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REPORT OF FACT FINDER

IN THE MATTER OF FACT FINDING BETWEEN:

THE CITY OF MUSKEGON,

-and-

LOCAL 586, S.E.I.U.

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MERC CASE NUMBER:

G82-J-1781

SUBJECT:

Wages for seasonal employees for 1983.

ISSUE:

Was the offer implemented by the City reducing the wages of seasonal employees a reasonable wage under all circumstances?

APPEARANCES:

City of Muskegon

Michael M. Knowlton, Attorney

Union

Michael L. Bailey, Union Representative

John R. Houle

Richard Snyder

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*Muskegon, City of*

#### POSITIONS OF THE PARTIES:

Position of the Union: It is the Union's position that the seasonal laborers wage was unreasonably unfairly reduced by the City. The Union was willing to abide by a wage freeze, but not a reduction.

Position of the City: It is the City's contention that the implementation of its last offer for seasonal employees was reasonable, and further that MERC had rejected the Union's contention that the unilateral implementation was an unfair labor practice. It is the City's position that the entire question of the wage for seasonal employees is moot.

#### BACKGROUND:

The City of Muskegon and Local 586 had been unable to reach agreement on a contract for 1983. The parties underwent mediation. At the conclusion of mediation, the Union agreed to present the City's final offer to the membership for ratification. The document submitted to the membership was entitled "a tentative agreement", and after failure of ratification, the City of Muskegon implemented the wage offer on seasonal employees at \$4.00 per hour and \$4.50 per hour for seasonal maintenance employees.

The wages paid seasonal employees in 1982 were \$5.66 per hour for seasonal laborers with an increase to \$5.76 per hour after six months. The seasonal maintenance workers receive \$6.78 per hour and an increase to \$6.96 per hour after six months. The number of seasonal employees was estimated at 27 for 1983, with general permanent laborers numbering 83. The permanent employees have accepted a wage freeze for 1983.

The seasonal employees in Muskegon are employed on an average of nine to ten months. They are employed primarily in the clean up and maintenance of grounds at city parks and cemeteries. The seasonal maintenance persons are able to use heavy city equipment in this work. All seasonal employees were members of the bargaining unit and essentially did the same work as permanent employees.

The permanent employees had refused to work any overtime in order to increase the pressure on the employer during negotiations. Despite mediation, the tentative agreement taken back to the employees was rejected, and the employer implemented that offer. The unilateral implementation was taken to MERC as an unfair labor charge, and the employer's action was upheld by Administrative Law Judge Bixler. The wages for the seasonal employees was submitted to fact finding as well. The fact finding hearing was held on November 21st, 1983.

The City has taken the position that the parties had stipulated that a ruling from MERC would moot the issue of fact finding. The Union disagrees and submitted a brief to the Fact Finder.

#### DISCUSSION AND FINDINGS OF FACT:

The Fact Finder did discuss with the parties at hearing the question of the effect of the MERC decision on the City's implementation of wage rates for seasonal laborers. The employer's position at hearing was clear that any MERC decision would render the fact finding moot. The Union's position was, according to the Fact Finder's notes at hearing, that the possibility existed that the MERC decision would moot the fact finding. No precise stipulation was had on the matter that a MERC decision denying the Union's charges would render the fact finding irrelevant.

Administrative Law Judge Bixler's Decision and Recommended Order found that the unilateral implementation of the last offer of the employer was neither a breach of contract, nor a failure to bargain. The unfair labor practice charge was denied. However, the Decision and Recommended Order does not reach the question of the wage itself, and the amount paid to the seasonal laborers. Therefore, in the opinion of this Fact Finder, the decision did not moot the fact finding issue as the parties suspected that it might.

The only evidence submitted to the Fact Finder in relation to the wages paid the seasonal employees for parks and cemeteries was information on the City budget and some information as to the payment made to comparable laborers in six other communities whose population ranged from 34,000 to 150,000.

It was readily apparent from the budget information submitted by the City that it had overspent its budget for salaries and wages for temporary employees in the parks department for the three years proceeding 1983. The testimony was not clear as to how such a "cost overrun" is made up in finally balancing the budget. It appeared that some small surplus was shown by the City of Muskegon on its total budget at each year's end. Further financial information was not submitted to the Fact Finder and definitive conclusions are not possible under the circumstances.

Similarly, the so-called comparables submitted by the Union provide the Fact Finder with a paucity of necessary information from which solid facts can be deduced. For example, the information submitted concerning Flint is not comparable since it refers to skilled labor and the wage scale is much higher. The wage scales submitted run from minimum wage to \$6.80 per hour. Most of the evidence submitted has an average wage scale of \$5.00 per hour. Whether these

communities and the work done by the laborers is genuinely comparable is difficult for the Fact Finder to determine.

Much of the dispute appeared to center upon the fact that the seasonal laborers are really employed for almost the full year. The original concept was for employment of three to four months, and had grown to an eight or nine month term. There had been a reduction in force of permanent employees as well as seasonal in an effort by the City to meet budgetary constraints.

A reduction in wages imposed on the seasonal employees was quite substantial, amounting to a 29.3 percent decrease. The permanent employees accepted a wage freeze and not a reduction. The Union's position was that the seasonal employees should be treated no differently since they are employed for the greater part of the year.

The city budget for 1983 reduced the funds available in the parks budget and allocated only \$45,000 for seasonal laborers for 1983. The \$4.00 per hour wage would allow the City to maintain those budget figures. City revenues had remained static over the previous three years and expenditures had increased from five to ten percent over the same period of time. The budgetary surplus, or balance, was largely achieved through attrition and that appeared to no longer be a possibility. The other factor in consideration of the City's financial position was that the department of parks would actually come in under budget in 1983 because the labor dispute had meant that seasonal laborers started later than usual and no wages had been paid.

The Fact Finder is somewhat reluctant to fully accept all of the City's budget information, since accounts of the previous years submitted by the City show that much greater amounts were spent in this area than had been budgeted and the City still remained fiscally sound. Similarly, the comparable wages

shown to be paid other seasonal employees in other communities cannot really be used as a basis for determination of wage rates in Muskegon without much more information. Based on the information submitted which can be verified, and for which there was additional supportive testimony, the Fact Finder finds:

1. That permanent employees did not receive any reduction in wages;
2. Seasonal employees, doing the same work, suffered a thirty percent reduction in wages;
3. City revenues were not reduced as a result of a failure of state aid as expected;
4. That a reduction in the numbers of seasonal employees had occurred;
5. That a reduction in the number of employees and a late start in the 1983 season could largely make up for the reduction in the parks department budget;
6. That the wage rate paid seasonal laborers in the City of Muskegon has been reduced to the lowest end of the wage scale of all communities submitted.

Based on the above facts, it is the Fact Finder's decision that the 1983 wage scale for seasonal and seasonal maintenance employees in the City of Muskegon parks department is lower than that required by the City's financial situation. A wage scale of \$4.50 per hour for the seasonal employee and \$5.00 per hour for the seasonal maintenance employee would appear to be a wage scale more in keeping with the facts. The reduction in the parks department's budget is appropriately reflected in a reduction in wages for seasonal employees to a greater degree than permanent employees. The extent of the cut, however, appears to the Fact Finder to be greater than that necessitated by the facts.

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Sandra G. Silver

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Dated: January 19th, 1984