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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BEFORE
PATRICK A. McDONALD
FACT FINDER

CITY OF PONTIAC

-and-

LOCAL 530, UTILITY WORKERS
UNION OF AMERICA
Patrick McDonald /

Case No. D77 C857

FACT FINDER'S REPORT AND RECOMMENDATION

I. APPEARANCES

For the City of Pontiac

Sam Baker
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Pontiac, Michigan 48058

For Local U.W.A.

Thomas J. Wojtala
1016 Hazel
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II. INTRODUCTION

Your Fact Finder did receive notice from the Department of Labor for the State of Michigan on December 27, 1977 that he had been appointed the Hearing Officer and Agent to conduct a Fact Finding Hearing pursuant to Section 25 of Act 176 of the Public Acts of 1939 and to issue a report with recommendations with respect to the matters of disagreement to the above referenced parties. Pursuant to such

authority, the parties were contacted and a hearing was scheduled for January 27, 1978. That hearing was adjourned, rescheduled, and ultimately conducted on Friday, February 17, 1978 with all parties being present.

Negotiations had continued throughout 1977 and despite the efforts of a mediator, the parties were unable to conclude an Agreement. Having reached an impasse, the Utility Workers of America petitioned the Michigan Employment Relations Commission for Fact Finding. At the February 17th hearing, the parties outlined nine (9) different issues which were still unresolved and which divided them. Prior to the formal Fact Finding Hearing beginning, a number of separate caucuses and meetings were held. As a result of this, six (6) of the nine issues were settled. Those issues were confirmed by letter dated February 22, 1978 and the solution agreed to by both parties is as follows:

1.) Vacation - Article IX, Section 1(a)-1 to read:

four weeks vacation after nine (9) years service.

2.) Retirement - The Union proposed change of 50% to 100% pay upon retirement, death or permanent disability has been withdrawn.

3.) Overtime - Article IX, Section 6 shall be changed to read as follows:

employees who work on any of the paid holidays shall receive holiday pay plus double time for all the time worked.

4.) Personal Leave Days - Article IX, Section 7 shall indicate the one (1) personal leave day per year shall be allowed for each employee in the unit. It is understood that advance notification must be given to the supervisor by the requesting employee and that this personal leave day must be utilized within the contract year and would not be paid for if not utilized.

5.) Bargaining Unit Erosion - The parties agree that this issue is covered by a case pending before the Michigan Employment Relations Commission and the parties agree to wait the outcome of those proceedings.

6.) Classification Wage Adjustments - The parties agree that a third party consulting firm shall be retained by the City of Pontiac to conduct a study concerning wage levels for all of the classifications within the bargaining unit (Employer's Exhibit 4). Prior to commencing the actual study, the consulting firm shall meet with the Union Bargaining Committee to outline the procedures it will be utilizing in conducting the study. The Committee, in turn, will advise their membership of such procedures. The Committee shall also have the opportunity to meet with the consulting agent during the course of the study to provide data that it deems pertinent and relevant. The parties agree that the result and recommendations of such a study shall not be binding on either party, but shall form the basis for possible adjustments in the job classifications.

Three issues remain for resolution. These include 1.) Salary and wage benefits; 2.) Bargaining Unit definition and 3.) Audit grievance procedure. Your Fact Finder has carefully examined all material submitted to him and forwards this report, which I earnestly hope will prove instrumental in providing a guideline to settlement of the complete Collective Bargaining Contract.

III. DISCUSSION AND DECISION

Issue No. 1 - Wages and salary schedules.

In presenting factual data on this issue, the City pointed out that wages cannot be taken out of context to the exclusion of the remainder of the Contract. They point to the fact that many issues had been settled, some of which had an economic impact on the City budget. Some of these were set forth in Employer's Exhibit 6 and some of these were settled the

very day of the hearing. These included increasing compensable injury pay from 90 to 120 calendar days, adding to the present holidays one half day on both Christmas Eve and New Year's Eve, increasing the shift premiums by 5¢, improving the longevity program by adding an additional percentage step and decreasing the time necessary to receive step increases. The City also indicated that a new Dental Insurance program was being initiated on a 50/50 percent co-payment basis. It mentioned increases to time and one-half for premium time work and double time for holidays. One personal leave day was allowed with the current contract year and a vacation schedule was increased to provide four (4) weeks after nine (9) years of service. The City emphasized that the Fact Finder should take these matters into account.

The City explained that while it has not offered or agreed to cost of living language to be inserted in the Collective Bargaining Agreement, it is agreeable to a re-opener for wages in the second year of the contract. Therefore, if the cost of living increases greatly, the City is able to negotiate increases taking that factor into account. The City points out it has a ten (10) mill limitation, which it is presently at and therefore, any further increases are subject to the vote of the people. Such a vote usually means defeat of such a proposal.

The City of Pontiac distinguishes between the supervisory administrative employee unit represented by the U.W.A. and the non-

union management group by citing at least eight (8) important differences in fringe benefits. In each of the eight categories which include overtime, compensable injury, holidays, longevity, personal leave and holiday pay, among others, the group represented by the Utility Workers of America, as a result of this Contract and its improvements will get better benefits than would their counter-part in the non-union management section of the City. The City argues that the Union wants the best of both worlds. It wants job security, a strong grievance procedure and yet, at the same time, better benefits than the non-union management group. The City points to the fact that it has offered to bring the Union employees into the merit pay plan program, which governs the non-union management group. Each time this had been discussed, however, the Union has rejected this proposal. They further point to the fact that the yearly increases and increments for non-union management employees do not occur automatically, but instead on a merit or performance basis. Unlike the Union membership, non-union management employees may not get any increase if their performance is not up to standards. As a result, the City concludes that the five percent wage increase offered to the supervisory union is both a fair and just one and that no further increases above the five percent level are warranted.

The Union, on behalf of its membership, basically argues that the supervisory and administrative employees it represents have not received the level of pay increases that the non-union management employees for the City of Pontiac have since the beginning of 1974,

onward to the present. It indicates that this is quite deliberate and results from the fact that in 1973, this particular unit was certified. Employer's Exhibit 9 is cited to demonstrate that during the years 1974, 1975 and 1976, the non-union management group has received increases totaling 9.75% more than the comparable supervisory administrative employees association represented by the Union. Of this amount, 2-1/2% is attributed to the City picking up the employee's retirement contribution in 1976. The other 2-1/2% employee contribution was picked up by the City as of 1977. The Union further indicates that the fringe benefits that will be accruing to its membership, growing out of this Collective Bargaining Agreement will probably result in the non-union management employees getting the same benefits in the near future. In comparing their status to those employees on the merit pay plan, the Union indicates that while its members are guaranteed certain increases, by the same token, they must wait at least four (4) years to get to the maximum rate schedule. This is not the case with non-union management people who may obtain the maximum rate in a shorter period of time.

In rebuttal, the City indicated that in accordance with Article V, Section 8(b), no employee is precluded, the possibility of being advanced at a more rapid rate (See Employer's Exhibit 3). Moreover, says the City, the non-union management employees do not automatically get the fringe benefits that those in Union bargaining units obtain through the collective bargaining process.

At the hearing, and in meeting with the parties, I was struck by the positive attitude of both parties. They were attempting

in good faith, to obtain an agreement that was both fair to all employees concerned yet, at the same time, was fiscally responsible. Certainly, the contrasting of the salary and benefits of non-union management employees with those of the Union supervisory and administrative employees is a relevant and strong point to be taken into consideration. The employees in both such units work closely with each other and in many situations, work side by side. Obviously, the seeds of discontent are present when one group consistently obtains higher salary increases than the other. The morale of the employees involved is important. Both the City and the Union would agree that the spirit of the employees should be kept at its highest, if at all possible. Obviously, wage schedules are an important aspect of this situation. On the other hand, the City of Pontiac is under no legal obligation to guarantee that both groups should receive identical increases. Obviously, the supervisory and administrative employees voluntarily chose to bargain through representatives of their choice, with the City of Pontiac through the Collective Bargaining atmosphere. They will have many benefits which are not available to those who are not in such a unit. The two units are not identical and such employees should not necessarily be treated identically both in terms of wages, hours and conditions of employment.

I must agree with the City when it points out that the many improvements in the Collective Bargaining Agreement that have tentatively been agreed upon between the parties, should be considered by the Fact Finder in recommending a wage schedule. Certainly, many of these items have a direct economic impact both on the budget

of the City and on the economic welfare of the employees. Overtime rates are just one of these important issues.

On this particular issue of wages and salaries, I am recommending to the parties, that the supervisory and administrative employees represented by the Utility Workers of America receive a 5% wage increase for the first year of their contract. In addition, during this first year of the Agreement, the City should begin paying 2-1/2% or one-half of each employee's present 5% retirement contribution. I make this recommendation to the parties for a number of sound reasons: First, the 5% increase is consistent with that granted to the Pontiac Municipal Employees Association, the Pontiac Fire Fighters Union, the Pontiac Police Officers Association and the Pontiac Police Supervisors Association during the year 1977. Second, the 2-1/2% to be paid into the employee's retirement fund, in lieu of the employee's 2-1/2% contribution is made because it is consistent with an identical increase given to the non-union management employees during 1976 and 1977. Third, the increase is more in keeping with the cost of living index during the year 1977. Fourth, depending upon the tax bracket of the particular employee, while the contribution costs the City 2-1/2%, it amounts to over a 3% increase in effective after tax pay for each employee. This would bring the 1977 increase more in line with the non-union management employees with which they work. I would further recommend that the remaining 2-1/2% contribution be picked up by the City during the year 1978, so that the Retirement plan for employees would totally become a non-contributory

plan, rather than its present contributory status. Such 2-1/2% should be credited to the City and taken into account during the wage re-opener in the second year of the contract between the parties.

In summary, these recommendations would allow the City's 5% offer to be kept intact and consistent with the majority of the other employees working for the City of Pontiac during the year 1977. At the same time, the 2-1/2% retirement contribution would allow the employees represented by the Utility Workers of America to achieve greater after tax dollars and when coupled with the 5% raise, would keep them abreast of the cost of living for 1977 and would allow them greater parity with the non-union management employees with which they are in daily contact.

Issue No. 2 - Bargaining Unit Definition

The Union requests that there be added to the Collective Bargaining Agreement language as follows: People outside the bargaining unit shall not perform bargaining work except in case of emergency. The Union indicates that this language, if added, would preserve the integrity of the unit and would protect the job classifications to which the Union was certified.

The City, for its part presented several Exhibits which consisted of job descriptions both for job classifications within the bargaining unit and job classifications outside the bargaining unit both in a subordinate position to the bargaining unit classifications and in

a superior position to that of the bargaining unit classification. They have indicated that a comparison of these job descriptions demonstrates a tradition in practice of overlapping of duties, which makes it virtually impossible to define the particular unit.

The Union counters by indicating that even though the job descriptions are overlapping, the main job duties do not overlap. They indicate that those duties significant to the classifications as a whole, should not be infringed upon.

What the Union is requesting, by way of amendment to the Contract, is language that is traditional in many Collective Bargaining Contracts. If this were a traditional contractual situation, I would have no difficulty in recommending the inclusion of such language. There does appear to be, however, a unique character to this unit that is not normally present in other labor situations. The job descriptions do overlap, both as to employees subordinate to bargaining unit jobs and to those superior to such positions. There apparently has been a tradition of overlapping. By the same token, there are some distinct duties performed by those employees within the bargaining unit which should be kept intact. In effect, what the Union wishes is language that would protect its status quo and would keep from the unit being eroded. It would seem that a letter of understanding can cover this situation and avoid the necessity of contract amending. Such a letter can mention the traditional overlapping of job classifications yet protect the duties that are significant to each particular

classification. At the same time, this would allow the Employer sufficient flexibility to have job classifications which entail similar work to also be performed.

Issue No. 3 - Audit Procedure Grievances

On the final issue separating the parties, the Union proposes adding the following language to the Collective Bargaining Agreement: Any dispute arising from the results of such an audit shall be resolved through the grievance procedure.

The audit that the language makes mention of concerns a procedure whereby an employee may request a review of his position if he feels his job duties have changed concerning work responsibilities to a major degree. This audit takes place within sixty (60) days after the request is submitted. If, as a result of the audit, the duties of the employee are determined to fall within a higher classification, the employee is reclassified to the higher position. Normally a pay increase is incidental to such a reclassification. The Union looks upon the audit as a vehicle to either qualify or disqualify an employee for promotion. They believe strongly that everything in the contract between the parties should be subject to review and the grievance procedure. This would include the audit as well.

The City of Pontiac, on the other hand, indicates that the audit procedure allows both the City and the employee the greater flexibility of reclassification in the event new responsibilities are

added to an employee's job description. This mechanism allows re-evaluation of newer changed duties. The City submits that the audit is a neutral process and therefore shouldn't be involved in the grievance procedure.

A review of the contract Section involved would tend to support the City contention that the procedure allows a re-evaluation of a job description in the event new responsibilities are added. It, in effect allows a new job description to be created without the necessity of posting the job description as a new vacancy. This creates greater stability for all employees, and at the same time, gives the employee an opportunity to get greater pay for greater responsibility. Subjecting this audit procedure to the general grievance procedure would create a situation not constructive to good relations. Almost every audit, if it did not result in additional pay, would be grieved, as there would be little incentive not to go forward with such a procedure. This would create enormous expenses both for the City and for the Union with little benefit to be had for either party.

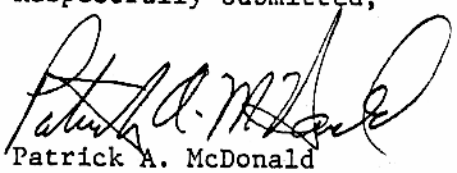
Instead of subjecting Section 3 to the general grievance procedure, the parties might agree to insert language that would allow review of the audit procedure, <u>but</u> conditional upon the grievant successfully demonstrating that the audit procedure was conducted in a arbitrary and capricious manner. In otherwords, the results of the audit should stand unless the procedure was arbitrary and capricious. This would provide protection for the employee in the event such a situation has occurred, and at the same time, would place the burden directly where it should be, on the party disagreeing with

final results of this audit reclassification procedure. This change would protect the employee from arbitrary and capricious conduct, yet not precipitate a deluge of grievances soley because the results are not in keeping with an employee's expectations or hopes.

IV. CONCLUSION

In making these three recommendations, I do so with the sincere hope that they will result in a Collective Bargaining Agreement being concluded. I respect the parties rights and wishes to refuse such recommendations but would hope that in keeping with the good faith demonstrated in the meetings held thus far, that they would accept them and conclude an Agreement. Your Fact Finder stands ready to be of continued service to the parties in the event that becomes necessary.

Respectfully submitted,



Patrick A. McDonald