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5/12/1994

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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the
Fact Finding Between

SAGINAW COUNTY AND 70TH DISTRICT COURT

- and -

MERC Case No. L92 B-0848

GOVERNMENTAL EMPLOYEES LABOR COUNCIL, PROBATION OFFICERS
MICHIGAN FRATERNAL ORDER OF POLICE

FACT FINDER'S FINDINGS OF FACTS AND RECOMMENDATIONS

APPEARANCES:

FOR SAGINAW COUNTY AND
THE 70TH DISTRICT COURT

Stephen L. Borrello, Attorney
Jon B. Mersman, Deputy Controller
of Saginaw County

Cheryl Jarzabkowski, Acting
District Court Administrator

Commissioner Tom Basil

GOVERNMENTAL EMPLOYEES
LABOR COUNCIL, PROBATION OFFICERS

Pat R. Bertrand, Chairperson,
Saginaw County 70th District State Court
Probation Agents Unit

Marvin Grimaldi, Probation Officer

Ray Wallace, Field Representative,
Police Officers Labor Council

Original (County/70th District Court)

PROLOGUE NO. 1 - INTRODUCTION

This is the first contract. The union was certified in October, 1992. Negotiations began in January, 1993. The parties have had one mediation session, lasting three hours, on March 9, 1993. As a result, the parties have not been able to reach an agreement causing a petition for Fact Finding to be filed. As a further result, the undersigned has been appointed the Fact Finder pursuant to Michigan law.

Edward Rosenbaum

The Fact Finder has begun this report with a series of prologues to emphasize certain points to the parties and to the Saginaw County Board of Commissioners who are the funding agents, at least in part, for the operation of the District Court.

PROLOGUE NO. 2 - THE STATUTORY SCHEMES COMPARED

The police and firemen are governed by Act 312 which provides for binding final last offer interest arbitration. Thus, the decisions of the arbitrators in those cases are binding on the parties concerned.

Fact Finding, on the other hand, involves recommendations of neutral third parties which are not binding on the parties.

PROLOGUE NO. 3 - THE REPORT

The Fact Finder is aware that this dispute probably cannot be resolved until the County Commissioners can come to an accommodation with the District Court because the Court must rely on the Commission for funds.

The citizenry look to the courts as that third branch of government to ensure that the laws are obeyed, society is protected, and individual rights are maintained. To do that, our court system must function in a satisfactory fashion. Without a court system functioning in that manner, our democracy will fail. The public will not accept anything short of a court system functioning in a satisfactory fashion. Thus, this labor dispute must have the attention of all parties involved, and must demand the very best of all of them, including the County Commissioners, to address the issues and to resolve them.

As previously indicated, this report is not binding on the parties. However, under Michigan's legal system, once a Fact Finder's report is issued, the parties are obligated to continue bargaining with consideration given to the recommendations made in the report. This bargaining process probably would require the aid of a mediator. Your Fact Finder hopes this report will help the parties form a basis from which to bargain because this dispute must be brought to a final resolution. The responsibilities that all parties have to that end is enormous. If, unfortunately, resolution cannot be reached after the Fact Finder's report and further negotiation, then serious consideration should be given to a binding fact finding technique which is sometimes used by governmental units within the State of Michigan. Hopefully, the recommendations given in this report will prove to be helpful.

THE UNRESOLVED ISSUES

A. At the time the Petition was filed

At the time the petition for Fact Finding was filed, the unresolved issues were the following.

Employer's Issues	Union's Issues
1. Management's Rights	1. Wages
2. Paid Time Off	2. Grievance Procedure
3. Disability Plan	3. Retirement
4. Wages	4. Job Description/Reclassification
5. Residency	5. Union Representation
6. Outside Employment	

B. At the end of the second day of Fact Finding Hearings

Negotiations continued between the parties from the date the petition was filed passed the date of the first day of Fact Finding hearings through to the second day of Fact Finding hearings. Thus, by the second day of Fact Finding hearings the following issues were settled.

Paid Time Off
Disability Plan
Residency
Outside Employment
Retirement

Thus, the Fact Finder was left with the following issues.

Wages
Management Rights
Grievance Procedure
Union Representation
Job Description/Reclassification

THE BARGAINING UNIT

The bargaining unit consists of seven people composed of six Probation Officers (Agents)[1] and one Community Service Coordinator.

The usual minimum educational requirement for the job of Probation Officer is a bachelor's degree from an accredited educational institution. They would prefer the degree be in a subject related to community service. They usually want people with experience dealing with people involved in substance abuse and with counselling experience. The job requires Apprentice Counsellor Credential. One needs to pass a test with the State of Michigan to get that certificate.

[1] The terms "Probation Officer" and "Probation Agent" will be used interchangeably in this Report.

The duties of the Probation Officers were described by Pat Bertrand as follows. The primary duties are covering misdemeanour cases sent down by the District Court to prepare the presentencing report. Those include the interview process, background checks, speaking to outside resources such as victims, police officers, treatment agencies and supervision of those individuals placed on probation at the time of sentencing for anywhere up to five years. S/he also screens individuals for substance abuse and what they call the PLUS Program, which is similar to the State's tether program (electronic monitoring). This amounts to a "house arrest" kind of program. The Probation Officers also approve any release given from either the house arrest or from the County Jail for schooling, work, or counselling.

THE PLUS PROGRAM

Saginaw County received a grant from the State of Michigan to fund the "PLUS Program". The Court received the money for the PLUS Program from the Community Corrections Advisory Board. This PLUS Program involved an additional function or set of duties assigned to the Probation Officers. The function was (1) to assess the individuals convicted of a crime as to whether or not they would be a good risk for a tether. If the individual is assessed to be a good risk, a tether is put on the individual and a monitoring device is put in his/her home. In order for the individuals to leave their homes, permission would have to be granted. Thus, this amounts to house arrest. From the individual's point of view, this is far better than spending that time in jail. It is also an alternative sentencing option to probation. If assessed a good risk, the convict would have to pay the County a one-time fee of twenty-five dollars plus a daily rate. (2) The second function would be to recommend the daily rate that the individual would pay the District Court.

Most of the time the Court would follow the recommended rate. (3) The third function is to monitor the individuals placed on the tether.

The amount of time spent on the PLUS Program varied from day to day according to how many people were on the PLUS Program.

Therefore, the additional workload as a result of the Plus system is

1. Requests from convicts for more released time.
2. Verification from the Sheriff's office that the individual should or should not have been out when the Probation Officer is called by the Sheriff.
3. Preparing the enrolment sheet.

The Acting Court Administrator defined the job of the Probation Officers in greater depth along the following lines.

1. They prepare background checks for the presentence interview.
2. They speak with the individual.
3. They do a bunch of different things including getting police reports to make an assessment of the individual. They take the victim's statement if there is a victim involved. They collect data.
4. Then they make a determination whether or not the individual is a threat to society or to themselves.
5. They would recommend to the Court whether or not the individual should go on the PLUS Program.
6. If the Judge determines the individual should go on the PLUS Program, they fill out a form.
7. If there is a change in the individual's work schedule, another form is filled out.

8. On special requests, e.g. dental problems, there is a special form to be filled out to allow them to leave their homes.

9. There are fees that need to be collected from individuals on the PLUS Program and the Probation Agent makes the recommendation of the fees to be paid pursuant to a Chart showing various fees under various circumstances. The Chart was, in fact, prepared by the Judges with the help of the Acting Court Administrator. This Chart was prepared around February of 1993. Prior thereto, the Probation Agents recommended what the fees should be. The PLUS Program was in place for more than a year before the Chart was prepared.

The reason the Chart was prepared was because prior thereto while the Probation Officers were getting the overtime stipend, there seemed to be a high correlation with recommendations of high fees, but when the overtime payment ceased, there seemed to be a high correlation with low fees being recommended so that, according to the Acting Court Administrator, the PLUS Program was financially failing.

According to her, she perceived the PLUS Program to be a dual function in that the Probation Agents make the determination of the defendant's eligibility for the program and the Jail holds the responsibilities as far as putting the person on the program, collecting the fees, and the monitoring of the individual.

The individual Probation Officer is not working any overtime as a result of the PLUS Program. The Sheriff's calls are within the eight-hour day. However, the PLUS Program was not used by the Judges to the extent it is now prior to the PLUS grant. Previously there were only five monitoring units. Now there are seventy monitoring units. The PLUS Program generate's additional calls to the offices of Probation Officers.

The Acting Court Administrator estimates that the time spent by the Agents on the PLUS Program varied from 5-10%.

While the grant was used to raise the Probation Officers' pay from an O5 to an O6, the Probation Officers also performed pretrial screening services. However, the Community Corrections Advisory Board hired an additional person to serve as a pretrial screener. Except for the pretrial screening that this person currently is doing, the Probation Officers are doing all of the other PLUS Program functions. The grant is still continuing, but it is used to pay the pretrial screener. Effectively the "overtime" ceased for the Probation Officers when the pretrial screener was hired.

THE CRITERIA

Fact Finders, and arbitrators acting in the capacity of Fact Finders, have developed criteria over the years on which to base their decisions. The criteria or factors to be considered have been codified by the Legislature of the State of Michigan in Act 312, Section 9, MSA 17.455 (39), which reads as follows.

> **423.239 Findings and orders; factor considered.**
> Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment

of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Although this is the language used in the arbitration Act for police and fireman, and Probation Officers are not covered under that Act, these are the factors considered by Fact Finders.

Sometimes some of these criteria will be in conflict with each other. For example, the comparables may indicate the employees should get a wage increase of a certain amount or percentage, but the financial ability of the unit of government may not be able to meet the level and/or percentage increase of the comparables.

THE STIPULATED COMPARABLES

The stipulated outside comparables are the counties of

Dade	Livingston
Berrien	Monroe
Calhoun	Ottawa
Ingham	Kent
Jackson	
Kalamazoo	

WAGES

The Positions

The union's wage proposal appears as its Exhibit #14, which is

Effective January 1, 1993	5% for all steps
Effective January 1, 1994	5% for all steps
Effective January 1, 1995	5% for all steps

The wage increases are to be retroactive.

The employer proposals appear as its Exhibit #6 and are

A wage freeze for 1993
A 5 percent increase for 1994
A wage reopener for 1995.

For 1994

As both the union and employer agree that effective January 1, 1994, each Probation Officer should get a five percent increase in wages, that settles that calendar year and is the Fact Finder's finding and recommendation on that year.

For 1993

The employer states there was a wage freeze for all other District Court employees in 1993, so there should be a freeze for the Probation Officers.

As part of Employer Exhibit No. 13, the County prepared a schedule of various summary data for Saginaw County District Court and the ten comparables. The Chart was prepared in February, 1994, using Probation Agent data from Union Exhibit No. 12, listed in descending order of the comparables to Saginaw County on the basis of the State Equalized Value.

County	1992 Pay Rate	1993 Pay Rate	Percentage Increase
Kent	36,076	37,854	4.9
Ingham	37,599	39,103	4
Ottawa	33,363	34,698	4
Kalamazoo	34,169	34,029	(0.4)
Monroe	29,231	31,746	8.6
Berrien	31,532	32,163	2
Livingston	29,451	31,369	6.6
Jackson	30,372	33,852	11.46
Calhoun	29,628	30,410	2.6
Bay	35,716	36,999	3.59
		Average (Mean)	4.7
		Median	4
		Mode	4

The comparable figures for Saginaw County for 1992 and 1993, according to the summary chart in Employer Exhibit No. 13 are 29,518 and 32,021. That amounts to a wage increase of 8.48 percent. However, we know there was a wage freeze for 1993, i.e a P-05 Probation Officer in Saginaw received the same amount in 1993 as in 1992, i.e 29,518. The 32,021 is really the pay of the Community Service Officer who is in the bargaining unit but is not classified as a P-05, i.e. the rating of the remaining Probation Agents in the Probation Department. He is not a Probation Agent, but he was one previously. The 32,021 may simply have been a clerical carry over into 1992 of the wages of a P-06 that the Probation Agents actually received in 1992 but did not get in 1993.

Because of the above error, doubt is cast on the remaining wage data shown in that summary table. However, as the employer supplied the 1993 data and made it part of its Exhibit No. 13, for purposes of this Fact Finding, the Fact Finder will assume the non-Saginaw wage data in that table is correct for the purpose of computing the percentage increases of the comparable counties.

Thus, on the basis of the above percentage increases of the comparable only, the Fact Finder would say that the percentage increase of the Probation Officers for 1993 should have been four percent. However, that is not the whole story. Five other factors should be taken into consideration. These are (1) internal consistency and comparability within the District Court itself, (2) the fringe benefits received, (3) the relative level of wages of the other Court employees compared to the comparable employees in the ten other comparable counties, (4) the work load of Saginaw Agents compared to that of the other ten comparable counties, and (5) the County's ability to pay.

On the basis of internal comparability, the Probation Agents should not get any wage increase for calendar year 1993 as all the other employees in the District Court had their wages frozen for that year, also.

Saginaw County has excellent fringe benefits, especially in comparison to the other counties. In the words of its Assistant Controller, its fringe benefits are "second to none." the District court employees get the same fringe benefits as the other County employees. In fact, the Fact Finder had indicated at the hearings that the medical package was so good it ought to be sold to the Clinton administration. It certainly would be an improvement to the medical care plan President Clinton is proposing.

The total cost of an employee is not just his or her wages but also the cost of the fringe benefit package. Thus, on the basis of having an excellent fringe benefit package, the Probation Officers should have received little or no wage increase for 1993.

According to Employer Exhibit No. 13, the Probationor/Agent Ratio was as follows for the nine out of the eleven comparable counties for which figures were presented.

Kent	566
Ingham	150
Kalamazoo	300
Monroe	250
Saginaw	100
Livingston	250
Jackson	180
Calhoun	150
Bay	350

The Acting District Court Administrator used a computer printout to show that the average case load in 1993 for all six of the Probation Agents was 75.83. Based on a self-reporting basis, the Union Exhibit No. 23 shows a total number of cases supervision in May of 1992 as 300 and as of February 14, 1994, as 469. Dividing both figures by six gives us 50 for each Agent in 1992 and as 78 as of February 14, 1994. Thus, the figure appears to be close to 76 per Agent and even using the higher figure in Employer Exhibit No. 13, the figure is significantly below the comparable figure for the eight comparables provided. Therefore, the workload seems to be significantly below that of the comparables. Thus, on the basis of work load alone, the Agents should not have received any wage increase in 1993.

Finally, we come to the County's ability to pay. Two measures of ability to pay are State Equalized Value and State Equalized Value per population. Saginaw County ranks fifth lowest of the eleven comparable counties in terms of State Equalized Value and third lowest in terms of State Equalized Value per population. That indicates a below average to weak ability to pay. On that basis, because all the other comparable counties granted wage increases except one, Saginaw County should have granted its Probation Officers a low wage increase for 1993.

Taking all of the above six factors into consideration, your Fact Finder finds that the District Court should have granted its Probation Officers a low wage increase for 1993. Therefore, he recommends that the Probation Officers wage increase effective January 1, 1993, be set at one-

and-one-half percent retroactive to that date. Certainly the cost of living as of January 1, 1993, was increasing at an annual rate significantly above that percentage.

For 1995

Of all the contracts that the parties made available to the Fact Finder, the only one that said anything about the wage rates commencing January 1, 1995, was that for Jackson County. That said the salary schedule will incorporate as an integral part of this Agreement.

"1995 - 2% annual increase effective 1/01/95

2% annual increase effective 7/01/95

$300.00 added to 1995 salary

There will be wage reopeners in 1994 and 1995."

Thus, the Fact Finder will have to conclude that it is too early for him to state a percentage increase effective January 1, 1995, and that he, therefore, finds there should be a wage reopener effective January 1, 1995, and recommends accordingly.

MANAGEMENT RIGHTS

The union proposes the management rights clause should read as follows.

ARTICLE 2 - MANAGEMENT RIGHTS

Section 1. The Union recognizes that the management of the operations of the Employer, and its respective departments, is solely a responsibility of the Employer, and the respective department heads, and that nothing in this Agreement can restrict, interfere with or abridge any rights, powers, authority, duties or responsibilities conferred upon or vested in the Employer, or any of its elected or appointed officials, by the laws and constitution of the State of Michigan or the United State of America.

> Section 2. In addition to all such rights conferred by law, the Employer and its department heads, reserve the right to manage its affairs efficiently and economically including, but not by way of limitation, the rights to determine the number and locations of buildings and work areas within buildings, the work to be performed within the bargaining unit, the amount of supervision necessary, the methods of operations, the schedules of work, the right to purchase work, processes or services of others, the selection procurement, design, engineering and control of tools, equipment and materials, the discontinuance of any services, material or methods of operation, the quantity and quality of service, the right to hire, to suspend, demote, or to discharge for just cause, to assign, promote, or transfer employees, to determine the amount of overtime, if any, to be worked, to relieve employees from duty because of lack of work or for other legitimate reasons, to direct the work force, assign work and determine the number of employees assigned to each job classification, to establish, change, combine or discontinue job classifications, and prescribe and assign job duties, to adopt, revise and enforce working rules and regulations.

The employer is willing to accept Section 1 as written. Therefore, the Fact Finder recommends Section 1 of the Management Rights clause to be as written above in the union's proposal.

On the other hand, the employer wants the language of Section 2 to be as indicated below.

> Section 2. Employer retains all of the rights and functions of management, except to the extent that they are expressly and specifically modified or limited by the written, specific provisions of this Agreement. Some of the rights retained by the Employer include, but are not limited to, the rights retained by the authority to manage employer's operations and to direct the work force; to hire and assign employees of its own selection and determine the number to be employed; to maintain efficiency; to extend, maintain, curtail, sell or terminate all or any part of the operations of the employer; or to subcontract any part thereof; to determine the size and locations of employer's facilities; to determine and establish new or improved methods or facilities; to discontinue old methods or facilities; to prepare job qualifications and establish job classifications; to assign and reassign the work to be performed by employees or classifications of employees as employer may deem necessary to expedient; to establish and change work schedules and assignments; to transfer, promote, demote, lay-off, terminate, or otherwise relieve employees from duties; to establish, maintain and enforce rules for the maintenance of discipline; to discipline, suspend or discharge employees at the will of the judges of the 70th District Court; to determine, establish, change and modify performance standards; to determine what work,

> if any, shall be performed by contractors; to determine the number and starting times of shifts, the hours of work, days of work and the number of hours and days in the work week for all employees, to establish and require employees to observe county rules and regulations; except as the foregoing may have been modified by, or contrary to, any specific written terms of provisions of this Agreement.
>
> The above rights of management are not all inclusive, but indicate the type of matters where rights shall belong or are inherent to management.

This Employer, as represented by the County, has already negotiated a much narrower management rights clause for its County Sheriff's Department than it is asking from this union. The language in the contract between the Teamsters and the Juvenile Division of the County's Probate Court has the same language on Management Rights that appears in the signed agreement with the County Sheriff's Department.

That language reads as follows.

> MANAGEMENT RIGHTS
>
> Unless specifically limited by provisions elsewhere in this Agreement, nothing in this Agreement shall restrict the Employer in the exercise of its function of management under which it shall have among others the right to hire new employees and to direct the working force, to discipline, suspend, discharge for cause, transfer or lay off employees, require employees to observe reasonable departmental rules and regulations, to decide the services to be provided the public, schedules of work, work standards, and the procedures by which such work is to be performed. It is agreed that these enumerations of management prerogatives shall not be deemed to exclude other prerogatives not enumerated.
>
> The exercise of the foregoing rights and responsibilities shall be limited by other provisions of this Agreement as well as by the Constitution and the laws of the State of Michigan and the Constitution of the United States.

The 70th District Court has signed an agreement with OPEIU which has a Management Rights clause which, like that requested by the Probation Officers, contains a just cause standard for discharge. That Management rights section, which appears under the heading "ARTICLE 2, UNION AND MANAGEMENT RIGHTS" after the first Section which deals with the union's rights, reads as follows in full.

> Section 2.
> It is the right of the EMPLOYER to determine the standards of service to be offered; determine the standards of selection for employment and promotion; direct its employees; take disciplinary action; adopt uniform work rules; relieve its employees from duty because of lack of work or for any other legitimate reasons; discharge employees for just cause; maintain the efficiency of its operations; determine job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.
>
> The listing of the preceding rights of management in this Article is not intended to be, nor shall be considered restrictive of, or as a waiver of, any of the rights of the EMPLOYER not listed. All management rights and functions, except those which are expressly limited in this Agreement, shall remain vested exclusively in the EMPLOYER.

It would appear that much of the conflict as to the wording of the Management Rights clause in this Fact Finding situation hinges on whether or not employment discharge shall be "for just cause" or employment is "at will."

The County Sheriff's Department and the identical language on the Management Rights clause in the Juvenile Division of the Probate Court agreement seem to this Fact Finder to be both fair and to provide management with adequate protection in conducting its business. The Fact Finder also feels this to be the case with the contract signed by the 70th District court with the

OPEIU. Also, the proposed language of the Probation Officers Union of the 70th District Court would fall in the same category.

Therefore, the Fact Finder recommends that the 70th District Court should be free to pick any of the complete contract language clauses dealing with Management Rights it chooses from those contained in either of the above enumerated contracts with the Sheriff's Department, Probate Court's Juvenile Division, the OPEIU or the Probation Officers Union's proposed contract language on Management Rights.

UNION REPRESENTATION

The union's proposed representation article reads as follows.

ARTICLE 4 - REPRESENTATION

Section 1. Unit Chairperson. the Employer hereby agrees to recognize one (1) Union Chairperson and one (1) alternate chairperson. The Unit Chairperson must be a full time bargaining unit Union member with at least one (1) year of seniority. It shall be the function of the Unit Chairperson to meet with representative of the Employer for purpose of negotiations and in accordance with the procedures established in the grievance procedure of this Agreement.

Section 2. Alternate Chairperson. The Alternate Chairperson shall function only in the absence of the Unit Chairperson.

Section 3. Notice. The Union shall notify the Employer, in writing of the names of the Unit Chairperson and alternate Chairperson and any subsequent changes thereof.

Section 4. Chairperson(s) Time. It is understood between the Employer and the Union that all such time of Chairpersons shall be devoted exclusively to the prompt handling of grievances and shall not be abused by such employees. Therefore, the privilege of Chairpersons to leave their work stations after explanation to the Supervisor, or Director in the absence of the Supervisor, during working hours, without loss of pay, is granted.

The Fact Finder's review of his notes and the Exhibits submitted by the employer do not reveal what the employer's objection(s) (is) (are) to this Article. It does seem quite reasonable to the Fact Finder. However, a comparison with the other unions' contracts submitted by both sides would be in order to see if these four sections are in any way out of line.

After a thorough review of the relevant portions of the other contracts on union representation, the only significant differences the Fact Finder found of the relevant language was the following.

1. It has neither the leave days of the Saginaw County Sheriff's Department nor its super-seniority for layoff and rehire purposes.
2. It lacks the specific time limitations of the Teamsters with 54-B District Court, namely one hour per grievance or 4 hours per month as well as the allowance of 8 hours for each day of an arbitration hearing.
3. It does not have the phraseology "The Steward and alternate Steward may be required to record time spent." of the OPEIU and the 70th District Court contract.

However, except for these above-mentioned unique exceptions, the union's proposal is in line with the general language of all the contracts on union representation. Therefore, the Fact Finder recommends the parties adopt the union's proposal on union representation with any of the above-mentioned unique features that the parties mutually agree to include.

JOB DESCRIPTION/RECLASSIFICATION

To the knowledge of the Chairperson of the Saginaw County 70th District State Court Probation Agents Unit, the Probation Officers have not been reclassified for at least fifteen years.

When the grant for the PLUS Program was received, the Probation Officers' salaries were raised from a P-05 to a P-06. However, technically they were never reclassified to a P-06. In addition, they received an overtime stipend.

When the person was hired to do prescreening for the PLUS Program the Probation Officers were (1) dropped in salary back to the P-05 level, and (2) were told their salaries would be reduced for a period of time to make up for the overload stipends which they had received due to an administrative error. They each signed repayment forms accordingly.

Patrick Bertrand wrote a letter on November 6, 1992, protesting the fact that the Probation Officers had not received the stipend covering the difference in salaries from a P-05 and a P-06 since July 1, 1992, even though, according to Mr. Bertrand, the duties of the job continued and the Probation Officers were never informed in writing that the grant had ceased.

The union notes that according to the second pages of the Committee on Appropriations "Revised Report" dated February 26, 1991, "Following completion of the demonstration [the PLUS Program] the additional grade will be reconsidered depending on the future of the grant program."

The Probation Officers filed a group grievance (1) protesting the drop from a salary of a P-06 back to a P-05 level, and (2) asking if they had to repay the overload stipend they should be allowed to either (a) "work off the overpayments over a period of time as done in the past, or [(b)] pay back the overpayments over a period of 46 pay periods" [rather than the 23 pay periods demanded.] This grievance was denied.

The union has pointed out in its Exhibit #9 that various other positions have been reclassified including that of the District Court's "positions of Civil, Criminal and Traffic Division Supervisor, be placed in grade MO2; and the position of Bailiff be placed in grade T11..."

As indicated earlier in this report, previously there were only five monitoring units and now there are seventy monitoring units. In and of itself, this indicates some increase in work load on the part of the Probation Officers.

The union is proposing the following Article on Reclassification.

Article 17 Miscellaneous

> Section 5. Job Reclassification. If the Court substantially modifies or alters the job functions of bargaining unit members to perform work not otherwise associated with the primary duties of bargaining unit members, the Union may request a reclassification of the job.

A review of the employers' Exhibits fails to find any material dealing with the 70th District Court's position on a reclassification clause in the new contract.

A review of the contracts submitted failed to show a clause directly dealing with reclassification even though there were clauses dealing with reassignment, a temporary assignment, acting assignment pay, transfers, promotions and the filling of vacancies. There was a Letter of Understanding attached to the Teamsters' contract with the 54-B District Court which dealt with what happened when a new judge was to be appointed resulting in a change in working conditions. Although that clause probably comes closest to job reclassification of the clauses mentioned, it still was not directly on point.

Your Fact Finder sees no reason why the union's proposed Article 17, Section 5 should not be included in the contract and, therefore, recommends its inclusion. However, he would add a sentence reading, "This does not preclude the Employer from making a reclassification under similar circumstances."

GRIEVANCE PROCEDURE

The final unresolved issue is the contract's language on the grievance procedure to be utilized. The "guts" of that issue is whether or not there should be binding arbitration.

Some Background Information

In early 1992 some racially denigrating literature was circulated around the District Court indicated (1) there was an open season on hunting Blacks and (2) disparaging Blacks in general. This was very vicious and malicious, racially inflammatory literature. An ex-Probation Officer spoke to some Judges. An investigation was held by a Mr. Jensen from the law firm which represents both the County and the 70th District Court. During that investigation, Mr. Bertrand was not read his rights. As a result of this investigation,

1. Mr. Bertrand was given a two-week suspension without pay.
2. Two other Probation Officers were given one-week suspensions without pay.
3. The position of Director was eliminated as was that of the Deputy Director.
4. The Department was restructured.

Mr. Bertrand did not feel he had a right to arbitration. He wrote Chief Judge Boyd a letter asking that they reconsider and reduce his suspension to one week as were the suspensions of the other two Probation Officers. The request was denied.

When Judge Boyd handed him the letter informing Mr. Bertrand that he was being suspended, he told Mr. Bertrand that he acted unprofessionally.

Mr. Bertrand felt that he should have been given only a one-week suspension as was given to the other Probation Officers. He considers this a dual standard.

When the employer sought to introduce its first two Exhibits, i.e. the racially malicious literature, Mr. Wallace objected to its introduction on the basis that these documents are believed

to have been circulated by one or more Probation Officers, but the fact that any Probation Officer circulated this material has not been proven through any grievance procedure, employee hearing procedure or any appeal procedure.

While the Fact Finder was not present at any of the investigatory proceedings conducted by Mr. Jensen and it is true that it has not been proven through any grievance procedure, employee hearing procedure or any appeal procedure that any Probation Officer circulated the documents, the Fact Finder is satisfied in his own mind that one or more Probation Officers did, in fact, circulate these racially scurrilous Exhibits.

As a result of the suspensions and the restructuring of the Probation Department, this union was organized.

Less than a year later, the Community Service Coordinator made a physical threat to a clerical staff member in Mr. Bertrand's presence. A police report was even filed about this threat. Yet there was no investigation conducted about it. He feels that at least an investigation was warranted. He feels this is another example of a double standard.

Although Probation Officers have to be there 8 to 5, the judicial staff do not have to and can come and go. Mr. Bertrand feels this is another example of a double standard.

The contract between the 70th District Court, the 10th Judicial Circuit Court and the Saginaw County Probate Court with the Office and Professional Employees International Union Local 393 does have binding arbitration as its final step in the grievance procedure.

According to Employer Exhibit #12, Barrien, Ingham, Livingston, Ottawa and Kent do provide grievance arbitration for their Probation Officers, while Bay, Calhoun, Jackson, Kalamazoo, Monroe, and Saginaw do not. Thus, five of the comparables do, and five of the comparables do not have binding arbitration as the final step in the grievance machinery. However, a majority of the counties that are unionized do have binding arbitration for Probation Officers.

The Union's Proposed Language on the Grievance Procedure

The Union proposes the following language for the grievance procedure.

ARTICLE 5 - GRIEVANCE PROCEDURE

Section 1. Definition. A grievance shall deem to exist only whenever there develops a disagreement between the Employer and one or more employees represented by the Union as to the interpretation or application of a specific provision of the Agreement. Such disagreement shall be considered a grievance and shall be addressed to the grievance procedure.

Section 2. Procedures.

Step 1: Any employee having a grievance, or one designated member of a group of employees having a common grievance, shall discuss the matter with the Supervisor, or Director, in his/her absence, and the employee shall have the right to have the Chairperson present during the discussion. The Chairperson shall be permitted to discuss the grievance with the employee involved and to investigate the matter if necessary, in order to establish the facts before taking up the matter with the Supervisor. The Supervisor, the employee and the Chairperson will attempt to adjust the grievance at this point. If the grievance is not resolved through this point, the employee shall reduce the grievance to writing which shall be signed by the employee or designated group member and be presented to the Supervisor within 10 working days. This Supervisor shall give the Chairperson a written answer to the grievance within 10 working days.

Step 2: If a satisfactory adjustment is not obtained under Step 1, the Chairperson may request a meeting with the Director and/or designees. Such meeting will be held not later than 10 working days. At such time, the Chairperson, employee and Director shall attempt to settle the grievance. Failure of the parties to resolve the grievance will require the Director to give the Chairperson a written answer to the grievance within 10 working days following the expiration of the meeting.

Step 3: If satisfactory adjustment is not obtained under Step 2, either party may request a meeting within 10 working days with the Court Director and the Union's outside district representative and

the judge and/or court representatives, employees and Chairperson shall be present at the meeting. A decision on the grievance shall be made in writing by the judge or her designee, within 10 working days subsequent to the conclusion of the meeting. The final decision shall be given to all parties involved.

Step 4: Arbitration. Prior to arbitration, the parties mutually agree to submit the grievance to non-binding arbitration to the Michigan Employment Relation Commission. Such request must be made within 10 working days of the final decision of the court. A grievance which has not been settled in Step 3 may also be submitted by the Union to arbitration before an arbitrator selected by the parties from a panel provided by the Federal Mediation and Conciliation Service. Such submission to arbitration shall be made by written notice to the other party no later than 30 working days from the date of the decision given in Step 3. The Employer or Union shall request the Federal Mediation and Conciliation Service to submit a panel of at least seven qualified arbitrators. Within 10 working days after receipt of a panel, the Employer or Union may object to one panel per grievance only. Within 10 working days after the day the letter from the agency providing the panel is received by the Employer, the Employer and Union will alternately strike names to select the arbitrator.

Section 3. Rules of Arbitration. The arbitrator shall render his/her decision within thirty days (30) after the submission of all evidence in the matter and the decision of the arbitrator shall be final, binding and conclusion upon all parties.

Section 4. Arbitration Costs and Fees. An administrative fee, if any, and the arbitrator's fee and costs shall be shared equally between the Employer and the Union.

Section 5. Grievance Procedural Rules.

A. Whenever the term working day is used in the grievance procedure it shall be defined Monday through Friday excluding Saturday and Sunday and any recognized holiday.

B. Grievances regarding any disciplinary action must be filed in writing within three fully scheduled working days of the disciplinary action excluding Saturday, Sunday and holidays.

C. Any agreement reached between the Employer and the Union under the grievance procedure shall be binding upon the Employer and the employee specifically affected, and cannot be changed by any individual.

D. Time limits or steps within the grievance and arbitration procedure may be extended or waived by mutual agreement between the Employer and the Union.

The employer's Exhibits do not reveal any proposed language for the grievance procedure. Stephen Borrello, the attorney for the Court and the County said, at the Fact Finding hearings, the reason the judges want to retain the at will status is because the Probation Officers created racially inflammatory material. As long as the Judges are able to maintain the at will employment condition, that certainly will weaken the possibility of having any meaningful arbitration machinery.

As disgusting as the creation and distribution of that racially inflammatory material was, in the opinion of this Fact Finder, this is more an excuse - good as it may be - than a reason. It is always more convenient and comfortable for an employer to have an at will standard than to have a just cause standard. The at will standard conforms to the status of each Judge's personal staff members.

Furthermore, this Fact Finder feels that the worries of the Judges as to what the arbitrators may do are grossly exaggerated. In the discipline involved, two Probation Officers were handed one-week suspensions without pay and one Probation Officer was handed a two-week suspension without pay. In this day and age, many arbitrators would have sustained much more severe disciplinary actions for the distribution of such racially inflammatory material. Arbitrators, taken as a group, are very reasonable people. By the very nature of the grievance arbitration process, including the selection portion thereof, they have to be.

Can an accommodation be made to the fears of the Judges. This Fact finder feels it can. That accommodation would be to utilize an arbitration clause which would limit the arbitrators in the strongest fashion to go no further than the narrowest of interpretations of each of the clauses. The following is one of the toughest arbitration clauses this Fact Finder has ever seen and should go very far to alleviating the fears of the Judges. It reads

1. This Agreement constitutes a contract between the parties which shall be interpreted and applied by the parties and by the Arbitrator in the same manner as other collective bargaining agreements. The function and purpose of the Arbitration is to determine disputed interpretations of terms actually found in the Agreement, or to determine disputed facts upon which the application of the Agreement depends. The Arbitrator shall therefore not have authority, nor shall he/she consider his/her function to include, the decision of any issue not submitted or to so interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effect modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. Past practice of the parties in interpreting or applying terms of the Agreement can be relevant evidence, but may not be used so as to justify, or result in, what is in effect a modification (whether by addition or detraction) of written terms of this Agreement. The Arbitrator has no obligation or function to render decision merely because in his/her opinion such decision is fair or equitable or because in his/her opinion it is unfair and inequitable.

2. If either party shall claim before the arbitrator that a particular grievance fails to meet the tests of arbitrability, as the same are set forth in this Article (Grievance Procedure), the arbitrator shall proceed to decide such issue before proceeding to hear the case upon the merits. The arbitrator shall have the case upon the merits. The arbitrator shall have the authority to determine whether he/she will hear the case on its merits at the same hearing in which the jurisdictional

question is presented. In any case where the arbitrator determine that such grievance fails to meet said test of arbitrability, he/she shall refer the case back to the parties without a recommendation of the merits.

3. Unless expressly agreed to by the parties, in writing, the Arbitrator is limited to hearing one issue or grievance upon its merits at any one hearing. Separate Arbitrations shall be constituted for each grievance appealed to binding arbitration.

Under this very tough arbitration clause, the arbitrator cannot render an opinion based on what s/he feels is fair or equitable.

The Probation Officers do not have the right to strike. The quid pro quo of an inability to go on strike for work-related grievances that unions have is the ability to submit the disputes during the life of a contract to an impartial third party with final authority to settle the dispute. That is binding arbitration.

This union was born out of a feeling of unequal treatment. An adequate grievance procedure is designed to eliminate double standards of treatment. An adequate grievance procedure should have binding arbitration.

However, mindful of the fears of the Judges, this Fact Finder has presented an arbitration clause which should alleviate those fears.

Therefore, the Fact Finder recommends the adoption of

1. All of the union's proposed grievance clauses not in conflict with the Fact Finder's suggested arbitration clauses.

and

2. The above arbitration clauses suggested by the Fact Finder.

NEGOTIATE!

This is the report. The recommendations were mentioned throughout the report at the end of each of the sections dealing with each of the unresolved issues. They need not be repeated again. The time to negotiate a new contract has arrived. It is over sixteen months since negotiations began. That is too long to wait for a contract - even an original contract. Hopefully the recommendations give some guidance.

Again, the Fact finder cannot overemphasize to all concerned the value of the courts and their proper administration for our society to survive.

While it is true this Fact Finding Report can be filed in the proverbial circular file, this bargaining situation requires urgent action. The services of a mediator on an almost continuing basis may be needed. As the recommendations suggest, consideration should be given to the technique of binding fact finding, if the parties cannot get to the table under the guidelines set forth in the recommendations.

Your Fact Finder's final recommendation is that this be a three-year contract commencing January 1, 1993, and terminating on December 31, 1994.

Edward Rosenbaum

EDWARD ROSENBAUM
Fact Finder

May 12, 1994