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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

FACT FINDING OPINION AND AWARD

MONROE COUNTY ROAD COMMISSION

and

UTILITIES WORKERS UNION OF AMERICA

MERC Case No. #D91B-0252

FACT FINDER - C. KEITH GROTY, Ph.D.

Appearances:

Employer

Michael R. Kluck
Michael R. Kluck and Associates
4265 Okemos Road, Okemos, MI 48864

Union

Robert Miller and Thomas Wojtala
840 S. Telegraph Road, Monroe, MI 48161

Hearings Held: October 24, 1991, November 12, 1991

Place: Michigan State Bar Association, 306 Townsend Street, Lansing, MI

INTRODUCTION

The parties to this fact finding operated under a contract covering the period July 1, 1987, through June 30, 1990. In correspondence dated April 25, 1990, the Union notified the Employer that it wished to enter into negotiations for a successor agreement. On May 2, 1990, the Employer responded by naming Michael R. Kluck its chief spokesperson, and requested the Union submit its proposals so that the parties might arrange dates to commence bargaining. An initial negotiating session convened on June 21, 1990, and the parties exchanged their proposals. Subsequent negotiation sessions occurred on June 25, 1990, September 4, 1990, October 5, 1991, October 23, 1990, December 19, 1990, December 26, 1990, January 21, 1991, and January 23, 1991.

On January 28, 1991, the Employer requested the Michigan Employment Relations Commission to appoint a state mediator to enter the negotiations with the parties. State Mediator Robert Whitaker conducted an initial mediation session on February 19, 1991. A second mediation session was held on March 7, 1991.

The Employer filed a petition for fact finding on March 21, 1991. The Michigan Employment Relations Commission presented a proposed list of fact finders on April 22, 1991. For reasons unknown to the fact finder, his appointment was not made until July 25, 1991. On July 30, 1991, the fact finder confirmed to the parties that a fact finding proceeding would convene on September 24, 1991, and reconvene, should it be necessary, October 1, 1991. On September 23, 1991, the Union requested that the fact finding proceedings be postponed to a later date so that they might more fully prepare their case. The parties agreed to submit their proposed exhibits through simultaneous exchange on October 14, 1991. The first fact finding

hearing occurred on October 24, 1991, A subsequent hearing was conducted on November 12, 1991. Since the parties had not participated in negotiations for several months, and during earlier negotiations had not explored all the issues between them, the number of items placed before the fact finder was extensive. In many cases, the positions of the parties were not clearly established before the hearing.

The fact finder apologizes for the delay in submitting his recommendations of settlement. It has been a difficult task to formulate a recommendation upon which the parties might fashion their final settlement considering the numerous and complex items, and the lack of clarity of each party's position on issues.

ISSUES

Management Rights

The Employer proposed the addition of language to cover "demotions" to clarify the issue. The Union opposes any inclusion as unnecessary.

The fact finder recommends the inclusion of the proposed demotion language in a new contract.

Seniority

The Employer is proposing the elimination of language contained in Article X, Section 6, concerning the "paying off" of accrued sick leave at the time seniority is lost due to layoff.

The fact finder recommends that the language contained in the expired contract be left unchanged.

The Employer also suggests a change in Section 7, Subsection J, to provide that persons with non-work related injuries or illness, who are absent for one (1) year, as opposed to the

present language of two (2) years, lose their seniority. Work related injuries would be kept at the same two (2) year absence before loss of seniority.

The fact finder recommends that the loss of seniority occur after two (2) years, whether for sickness or accident, related or unrelated to work.

Discipline

Article XIV contains language that requires that warning slips involving infractions of minor rules be given to the employee within 10 working days of the day of the infraction. The Employer proposed the elimination of this 10 day limitation. A just cause standard is proposed for inclusion so that infractions occurring without the immediate knowledge of the Employer may still be disciplined.

The fact finder recommends that the language of the contract be reformed to remove the 10 day restriction.

The contract contains language requiring disciplinary actions be destroyed three (3) years following the date of the offense. The Employer proposes removal of the requirement that records be destroyed. It would be replaced with language restricting the use of disciplinary records beyond three (3) years, from the date of infraction, to simply historical record without value in establishing justification for future discipline.

The fact finder recommends that the contract be reformed so that records are not destroyed. They should be restricted from consideration in establishing just cause for the imposition of discipline occurring three (3) years or more beyond the date of the initial infraction.

Arbitration

Article XVI contains language concerning the selection of arbitrators using the Michigan Employment Relations Commission or the Federal Mediation and Conciliation Service. The Employer proposes limiting the agency handling the administration of grievance arbitrations to the Federal Mediation and Conciliation Service. The Union objects to changing from the present contract language.

The fact finder recommends that the parties leave their arbitrator selection process so that either the Michigan Employment Relations Commission or Federal Mediation and Conciliation Service are used at the discretion of the parties seeking arbitration. An explicit provision should be added permitting the parties to mutually agree to directly select arbitrators without resort to either of the services.

The parties stipulated at the hearing to reform the language of the contract so that requests for arbitration would be sent by certified mail. This eliminates the reference to registered mail in the contract.

The Employer also proposes that any retroactive payment of wages, as a result of reinstatement, be offset by any unemployment compensation benefit received during the period of retroactive compensation.

The fact finder recommends the inclusion of such language in the contract.

Sick Leave

The Employer proposes that sick leave accumulation, as stated in Article XIX, Section 6, be converted from days to hours. This conversion is for purpose of computerization and does not change the accrual rate. At hearing, the parties agreed to this conversion as long as it was

consistent with the same levels of accumulation as contained in the present agreement.

The Employer proposes that an employee off work on a non-job related injury or illness not accumulate additional sick leave, even during the first 90 days of their absence, as contained in the present contract, unless the employee is also continuing on the payroll. The Union objects to this change. The fact finder recommends the use of the present contract language.

The Union proposes that the employee be paid 100% of his unused sick leave accumulation at the time of retirement, up to the 120 day accumulation cap. This would be an increase from the two-thirds pay out limit of the former contract.

The fact finder recommends that the pay out limit remain unchanged.

Court and Funeral Leave

The Employer proposes that the language of Article XX be changed so that accumulation and use are in hours rather than days. At hearing, the parties stipulated agreement to this proposal.

The Employer also proposes that these provisions be limited to non-probationary employees. The fact finder recommends that the parties agree to this modification.

It is also proposed by the Employer that the present practice of being able to use sick leave to supplement funeral leave be specifically stated in the contract. The fact finder recommends that the language be reformed to incorporate this provision.

The parties have withdrawn any other proposals to change the language of this section.

Patching Crews

The Union proposes new language at Article XXIII to require at least two persons per vehicle for cold patching. Further, under no circumstances shall a single employee be dispatched. The Union argues that these restrictions are necessary for the safety of employees. The Employer believes the present practice of occasionally using single persons is not unsafe.

The fact finder, while recommending no change in the present contract, is concerned that the parties address this issue. Therefore, it is recommended that the parties work together to collect more information on the frequency of single person assignments, safety issues related to patching assignments and the practices of other Road Commissions. If the study shows a need to set new policy or negotiate new contract language, the matter can be resolved from a base of factual information.

Worker's Compensation

The Employer proposes, at Article XXV, that the language "occupational disease or on-the-job injuries thereafter, the Employer shall pay the" be inserted to correct an oversight that occurred in the former contract. It is the Employer's position that this language from previous agreements should be carried forward so that the total language of this section is returned to its former status. At hearing, the parties agreed that the old language should be returned to the contract, and the conversion made from days to hours, consistent with other places in the contract.

Insurances

Article XXVI covers various types of insurance. The Employer proposes that this article be divided into sections related to the specific types of insurance. The fact finder recommends that the parties adopt this form for purposes of completing this section of their contract.

Life Insurance

The Union proposes increasing the life insurance coverage from \$7,500 and \$15,000 for accidental death and dismemberment to the level of two times an employee's annual wage and \$100,000 for accidental death. The fact finder recommends an increase to one time annual wage (hourly rate x 2080 hours) and double for accidental death.

Health Insurance

The Employer proposes the inclusion of a pre-certification requirement to the Blue Cross/Blue Shield Health Insurance Program. This provision would require non-emergency surgeries to be pre-approved and, in some cases, second opinions secured before performance of the services. In addition, the Employer is proposing that the current prescription drug rider be increased from a \$2.00 to \$3.00 co-pay. Further, it is proposed that health insurance premium contributions by the Employer be capped at the effective rate of June 30, 1990, with all additions after that date being assumed by the employee. Finally, the Employer proposes that employees who are on non-work related disability assume the full premium for their Blue Cross/Blue Shield Health Insurance after one month of leave, as opposed as the present six (6) months.

The Union rejects the Employer's proposals to increase the cost of health insurance to employees and to add restrictions by way of pre-certification.

The fact finder recommends that the Employer continue to pick up the increases in health insurance premiums for the life of the agreement. The co-pay on drugs, however, should be raised to \$3.00, and the major medical single and family deductible be raised from \$50, \$100 respectively to \$100, \$200 in the first year of the contract, and \$150, \$300 in the second year. A pre-certification provision should be added.

Dental Insurance

The Union is proposing to increase the annual maximum for dental coverage from \$600 to \$1000. The fact finder recommends no change in the annual maximum for dental insurance.

RETIREMENT

Article XXVII, Section 5

The retirement program is a major dispute between the parties. Through arbitration, under the previous contract, it was determined that the local should be removed from the common retirement pool and treated separately during the life of that contract. The Employer proposes the return of the employees represented by the local to the overall pool, effective with the end of the expired contract, June 30, 1990. The Union opposes any change; particularly since the issue of "overpayment" result of the arbitration award has not been settled.

The fact finder recommends that the employees in this bargaining unit be returned to the larger pool. He is without jurisdiction, however, to settle the matter already arbitrated concerning alleged overpayments to which the Union claims entitlement.

Retiree Medical Benefits

Article XXXVIII provides health insurance coverage for retirees. The Employer proposes that retirees share in the increasing cost of health insurance premiums occurring after January 23, 1991. The Union believes that the Employer should continue to support retire medical insurance and not pass any increased costs to retirees. They believe it is unfair to the retiree to pass on the increasing cost of health insurance.

The fact finder recommends that the Employer continue coverage of increased health insurance premiums for the term of this Contract.

The Union proposes that the Employer pay the health insurance of a person who retires because of a workers compensation disability and who is less than 60 years of age. The Employer rejects this added benefit. The fact finder recommends that this proposal be dropped.

The Union also proposes that the Employer provide retirees with dental and vision coverage beginning at age fifty-five. The fact finder recommends that this proposal be dropped by the Union.

Longevity

Article XXVIII contains language on longevity that has been inoperable since 1983. The Employer proposes that the language be deleted from the contract. The Union argues that while it is inoperative, they would like to retain the language since someday they intend to return longevity into the contract.

The fact finder recommends that this section of the contract be deleted. If, at some later date, the Union and Employer agree to new longevity language, it can be added then.

Change of Command

Article XXXI, Section one, was settled at hearing by a stipulation to the following language:

"Employees shall normally receive their job work orders and any changes therein through their own supervisor. In no case will members of the Board of County Commissioners of the County of Monroe exercise any direct supervisory authority over employees in the bargaining unit."

While this language is contained in the transcript, the fact finder believes that an error of omission has been made and the word "road" should be inserted before the word "commissioners." If this is the understanding of the parties, it is appropriate to correct the stipulation when the contract's completed.

Bidding on Equipment

The Union proposes that any equipment used for year around maintenance be bid. This adds additional vehicles to a process already provided for under the contract. The fact finder recommends this proposal be dropped by the Union.

Bargaining Committees

Article XXXI, Section 3, contains language setting forth the size of the union bargaining committee. The section also states that a representative of the Utility Workers Union of America, AFL-CIO, and a member of the Board of County Road Commissioners will attend bargaining sessions as often as reasonably possible. The Employer proposes deletion of the requirement for a commissioner to attend bargaining sessions.

The Union cites historical reasons when they mistrusted a managing director for the Commission. This inclusion of the language was to correct the problem. The Union argues that the provision should be continued since it has served a useful purpose.

The fact finder does not believe it is a good practice for the parties to command the attendance of members of the other party at the bargaining table. This is particular true when the Commissioners, who have the statutory responsibility of the Employer, seek to remove their mandatory appearance and delegate the process of bargaining to their official representative. Since commissioners serve on only a part time basis, it seems unreasonable to ask them to participate in the bargaining process, and at the same time carry out their other duties. Therefore, the fact finder recommends that the language stipulating the attendance of either an international representative for the Union, or a commissioner for the Employer, be removed from the contract.

Commercial Drivers Licensing

Article XXXI, Section 5, contains language requiring employees to maintain valid motor vehicle operator's licenses. More specifically, it states:

"In the event an employee is deprived of the right to operate a motor vehicle, through the action of the Michigan Secretary of State or by any court, or is refused, such employee shall be transferred to other available work which he can perform and shall be paid the rate of pay for the job classification to which he is transferred."

The Employer is proposing a rewrite of this language to recognize that employees are now required to possess commercial drivers' licenses. But more specifically, the proposed language limits reassignments to work not requiring a license to a period of 90 calendar days.

Should an employee not be re-licensed, certified or endorsed after the ninety day period, their employment terminates.

The Union objects to changing in the language. They argue that it is unnecessary to change the language to recognize commercial drivers' licenses. The term "valid motor vehicle operators license" can be interpreted under the laws of the state to require a commercial driver's license. More specifically, the Union wishes to retain the language of the contract requiring the Employer to indefinitely maintain an employee who has lost his license in a position that does not require a license.

The fact finder believes that the language of the contract should be corrected to accurately reflect the laws of the State of Michigan requiring a commercial drivers' license. It is also recommended that the language be reformed so that any employee who has lost his license must regain it in a six (6) month period, or his employment would terminate.

The Union proposes that the employer assume all costs for licenses, skill tests, endorsements and physical examinations not covered by other provisions of the contract. The actual costs vary for employees depending on other medical expenditures and endorsements. The Employer believes these costs are the employee's responsibility and part of their compensation. The fact finder recommends no change in these provisions.

Maintenance of Standards

Article XXIV contains what is known as a Maintenance of Standards Clause. This language guarantees that conditions in existence at the signing of the agreement are maintained at no less than there existing level, unless improved by any specific provision of the contract. The Employer wishes to set forth the specific conditions of employment within the contract, and

not use a general approach, as contained in the Maintenance of Standards Clause. The Union strongly objects to the removal of a Maintenance of Standards Clause as regressive to the working conditions of the bargaining unit.

The fact finder finds it difficult to recommend a Maintenance of Standards Clause when clearly the parties are unsure of those matters which it covers. The purpose of the contract is to set forth the terms and conditions of the parties where they have reached "a meeting of the minds" during the negotiating process. Under the Maintenance of Standards Clause, there has not been discussion of matters that could be brought forth to be binding upon the parties at some later date. The fact finder, therefore, recommends that the Maintenance of Standards Clause be deleted from the contract.

Duration and Termination

Article XXXVI, Section 1, sets forth the beginning and ending dates of the agreement. The Employer proposes that the commencement date of any new agreement begin with the settlement of a three (3) year agreement. The Union wants a new agreement to be retroactive to the expiration date of the former agreement and begin July 1, 1990. They also seek retroactivity of the terms of any new agreement.

The fact finder recommends that a new three (3) year agreement commence with the settlement of a new contract. Further, that the contract term will be three (3) years. Matters of retroactivity should be settled as a single payment provision.

Classifications

The former contract includes classifications of Highway Worker X-Temporary employees and Highway Worker XI-Temporary employee (laborer). The Employer wishes these two classifications removed from the contract since they are not represented by the Union. Article X contains language that places limits on the number of temporaries to be used by the Employer to do bargaining unit work. However, these temporary employees are not members of the bargaining unit for purposes of seniority or the paying of dues. Neither does the organization represent them. Therefore, the Employer believes it inappropriate to have these classifications as part of the labor agreement.

The Union, while acknowledging that temporary employees are not a part of their bargaining unit, wishes the language to remain within the contract.

The fact finder recommends that references to classifications not a part of this bargaining unit be removed from the contract to eliminate any confusion over the representational status of temporary employees. Article X of the contract is sufficient language to protect the bargaining unit from the misuse of temporary employees.

Weighmaster Position

The Union proposes that the Weighmaster position be reinstated and filled by bidding. The Employer doesn't believe the Weighmaster position needs to be filled. The fact finder finds no reason to recommend that the Employer fill this position.

Rest Area Attendant

The Union proposes the addition of the classification Rest Area Attendant. Presently, an individual assigned as a Rest Area Attendant is classified as a Highway Worker. The proposal would not change the level that is XI. The Employer does not wish to create a specific classification for Rest Area Attendant. The fact finder recommends that this issues be dropped by the Union.

Classification Use Restriction

The Union proposes that language be added to restrict classifications to use of pay only and not layoffs and reductions. The fact finder can not recommend this proposal or alternative language to meet the proposal of the Union. The matter would require a change in many other areas of the contract, including restrictions on the Employer's rights to establish and classify jobs and determine levels of staffing.

Time Limit on Temporary Transfers

The Union proposes a time limit be placed on temporary transfers but offers no specific duration. The fact finder recommends this issue be dropped by the Union.

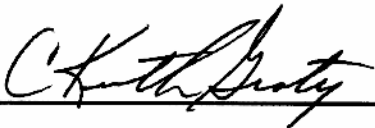
Wages

The Union proposes wage increases of five percent (5%) per year, starting with the expiration of the former contract. They also want full retroactivity from the date of settlement to July 1, 1990. The Employer has offered two percent (2%) per year beginning with the settlement of a three (3) year contract.

The fact finder recommends:

- With the settlement date of a new contract, each employee receive a cash amount equal to five percent (5%) of their June 30, 1990, hourly rate of pay, or the hiring rate if hired since June 30, 1990, multiplied by the regular hours worked from July 1, 1990, through April 1, 1992.
- Each employee's June 30, 1990, rate of pay, or the hiring rate if hired since June 30, 1990, be increased by seven percent (7%). This rate should be applied for the first year of a new agreement.
- Each employee on the payroll at the end of the first year of the contract (in 1993) receive a three percent (3%) increase in base rate.
- Each employee on the payroll at the end of the second year of the contract (in 1994) receive a 2.5% increase in base rate.

The fact finder recommends that all other issues not previously agreed to by the parties be dropped.



C. Keith Groty, Ph.D. Fact Finder

March 25, 1992

Date