Administration can, or should, be bound to an inflexible starting time by a contractual provision.

WAGES

In the matter of wages, the Union requested a two year Agreement with an across-the-board increase of 25¢ per hour in the first year, and that the subject of wages for the second year be negotiated in June, 1974; the beginning of the second year of the contract. The City's offer was 20¢ per hour for the first year, and 20¢ per hour for the second year.

The Union's primary argument for a wage reopening provision was that in view of the recent acceleration in the cost-of-living, it would be impossible at this time to estimate the specific amount of the 1974 wage increase request. Further, that the past several contracts, all of which were for a two year period, provided for a wage reopener in the second year.

The City argued, that as its fiscal year was January through December, if its labor cost were not established until June, it would be impossible to develop a realistic budget for the year. Further, that inasmuch as six months of the contract

year had already passed, acceptance of the Union's request would put the parties into wage negotiations again in less than six months.

After considering the arguments presented by the parties, most particularly that which concerned the time element, it is the opinion of the Fact Finder that a wage reopening provision in the current agreement would be impractical.

Contract negotiations are time consuming, and often upsetting to the normal routine; therefore, the Fact Finder does not believe in negotiations just for the sake of negotiating. Had the new contract been resolved at the expiration of the former contract in June, the first year of the new contract would have had a full year to run. Under these circumstances, with the cost-of-living so unpredictable, a wage reopener might have been justified. However, as pointed out, at this point in time only half of the first year remains. On this basis the Fact Finder feels the wage requirements of the Union can be reasonably anticipated at this time, thereby eliminating the need for further negotiations six months from now. This reasoning is supported to some degree by the fact that there are current indications the cost-of-living spiral will not be as steep in the immediate future as it has been during the past year.

In reaching a determination and recommendation with respect to an equitable wage increase, the Fact Finder considered the economic issue already concluded by the parties. Although all are not effective as of June, 1973, according to his information the agreement includes an additional holiday, witness pay, an increase in hospitalization benefits and life insurance coverage, and an improvement in the call-in pay provision.

Also considered were the comparable pay levels in cities of like size, both in the immediate area and in the lower peninsula. The figures reviewed were taken from several current Street and/or Public Works Department contracts, and figures compiled by the Michigan Municipal League. This review involved a comparison of the wage rates in the pertinent classifications, and where necessary because of differences in contract expiration dates, the interpolation of various rate levels. Further, in some instances with which the Fact Finder was familiar, classification job content was also compared.

The results of this analysis indicates the majority of wage rates in the Street Department, or Public Works Department, in the City of Ludington are reasonably comparable to rates in like classifications in a substantial number of the cities reviewed.

Therefore, after considering all elements concerned, it is the recommendation of the Fact Finder that the Union accept the last offer made by the City of 20¢ per hour for the contract year 1973-74, and 20¢ per hour for the year 1974-75. This will provide an approximate 11% wage increase over the next year and one-half; an increase that is within the guideline average indicated by recent public sector settlements.

In summary, it is the recommendation of the Fact Finder that a provision be included in the Agreement that will indicate the City's intention to provide a 7:00 A.M. starting time during the period June 1st through September 30th. This provision should be worded to the effect this starting time will prevail whenever possible, but retaining to the City the final determination of when a deviation from this starting time is necessary.

The Fact Finder is aware his recommendation calls for an effective starting date of June 1st for the summer schedule, whereas the Union requested May 1st. However, considering such items as school closing, the accepted start of what is considered the summer season, etc., June 1st should be acceptable as the effective date of the summer schedule.

In view of the fact the parties are only considering a two-year contract, plus the fact the first year of the contract is half over, it is the opinion of the Fact Finder that the Union can forego reopening the wage question at the beginning of the second year of the contract without compromising its interests.

Therefore, as the question of the appropriate wage increase for both the first and second year must be determined. For the reasons expressed earlier in this report, it is the recommendation of the Fact Finder that the wage increase for the first year be 20¢ per hour, and for the second year, an additional 20¢ per hour; both of these increases to be across-the-board increases.

Samuel S. Shaw
Samuel S. Shaw, Fact Finder
Grand Rapids, Michigan
November 21, 1973



WILLIAM G. MILLIKEN, Governor
BARRY BROWN, Director

STATE OF MICHIGAN

DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

400 TRUST BUILDING, GRAND RAPIDS, MICHIGAN 49502 - Phone 468-3631

September 19, 1973

COMMISSIONERS

ROBERT G. HOWLETT,
Chairman
MORRIS MILMET
WILLIAM M. ELLMANN

City of Ludington
City Hall
Ludington, Michigan
Mr. James Cartier, City Manager

S.E.I.U. Local #586, AFL-CIO
2401 - 8th Street
Muskegon Heights, Michigan
Mr. Neil DeRoche, President

Re: City of Ludington and
S.E.I.U. Local #586

Gentlemen:

NOTICE OF APPOINTMENT OF FACT FINDER

The Michigan Employment Relations Commission has reviewed the petition for fact finding filed by Public Employee's Union of Southwestern Michigan, S.E.I.U. Local 586 on August 24, 1973, and has concluded that the matters in dispute between the parties may be more readily settled if the facts involved in the dispute are determined and publicly known.

We have made our determination on the petition above and the Employment Relations Commission has accordingly appointed Mr. Samuel S. Shaw as its Hearings Officer and Agent, to conduct a fact finding hearing pursuant to Section 25 of the Labor Mediation Act (Mich.Stat.Ann. 17.454 (27); Mich.Comp. Law 423.25 and Part 3 of the Board's General Rules and Regulations. The fact finder will conduct a fact finding hearing and issue recommendations with respect to the issues in dispute.

The fact finder's address and telephone number are:

Mr. Samuel S. Shaw
2490 Normandy Drive, S.E.
Grand Rapids, Michigan 49506
Telephone: 616 452-2875

The fact finder has been requested to schedule a hearing in this matter as promptly as possible.

Sincerely,

Robert G. Howlett
Chairman

RGH:dm
cc: Mr. Samuel S. Shaw
Mr. Shaw: We enclose a copy of the petition.

