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IN THE MATTER OF FACT FINDING)
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 between)
)
 OAKLAND UNIVERSITY)
 Rochester, MI)
)
 and)
)
 MICHIGAN AFSCME COUNCIL 25)
 LOCAL NO. 1418)

MERC Case No.: D92 K-1598

APPEARANCES

For the Union:

Byron E. DeLong, Staff Technician, Council 25
 Darrel O. Szczesny, President, Local 1418
 Jess Shelton, Food Service Chief Steward
 A. C. Wilcox, Custodial Chief Steward
 Bill McGrath, Skilled Trades
 Ronald Koski, Plumber

For the University:

William G. Albertson, Attorney, Hardy, Lewis, et al
 Willard C. Kendall, Asst. VP, Employee Relations
 Susan Gerrits, Asst. General Counsel
 Peggy Cooke, Manager, Auxiliary Services
 Allan K. Sather, Sr. Food Service Director, Marriott Ed. Svcs.

Hearing held at Rochester, Michigan on 18 January 1994

before

Leo S. Rayl, Fact Finder

Recommendations dated: 1 February 1994

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Oakland University

INTRODUCTION

There were four issues indicated as separating the Parties from complete agreement. They were:

1. Subcontracting of Food Service
2. Staffing of Food Service
3. Wage Increase
4. Retroactivity of Economic Adjustments

At the close of the hearing, the general situation appeared to be as follows: a "package" concerning the above issues was necessary to a complete agreement. If a package were acceptable, retroactivity was no problem except for determination of personnel eligible. The wage increase was generally acceptable at 3.75% across-the-board MINUS the cost of benefits as agreed - again, as part of the "package." Staffing of Food Service related to the elimination of the classification of Pastry Baker. Part of the package, but the Parties seemed amenable to "grandmothering" (redcircling the wage rate) the incumbent who would become a Baker. SUBCONTRACTING OF FOOD SERVICE was the primary obstacle to the Agreement.

During the hearing, the Union protested the submission of certain financial/statistical information as having been requested during negotiations but not received. The Union declined to submit a written statement, but the substance is hereby noted. The matter appeared to be of concern in another forum; all exhibits offered by the Parties were accepted in evidence. Witnesses were not sworn - no request was made. Parties had opportunity to cross-examine. Parties closed orally and waived post-hearing briefs.

FINDINGS and CONCLUSIONS

In regard to Subcontracting of Food Service, the controlling issue, the current (extended) Agreement (J1) at 6.0/6.1 provides that the Employer has the right to contract and sub-contract, as long as the bargaining unit is not reduced in size, nor a BU member be caused a layoff, nor there be a reduction in non-overtime hours worked as a result. The Employer is seeking relief from this provision for the Food Service Unit of the Local. There has already been some relief in the size of the unit (from 44) to the present 33 seniority employees.

Presently, the Employer has contracted with Marriott (E7) to manage the food service function. Among the many requirements placed on Marriott is the expense of wages and benefits of AFSCME BU employees and related costs of unemployment and workers compensation, and grievance procedures, etc. This cost is reported at nearly \$13 per hour, and claimed to be about double that for normal fast food employees (E10). This labor cost is claimed as part of the reason for a low Operating Profit in FY92 for Marriott (about 1.3% of Sales & Revenue) and a lower profit in FY93 (about 0.2%) (E8). This low contribution causes the Employer to fear that Marriott might terminate the contract and that a replacement could not be enticed.

The Employer does not want to be in the Food Management business. It prefers to spend the dollars it has toward its primary function - education. It points out that the good years applied little pressure to this end, but that more recent times (re State appropriations) have become critical (E1). The Employer indicated that it has cut corners by eliminating staff - primarily academic administrators, clerical-technical employees, and administrative professionals (E2). It has also raised tuition to counter rising cost (E3&4&5). While student population has been rather stable over the decade, the number of hall residents has been declining - and that is where there is an acceptable food profit, Vandenberg (E6&8). Oakland Center is the problem now, but increasing board rates may lower Vandenberg profit. E9 provided information that indicates Brand-name facilities MIGHT be an answer to Oakland Center. It would be a "business decision" to try it. But E10 & E11 tend to show that would be impossible without relief from the 6.0/6.1 clause for the Food Service category.

The Union position on modifying the subcontracting clause for food service employees (U1) calls for ongoing protection for current workers, no separation or layoff by a sub-contractor (except for just cause, or at normal year-end layoff time), return to Local 1418 status if contract fails, right to bid into other Local positions, and consent recognition of AFSCME by any sub-contractor.

Some protection for the 33 current seniority employees seems reasonable. U2 shows some long service employees. There must be some time for adjustment to changing conditions. Either attrition (some has already taken place) and/or some specific time limit might be a proper solution. The Union indicated that the problem would disappear in five years. A sub-contractor might accept the no separation or layoff aspect, if the University were picking up the difference in wage-level. Return to Local status if contract fails would be reasonable during the protection period. The right to

bid out of food service should be encouraged. Consent recognition by a contractor with prior collective bargaining relationships might be workable, but the bargaining should not involve the University. A Brand-name that has never engaged in collective bargaining should be exempt. If no Union has ever been able to organize them, it would be evident that this was an outrageous restriction on the University.

It was concluded that just as the Union expects increases (change) in wages and benefits to keep up with the times, the Employer must be allowed to take advantage of new offerings that may satisfy its clients, and thereby benefit the total organization. The current seniority employees must be protected somewhat, but the Employer must be able to operate in the real world with its present conditions. Some relief is indicated from 6.0/6.1 for the Food Service Unit.

In regard to the elimination of the Pastry Baker classification, with the "grandmothering" aspect in place, it was concluded without further discussion that the Parties should make-it-so. Primarily, because no one seemed to be against the idea, standing alone.

In regard to the across-the-board wage increase, the formula of 3.75% minus the cost of benefits was agreeable to the Parties. The costs presented, without contest, were: P55.7, Early Retiree Medical Fund, .02% - P56.1, Multi-Option Retirement Plan, .73%, 30 hrs. Employee, .04% - P57.1, Hosp./Med. Coverage & P57.2, Maj. Med., 0% - P61.3, Laundry Allowance, .09% = .88% total. $3.75\% - .88\% = 2.87\%$. Since the cost was based on 39 employees (33 seniority plus 6 probationers), the Union asked for 2.93% in consideration of the fact that the University saved by not filling the original 44 FS positions. It was concluded that the Union must have received something in negotiating the reduction to 39. It was further concluded that the 2.87% was appropriately calculated.

In regard to the retroactivity issue, the Employer stated that if the package were agreed to, the relief in sub-contracting especially, retroactivity was acceptable. While retroactivity may have been historical at Oakland, it is sometimes offered that it takes two to delay settlement and that both Parties might properly be penalized by some fractional application. It was concluded, however, that full retroactivity prevail to those determined as eligible if the "package" of four issues is accepted.

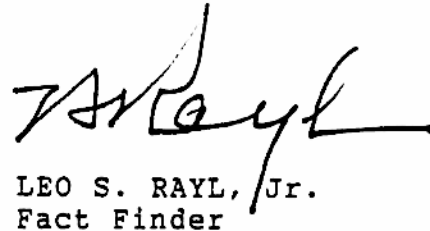
RECOMMENDATIONS

Given the impact on employees affected and status of the bargaining unit as a whole that contracting and sub-contracting would have, it is believed that the long term view should prevail and be reflected in the new Agreement between the Parties. That would allow all those affected to plan and plot the best course of action for the future. The Employer is intent upon eliminating the present food service unit, and to contract and/or subcontract the food service function to others. It will come about. A period of time is necessary to enable employees affected to adjust to the inevitable. It is anticipated, as stated by the Union, that employees will quit, retire, find more attractive jobs outside the present Employer, and bid out of their classifications to other classifications within the Local. Attrition is the kindest approach. However, there must be a cutoff date for protection to stimulate action on the part of employees. The Union mentioned five years as a probable time unit for disappearance of the problem. It is believed that four (4) years would be adequate with advance notice of the end of protection. As for Union status, it is believed that consent recognition by a contractor or sub-contractor is proper, but only where that contractor or sub-contractor normally has engaged in prior collective bargaining, and ensuing bargaining is independent of the University. For a contractor or sub-contractor with no history of collective bargaining, consent recognition should not be required. The Union is always free to conduct organizing campaigns. THEREFORE: The Food Service Unit should be an EXCEPTION to Paragraph 6.1. Paragraph 26.1 should apply to Spring and Summer Terms as well as to the "historical" layoff period at the end of the school year for Food Service employees only. This staffing issue is tied-in with the gradual reduction of the food service unit. Paragraph 63.1 might be the location for the language covering the following further recommendations: The Food Service Unit may be reduced by attrition. Meanwhile, the thirty-three (33) seniority food service employees are to be protected as far as wages, normal non-overtime hours, benefits and negotiated increases are concerned, by the University. The University obligation is that amount above the wage and benefit package provided by the contractor or sub-contractor. This protection by the University will end four years after the new Agreement is reached, regardless of the number of food service personnel remaining. Contractors or sub-contractors with a prior collective bargaining history will be required to agree to consent recognition of AFSCME, but will bargain directly with the Union. Contractors or sub-contractors with no prior bargaining history will not have such a requirement. (No attempt at precise language was made; the recommendations are concepts.)

The Pastry Baker classification is to be eliminated. The incumbent is to be "grandmothered."

The across-the-board wage increase is to be 2.87% as calculated during the hearing.

With the acceptance of the foregoing package, retroactivity of economic adjustments will be to November 1, 1992, with proper determination of those eligible.



LEO S. RAYL, Jr.
Fact Finder

1 February 1994
Battle Creek, MI