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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the matter of:

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, Local 459,
AFL-CIO

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

Union,

Case No. 089 L-0651

-and-

Fact Finder: Jerold Lax

MANISTEE-BENZIE COMMUNITY MENTAL
HEALTH SERVICES,

Employer.

Appearances:

For the Union - Neal J. Wilensky, Esq.

For the Employer - Bonnie G. Toskey, Esq.

FACT FINDER'S REPORT

Introduction

The Union was certified in 1988 as collective bargaining representative of a unit of employees defined as follows:

All full-time and regular part-time aides employed by the Manistee-Benzie Community Mental Health Services Board, including day program program assistants, transporters, production control processor, residential training aides, and day care program aides, excluding supervisors, residential program assistants, recreational coordinator, office clerical employees, casual (substitute) and temporary employees, professional employees and all other employees.

It should be noted that for at least one classification, that of program assistant, employees in the Employer's day program were included in the bargaining unit while employees in the residential



Manistee-Benzie Community Mental Health Services Board

program were not included in the bargaining unit. The first collective bargaining agreement between the parties became effective April 27, 1989, and extended through September 30, 1990. The agreement provided for a wage reopener in October 1989, but the parties were not able to reach agreement in October 1989 as to the proposals made by each party pursuant to the wage reopener. Mediation also failed to produce agreement, and the parties consequently filed a petition for fact finding in November 1989. Three days of hearing were held on March 23, March 26, and April 4, 1990, and each party filed a written brief subsequent to the conclusion of the hearings.

The issues concerning which the parties disagreed were wages, modifications of the health insurance provisions of the contract, number of sick days, and number of leave days.

With regard to wages, the Union requested that bargaining unit members be granted a step scale comparable to that which had been granted to non-union employees in May, 1989, subsequent to the effective date of the collective bargaining agreement. It was the Union's position that a step scale was justified for a variety of reasons, including equality of treatment between union and non-union employees who occupied positions of comparable worth and the presence of step scales in the wage structures of other community mental health agencies. It was the Employer's position that a step scale was justified in the case of the non-union employees because of the difficulty the Employer had experienced in retaining qualified clinical personnel in the absence of a step scale, and that economic constraints imposed by the State of Michigan in

funding community mental health programs made it financially difficult for the Employer to provide a step scale in the case of non-union employees, many of whom had salaries in excess of the minimum salaries under the collective bargaining agreement because the agreement provided for grandfathering of the salaries of pre-existing employees. In response to the Employer's contentions, it was the position of the Union that although a step scale may have been useful in retaining clinical employees, no similar justification existed for providing a step scale for secretarial employees and residential program assistants while denying a step scale to program aides, day care program assistants and other employees included in the bargaining unit. With regard to the question of lack of financial ability, the Union noted that funds had apparently been available to provide a step scale for non-union employees, that many existing employees exceeded the maximum compensation level allowed by the State with no apparent State objection, and that funds from other State budget categories such as administrative expenses had been utilized by the Employer to supplement wages when the Employer found such use of State funds to be appropriate.

With regard to the health care provisions of the contract, the Employer sought agreement of the Union with regard to certain specific cost cutting measures including second opinions, testing, and out-patient proceedings, and also sought a contractual provision that in the event the Employer modified health care arrangements for non-union employees, similar modifications could be made for union employees. The Employer noted that Section 5 of Article 23 of the collective bargaining unit already provided that the Employer had

some discretion to reduce benefits by virtue of the following language:

Notwithstanding any contrary provisions, benefits shall not exceed State current matchable percent for employee fringe benefits. If the Employer believes benefits exceed the State current matchable percent it shall notify the Union and offer to negotiate a change. If the Union and the Employer are unable to agree on a change within thirty (30) days, the Employer may institute changes in a manner as applied to non-bargaining unit employees.

The Employer regarded its proposal concerning modification of health benefits to be consistent with this existing contractual provision. The Union was willing to agree to specific cost cutting measures, but was unwilling to provide blanket authority to the Employer to modify health insurance benefits in the event that such benefits were modified for non-union employees.

With regard to sick days, the Employer proposed a reduction in the number of sick days from the thirteen days provided by the contract to six days per year in exchange for additional compensation in the amount of fourteen cents per hour. The Union proposed that sick days as provided by the contract not be modified. With regard to personal leave, the Union requested an additional four days of personal leave per year, and the Employer proposed that the existing contractual provision which provided sixteen hours of paid personal time upon hire and on October 1 of each year remain unchanged.

Findings

1. While the testimony produced at the fact finding hearings supports the Employer's position that some difficulty had been

experienced in attracting clinical employees and that a step scale was likely to be useful in attracting and retaining such employees, there is no comparable evidence that the Employer had experienced any attracting and retaining employees in other categories who were also granted a step scale in the spring of 1989 after the effective date of the collective bargaining agreement. To the extent that the evidence provided some support for the conclusion that there was significant turnover in other employee categories, there is no less reason to conclude that a step scale would be useful in retaining employees in those categories than to conclude that it would be useful in retaining the clinical employees.

2. While the duties of the clerical employees (who are not a part of the collective bargaining unit) are different in kind of the duties of the program aides (who are included in the bargaining unit), the evidence produced at the hearing provides no support for the conclusion that any greater justification exists to provide a step scale for the clerical employees than exists for providing such a step scale for program aides.

3. The employment responsibilities of program assistants in the residential program (who are not covered by the collective bargaining agreement) do not appear to differ from the responsibilities of program assistants in the day program (who are covered by the contract) in any manner which would dictate a step scale for the former employees while denying such a step scale to the latter employees.

4. While State guidelines applicable to the funding of community mental health programs do appear to provide a maximum

average benefit level for employees, it appears from the evidence that this level has been exceeded on occasion with no apparent State sanction and, moreover, it also appears that other State budgetary categories have been used for employee benefits when deemed appropriate by the Employer. Even if it were concluded that State budget limitations create a difficulty in providing a step scale, it is not apparent why these difficulties would not also have interfered with the provision of a step scale for non-union employees in the spring of 1989.

5. While the beginning pay for bargaining unit employees does not appear out of line with the beginning pay for comparable employees of other similar employers, it does appear that a step scale is a prevalent feature of the wage structures of other employers who provide mental health services in a manner comparable to the provision of services by the instant Employer.

6. With regard to the issue of health benefits, the existence of Section 5 of Article 23 of the contract may already provide the Employer with at least some discretion to propose modification of benefits in the event that applicable funding limits are exceeded. Hence, there is no compelling reason to include a separate specific provision which would permit the Employer to modify health care benefits for Union employees if similar benefits for non-union employees are modified.

7. The record provides no compelling reason for reducing the number of sick days presently available to Union employees.

8. The record also provides no persuasive reason for increasing the number of personal days available to Union employees,

and to the extent that the testimony provided data concerning the availability of such a benefit to employees of comparable employers, the benefits provided to the bargaining unit employees do not appear to be out of line.

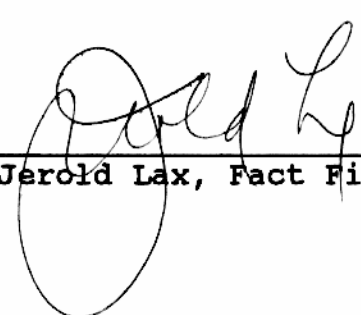
Recommendations

1. It is the recommendation of the undersigned that a step scale be included in the wage structure of those employees covered by the collective bargaining agreement. While the steps proposed by the Union do not appear inappropriate in light of the step scale provided by the Employer to non-union employees, the specific structure of the step scale, and the timing of its implementation, are appropriate subjects for further bargaining between the parties, particularly in light of the fact that the record does not provide specific data as to the precise economic impact upon the parties of implementing a step scale.

2. No provision need be adopted which would authorize the Employer to modify health insurance provisions for Union employees if modifications were made for non-union employees; however, the specific cost cutting proposals to which the parties have agreed should be implemented.

3. No reduction in sick days is recommended, nor is any increase in paid personal leave recommended.

Date: August 6, 1990



Jerold Lax, Fact Finder

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