

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

EX

IN THE MATTER OF
THE FACT FINDING BETWEEN:

STURGIS HOSPITAL

MERC Fact Finding
Case No: L97 F-6023

-AND-

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 79, AFL-CIO

INTRODUCTION

Pursuant to Section 25 of ACT 176 of Public Acts of 1939, as amended, and the Commission's regulations, pre-hearing activities were conducted by telephone and an actual pre-hearing meeting was waived. It was agreed to take the matter directly to hearing regarding issues in dispute between the above parties. The hearing was held on July 9, 1998, at the Sturgis Hospital, Sturgis, Michigan. The undersigned, Ildiko Knott, is the Fact Finder herein.

Sturgis Hospital shall hereinafter be referred to as the "Employer", and Local 79, Service Employees International Union, AFL-CIO, as the "Union".

Sturgis Hospital

APPEARANCES

FOR THE EMPLOYER:

Gary D. Johnson, Esq.

Also Present:

Harry VanMunster, Chief Financial Officer
Sandy Cole, Director of Patient Services
Mary Kay Schultz, Director of Human Resources
Martin Stemen, Administrative Intern
Megan Griffith, Baker & Daniels Intern

FOR THE UNION:

Herbert A. Sanders, Esq.

Also Present:

Fred Harris, Business Agent
Michele Jones, Business Agent
Carolyn Schermerhorn, Steward
Janice Strang, Steward
Lonnie Falkenstein, Steward
Marvin Shields, Steward

BACKGROUND

The Employer, Sturgis Hospital, is a nonprofit institution principally owned and operated by the City of Sturgis, Michigan. Sturgis is a community of approximately 11,000 in southwestern Michigan. The Service Employees International Union Local 79, AFL-CIO, represents four separate bargaining units at the hospital: a Professional Unit of Registered Nurses, an LPN and Technical Unit, the House Supervisors Unit, and the General Unit which is primarily composed of clerical, maintenance, and housekeeping personnel in Materials Management, Central Sterilizing, Dietary, Environmental Services, Maintenance, Pharmacy, Laboratory, Medical Imaging, Respiratory Therapy, and Cardiac Rehab/Fitness Departments. The unit is composed of ninety-seven members. The parties' respective contracts were scheduled to expire on September 19, 1997.

In 1995, the hospital had undergone geographic reclassification for Medicare reimbursement purposes. It is undisputed that this essentially meant that Medicare would pay the hospital less than it did before. Sturgis Hospital is a public hospital which derives over half of its income from Medicare and Medicaid reimbursements. As a consequence of its revenue losses, the hospital instituted a variety of significant cuts and asked the bargaining units for several concessions during the 1995 negotiations. An austere economic settlement of three increases; of 1%, 1.5%, and 1%; over a two year agreement combined with significant changes in the members' insurance coverage resulted in considerable employee dissatisfaction which carried over into the 1997 negotiations. It is undisputed, however, that before the changes in Medicare reimbursement, the net operating margin of the hospital (money left over, after everything is paid, to cover all

unanticipated expenses) was approximately \$600,000. After the 1995 negotiations, and notwithstanding the concessions made by the units, the operating margin was approximately 40% less than in the previous year. In dollars, by the end of 1996, the operating margin was \$374,525. Such a small operating margin, given the average age of the hospital's infrastructure (13 years), has the potential to create a very real problem.

In fiscal 1997, 53.7% of Sturgis Hospital's total revenues came from Medicare and Medicaid sources and 19% from Blue Cross or Managed Care. The hospital entered the 1997 negotiations with certain projections, obtained with the help of the American Hospital Association, to take into account federal government's cutbacks based on the balanced budget amendment. Based on this analysis, under a worst case scenario a \$575,696 reduction in revenues was anticipated for 1998, and \$952,268 for 1999. By fiscal 2002, the projected decrease in revenues was \$1,246,921. These projections were not disputed by the Union.

It is against this background of financial problems and membership dissatisfaction that the parties began pattern bargaining on all major issues simultaneously for the Registered Nurses Unit, the Technical Unit, and the General Unit on August 12, 1997. The Union's initial proposal was for annual salary increases of 8%, 6%, and 4% respectively for the three years of the contract. Additionally, in the General Unit it sought to upgrade two positions and asked for one additional paid holiday. The hospital asked for a gain-sharing plan, changes in the insurance package, and for a discontinuation of paid lunches. Eventually, all of the hospital's proposals were withdrawn save one which the hospital considers crucial in enabling it to affect savings and which it has tied to any salary improvements. It offered all bargaining groups identical salary packages

of 2% increase for the first year, 2.5% the second year, and 1.5% the third year tied to an incrementally phased out paid lunch break.

After being unable to reach a settlement by the expiration of the then existing contract, its conditions were continued in effect without a formal contract extension. Negotiations continued without closure and in October the parties sought the assistance of a state mediator. Under his auspices they were subsequently able to reach tentative agreements for all three units with virtually identical terms on the major economic and other issues.

While the Registered Nurses and the Technical Units ratified their respective agreements, the General Unit failed to do so. The membership rejected the tentative agreement on November 18, 1997, and again on December 4, 1997. The issue in contention appeared to be the parties' tentative agreement on compensation for lunch breaks.

That tentative agreement involved a phase out of paid lunch periods during the term of the three year contract. Under the expired Agreement, the members received a one-half hour paid lunch as part of their eight hour workday. The tentative agreement provided that fifteen minutes of the lunch period would be paid and fifteen minutes would be added to the workday for the first two years of the Agreement and that all paid lunches would be eliminated in the third year of the Agreement. The net effect of this was that, by the third year, the member would be working for eight hours each day, would be paid eight hours each day, and would have a one-half hour unpaid lunch break each day. The tentative agreement's salary package for the three years of the Agreement was a 2% increase for the first year, a 2.5% increase for the second year, and a 1.5% increase for the third year.

After the General Unit membership's failures to ratify the tentative agreement reached by its negotiating committee, another session with State Mediator Booker Brown on January 6, 1998, failed to resolve the impasse and on January 12, 1998, the Union filed a Petition for Fact Finding with the Michigan Department of Consumer and Industry Services specifically on the issue of lunch breaks. While the issues of salary and a new classification of Tech I A Class had not been resolved, the Union did not seek fact finding on these matters.

The undersigned was appointed as the Fact Finder in this matter and notified of her appointment on April 24, 1998. Between that time and the eventual fact finding at Sturgis Hospital on July 9, 1998, various pre-hearing activities to clarify the issue in dispute, to discuss an agenda, to consult on procedural matters, and to prepare the parties for the fact finding were conducted by telephone. The Arbitrator also provided the parties with a written outline of points of information which she was seeking for background information and a proposed agenda for the hearing.

On July 9, 1998, a formal hearing did not take place. Instead the parties engaged in lengthy off the record discussions which eventually resulted in their agreement on the reclassification issue. Additionally, the parties agreed that for the first year of the Agreement which would end on September 19, 1998, the bargaining unit members of the General Unit had continued to receive paid lunch periods, effectively rendering that issue, at least for the first year of the contract, moot. The Arbitrator joined the discussions which had turned to how the parties could reach agreement on the salary question. While this salary dispute had technically not been the subject of the Union's petition for fact finding, everyone agreed that salary was inseparable from the lunch break issue. Since the parties

were unable to reach a salary settlement, it was agreed that the parties would present their respective positions in written format on which the Arbitrator could base her recommendations. The Fact Finder kept the record open in case clarifications or additional information would become necessary for her report. The parties' briefs were received in a timely fashion. It became necessary, however, to seek clarification from the parties on what tentative agreements had been reached by them, either prior to the fact finding process, or on July 9, 1998, or possibly after. The record was then closed on September 1, 1998.

UNION'S POSITION

It is the Union's position that inasmuch as the other bargaining units it represents have received a 6% wage increase over the three years of their agreements, the General Unit members are similarly entitled to such a raise. It argues that 6% was the Employer's last offer on the table and it should still be honored. Regarding the issue of lunch breaks, the Union acknowledges that since the members have continued to receive paid lunch breaks for 1997-1998, the first year of the contract, the issue has become "moot" for that year and, indeed, it has withdrawn its demand to maintain paid lunches for members of the General Unit. Further, it clarifies its present position on the issue stating that "beginning the second year of the contract, all employees will have an unpaid lunch."¹

EMPLOYER'S POSITION

It is the contention of the Employer that its employees have been very well paid based on external comparisons with similar healthcare employees at other hospitals in geographic proximity. It points out that, in comparing various

¹ Fact Finding Brief of the Union, p. 5.

positions, Sturgis Hospital employees in the General Unit rank at the top in the compensation they receive in five of the eight positions surveyed.

The Employer maintains that the conservative settlement of 1995 was essential to ensure the continuing viability of Sturgis Hospital. Having accomplished that, however, the economic outlook for the hospital in the next few years, given the projected cuts resulting from the balanced budget amendment, is still far from encouraging. It therefore maintains that it can offer wage increases only if such are combined with productivity gains. It stresses that the necessary balance was achieved in the tentative agreements which the parties had reached but which the members then rejected.

The Employer considers the raises which the General Unit is now seeking, after having withheld the productivity the Employer sought, unreasonable. It stresses that it cannot agree to raises without commensurate productivity as it wishes to continue to ensure the long-term viability of the hospital.

CRITERIA USED AND FINDINGS

Fact Finders usually give careful and thorough consideration to certain widely recognized and accepted standards used in interest arbitration. These include comparison of prevailing standards and practices, ability to pay, cost of living, productivity, and bargaining history.² No one of these criteria can be used in isolation, nor do they provide a magic formula for recommendations in interest adjudication.

The Fact Finder's task is made easier and objective results are more readily reached when clear and comprehensive data is presented by the parties

²See for example, MPELRA, Labor Relations Manual, 1990 and Elkouri and Elkouri, How Arbitration Works, 4th ed., for discussion of standards.

supporting their case and information is advanced consistent with commonly accepted standards.

It is, of course, desirable that the parties agree on standards to be used to move negotiations and subsequent fact finding away from the realm of creative speculation toward objectivity. In this case, there is no real dispute on these issues. The Employer's claim of financial exigencies precipitated by the government's forced geographic reclassification of the hospital and the resultant reduction of Medicare reimbursement was not contested by the Union. Nor was the Employer's assertion that the proposed wage increase would still leave the Union's members among the highest paid for comparable institutions. In fact, the Union's acceptance of these provided the basis for the tentative agreement which was subsequently rejected by the membership. The sole issue remaining is the relation between any wage increase and the increased productivity gained from a reduction or elimination of the paid lunch time. The Fact Finder's recommendations must nonetheless reflect sufficiently recognized standards to make these meaningful and credible.

The Union's argument is essentially one of internal equity: all other units at the hospital received a 6% wage increase over the three years of the contract. It asserts that there can be no issue of the Employer's ability to pay since the 6% increase was originally offered. Thus, it concludes that its members should also received a 6% increase and, having received no increase for the first year, it should be spread over the remaining two years.

The Employer counters that the 6% increase which was paid to other units, and offered to the Union, was predicated on increased productivity in the form of exchanging paid lunch time for work time. It reason that since the Union did not

give that increased productivity during the first year of the contract, it cannot receive the wage increase that depended on productivity gain. It characterizes the Union's present position as a case of wanting to "have [one's] cake and eat it too." It asserts that this posture is "neither financially feasible, or fair to the other units...."

DISCUSSION AND FINDINGS

From the record, I am convinced that the Employer has, indeed, suffered a severe blow to its financial situation as a result of a forced reclassification and a resultant reduction in Medicare income. I am also convinced that this reduction has left it in a precarious position with a minimal net operating margin and an aging physical plant. In light of these uncontested facts, its proposal to offer a modest wage increase in exchange for offsetting increased productivity is understandable. Further, the Negotiating Team of the Union forthrightly recognized the implications of the dire situation, reached a tentative agreement with the Employer on this basis, and recommended it to the membership. Unfortunately, the membership, for whatever reasons, rejected the proposed contract. Thus, for an entire year, it has received no wage increase but has continued with its paid lunch time.

The Union's initial request for fact finding was solely on the issue of converting paid lunch time into unpaid lunch time. At the hearing, however, it withdrew that matter. It now asserts that the Employer's previous offer of a 6% wage increase for the three years of the contract should be spread over the remaining two years and that all issues will be resolved.

On this point I must agree with the Employer that its wage proposal was inextricably tied to a presumed increase in productivity through a phased in

reduction of paid lunch time and a concomitant increase in work time. Since the Union did not agree to the increase in productivity that a fifteen minute reduction in lunch time and a fifteen minute increase in work time would have yielded in the first year of the contract, it cannot reasonably expect to benefit from that refusal. As the Employer argues, the Union's members cannot reasonably expect to have their cake and eat it too. In other words, to benefit from the increased productivity, the members must give the increased productivity.

Consequently, I find that the Union's members did not contribute the first year's requisite productivity, a reduction of fifteen minutes in the paid lunch time and an increase of fifteen minutes in work time, and should not, therefore, receive any wage increase for that year.

The Employer has stated that the total wages for the Unit, annualized, is \$2,010,303.³ Based on this, it calculates the cost of a two percent wage increase as \$41,027. While I calculate 2% of \$2,010,303 as \$40,206, I do not find this discrepancy material. Further, the Employer calculates the value of each fifteen minutes exchange of paid lunch time for work time as \$52,884 based on an actual average hourly rate (for the period of August 28, 1997 to June 6, 1998) of \$11.13 and an average of 73.1 employees.⁴ Although these data are from times prior to June 6, 1998, the Fact Finder is aware of no reason that they should have changed appreciably since then. By using the same manner of calculation, and compounding both the cost and the value of the productivity gain for each year by the proposed wage increase, I find the cost and values associated with the

³ Fact Finding Brief of Sturgis Hospital, p. 9.

⁴ Fact Finding Brief of Sturgis Hospital, pp. 9-10.

Employer's original proposals to the Union are best summarized in tabular form.

I have constructed the following to provide that summary:

TABLE 1

	1ST YEAR	2ND YEAR	3RD YEAR	TOTAL
Proposed Wage Increase	2.0%	2.5%	1.5%	6.0%
Annual Cost of Wage Increase	\$40,206	\$51,263	\$31,527	\$122,995
Cumulative Cost ⁵ of Wage Increase	\$40,206	\$91,469	\$122,996	\$254,671
Average Cost of 1 Hour	\$830	\$851	\$863	
Increase Productivity Hours	0.25	0.25	0.50	1.00
Value of Productivity Gain	\$53,942	\$55,290	\$112,239	\$221,471
Annual Cost/Value	75%	93%	28%	56%
Cumulative Cost/Value	75%	165%	110%	115%

Table 1 shows the Employer expected, had its tentative agreement been approved by the members of the Union, to pay wage increases costing a total of about \$122,995 on an annualized basis and \$254,671 on a cumulative basis over the three years of the contract while achieving productivity increases valued at about \$221,471. This yields an Annual Cost to Value ratio, for the entire contract, of about 56%. Perhaps more significantly, the cumulative cost of the wage increases over the three years of about \$254,671 is approximately 115% of the projected value of the productivity gains.

I do not find that a reduction in the Employer's original offer for the second and third years, as suggested at the hearing, is necessary to make the needed point and would be unnecessarily punitive. Assuming an exchange of fifteen minutes of paid lunch time in the second year and thirty minutes in the third, the tabular depiction of a similar cost/value analysis for the three years with a 2.5% wage increase in the second year and a 1.5% increase in the third (in other words, returning to the pattern) would be as follows:

⁵ The calculation of the cumulative costs of wage increases takes into consideration that a wage increase is not only paid in the year in which the increase is given but is also paid as part of base wages in subsequent years of a multi-year contract.

TABLE 2

	1ST YEAR	2ND YEAR	3RD YEAR	TOTAL
Proposed Wage Increase	0.0%	2.5%	1.5%	4.0%
Annual Cost of Wage Increase	-	\$50,258	\$30,908	\$81,166
Cumulative Cost of Wage Increase	-	\$50,258	\$81,166	\$131,424
Average Cost of 1 Hour	\$ 814	\$834	\$846	
Increase Productivity Hours	-	0.25	0.50	0.75
Value of Productivity Gain	-	\$54,206	\$110,038	\$164,244
Annual Cost/Value	-	93%	28%	49%
Cumulative Cost/Value	-	93%	74%	80%

While Table 2 shows the Annual Cost to Value ratio of this approach is in the realm of reason as compared to the original proposal (49% to 56%), it also makes readily apparent the inequities this approach would impose on both parties. While it gives the employees much less increased wages (\$81,166 to \$122,995 on an annualized basis and \$131,464 to \$254,671 on a cumulative basis), it also gives the Employer much less productivity (\$164,224 to \$221,471) and, undoubtedly, a more disgruntled workforce. In other words, both parties lose under this scenario.

In view of the Union's suggestion that it is willing to recommend that the paid lunch time end totally starting with the second year of the contract, there is a more equitable solution to this impasse. Instead of phasing in the unpaid lunch time in fifteen minutes increments in the first and third year of the contract as was contemplated in the rejected tentative agreement, and since the opportunity to phase in the fifteen minute increment during the first year has passed, the Union suggested it is willing to recommend a total conversion of the entire thirty minutes in the second year to make up for the lost opportunity of the first year.

Totally converting the paid lunch time to work time in the second year would be advantageous to both parties: it would give the Union's membership a chance to somewhat recoup from their ill-advised decision to reject its Negotiating

Team's recommendation and the Employer a chance to somewhat make up for the lost opportunity to increase productivity. I say somewhat in both cases because if opportunities were lost by the Employer last year due to the lack of the funds that would have been available from the increased productivity, those opportunities may be lost forever. Further, although the Union's member's should be allowed to recover from its injudicious decision, it cannot always expect to totally recover from a missed opportunity. The conditions that made the 6% wage improvement feasible a year ago may have deteriorated so much in the interim as to make such an improvement impossible today. Indeed the "worst case scenarios" of the Employer suggest the possibility of increasing losses over the next five years. On the other hand, although it is prudent for the Employer to consider such prospects, they are still speculative and not, as yet, fact.

A cost/value analysis of this approach, allowing the employees to convert immediately to unpaid lunch time and a full eight hours of work time while recovering most of the 6% wage increase is given in the following table:

TABLE 3

	1ST YEAR	2ND YEAR	3RD YEAR	TOTAL
Proposed Wage Increase	0.0%	4.0%	1.5%	5.5%
Annual Cost of Wage Increase	\$0	\$80,412	\$31,361	\$111,773
Cumulative Cost of Wage Increase	\$0	\$80,412	\$111,773	\$192,185
Average Cost of 1 Hour	\$814	\$846	\$859	
Increase Productivity Hours	0	0.50	0.50	1.00
Value of Productivity Gain	\$0	\$109,999	\$111,649	\$221,647
Annual Cost/Value	-	73%	28%	50%
Cumulative Cost/Value	-	73%	100%	87%

The advantages of this "make-up" approach are evident. From the Employer's prospective, the total value of the productivity gain is almost the same as in the rejected tentative agreement. Admittedly the Employer lost the use of about \$53,942 from the first year, but it recovers that much in the second. Over the

three years, the value of the increased productivity is virtually identical. And, while the cost of this gain is only slightly less in increased wages on an annualized basis, it is more than \$60,000 less on a cumulative basis.

At the same time, the employees are able to return to nearly the same wage level they would have achieved under the tentative agreement and make up most, but not all, of the wages lost. The lost wages are the price of the paid lunch hour for the first year. In return, they must provide more productivity in the second year than they otherwise would have.

RECOMMENDATION

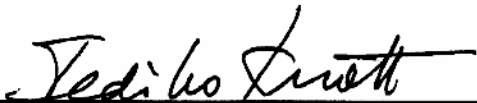
1. PAID LUNCH TIME

It is the recommendation of the Fact Finder that the thirty minutes of paid lunch time terminate commencing with the second year of the contract and that thirty minutes be added to the work day for a total of eight hours.

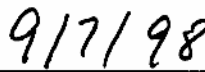
2. WAGES

It is the recommendation of the Fact Finder that wage increase for the Employees in the General Unit be 0% for the first year, 4% for the second, and 1.5% for the third.

It is the sincere hope of the Fact finder that this report will serve to provide a basis for a speedy settlement by the parties.



Ildiko Knott
Fact Finder



Date