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DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

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MERC Case No. G82 E-1189

In the Matter of Fact Finding)
between)
VILLAGE OF NEWBERRY)
and)
MICHIGAN AFSCME Council #25)

MERC Case No. G82 E-1189

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

The Michigan Employment Relations Commission on its own Motion, appointed the undersigned as its Fact Finder and Agent on December 1, 1983, to conduct a Fact Finding Hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's Regulations, and to issue a report with recommendations with respect to the matters in disagreement between these parties.

Fact Finder and Agent: William R. Ralls,
appointed under the procedures of the Michigan
Employment Relations Commission.

Representing the Parties:

AFSCME Council #25
Dale D. Latta, Staff
Coordinator
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Village of Newberry
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Dated: February 20, 1984

Newberry, Village of

Introduction:

The Union (Michigan AFSCME Council #25) filed a Petition For Fact Finding on October 5, 1983. At that time, the Union suggested that the parties - the Union and the Village of Newberry - had resolved all issues on a unilaterally implemented Impasse Collective Bargaining Agreement with the exception of one: the terminal step of the Grievance Procedure. The Union maintained that it had offered a compromise proposal on July 25, 1983, which its Employer had ignored along with refusing to set forth dates for continuing negotiation. The Union representative continued by stating that as of October 5, 1983, the Employer's position of "no arbitration" remained unchanged. The Union suggested that a Fact Finder's hearing and report would be beneficial in bringing about a resolution to a time-consuming and expensive dispute.

The Village of Newberry filed an Answer on October 20, 1983 admitting that the terminal step of the Grievance Procedure was an open issue between the parties. However, Village representatives emphatically denied Union allegations that it had ignored a compromise proposal dated July 25, 1983. Instead, the Village stated affirmatively that the proposal had been countered, negotiated upon and mediated on numerous occasions. In addition, the Village denied that a Fact Finding hearing and written report would be beneficial in bringing about a resolution of the dispute.

Subsequent to the above proceedings, the undersigned was appointed by the Michigan Employment Relations Commission as a Fact Finder to this case on December 1, 1983.

Background

Initially, the parties had entered into negotiations sometime in 1982. The negotiations were prolonged and resulted in an impasse situation. The parties had reached a point in their negotiations where they were unable to reach full agreement after bargaining in good faith about mandatory subjects.

The Village of Newberry then put into effect what are commonly referred to as work rules or a unilaterally implemented agreement. The Union objected to some terms of the implemented agreement and petitioned the Village for additional negotiating sessions at which they voiced their dissatisfaction. During these sessions, the respective parties bargained and settled on all issues, except the issue as to what would be the terminal step of the Grievance Procedure under the new contract.

The employer, Village of Newberry, proposing that the Grievance Procedure terminate at the Village Council level with its decision on any grievance considered final and binding. The Village was adamant in refusing arbitration, but conceded that in discharge and suspension cases, arbitration would be available.

The Union reiterated its position that final binding arbitration should be the final step of the Grievance Procedure as it was set forth in previous collective bargaining agreements between the parties.

The parties failed to settle the grievance issue. The Union filed a Petition for Fact Finding. The Hearing was held on January 13, 1984, with the issue compounded by the submission of a modified

proposal of the Union. In an effort to settle the dispute, the Union introduced a proposal providing a modification of traditional arbitration procedures. In essence, the Union suggested that the Grievance Procedure include a two-step appeal. If the Village Council's decision was not favorable, a party's grievance would then be introduced to a Citizen's Review Committee. The Committee would be structured to include a representative of the Union, a representative of the Village (preferably a taxpayer and not an employee or employer), and a disinterested third party. The grievance would be presented to this Committee for review and recommendation. The Union pointed out that the presence of this Committee in the Grievance Procedure would not foreclose the possibility of going to Arbitration on behalf of the Union. The Union's proposal contained a unique and somewhat appealing measurement of costs in the event a party chose to disregard the Committee's recommendations and proceed to Arbitration. If the Union received from the Arbitrator the same or less than what had been recommended by the Review Committee, then the Union would have to pay the difference in costs. In short, it was a catch-all to encourage parties to settle with the recommendations offered by the Review committee or run the risk of paying for Arbitration in the event a particular issue was not decided in its favor.

Fact Finder Recommendations

After careful consideration of the parties' proposals, the Fact Finder is of the opinion that machinery for the resolution of conflicts arising out of employer-employee relationships is an

absolute necessity. A solid, thoroughly defined grievance procedure is, of course, more than a device for "talking things out." It is a formal procedure for settlement of any employee work-related problem. It is indispensable to successful personnel administration. A lack of satisfactory grievance procedures negotiated by all parties does not mean the grievance will disappear. In fact, the grievance may fester and eventually cause serious irreparable internal problems.

As Fact Finder, I am faced with the task of recommending the establishment of a grievance procedure which is rigid enough to eliminate any doubts about who does what at this or the succeeding stage, but flexible enough to prevent the participants from being captured or controlled by the process.

Procedures to appeal or complain are a part of everyday life. There is a need for a substitute for strikes in our labor force. If good grievance procedures are not established, a substitute has not been created.

This discussion leads more specifically to the issue at hand. The parties do agree that a grievance procedure is a necessary provision in their collective bargaining agreement. Their disagreement lies as to what should be the terminal step of the Grievance Procedure.

The Village argues that the past availability of arbitration as a final step in the Grievance Procedure had become subject to abuse by the Union. Village representatives believed the Union treated the availability of Arbitration under previous collective bargaining agreements as a toy rather than as a legitimate dispute resolution device. To avoid abuse of the system the Village decided Arbitration

was not in their best interest.

The Village expressed legitimate concerns about the economic consequences of Arbitration for a small 18-unit local in a Village of the Upper Peninsula of Michigan. Newberry is experiencing a high level of unemployment and serious financial difficulties. The Village felt the economic burdens of Arbitration could not be met by their Treasury. They did propose that Arbitration would be more palatable if the Union would agree to either:

- assume the total cost of Arbitration, or alternatively,
- deposit an amount equal to the sum paid by the Village for Arbitration, in the Village Equipment Fund.

The Union declined the proposal. Although the Village presented important and very real economic concerns to which I sympathize, this Fact Finder nonetheless is compelled to recommend that the Terminal Step of the Grievance Procedure be final and binding arbitration. Grievance procedures resulting in binding arbitration guarantee a law-abiding determination of what might otherwise be a thorny problem. Binding arbitration provides an assured resolution to an outstanding dispute between the parties. It is a safety valve which will ensure high employee morale since an employee will know that if he/she ever has a grievance that cannot be resolved "in house", the matter will then proceed to independent arbitration. This morale factor is especially significant in a smaller community like Newberry, where a single personnel problem may create a ripple effect throughout the work force.

This Fact Finder does not believe that the Union's Modified

Proposal, which included a Citizen's Review Committee as a step preceeding Arbitration, to be in the best interest of preserving economy and efficiency. In fact, the Village had indicated that this modification was more objectionable to it than Binding Arbitration. In an effort to accomodate both parties, the Fact Finder is of the opinion that a Citizen's Review Committee's recommendations would not be binding and in the event they were not successful in resolving the dispute, there would still be Binding Arbitration. It seems a waste of valuable time and money for both parties to the dispute. In a community where financial problems are straining a tight budget, the feasibility of this interim mediation device cannot be supported.

Consequently, the Fact Finder recommends that Article 8-Grievance Procedure include as its terminal step, final and binding arbitration in cases where a dispute cannot be resolved between the parties. In addition, the Fact Finder would like to respond to criticisms that the availability of arbitration may have a chilling or deterrent effect on the parties' incentive to bargain in a good faith effort to resolve disputes prior to arbitration. If either party, the argument goes, anticipates it will get more from the arbitration than through negotiations, it will have an incentive to avoid the trade-offs and compromises of good faith bargaining and cling to excessive or unrealistic positions in anticipation of tilting the Arbitration outcome in its favor.

A method I would recommend to increase the parties' financial fear of over-using or abusing the process would be to require the loser to assume all the costs/fees of Arbitration. More specifically, I visualize a system where the party who decides to proceed to

Arbitration bear the financial risk in the event the Arbitrator's award is the same or less than what was offered during the final stage of negotiations between the parties. The Arbitrator would have the authority to assess one or the other of the parties his entire fee or divide it between the parties in such proportion as he/she determined when the decision is such that the losing party cannot be readily identified. In making such a determination the Arbitrator could be guided by the factors which ordinarily guide a Judge of a Court of Equity in taxing court costs, namely, the relative fault of the parties on the merits of the dispute, the fault, if any, of failure to reach a settlement, the reasonableness of the charge and the remedy assessed, etc. This requirement should increase the parties' incentives to reach agreement, especially in the Village of Newberry where the costs of Arbitration can pose a financial problem for the parties.

Arbitrators are uniquely qualified to detect danger signals emanating from a poor labor-management relationship. The Arbitrator, while serving as the Terminal Step in the Grievance Procedure for the Village of Newberry and its employees, can make a reasoned and impartial judgment. He/she is the key to finding an acceptable means for resolving disputes under a collective bargaining agreement.

Grievance arbitration is a system under which all the parties concerned will gain. Under it, disputes are conclusively terminated. It has succeeded in all areas of our nation labor force because its utilization provides crucial hallmarks of acceptability: justice, economy, speed and efficiency.

In summary, the cumulative effect of a grievance procedure

which incorporates final and binding Arbitration as the Terminal Step is substantial. It provides:

1. An employee with a means of airing a dispute without fear of reprisal;
2. Knowledge by the employee that his position is supported by an organizational entity (the Union);
3. Reliance of a Final Step to be decided by a neutral independent third party; and
4. Assurance on the part of the employer that the absence of grievances indicates a climate of general satisfaction or one in which the problems are being solved in a mutually satisfactory and just manner.

Finally, the Fact Finder recognizes that the handling of grievances can be, and often is, an emotional issue. It is an issue that the parties can best resolve if the grievance procedure leads to final and binding arbitration.

Summary

The Fact Finder sought to make recommendations on the above issue which he considers to be fair and equitable for both parties. Careful attention was given to testimony and exhibits of the parties. The Fact Finder strove to find the common ground upon which the parties could avoid disputes and impasses in the future.

Thank you for the opportunity to be of assistance in resolving this matter.



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Dated: February 20, 1984