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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the matter of:

CITY OF NILES
(Board of Public Works)

and

DISTRICT 50, ALLIED AND TECHNICAL WORKERS, LOCAL 13729 (CASE NO. L72-C-110)

Daniel Kruger

HEARINGS OFFICER'S FACT FINDING REPORT

APPEARANCES:

For the City: S.A. Brett, Manager, Board of Public Works
V.M. Gutschenritter, Auditor
J.G. Parnell, Member, Board of Public Works
A. Bowman, Mayor Protem; Chairman of Finance Committee

For the Union: Robert L. Gleissner, International Representative
Donald Mell, President
William Wogoman, Maintenance-Foreman
Frank Mattiford
Thomas Dawson

This is a fact finding report under the provisions of Section 25 of Act 176 of the Public Acts of 1939, as amended, which provides in part as follows:

"Whenever in the course of mediation under Section 7 of Act No. 336 of the Public Acts of 1947, being Section 423, 207 of the Compiled Laws of 1948, it shall become apparent to the Board that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the Board may make written findings, with respect to the matters in disagreement. Such findings shall not be binding upon the parties but shall be made public . . ."

In accordance with the Commission's Rules and Regulations relating to fact finding, the undersigned Hearings Officer was designated to conduct a

Niles; City of

hearing in the matter and to issue a report in accordance with Employment Relations Commission General Rules and Regulations 35. Briefly, this Rule states that the Hearings Officer will issue a report with recommendations with respect to the issues in dispute.

The Issues

In its petition for Fact Finding, the Union declared that the unresolved issues are:

- (1) changes in job description ✓
- (2) change of work hours
- (3) inclement weather provision
- (4) the question of what days holidays should be observed on
- (5) automatic wage progression within classification
- (6) one additional holiday
- (7) wages.

The Union Local 13729, International Union of District 50, Allied and Technical Workers through its International Representative, Robert L. Gleissner, sent a letter to the Michigan Employment Relations Commission dated August 7, 1972 requesting fact finding. It noted that the City and the Union had met together and separately for the last 120 days with a state mediator present. The unresolved issues noted above were cited. The Commission concluded that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known. Accordingly, the Commission appointed Daniel H. Kruger, as its Hearings Officer and Agent.

The hearing was held on Thursday, September 14, 1972 at the City Hall in Niles, Michigan. Additional materials on the increased cost of employee life

insurance, hospitalization and surgical insurance and the cost of a wage increase were submitted, at the request of the Fact Finder, by the Board of Public Works in a letter dated September 20, 1972.

Discussion of Unresolved Issues and Recommendations

At the hearing, the Fact Finder requested the parties to review the unresolved issues. Mr. Gleissner, International Representative, stated the following issues were still unresolved:

- (1) all job descriptions covering members of the bargaining unit (23 members are in the local) were to be negotiated
- (2) holidays - holidays which fell on Saturday would be observed on Friday and holidays which fell on Sunday will be observed on Monday
- (3) Automatic progression - wages would be increased incrementally based on a test or performance or both.
- (4) one personal day - the Union seeks one personal day a year
- (5) the change of work hours was mutually agreed as not being an issue
- (6) inclement weather provision - this parties mutually agreed to drop this issue
- (7) wages - the Union is seeking a 30 cents an hour across the board increase.

Mr. S.A. Brett, Manager, Board of Public Works, acknowledged that the issues as outlined by Mr. Gleissner were correct. Below is a discussion of the issues and recommendations.

Changes in Job Descriptions

The Union seeks to negotiate job descriptions for all jobs in the bargaining unit. All jobs do not have job descriptions. It was pointed out by Mr. Brett that there are some job descriptions which have been developed by the Michigan Municipal League. The job descriptions while not specifically designed for the jobs in the Board of Public Works do have general applicability. Mr.

Brett stated that he is opposed to negotiated job descriptions because the Board of Public Works operates both the electric utility and the waterworks and it needs flexibility in work assignments. He also stated that the Board tries to hire "well rounded employees" who can be moved about as the work loads demand. Mr. Gleissner stated and this was confirmed by the members of the bargaining unit present that workers are for the most part assigned to their units, e.g. utility and waterworks. There have, however, been occasions where workers were assigned to do janitorial work such as sweeping floors and washing windows, but this is only done very infrequently.

Recommendation

The Fact Finder recommends that the Board of Public Works develop job descriptions for each classification in the bargaining unit, that it review carefully these job descriptions individually with the employees carrying out these jobs. To provide the flexibility that the Board needs given its size, the job description could contain a statement to the effect that the Board will make every effort to assign the employees to work in their classifications, but in unusual circumstances it may be necessary to assign temporarily workers to other work assignments, provided they are qualified to perform such assignments.

Observance of Holidays

The Union seeks to have the holidays which fall on Saturday observed on Friday and the holidays which fall on Sunday to be observed on Monday. The industries in the area have this practice. There appears to be general agreement that this would be desirable. Mr. Brett said that this could be worked out before 1974, the next time the situation will arise.

Recommendation

The Fact Finder strongly recommends that the Manager of the Board of Public

Works discuss the Union's demand with the City Council within the next two months so that appropriate legislative action can be taken to implement it. It is the Fact Finder's understanding that the Council has to act on this matter. The Manager should take the initiative in getting the Council to act favorably to demonstrate "good faith bargaining."

Automatic Wage Progression within Classification

This issue is tied in with the establishment of an apprenticeship program. There is general agreement by the parties that an apprenticeship program would be desirable. At the hearing it was stated that the parties would be agreeable to negotiate such a program.

Mr. Brett stated that he was opposed to automatic wage progression because all the employees would move eventually to the higher wage without demonstrating their proficiency or capability to perform the job duties at the higher classification. Mr. Gleissner replied that the workers would not move automatically, but would either have to pass a test or demonstrate their performance for the higher classification before receiving the wage increment for the higher classification. It thus seemed to the Fact Finder that there was misunderstanding about the nature of this demand. The parties apparently misused the word "automatic" in their discussions.

Recommendation

The Fact Finder strongly recommends that the parties negotiate an apprenticeship program which will meet their needs. There appears to be consensus by the parties for an apprenticeship program.

The Fact Finder further recommends that the parties negotiate the establishment of a proficiency test combining both written and performance which employees would take as a precondition or prerequisite for moving to a higher

classification. Upon successful completion of the test, the employee would be classified for the new job classification and would be paid the corresponding wage increase. Foremen should be available for counseling with employees prior to taking the test to acquaint him with the subject matter areas to be tested and afterwards in discussing how well he did on the test. If the employee did not do well on a certain topic on the test, the foremen should explain what he did wrong and what additional information or procedure must be mastered.

One Personal Day a Year

The Union seeks one personal day to take care of personal business. The City is opposed to this demand because it already provides 9 holidays, three weeks of sick leave after one year with an accumulation up to 29 weeks and a vacation schedule as follows:

1 year	-	1 week
2 years	-	2 weeks
8 years	-	3 weeks
18 years	-	4 weeks
25 years	-	5 weeks

Moreover, current City policy permits that one week of vacation must be taken at one time, but workers can schedule other vacation days at their convenience. They, however, must give advance notice for scheduling purposes if they wish to take a vacation day.

One personal day for 23 employees would cost the City \$851.12 (calculated as follows \$4.63 average hourly rate x 8 hours x 23).

Recommendation

The Fact Finder does not recommend a personal day. The unique policy for vacation scheduling permits the employee to take a day at a time providing he gives advance notice that he wants a certain day off.

Wage Increases

The Union is seeking a 30 cents an hour across-the-board increase. Ac-

cording to Mr. Victor Gutschenritter, Auditor, Board of Public Works, this increase would cost the City \$14,352 in additional wages for one year. (This is calculated as follows: $.30 \times 2,080 \text{ hours} = \$624 \text{ per man per year} \times 23 \text{ men.}$) When additional costs for workmen's compensation insurance, pension and social security are included, the total cost of this 30 cents an hour increase would be \$16,299 a year.

The Board reported that it does not have the money to finance any wage increase. It stated that since Niles is a Fourth Class City that once the budget is approved and it goes past May 31, there can be no changes in the budget for the next fiscal year. The budget has already been approved and did not include any raises for any of the City's employees. The money cannot be now included to provide for raises since the deadline for changes in the budget has passed.

The Fact Finder discussed this particular situation as described by the City with the Office of the Attorney General of Michigan. One of the staff members discussed the appropriate sections of the Fourth Class Cities Act of 1895 (Public Act 1895 No. 215 Chapter XXX Section 14) and sent the Fact Finder a copy of Section 14 (Fourth Class Cities Act of 1895, Compiled Laws of 1948, Chapter 110, Section 14).

This Section (110 .14) is entitled "Raising of moneys after passage of appropriation bill" and the first sentence is quoted below:

After the passage of the annual appropriation bill, no further sums shall be used, raised or appropriated; nor shall any further liability be incurred for any purpose, to be paid from any general fund or street district fund, during the fiscal year for which the appropriation was made, unless the proposition to make the appropriation shall be sanctioned by a 2/3 vote of the electors voting upon the proposition at the next annual city election or at any special election called for that purpose. . . .

It thus seems from a reading of this Section that the City cannot now use, raise or appropriate any further sums once the annual appropriation bill is

passed.

The history of negotiations as presented by Mr. Brett in a written statement made at the hearing explains why no money for any raises was included in the budget of the Board of Public Works.

Initially, the Union's total economic package made on April 3, 1972 amounted to an increase of 20.23 percent. Meetings of the parties took place on April 18, April 27 and May 2. Another meeting was held on May 3 and the parties met on May 18 with a state mediator. On May 22 the Union revised its demand to a 33 cents an hour across-the-board increase plus an added holiday. This demand amounted to a little over 7.5 percent on wages and fringe benefits.

On May 23, the parties again met and the Board offered a 5 percent or 5.5 percent increase. A 5 percent increase amounted to 23 cents and a 5.5 percent increase 25 cents an hour. The Board of Public Works needed a decision by the Union prior to 7:00 p.m. that evening since the Board and the Finance Committee of the City Council were to meet at that hour to discuss the Board's budget. The Board had informed the Union at the morning meeting that this hour (May 23 at 7:00 p.m.) was the deadline for budget submission to the City Council since action on the budget would be taken at that time. The Union informed Mr. Brett that it would call him back at 6:30 p.m. that evening to give its decision. At 6:40 p.m. the Union called to inform Mr. Brett that it had turned down the Board's offer. Since there was no package of wage adjustments to present to the Board, the Board approved the budget without any raises for any of its employees. Later that evening the City Council approved the budget of the Board of Public Works as presented, i.e. without any wage increases for any of the employees. It is the understanding of the Fact Finder that no employees of the City received any wage increases for the new fiscal year.

On July 13, the parties met with a state mediator, but no progress was made in view of the Council's action on the budget.

On July 27, the Board and Union met with the Chairman of the Council's Finance Committee without any results.

Again, on July 31, the Board, Union, Finance Committee and the state mediator met, but no solution was found to the problem.

Mr. Brett in his statement explained why the negotiations this year were different than those in previous years. In the past the Board had been able to continue its negotiations with the Union past the May 31 deadline. The Board had paid for its raises to its employees by paying off the demands of the Council for money to provide raises for all other City employees and

dollars in its budget to pay anticipated raises. This year the Board did not have the money "to buy" wage increases.

The Board this year followed the same sequence of events as it had in the past. Any agreement reached by the parties is subject first to approval by the Board and then the Council. The approval by the Council is based on the recommendations of the Finance Committee of the Council. The strategy in this year's negotiation was to get a package approved by the Board of Public Works, then have the Board take the economic package to the Finance Committee who in turn would take it to the Council. There was no package to take to the Board for approval this year. Consequently, the Board approved the budget without any wage increases and later, the City Council approved the Board's budget.

While the Union did not receive any wage increases, employee life insurance was increased from \$3,000 to \$8,000 at no cost to the employee. This increase in coverage cost the City \$11.28 per employee or \$259.44 for 23 employees. Significant improvements were also made in the group hospitalization and surgi-

cal insurance program. These improvements cost the City approximately .067 cents per hour per employee. Thus the increased costs of the life, hospitalization and surgical insurance amounted to 7.3 cents an hour per employee.

Recommendation

The Fact Finder does not recommend any wage increase. He was persuaded that the Fourth Class Cities Act of 1895 Section 14 does not permit any alterations in the budget.

He considered the implications of the following wage increases:

- (1) a 25 cents an hour increase would cost the Board \$11,960 (calculated as follows 2080 hours per year x .25 x 23)
- (2) a 23 cents an hour increase would cost the Board \$11,003.20 (2080 x .23 x 23)
- (3) a 20 cents an hour increase would cost the Board \$9,568 a year (2080 x .20 x 23).

Since the budget does not contain any monies for wage increases, any wage increase would have to be financed out of the monies in the budget. This would mean that some employees would have to be laid off.

The normal layoff procedure in a collective bargaining agreement is through the use of seniority, with the individual with least seniority being the first to be laid off. The Fact Finder was not inclined to recommend that possibly two employees be laid off to finance a wage increase for the other 21 members of the bargaining unit. The bargaining unit is small and the layoff of two persons would represent approximately a 10 percent reduction in the work force. Even the layoff of one person would represent approximately a 5 percent reduction in the work force.

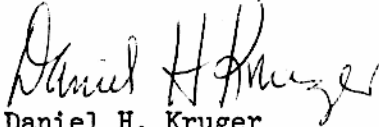
The time constraints on budget approval by the Board and submission of the budget to the Finance Committee and City Council respectively, coupled with the financial position of the Board did not permit the Board to follow the strategy used in previous years. There was no economic package for the Board

to consider so consequently, no package was included in the Board's budget/

Another factor considered by the Fact Finder was that no wage increases were given by the City to any of its employees for the new fiscal year. In the past it is the Fact Finder's understanding the Board of Public Works provided the City with the funds to pay wage increases for other City employees. The Board's financial position did not permit it to continue this practice this year.

For the above reasons, the Fact Finder does not recommend any wage increase for the employees of Local 13729 this year.

In summary, these recommendations can serve as the basis for the parties to resolve the issues in impasse. The Fact Finder strongly urges that the parties give these recommendations serious consideration.


Daniel H. Kruger
Fact Finder

October 7, 1972

NOTE: The Union went on strike at midnight September 30, 1972, and as of October 6 was still on strike.