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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

Macomb County 16th Judicial Court
Macomb County Probate Court,

Respondent Employer

Teamsters Local 214

Union Petitioner

Fact Finding

MERC Case #D85 H-2019

Fact Finder
Findings and Recommendations

Issues

1. Grievance Procedure
2. Court Supplies.

Hearing Held: December 3, 1986

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Fact Finder

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Macomb County Probate Court

Fact Finding Hearing Re: Macomb County 16th Judicial Circuit and Probate Court Reporters, Teamsters Local 214 Petitioner, and Macomb County 16th Judicial Court and Macomb County Probate Court, Employer. Macomb County Court Building, December 3, 1986, 10:00 o'clock A.M.

Summary of Facts and Opinions as given by the parties and considered by Fact Finder.

Re: Grievance Procedure.

Union Position--Binding Third party settlement of grievances for both Courts.

Employer Position--Existing procedure to end with presiding judge, but applied to both probate and circuit courts.

The position of the employer was given in the testimony of Salvatore Crimando, Circuit Court Administrator, and William Boyea, Probate Court Administrator.

Each respectively expressed their opinions that the relationship between the Court Reporter and their individual judge was a very personal one and that the individual judges did not feel they could delegate their statutory authority to make final determinations on employee grievances. The Administrators further stated it was their opinion that no real grievances had ever existed and accordingly, they could see no need for independent arbitration. Further, they advised that in the event such a grievance should ever arise, the Chief Judge of each Court feels he can be impartial in making any final ruling and that an independent person is not necessary.

In response to inquiry, the employees' representatives

advised, they did not know who might be chief judge of their Court in 10 years.

The employer presented a letter of agreement dated: 10/1/84 between the employer and the Union, re: Circuit Court Reporters, setting forth a procedure for employee grievances regarding Contract administration or interpretation and with a written decision by the Chief Judge at his/her earliest convenience as the last step.

The Fact Finder inquired of employer's representative in view of reference to "statutory authority to make final decisions," was the employer taking the position that the Fact Finder or the commission had no authority to recommend, outside arbitration of unresolved grievances, even if the facts supported such a recommendation? The employer's representative responded, "No that is not our position."

In support of its position, the union presented various exhibits, including:

1984-85 Agreement between the County of Macomb and Macomb County Employees A.F.S.M.E. Local 411. It is a general agreement covering all county employees with a Supplementary Agreement at Page 53 re: Circuit Court Clerks.

The Supplement sets forth that the Circuit Court Clerks are a recognized bargaining unit separate from all other county employees. It further sets forth that the Master Agreement between the Union A.F.S.M.E. Council 25 and Local 411 and the County of Macomb, as employer and dated: January 1, 1984, shall be considered a part of the Agreement with the Circuit Court Clerks just as though it was fully set forth.

Pursuant thereto, reference is made to the Master Agreement, Grievance Procedure pgs. 5-7, par. 9. Step 4 D, page 6

. . . If after thirty (30) calendar days from the Appeal Board's first meeting, they are unable to agree upon a disposition of the grievance, the grievance may be submitted by the union to final and binding arbitration.
[Underscoring added]

Paragraph E provides for selection of the arbitrator. In the event of inability to agree to an arbitrator, the arbitrator is selected by American Arbitration Association and not by the internal Appeal Board.

Paragraph G sets forth the scope and jurisdiction of the arbitration.

A careful review of the agreement reveals no provision, excluding the Circuit Court Clerks from the Arbitration provision of the Agreement.

In addition, the Union presented the Agreement between Macomb County Board of Commissioners and Macomb County Prosecuting Attorney and Police Officers Association of Michigan on behalf of Ass't Prosecuting Attorneys. Dated: January 3, 1985. Reference is made to:

Art VII. Grievance Procedure for non-Disciplinary Matters.

The agreement sets forth a detailed grievance procedure which ends with provision for binding Arbitration. I note that the actual wording of the grievance procedure for Assistant Prosecuting Attorneys and particularly re: the Arbitration provision, is identical, word for word, as the like provision in the agreement re: Circuit Court Clerks, A.F.S.M.E., Council 25,

Local 411.

Art IX Grievance Procedure for Disciplinary Action.

This Article sets forth a detailed procedure, including, hearing before a Hearing Board, comprised of 3 of the aggrieved employees' peers, one selected by the Prosecuting Attorney, one by the aggrieved employee, the third selected by the first two, or if unable to agree by lot from among all other assistant prosecutors. The recommendations of the Board, which are advisory, are communicated to the Prosecuting Attorney, whose decisions are final and conclusive.

The Union also presented a copy of the Agreement between Council 25 and the State Judicial Council for 3d Circuit (Wayne County) and Recorder's Court (Detroit) Court Reporters 1983-1986.

Article VI Grievance Procedure, Section 1 includes the following words, ". . . In recognition of the unique nature of employment, this Article shall not encompass, authorize, nor shall the employer accept any grievance that involves the hiring, termination or discipline of any employee covered by this Agreement."

Then, follows Section 2 -- 4A -- J, which section and subsections set forth a detailed grievance procedure, including provision for oral discussions, hearings and a binding arbitration.

In its Petition for Factfinding, the unresolved issues re: Grievance Procedure, as presented by the Union, is set forth as follows:

Binding Third Party settlement of Grievances for both Courts.

However, during the course of the hearing, the Union stated that, though they had asked for binding Arbitration on all grievances, that as to grievances involving hiring, discipline including termination, they were prepared to accept the Chief Judge of each Court as the final authority.

Both parties requested time to file post hearing Briefs.

Subsequent to the close of the hearing and at the request of the factfinder that a copy of the referred Statute be provided, the employer forwarded a copy of Administrative Rules of Court, with reference to:

Rule 8.110--Chief Judge Rule, 8.110 (E) (3).
As director of the administration of the Court, a Chief Judge shall have administrative superintending power and control over the Judges of the Court and all Court personnel with authority and responsibility to:

(d) supervise the performance of all Court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of the Judge's secretary and law clerk, if any;

On December 19, both parties filed their post-hearing Briefs.

Included in the Union's brief was a copy of (MERC 894) wherein the Commission found that when the Contract between the parties contained no mandatory binding procedure for resolving a dispute, the Commission will supply such final binding solution including arbitration.

The employer's Brief set forth the three areas

comprising the Union's general issues of "Grievance Procedure" as follows:

1. Procedure to apply to both Circuit and Probate Courts.
2. Time limit to be established.
3. Neutral third party binding Arbitration.

The Brief further stated--Both Courts have already agreed to #1.

Employer now agrees to place a 30-day time limit on Chief Judge rendering his or her written binding decision. Your factfinder could find nothing in the letter of Agreement of 10/1/84, which made or implied the decision of the Chief Judge to be either final, binding or conclusive. Accordingly, that will be considered as a new fact, added.

Based upon the following taken from the facts as submitted as to the issue "Grievance Procedure," your Factfinder finds and recommends as set forth below:

1. Macomb County Board of Commissioners does have established Grievance procedures, including binding arbitration with outside arbitration covering most County employees.

2. A separate contract entered into between Macomb County Board of Commissioners and AFSME Council 25, Local 411 for Macomb County Circuit Court Clerks does provide for binding arbitration as the final step in the grievance procedure with an outside arbitrator.

3. Macomb County Board of Commissioners has entered into a contract with Macomb County Prosecuting Attorney and Police Officers Association on behalf of Macomb County Assistant

Prosecuting Attorneys. The Grievance Procedure is identical with the provisions covering Circuit Court Clerks except that there is a special provision under Article IX covering Disciplinary Action Grievances. This procedure for Disciplinary Action Grievances sets up a hearing Board. After conducting a hearing, the Hearing Board makes its advisory recommendation to the Prosecuting Attorney. The decision of the Prosecuting Attorney re: disciplinary action grievances is final and conclusive. Your Factfinder distinguishes the relationship the Prosecuting Attorney and his Assistant Prosecuting Attorneys from the relationship of the Court reporter, not to his individual Judge, but rather to the Chief Judge.

4. AFSME Council 25 has an agreement with the State's Judicial Council, which covers 3rd Circuit (Wayne County) and Records Court (Detroit Criminal Court) Court Reporters.

The agreement establishes a grievance procedure, but recognizes the unique nature of employment of Court Reporters, it specifically excluding the filing of grievances or acceptance of grievances that involves hiring, termination or disciplining of any employee covered by the agreement. However, the agreement does set forth a detailed grievance procedure for all other grievances, with binding arbitration with an outside arbitrator as the final step.

5. (MERC 894) was referred to by the Union. Your Factfinder finds some dissimilarity of facts with Plymouth-Canton Community Schools' Board of Education and Plymouth-Canton Association of Educational Office Personnel and the case at issue.

In the Plymouth School's matter, the commission held at (894) that ". . . where no final and binding contractual means exist for the ultimate resolution of the issue, it will decide claims of unilateral changes involving contract breach." (MERC 894) appears to establish the right to a grievance procedure with an ultimate resolution of the disputed provision. In the matter before your Factfinder, the employer's amended proposal does contain an ultimate resolution of the dispute provision. The employer proposes that the ultimate resolution of grievances should be made by the Chief Judge. That position taken by the employer representative goes beyond the authority given the Chief Judge in the letter of October 1, 1984. Without giving final and conclusive authority to the Chief Judge or to someone, the door might be open to apply the (MERC 894)Rule at a later date. As previously noted, though the Union had asked for binding arbitration on all grievances, as to grievances involving hiring, discipline or discharge, the Union stated it was prepared to accept the Chief Judge of each Court as the final authority.

The employer's reference to Chief Judge Rule 8.110 (E) (3) (d), appears to be the internal administrative procedure between the judges.

In conflict with the claim of the unique nature of reporters' employment and the relationship of the reporter to the individual judge, Rule 8.110 (E) (3) destroys that concept. It takes the right to hire, discipline or discharge Court reporters away from the individual judge and delegates it to the Chief Judge. Apparently, the relationship is neither unique nor personal. Every governmental agency, every business entity must

have a designated authority to hire, discipline or discharge. Someone must be in charge. However, designating someone, who has that authority does not establish the right of that authority to act at will or whim without regard to contractual obligation or outside of existing statutory or case law. Nor does it prohibit that authority from following good and well established labor relations procedures.

No facts were presented prohibiting agreements providing for final resolution of disputes by an outside arbitrator. Rule 8.110 does not serve that purpose. Your Factfinder could find nothing in Rule 8.110 creating the statutory authority referred to.

Accordingly, your Factfinder recommends as follows:

1. That the offer of the Union to accept a grievance procedure with the Chief Judge of each Court as the final authority on all grievances involving hiring, discipline or discharge be accepted.

2. That the Chief Judge render his written binding decision at his earliest convenience but not later than 30 days after presentation.

3. That, as to all other grievances, a detailed grievance procedure be established with binding arbitration as the final step.

4. That in both instances the grievance procedure provide for some oral participation with the Union representatives prior to the final step.

Issue #2 — Court Supplies

Union Position Increase pay for supplies from \$175.00 to \$400.00 per year. No change in existing contract language.

Employer Position Increase from \$175.00 to \$400.00 per year. Change the existing language to reflect that employees must pay for supplies previously paid for by the Court.

The employer by testimony of the Circuit Court Administrator explained that the ordering of supplies had been taken over by the Court Administrators in 1985. Prior, each Judge ordered his or her own supplies.

Circuit Court Reporters are reimbursed for all transcripts by the party ordering them. Until recently, Probate Court Reporters were not reimbursed for 90% or more of their transcripts; however, that had been corrected with the Probate Court agreeing to pay for transcripts for indigents though they received no benefit from them.

Pursuant to the existing contract and commencing in 1981, Reporters of both Courts receive \$175.00 per year covering cost of transcript paper, covers and fasteners and for repair and purchase of dictating machines. Apparently as a matter of practice, such other supplies as onionskin for copies was also supplied.

The Union presented statistical charts which showed the wages of Macomb County Court Reporters to average approximately \$3,000.00 below the wages of Court Reporters employed by the Courts of the surrounding counties.

The statistical facts, as presented, revealed no common policy in the various courts re: providing supplies to the reporters.

The Courts of no county other than Macomb County were shown to pay a fixed sum, i.e. \$175.00 per year, proposed to be increased to \$400.00 per year, or any other amount.

Your Factfinder was not presented with any facts which even suggested that the reporter received any benefit from preparing the transcripts other than compensation, or that the reporters had any duty to make any voluntary contribution whatsoever.

The employer argued that no benefit runs to it as a result of providing the transcripts. Your Factfinder cannot accept that conclusion. Appeal is a part of the whole judicial process. It is the trial judge, either Circuit or Probate, who advises the party of its right to appeal. If a Trial Court is reversed on appeal, the reversal is merely a correction of its error. A confirmation of its holding is an approval of its finding. In either case, the trial court has had a direct benefit from the appeal.

The proposed increase in the lump sum payment from \$175.00 per month to \$400.000 per month had to serve some purpose other than merely changing numbers. There is a total absence of showing of any other jurisdiction making any such lump sum payment to Court reporters.

Accordingly, your Factfinder concludes as follows:

1. The wages of Macomb County Court Reporters are below wages paid to Court Reporters in seven surrounding counties.
2. Within the 8 counties, there is no common policy

re: providing reporters with transcription supplies; some do; some do not.

3. Macomb County Circuit and Probate Courts appear to be the only Court jurisdiction which make lump sum payments to reporters.

4. The amount of reporters' wages are not an issue subject to these proceedings.

5. No facts were presented nor was it argued that the Cost of repairing and replacing stenotype machines had increased in an amount to consume the full proposed increase.

6. No facts were presented or argument made that the proposed \$400.00 was insufficient to cover maintenance cost and the cost of supplies.

7. No costs for supplies were presented, and although your Factfinder made inquiry, he was left without any statistical information from either party.

8. Insufficiency of the lump sum payment was not made an issue of the proceedings though it probably should have been. Accordingly, your Factfinder has no basis upon which he can recommend an increase in the proposed lump sum amount, though he might otherwise be inclined in that direction. Perhaps, at some future date, the Union will seek redress of possible underreimbursement by way of increased transcript fees or increased lump sum payment.

Accordingly, your Factfinder recommends that the proposal of the employer to increase the lump sum paid for repair or replacement of stenotape machines, etc., from \$175.00 per year to \$400.00 per year, which sum is to include the cost as

necessary to prepare transcripts and copies, including transcript paper, covers, clips, folders, onionskin and such other transcript supplies, be adopted.

Respectfully submitted,



JERRY RAYMOND, Factfinder

DATED: January 14, 1987.