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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

In the matter of: 50

NEWAYGO COUNTY COMMUNITY
MENTAL HEALTH BOARD,
EMPLOYER, DETROIT OFFICE

Case No. G 88 J-821

Fact Finder: Jerold Lax

Employer,

and

TEAMSTERS STATE, COUNTY,
AND MUNICIPAL WORKERS
LOCAL 214,

Union.

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State UniversityAppearances:

For the Union - F. W. Bennett, Business Representative

For the Employer - Bonnie G. Toskey, Esq.

FACT FINDER'S REPORTIntroduction

The Union became the collective bargaining representative of all full-time and regular part-time professional employees of the Newaygo County Community Mental Health Program in June, 1987, the unit in question consisting of some 16 clinical employees of the program. The program also employs 3 administrators, 3 supervisors, and 11 secretarial employees. An initial collective bargaining agreement was negotiated covering the calendar year 1988. In the fall of 1988, some negotiations occurred with regard to a proposed collective bargaining agreement for subsequent years, but the parties were unable to reach agreement. Mediation occurred in February, 1989, but the parties continued to be unable to agree upon the terms of the new contract. Hence, fact finding was requested in March, 1989.

Newaygo County Community Mental Health Board

An initial fact finding hearing was held on June 23, 1989, and a second hearing was held on January 23, 1990, that being the first date upon which the parties could mutually agree for continuation of the hearing. Post-hearing briefs were requested by the fact finder and were submitted by the parties approximately one month after the final hearing date.

The issues concerning which the parties disagreed were wages, number of paid holidays, amount of paid leave, and availability of bereavement leave. With regard to wages, the Employer proposed a 4% across-the-board increase for 1989. The Union requested a 4% increase for 1989 and also a 5.6% bonus for each employee equivalent to the average merit performance adjustment which the Employer had made available to non-union employees during calendar year 1988. For 1990, each party proposed that a wage reopener be available. With regard to holidays, the Union proposed the addition of two holidays to the eight holidays currently available to employees. The Employer proposed that one holiday be added, but that paid leave be reduced by one day. With regard to paid leave, the Union proposed that all employees be permitted the amount of leave available under the first contract only to those employees who had been hired prior to December 1, 1987, the contract providing a lesser number of leave days for employees hired subsequent to that date. The Employer proposed deletion of a leave day for employees hired before December 1, 1987, and the addition of one holiday for all employees. The Union requested three days bereavement leave over and above other leave time, and the Employer, while rejecting this proposal, made no alternative proposal concerning bereavement leave.

While some evidence was presented at the hearings by each of the parties concerning all of the above issues, the principal focus of attention was on the question of wages, and in particular on the question of whether Union employees should receive some form of merit performance adjustment as had been made consistently available to all employees from 1984 through 1987, and which had continued to be available to non-union employees in 1988. It was the contention of the Employer that the Union had achieved a number of other advantages through the collective bargaining process, including a grievance procedure culminating in binding arbitration, a seniority system, and a just cause standard for discipline and discharge. As a result of these protections, the Employer contended that the Union had no reason to anticipate that its wages would necessarily follow the same formula as was applied to non-union employees.

Findings

1. Some form of merit performance adjustment had been available to all employees from 1984 through 1987, and a merit performance adjustment continued to be afforded to non-union employees in 1988.

2. Although the Employer has provided a merit performance adjustment annually since 1984, the funds for this adjustment are not generally included in the Employer's budget, but have resulted from staff vacancies and certain income from in-patient care received during the year; hence, while funds have historically been available in recent years for a merit performance adjustment, no employee appears guaranteed that such an adjustment to salary will be available in any given year.

3. While certain Employer expenses such as insurance premiums have increased sharply during the 1989-1990 period, the Employer has not contended that it would be unable to pay salary increases for Union employees, even if some form of merit performance adjustment were determined to be appropriate for the 1989 period; the relevant budgets of the Employer specifically took into account the possibility of a 4% wage increase, and State funds, as well as internal budget adjustments, could make it possible to pay some increase beyond 4%.

4. Although ability to pay does not appear to be a significant barrier to providing a salary increase of 4% or more for the 1989 period, the parties have produced no conclusive evidence to demonstrate that an increase limited to 4% would place the members of the bargaining unit at a wage disadvantage as compared to employees in either public or private agencies which might compete with Newaygo County for the services of the employees in question. While the Union disputes the use of certain of the Employer's alleged comparables, such as those involving private agencies, the Union has not provided external comparables of its own which would necessarily justify a wage increase for 1989 in excess of 4%.

5. Although external comparables do not dictate a wage increase in excess of 4%, it is appropriate to place some weight, as the Union does, on the fact that other employees of the Employer have traditionally been granted a merit performance adjustment. While the Employer correctly points out that the Union has achieved certain protections through the bargaining process that may not be available to non-unionized employees, and while the Employer may

also be correct in asserting that the Union cannot necessarily anticipate that compensation for its bargaining unit members will follow precisely the formula used for non-union employees, it is nonetheless appropriate to take into account wage enhancements available to other employees of the same Employer. The non-monetary protections achieved by the Union cannot readily be equated with the wage enhancements provided to the non-union employees. It may, however, not be necessary to utilize precisely the same approach in compensating the Union employees as is used to compensate the remainder of the employees.

6. Although the evidence does not provide a conclusive demonstration that the bargaining unit employees differ significantly from comparable employees in terms of wages, the evidence does appear to make it clear that with regard to holidays and bereavement leave, the employees in the present bargaining unit have benefits somewhat below those available to employees in comparable units. Further, no apparent justification has been offered as to why employees hired prior to December 1, 1987 should be accorded a more generous paid leave schedule than employees hired subsequent to that date.

Recommendations

1. It is the recommendation of the undersigned that the bargaining unit employees be granted a 6% across-the-board wage increase for 1989, retroactive to January 1, 1989. This figure is higher than the increase offered by the Employer, but utilizes a uniform additional increase rather than attempting to take into

account a figure equivalent in some way to the average of the varying bonus amounts which were paid to non-union employees in 1988.

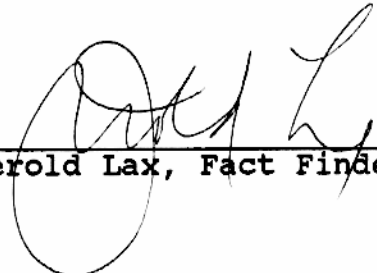
2. Wages for 1990 should be subject to further negotiation by the parties, with the parties free to consider the possibility of including a provision to the effect that if funds are available for merit bonuses, they should be allocated in part to Union employees on a formula to be agreed upon by the parties. Further, it is recommended that an increase of no less than 4% be immediately instituted, retroactive to January 1, 1990, subject to such additional amount, if any, as shall be agreed upon by the parties during the course of negotiations.

3. With regard to paid leave, the differential between leave awarded to employees hired before December 1, 1987, and employees hired thereafter should be eliminated, with all employees being entitled to the amount of leave provided in the 1988 contract for those employees hired on or before December 1, 1987.

4. Employees should be granted 3 days bereavement leave with pay, such leave not to be deducted from the remainder of the paid leave available to employees.

5. Two additional paid holidays should be made available, chosen by the Employer from among the following: employee's birthday, employee's anniversary day, Columbus Day, President's Day, one-half additional day at Christmas Eve, or one-half additional day at New Year's Eve.

Dated: May 30, 1990



Jerold Lax, Fact Finder

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