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9/6/78

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING
BETWEEN:

MERC CASE NO. D77 F-2084

CITY OF NOVI (UNIT I & II) (City)

-and-

TEAMSTERS LOCAL 214 (Union)

/

INTRODUCTION

Pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. Pursuant to an agreement between the parties, the hearing took place on May 19, May 24 and June 7, 1978.

A post-hearing procedure was established for the filing of briefs and both parties availed themselves of the opportunity.

Novi, City of

APPEARANCES

FACT FINDER: Mario Chiesa

FOR THE CITY: Dennis B. DuBay, Attorney
Edward Kriewall, Jr., City Manager
Ronald R. Keller, Director of Labor Relations

FOR THE UNION:
James Markley, Business Agent
Marilyn Kreger
Cathy Carey
John Willacker

ISSUES

The outstanding issues in the present dispute are as follows:

1. Duration
2. Wages
3. Reclassification

4. Retroactivity

5. Sickness and Accident Policy

6. COLA Increases and COLA in Third Year

7. Vacations

8. Columbus Day as an Additional Holiday During the Third Year of the Collective Bargaining Agreement

9. Pay for Working in Higher Classification

HISTORY

The unit involved herein consists of approximately 49 employees. The parties engaged in negotiations and employed mediation. Impasse was reached in certain areas and the Union filed a request for Fact Finding on September 8, 1977. The request was received by MERC on the next day.

COMPARABLES

The parties are in sharp dispute regarding which communities should be considered comparable to the City of Novi for the purposes of this hearing.

The Union takes the position that only those communities listed in the Michigan Municipal League Book as having populations between 10,000 to 24,999 and being located in area 1 should be considered comparable to the City of Novi. It maintains that the contiguous communities are too small to be used as comparable communities and, further, the population in Novi has been increasing at a substantial rate. It maintains that Novi's population in 1970 might have warranted the placing of Novi in the 4,000 to 9,999 category, but that presently Novi should be ranked with cities contained in the Municipal League's 10,000 to 24,999 population category.

The Union points out that as Novi grows the demand will increase for more sophisticated services and this should be reflected in the wages, hours and other terms and conditions of employment that exist for this bargaining unit. It maintains that Novi's proximity to the City of Detroit further influences the relationship that exists between the parties.

The Union attacks the City's utilization of contiguous communities as comparable communities because it contends that Novi has outgrown the other communities and thus cannot be fairly compared to them.

The City points out that while it is true that the 1975 census indicated that Novi had a population which exceeded 14,000, the City cannot be lumped into the 10,000 to 24,999 population bracket created by the Michigan Municipal League. The City maintains that the population figure utilized by the League is in fact the figure which was the result of a 1970 census. Thus, it argues that the Union cannot place Novi in the 10,000 to 24,999 bracket because there is nothing in the record which would allow the Fact Finder to conclude that the population of all other communities in the League Reports have remained unchanged since 1970.

Further, the City argues that area 1, the area utilized by the Union, encompasses a vast geographical area and there is no evidence which indicates that the conditions which exist in some of the other area 1 cities have any relevance to the City of Novi situation. The City goes on to state that if area 1 communities are considered, then area 2 communities should also be considered.

The City also argues that the geographic location of the comparable communities, in relation to Novi, is very important. It maintains that the vast majority of the involved employees live within Novi and the communities which the City suggests are comparable. Those communities are: Farmington Hills, Farmington, South

Lyon, Northville, Walled Lake, and Wixom. Further, the City argues that it is also important to compare Novi with the Novi school district. It points out that the school district is an important employer in the area and it is a logical comparison to Novi because the school district has clerical positions within the immediate geographical area.

The evidence clearly establishes that at the present time Novi has a population which exceeds the category into which it was placed by the Michigan Municipal League. There is no question that in 1975 Novi had a population which exceeded 14,000 people. This would place it squarely within the 10,000 to 24,999 bracket instituted by the Michigan Municipal League. Nevertheless, the City's arguments regarding the use of the 1970 census figures is valid and must be carefully considered. There is really nothing in the evidence which indicates which, if any, of the other communities have experienced a change in population which would cause them to be changed in the Municipal League's ranking. Thus, the data submitted by the Union must be carefully considered in light of the propositions offered by the City.

By the same token, the alleged comparable communities offered by the City possess a geographical similarity which cannot be ignored. The communities offered by the City are the most proximate communities to the City of Novi and if other distinguishing features are not too pronounced, the wages, hours and conditions of employment which exist in those communities, must also be carefully considered. While the Union's argument suggests that Novi has clearly outgrown these other communities, the evidence in the record does not clearly and convincingly establish that premise.

Further, the status of the Novi school district, as a

geographically relevant employer, must also be considered. True enough, the Union argues that a clerical position in the school district is much different than a clerical position in the City because of the reduced work year existing in the school district. Again, the Union's position must be carefully considered in analyzing the wages, hours and conditions of employment that exist in the Novi school district.

In the final analysis, your Fact Finder will not specifically delineate a list of communities which he feels should be considered comparable to the City of Novi for the purposes of this hearing. What your Fact Finder will do is to sift and weigh the evidence carefully, examining all of the items which are relevant, and keeping in mind the arguments and considerations placed into the record, extract all of the relevant data and arrive at certain recommendations. This type of approach is necessary in order to adequately recognize the valid arguments and positions maintained by the parties. The mere fact that the parties may be diametrically opposed as to the communities which should be considered comparable, does not mean that one party is entirely correct, while the other is entirely wrong. There are elements contained in each position which are valid and must be considered.

ISSUE: DURATION

INTRODUCTION:

The prior Collective Bargaining Agreement had a duration of two years, existing from July 1, 1975 to and including June 30, 1977.

The Union's present position is that the new Collective Bargaining Agreement should have a duration of no more than two years terminating on July 1, 1979.

The City takes the position that the Collective Bargaining Agreement should have a duration of three years that expires on June 30, 1980.

DISCUSSION:

The Union argues that because of Novi's rapid growth, it is very possible that Novi could have a extremely large population within the next two years, along with the problems and obligations occurring to a city of that size. It maintains that if this takes place, the employees would again find themselves far behind their counterparts in other communities. Further, the Union argues that because of the unstable inflationary trend in the economy, a multi-year agreement could very well work to the employees' detriment.

The City argues that if the Union's position were accepted, the parties would be placed, almost immediately, back into contract negotiations. It maintains that the parties would not have enjoyed any labor peace whatsoever. The City goes on to argue that even if its proposal is recommended, the contract would expire in approximately two years and the parties would be back in contract negotiations in approximately 21 months.

Citing numerous 312 arbitration awards, the City points out that a multi-year contract is in the best interest of the parties, as well as the public's best interest.

The City goes on to point out that five of the six comparable communities which it has offered, have a three-year Collective Bargaining Agreement.

The evidence establishes that as stated by the City, Farmington Hills, Farmington, South Lyon, Walled Lake and Wixom all have three-year Collective Bargaining Agreements. In addition, the Collective Bargaining Agreement just settled by the City and the police officers is of three years' duration.

The evidence also establishes that the parties, as well as everyone else in the economy, are caught in a current inflationary spiral. Prices are increasing at an exorbitant rate.

What evidence is available, establishes that a three-year Collective Bargaining Agreement is extremely acceptable. First, there would be no doubt that the parties would enjoy a longer period of labor peace before they would have to return to the bargaining tables and again engage in collective bargaining. Secondly, if the Collective Bargaining Agreement contains adequate provisions against inflation, the employees would be better insulated against any dramatic losses caused by the inflationary economy. Thirdly, the City, in a three-year contract situation, would be in the position of being better able to judge and budget for the anticipated expenditures. It would have a much better understanding of the budgeting problems and actions that would be necessary in order to live up to its portion of the Collective Bargaining Agreement.

RECOMMENDATIONS:

In the final analysis, your Fact Finder recognizes the apprehension felt by the Union, but, nevertheless, recommends that the parties agree to a three-year Collective Bargaining Agreement. With proper language contained therein, a three-year Collective Bargaining Agreement would be much more desirable than the one or two-year agreement sought by the Union.

ISSUE: WAGES

INTRODUCTION:

The salary scale existing as of 6/30/77 appears as follows:

Ranges	6/30/77 $/Hour
1	$3.94
2	4.14
3	4.29
4	4.39
5	4.34
6	4.64
7	5.50
8	6.06
9	6.16
10	6.31
11	7.17
12	7.88
13	8.13

The Union has taken the position that in the first year of the Collective Bargaining Agreement the wage increases that should be realized should be equal to the difference between the salaries now paid in Novi and the average salaries developed in each classification by use of the Municipal League salary figures, area 1, per population between 10,000 and 24,999. According to the Union's packet of evidence, this increase would range from 10 cents per hour to a $1.52 per hour. Additionally, in its packet of evidence the Union seeks a 7% wage increase for the second year of the Collective Bargaining Agreement, if such second year is recommended. However, in the Union's brief, it suggests a wage increase which would equal its projected percentage increase in the CPI. This would be between 6.1 and 6.5%. The Union has stated that if it has caught up to the comparable communities' wages in the first year of the Collective Bargaining Agreement, it would be willing to accept a 6.1 - 6.5% wage increase for the second year.

The City proposes an 8% across-the-board increase for the first year of the Collective Bargaining Agreement, 6% for the second, and 7% for the third. It goes on to state that any other economic adjustment must be deducted from the proposed salary increase. It maintains that its proposal constitutes total money for the settlement.

DISCUSSION:

The City argues and the evidence establishes that the budgeted revenues for 1978-1979 exceed the budgeted revenues for 1977-1978, by 6.16%. It further argues and the testimony further establishes that for the two fiscal years mentioned, the City has established a contingency fund for the settlement of the five employee groups. It maintains that the evidence shows that the contingency fund breaks down into an across-the-board figure for all five groups of 8% for 1977-1978 and 6% for 1978-1979.

The Union maintains that the City's proposed salary figures represent only that which the City wishes to give its employees.

When looking at other settlements within the City, it becomes apparent that the patrolmen and corporals entered into a three-year Collective Bargaining Agreement which provided a 7% across-the-board wage increase for the first year; 6% and an increase cap on cost of living from $60.00 to $93.50 per quarter in the second year; and a 5% across-the-board increase with an increased cap on cost of living from $93.50 per quarter to $112.50 per quarter, along with the institution of the Michigan Municipal Employees Retirement System Plan C-1. Those are the basic items involved in the patrolmen-corporal settlement. In addition the record indicates that the administrative staff received an average 8% salary increase in 1977-1978 and an average 6% increase for 1978-1979 with no fringe benefit improvements.

The Union introduced a packet of information regarding the comparison of the salaries now paid in Novi as opposed to the salaries paid in its comparable communities, utilizing a number of different classifications. The Union has argued that while it may be impossible to find comparable classifications that are identical to those which exist in Novi, the wage salaries paid by the comparable communities in the various classifications give a very strong

picture of the difference between Novi and the comparable communities. The City has argued that the Union has compared unlike classifications and has introduced testimony to support this contention. For instance, there was testimony regarding light equipment and heavy equipment operators and the percentage of time utilized performing either the light operations or heavy operations. In addition there was testimony which sought to differentiate between the meter repairmen classification that existed in Novi and the classification as it existed under the Municipal League's definition. Nevertheless, when keeping all of these discrepancies in mind and examining the comparable data introduced by the Union, it becomes apparent that the salaries paid in Novi do not compare favorably with the salaries paid in the communities which the Union suggests are comparable.

The City argues that if both area 1 and 2, as defined in the Municipal League publication, are considered in the 4,000 - 25,000 cities, the rates for the City of Novi when increased by the 8% offered by the City, become very comparable and in fact exceed the average salaries paid in various classifications.

As a final finding of fact in the area of comparable data, it is extremely difficult to conclude that the employees in this bargaining unit are not paid wages which are comparable to those paid by the so-called comparable communities. The Union's evidence establishes a vast gulf, while the City's evidence narrows, if not eliminating any salary differences.

The Union's evidence regarding the CPI indicates that it will increase from 6 to 6 1/2% in the upcoming year. Of course, there were arguments regarding the weight that should be applied to the Union's evidence, but nevertheless, the above conclusions seem legitimate. In addition, the City takes the position that the CPI

is not without limitations. It points out that the consumer price index does not take into account employer-paid medical costs, nor does it actually measure changes in the standard of living. The City goes on to argue that the CPI uses fixed living patterns and does not reflect either the substitutions or goods or changes in prices due to the quality changes in product. Further, the City points out that employees in this bargaining unit have been receiving cost-of-living payments.

RECOMMENDATIONS:

In dealing with the first year of the Collective Bargaining Agreement, and after analyzing all of the available evidence and arguments, your Fact Finder recommends that the employees in the bargaining unit receive an across-the-board 8% salary increase. However, your Fact Finder is also well aware that a straight percentage increase can often work an injustice to some of the employees. For instance, an 8% increase applied to an $8.00 per hour salary would equal a 64 cent per hour increase. If the same percentage increase is applied to a $4.00 per hour salary, the increase would only be 32 cents. So, those making the least would receive the smallest salary increase. Thus, in the alternative, your Fact Finder recommends that the total dollars that would be paid if an 8% salary increase were granted, be calculated and applied to salary increases by increasing the lower paid employees by a larger monetary sum than the increase granted the higher paid employees. This second or alternative recommendation recognizes that some of the higher paid employees in the bargaining unit are receiving salaries which are very close to that being paid by the communities offered by the Union as being comparable to Novi. The 8% recommendation or the alternate recommendation represents a rather large percentage increase and in many cases

dollar increase. The increase should go a long way in alleviating any differences which may exist between Novi and the so-called comparable communities. By the same token, the recommendation, at least on a percentage basis, compares very well with the known and anticipated percentage increase in the consumer price index. The Union's first year proposal could not be adopted because its implementation, in certain areas, would result in excessive and extraordinary wage increases.

For the second and third year of the Collective Bargaining Agreement, your Fact Finder recommends that a 6% across-the-board salary increase be implemented. In the alternative, your Fact Finder recommends, as he did for the first year, that the total dollar outlay for a 6% increase be divided in such a manner that the lower paid employees receive a higher dollar increase or an equal dollar increase to that received by the higher paid employees. The 6% increase in the second year of the Collective Bargaining Agreement compares favorably with the wage increase received by patrolmen and corporals and further compares favorably to the wage increases received by the so-called comparable communities. Further, the wage increase, when expressed as a percentage, is very close to what the percentage increase in the CPI is expected to be. It should be noted that your Fact Finder has recommended, for the third year, a percentage increase which is one percent less than that offered by the City. This is so because your Fact Finder will make additional recommendations that will cost the City additional funds and present additional benefits to these employees. As suggested by the City, all of this must be kept in mind when the total economic environment is considered.

ISSUE: RECLASSIFICATION

DISCUSSION AND RECOMMENDATION:

Actually, the record had no evidence whatsoever regarding the issue of upgrading and/or reclassification. The Union did present a statement which indicated that it desired that five employees now working in the classification of Utilityman I be moved to pay range seven and re-titled Light Equipment Operator; one additional man should be moved to pay range eight and classified Mechanic's Helper; a new classification should be created entitled Ordinance Enforcement Officer and would be in range eight; one employee now working in pay range seven would be upgraded to the position of Ordinance Enforcement Officer; and all employees now assigned in pay range four will be moved to pay range six.

The above was part of an understanding that was presented as part of a package settlement. Since the settlement did not take place, the above never was agreed to.

As far as recommendations go, the only thing that your Fact Finder can state is that the parties have negotiated in this area and because of the concessions made, have realized that certain reclassifications are necessary.

However, your Fact Finder can only recommend that the parties continue to negotiate on this issue and perhaps reach a settlement tailored around their original proposed agreement.

ISSUE: RETROACTIVITY OF RECLASSIFICATION AND WAGE INCREASES

Obviously, since no specific recommendation can be made regarding reclassifications, this issue will deal only with the retroactivity of the wage recommendation.

The City has argued that retroactivity should not be recommended because of the time and expense expended by the City in negotiating and participating in this Fact Finding proceeding. Further, it argues that there is no suggestion that the City has acted in bad faith. Further, the City maintains that retroactivity would be inequitable to the City. It states that while the POAM settlement was retroactive, the settlement was reached as a result of negotiations and there was no need to enter formal 312 arbitration.

The Union takes the position that retroactivity was never in question until this hearing.

RECOMMENDATIONS:

Oftentimes employers argue that retroactivity should not be automatically granted because it would motivate labor organizations to elongate negotiating procedures because they would know that they had absolutely nothing to lose. By the same token, labor organizations have argued that unless retroactivity is granted, employers would be motivated to elongate the process because to do so can only result in a savings of money.

In the instant case, it is true that negotiations and this Fact Finding procedure have dragged out a considerable length of time. It is also true that both parties have spent considerable time in this procedure. Further, there is no question that the City has expended funds throughout this process.

Nevertheless, it must be remembered that the City has had the use of the funds that would have otherwise been distributed on July 1, 1977. Further, there is absolutely no indication that the labor organization has dragged out this process and ultimately caused the delay in settling the Collective Bargaining Agreement.

In the final analysis, because of the City's use of the money that would have otherwise been paid in benefits and salary increases, along with the good faith exhibited by the labor organization in engaging in negotiations and Fact Finding process, your Fact Finder must recommend that all wage recommendations be made retroactive. To do otherwise would place the employees in the position of losing the entire benefit of the first year and more of the new Collective Bargaining Agreement. There is nothing in this record which justifies such a result.

ISSUE: SICKNESS AND ACCIDENT POLICY

INTRODUCTION:

The prior Collective Bargaining Agreement contained a sick leave provision, but contained no provision for a sickness and accident policy.

The City wishes to continue the status quo,while the labor organization seeks a sickness and accident policy which would commence on the 91st calendar day after a sickness or accident has occurred. The policy would provide sickness and accident benefits of 50% of an employee's base salary for a period of 12 months.

DISCUSSION:

Actually the Union itself presented very little evidence on this point. There was no evidence indicating the cost of such a proposal, nor was there any other convincing evidence presented by the Union.

The evidence presented by the City indicates that out of the comparable communities it has submitted, only three of them have a sickness and accident disability plan, while one of the three

is of such a nature that the employees must bear 50% of the cost. The Collective Bargaining Agreement which exists between the POAM and this City does not contain a sickness and disability plan.

RECOMMENDATIONS:

In analyzing what data is available, your Fact Finder can only come to the conclusion that at this point in time he cannot recommend the adoption of a sickness and accident policy.

ISSUE: COLA INCREASES AND COLA IN THIRD YEAR

INTRODUCTION:

The prior Collective Bargaining Agreement contained a cost-of-living allowance which was capped at $60.00, total pay out, per quarter.

The City seeks continuation of that plan, while the Union seeks to increase the quarterly cap to $83.00 in the second year of the Collective Bargaining Agreement, and if there is a third year, to increase the cap to $104.00 per quarter.

DISCUSSION AND RECOMMENDATIONS:

The City argues that the Union has submitted no evidence whatsoever to support its demand for an increase in the cap of COLA payments. It maintains that while the cap was increased in the POAM settlement, an analysis of the Novi school district and the six other cities introduced as comparable communities, indicates that only Northville and Walled Lake have a cost-of-living allowance.

The Union argues that the cost-of-living cap increase is necessary in order to alleviate inflationary pressures felt by the employees. It maintains that its second year offer only provides

the potential of an $80.00 per year improvement. It further states that this is extremely modest.

The evidence establishes that the POAM settlement provided for a COLA increase which is substantially more than that now being sought by this bargaining unit.

Further, it must be remembered that your Fact Finder intentionally withheld one percent of the third year wage increase on the premise that he was going to make other recommendations in other areas. This COLA improvement issue is one of the areas where additional monies should be spent.

In carefully analyzing the evidence, your Fact Finder recommends that the cap, in the third year of the contract, be increased to $104.00 per quarter.

This recommendation, if adopted, would still provide a COLA cap which is less than that existing in the POAM unit. Further, the economic environment in which this three-year Collective Bargaining Agreement will have to survive, clearly indicates that a greater hedge against inflation is necessary. Additionally, the very existence of a cap on the COLA provision allows the City to have a target budgeting figure.

In the final analysis, in order to justify a three-year Collective Bargaining Agreement with the percentage increases in salaries offered by the City, it is necessary for your Fact Finder to recommend that the COLA cap be increased to $104.00 per quarter in the third year of the Collective Bargaining Agreement.

ISSUE: VACATIONS

INTRODUCTION:

The prior Collective Bargaining Agreement provided that after 10 years of service an employee would receive 20 working days of

vacation per year.

The City wishes to continue this practice, while the Union seeks 25 working days per year vacation once an employee has been employed for more than 20 years.

DISCUSSION:

The City argues that the Union has failed to produce any evidence whatsoever regarding this issue.

The record indicates that the Collective Bargaining Agreement in Farmington Hills provides for 20 days of vacation at 20 years of service; Farmington provides 4 weeks after 11 years of service, while Northville provides 25 days after 20 years of service; South Lyon provides 20 days after 10 years, while Walled Lake provides 20 days after 9 years and for people hired prior to 7-1-73, 4 weeks at 4 years; Wixom provides a maximum of 20 days of vacation.

RECOMMENDATIONS:

An analysis of the evidence that is available indicates that only Northville provides 25 days of vacation after 20 years of service. None of the other communities submitted by the City provide as many vacation days as that now being sought by the Union in this matter. In the final analysis, your Fact Finder cannot recommend that the vacation schedule be increased to provide 25 days of vacation after 20 years of service. One of the items that is crucial is knowing how many people would be affected by such a contract provision. That information was not available and when combined with the evidence that does exist in the record, the Union's request must be denied.

ISSUE: COLUMBUS DAY AS AN ADDITIONAL HOLIDAY DURING THE THIRD YEAR OF THE COLLECTIVE BARGAINING AGREEMENT

INTRODUCTION:

Currently employees in this bargaining unit receive 13 paid holidays.

The City seeks to continue this practice, while the Union seeks an additional holiday, i.e., Columbus Day, in the third year of the Collective Bargaining Agreement.

DISCUSSION:

The evidence indicates that employees in Farmington Hills receive 11 holidays, plus Good Friday afternoon, plus all other City holidays. Employees in Farmington receive 11 holidays, while employees in Northville receive 12. Employees in South Lyon receive 9 holidays, while Walled Lake employees receive 14. Wixom employees receive 10½ holidays.

The evidence also establishes that the patrolmen and corporals included in the POAM contract receive 13 holidays.

RECOMMENDATIONS:

Obviously, with the evidence stated above, your Fact Finder cannot recommend that an additional holiday be granted the members of this bargaining unit during the last year of a three-year Collective Bargaining Agreement. What evidence is available regarding the comparable communities indicates that Novi compares very favorably with the other communities, along with comparing favorably with the POAM contract now in existence.

Thus, your Fact Finder recommends that the Collective Bargaining Agreement contain 13 paid holidays and that no additional holidays be implemented in the third year of the agreement.

ISSUE: PAY FOR WORKING A HIGHER CLASSIFICATION

INTRODUCTION:

Article XV, Section 4 of the prior Collective Bargaining Agreement indicated that an employee working in a higher classification for more than one day shall receive the higher rate of pay for all time worked in the higher classification.

The City seeks a continuation of the above practice, while the Union seeks language which would state that an employee assigned to work in a higher classification for more than eight hours in one day shall receive the higher rate of pay for all time worked in the higher classification.

DISCUSSION:

The City argues that the Union has presented no evidence whatsoever on this matter.

The record indicates that out of the six Collective Bargaining Agreements submitted by the City, four of the communities have no language whatsoever guaranteeing pay for work in a higher classification, while South Lyon does so after four hours and Northville does so have fifteen continuous work days. The contract in Novi schools does indicate that an individual will receive the higher classification pay from the start of work.

RECOMMENDATIONS:

Again, after carefully considering what evidence is available on this matter, your Fact Finder cannot recommend that the Union's position be adopted. The evidence just does not support the Union's position.

CONCLUSION

The recommendations contained herein are the result of your Fact Finder carefully considering all items in the record. The recommendations should serve as a basis for settling this dispute.

Mario Chiesa
MARIO CHIESA

Dated: September 6, 1978