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IN THE MATTER OF FACT FINDING BETWEEN

CAPITAL REGION AIRPORT AUTHORITY

and

MERC Case No. L97 G-1025

POLICE OFFICERS LABOR COUNCIL

REPORT OF THE FACT FINDER

Capital Region Airport Authority

These fact finding proceedings were initiated pursuant to MCLA 423.10(d)(2) which posits that "matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known." Such fact-finding is "permissive in nature and not compulsory." American Federation of State, County and Municipal Employees, Council 25 v Wayne County, 152 Mich App 87, 96 (1986). Notwithstanding that all employees in the bargaining unit are not subject to MCLA 423.239, it was agreed that criteria set forth in the latter statute are to guide my recommendations. A hearing before me was scheduled at Lansing, Michigan for Monday and Tuesday, March 29 and 30, 1999. Unexpectedly, the hearing was completed in one day, subject to the filing of posthearing briefs.

At the hearing the following appeared:

For the Employer:

Joe Mical	CRAA
Michael Lynn	CRAA
David Wills	Director of Operations, Witness
Peter A. Cohl, Esq.	Attorney

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FF: Erwin B. Ellmann

For the Union:

Jerry Castel	POLC Field Representative
Nancy Cicone	POLC Research Analyst
Gregory L. Welch	CRAA-OPS Non-Sup.
Thomas Coe	CRAA Non-Sup, Witness
Timothy J. Dlugos, Esq.	Attorney

The evidence disclosed few disputes of ascertainable "facts." Differences between the parties were generated principally by their differing interests and expectations which, contrary to statutory hopes, are not readily susceptible to objective identification, measurement, or evaluation. What remains to facilitate arrival at an acceptable reconciliation of conflicting wishes are recommendations of an outside party guided simply by reasonableness and disinterest. It is hoped that this report will be helpful, though it is denuded of pretensions to scientific certitude.

The last Collective Bargaining Agreement between the parties became effective January 1, 1995 and it has been extended pending execution of a new Agreement. In negotiations the parties tentatively agreed on many provisions and they stipulated that these would be carried over into their new contract. What remains in dispute are proposals for changes or additions which may conveniently be considered in the order they appear in the existing Agreement.

Article 14, Section 12

The Union proposes a new provision to read as follows:

> Once each calendar year, on the employee's anniversary date, employees will be allowed to cash in vacation time. Employees with five (5) years or less of seniority can cash in up to forty hours each year. Employees with six (6) or more years of seniority can cash in up to eighty (80) hours each year.

The proposed language does not increase the amount of vacation leave which an employee may accumulate but permits "cashing in" such leave in lieu of taking vacation time off. Section 3 of the present article limits the accumulation of "annual leave" (sic.) without prior approval to 240 hours and in no event shall annual leave accumulations exceed 280 hours. The evident purpose of the limitation is to preclude extended periods of time off with a consequent depletion of available manpower. This objective is not frustrated but is actually furthered by the Union's proposal which would accommodate shorter vacations without loss of earned benefits. Although this could possibly augment the Authority's total wage costs, it would obviate unfair burdens on the most senior employees who currently might lose earned vacation benefits because of accumulation limits. If, as the Authority contends, there has been no showing that employees have been unable to take the full measure of vacations, the proposal should present few if any practical consequences, while lessening anxieties that vacations at desirable times can be frustrated by the claims of superior officers in another bargaining unit.

While comparable airport contracts do not echo such a proposal, it seems to me reasonable and I would recommend its inclusion in the parties' ultimate agreement.

Article 15, Section 1

The current agreement provides:

> Two (2) days (sixteen (16) hours) of personal leave shall be credited to each employee upon entering into employment and shall be immediately available, upon approval of the Director, for personal purposes, including time off for voting, religious observance, and necessary personal business. Thereafter, two (2) additional days of personal leave shall be credited each year during the pay period which includes January 10, except that no more than two (2) days (sixteen hours) shall be credited in any calendar year. Personal leave

shall be utilized and charged in increments of not less than two (2) full hours. Employees shall obtain the approval of the Director prior to being absent for all, or any part, of a personal leave day. Unused personal leave shall not be carried over from year to year.

The Union proposes an increase to three (3) days (twenty four hours) in the foregoing language. This suggestion appears to be motivated by little more than a desire to increase compensated time-off although the current provision is more liberal than that found in comparable collective bargaining agreements. The Union suggests that since some employees regularly work a single 24-hour shift, they would be able to take off that shift as "personal leave" under the proposed language. Neither voting, religious observance, nor the transaction of personal business would normally require such elongation of personal leave time and the Authority may well resist a proposal requiring routine compensation for sleep-time. I am not persuaded that it merits inclusion in the new contract.

Article 16, Section 1

The current agreement in Section 1(a) gives employees the option to exchange overtime hours earned for earned time off (ETO) hours for a maximum accrual of 32 hours for each year of the contract. Accumulated ETO will be paid off at the end of the year. An employee may utilize earned ETO only with prior approval. The Union proposes an increase of the maximum accrual to 40 hours. It is only when the employee has been required to work overtime hours that the provision becomes operative. Rather than accept payment for such overtime work, the employee may prefer to take time off. This will be allowed if found by the Director or his designee to be convenient and consistent with

manning requirements. If not, the ETO may accumulate. Again, it does not appear to me to be unreasonable to raise the limit of such accumulation to forty hours, permitting a full week off, consistent with the needs of the enterprise. I would recommend its inclusion in the new agreement.

Article 17, Section 2

The Authority proposes adding to language relating to selection of shifts on the basis of strict seniority, the following:

> No two Officers with the same special assignment (e.g. Firearms Instructor, K-9, etc.) may bid the same shift without permission from the Director of Operations.

This proposal is designed to assure optimum representation of special officers among the various shifts when and if special officers are added to the Authority's payroll. As I understand, the proposal has no present application since there are no duplicate special officers. The proposal does not unduly restrict employee shift choices and its inclusion of the contract will prevent future misunderstandings. Thus, I recommend its inclusion.

Article 17, Section 4

> The Union proposes that there be included the following language:
>
> Mandatory overtime or overtime assignments which require an employee to return to work with less than eight (8) hours off duty shall receive triple time (3X) for all hours worked.

It is of the nature of an airport facility that operations proceed "around the clock" and that employees must be available for sudden and unexpected recalls to duty when emergencies arise or other exigencies require. The payment of an overtime premium itself tends to discourage frivolous demands upon what is normally the employee's leisure.

There was no evidence submitted that there had been abuse in resorting to "call-backs." The Union's proposal seems plainly punitive and I am not persuaded that it merits adoption.

Article 17, Section 6

The Authority proposes that a new provision be added as Section 6 to read as follows:

> All employees are subject to call back on a 24-hour basis. The Director of Operations may require officers to carry department-issued pagers while off duty and will respond within established time limits when paged.

This proposal requires far more explanation than was vouchsafed at the hearing. It may be interpreted as making all employees in the bargaining unit subject to peremptory return to active duty, twenty-four hours per day, seven days per week, on pain of discipline or discharge if they fail to heed a summons by pager. Such wholesale and indiscriminate pre-emption of all non-scheduled work hours could result in gross inflation of labor costs as well as mortal injury to the worker's personal and family life. See Armour & Co. v Wantoch, 323 US 126 (1944); Skidmore v Swift & Co., 323 US 134 (1944). On the other hand, employees of an airport facility are aware that twenty-four hour operation is indispensable. Occasional unforeseen emergencies may disrupt normal work schedules and create extraordinary personnel demands. Modern technology has eased the burden of communicating with off-duty employees and I do not regard it as unreasonable if management wishes to supply pagers to facilitate handling emergency needs. But to discharge an employee for failing to wear a pager at the beach, or to respond while he or she is many miles from Lansing could make a shibboleth of "insubordination" and

precipitate strife which this proceeding is designed to avoid. What is "work time" requires much more sensitive analysis and articulation than are revealed by the present proposal. I do not recommend inclusion of the proposed language in a new agreement.

Article 19, Section 3

Article 19 of the current contract deals extensively with longevity pay. An annual longevity payment is made each December. For employees having 5-10 years of service, this payment is 2% of the annual wage; for those with 20 or more years of service, it is 5% of annual wage. In both Section 3 and Section 6 the parties emphasized, however, that longevity shall be paid "on a maximum salary to Twenty-Six Thousand Dollars." The Union proposes elimination of the following sentence in Section 3: "Notwithstanding any contrary provisions in the contract, effective January, 1987 there shall be a maximum cap on longevity to a salary of Twenty Six Thousand Dollars ($26,000)."

The effect of the Union's proposal would be to increase wages of eligible employees. How many would be affected and what additional costs would be incurred were not disclosed. While the Union's desire to improve compensation for its members is understandable, I do not find that eliminating the existing cap on longevity pay is supported by substantial evidence. I conclude that this proposal should be rejected.

Article 20, Section 18

The Authority proposes a new section to read as follows:

> Employees will notify the Director of Operations in writing of all prescription medications they are taking which may affect job performance.

Again, I find the formulation of this proposal too imprecise to merit incorporation in the

agreement. A prescribed condition of employment which leaves so much to individual judgment can only be a source of future conflicting interpretations. Further, there are considerations of patient privacy which should not be overborne without some showing of management need. I was furnished with no specific evidence that any allegedly deficient performance was traced to a prescription drug or that the requested information would improve operational safety or efficiency. In the absence of such showing, I do not recommend inclusion of the proposal.

Article 40

This article deals with salaries, a not unexpected source of the parties' conflicting views. The Union proposes yearly increases of six percent (6%) beyond the existing rates established January 1, 1997 while the Authority has offered three percent (3%) increases. Traditionally, it is on such economic issues that fact finders have given most weight to the experience of comparable enterprises. Here, review of collective bargaining agreements from roughly comparable airports in St. Joseph County, Michigan, Springfield, Illinois and Rockford County, Illinois--those timely selected and submitted by the parties--indicates that the level of compensation of employees at the Capital Region Airport is significantly higher, even when some other economic benefits are factored in the figures. This differential widens if allowance is made for the normal hours of work required of employees at the different airports. From the evidence submitted, I find no basis to conclude that there are inequities which must be redressed. Further, there appears to have been a 2.8% rise in the Consumer Price Index for Detroit-Ann Arbor from December 1997 until December 1998, the latest figures presented to me. The Authority's proposed 3% increase per year,

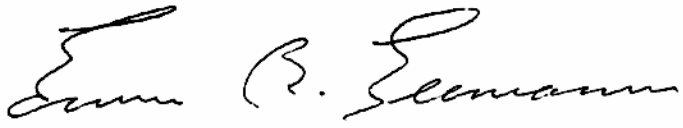
presumably retroactive to January 1, 1998, quite adequately reflects increases in the cost of living. The Union's proposal of 6% would create distortions which the marketplace has not tolerated. I would recommended incorporation of the wage adjustments which the Authority proposes.

New Article (Unnumbered) FITNESS TESTING

The Authority proposes that all employees be subjected to an annual test of their physical fitness which includes detailed requirements relating to push ups, running, timed search for a rescue mannikin in a smoke-filled room, timed use of a sledge hammer, ascending and descending a ladder while in full protective clothing and other evaluations of bodily condition. The Union tentatively agreed that such a test could be administered at time of hire but did not agree to periodic testing. The evidence before me indicated that members of the bargaining unit are called upon to perform police and fire fighting functions and to safeguard the health, safety and wellbeing of the traveling public and airport facilities and personnel. In a world which has become familiar with terrorist attacks, secreted bombs, and similar acts of violence, I do not regard the Authority's precautionary anxieties and concerns to be unreasonable. A loyal employee, crippled by age or disability, may well merit continued employment in some less demanding capacity while being unable to perform the heavy responsibilities of a public safety officer. A non-discriminatory periodic fitness test would appear to be an appropriate means for verifying each employee's physical capacity to perform assigned duties. Any such test, however, and the treatment of employees in consequence of such tests, must be strictly conformable to all applicable provisions of state and federal law, including the Americans with

Disabilities Act. To permit such testing early in employment and to forbid it thereafter would largely subvert its purpose. The parties may find it desirable to amplify in contract language the procedures to be followed in assuring that fitness testing shall not mask abuse of employee rights and be confined strictly to its proper purpose.

Respectfully submitted,



Erwin B. Ellmann
Fact Finder

Dated: May 24, 1999