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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the matter of the
fact finding between:

MICHIGAN COUNCIL 25, AFSCME,
LOCAL 3308 (Court Reporters),
Union,

MERC Case No. D89 A-0138

Issue: 1986-89 Wages

-and-

Fact Finder:
Kathleen R. Opperwall

STATE JUDICIAL COUNCIL (36th
District Court),

Employer.

Thirty-sixth District Court

FACT FINDING REPORT

A fact finding hearing was held in the above case on August 13, 1990 and October 19, 1990, in the offices of the Michigan Employment Relations Commission in Detroit, Michigan. The following persons attended and/or testified at the hearing:

On behalf of the Employer:

Robert L. Duty, Attorney
Norman Paelke, Executive Director
Anthony R. Trupiano, D-36 Empl. Rel. Director

On behalf of the Union:

Alison L. Paton, Attorney
Danny Craig, Local 3308 President
Willie Cockrell, Local 3308 Steward
Matthew Bradley, Court Reporter
Florence Dunklin, Court Reporter
Bobbie Fowlkes, Court Reporter
Matthew Dreger, Witness
Hon. Robert Ziolkowski, Witness
Hon. Pamela Harwood, Witness
Annette Garrett, Council 25 Staff Rep.

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

The hearing was closed on November 6, 1990, upon receipt of the parties' post-hearing briefs. The fact finding hearing was conducted pursuant to MCLA 423.25, and this report is issued pursuant to Rule 423.435 of the Michigan Department of Labor.

The unit consists of the approximately 35 employees who work as court reporters in the 36th district court in Detroit, Michigan. The time period covered by this fact finding is the 3-year period from October 1, 1986 through September 30, 1989. The only issue which was submitted to fact finding is the issue of wages.

Findings of Fact

I find the following facts to be pertinent to the dispute in this case:

1. The State Judicial Council became the employer of the court reporters in the 36th district court on or about September 1, 1981, pursuant to state legislation, MCLA 600.9101, et seq. Prior to that date, AFSCME Local 1659 had included many of the court reporters in the Wayne County common pleas court, the Detroit recorders court, and the 3rd circuit court, as well as two court reporters in the traffic court. The other court reporters in the traffic court were City of Detroit employees and were not included in Local 1659.

2. Before September 1, 1981, the court reporters who were included in Local 1659 were all paid the same wages, whether they worked for the common pleas court, or the circuit or recorders courts. However, the traffic court reporters who were employed by

the City of Detroit were paid at different wage rates. The State Judicial Council inherited these different wage rates.

3. After September 1, 1981, the court reporters who had been in Local 1659 were basically split into two different units, with the 36th district court reporters being included in Local 3308 and the 3rd circuit and recorders court reporters being included in Local 3309. This fact finding involves Local 3308 only.

4. Local 3308 and the State Judicial Council successfully negotiated a collective bargaining agreement to cover the period from October 1, 1983 through September 30, 1986 (Joint Exhibit 1). Appendices B and C of that contract show that as of September 4, 1985, the wage rates within that unit varied within approximately a \$1.00 range, from \$14.14 to \$15.11 per hour. The 1983-1986 collective bargaining agreement set up three wage tiers which basically covered the following groups of employees:

Tier 1 -- Former Local 1659 members

Tier 2 -- Former unrepresented city employees

Tier 3 -- New employees hired after October 1, 1984

The 1983-1986 collective bargaining agreement provided for different pay rates for the employees in the three different tiers.

5. At the present time, and pending the adoption of a new collective bargaining agreement, the annual salaries for the three tiers are as follows:

Tier 1 -- \$34,086 (\$17.48 per hour)

Tier 2 -- \$33,415 (\$17.14 per hour)

Tier 3 -- \$29,796 (\$15.28 per hour)

This means that the tier 2 court reporters earn \$671 less than the tier 1 court reporters, and the tier 3 court reporters earn \$4,290 less than the tier 1 court reporters.

6. Local 3308 is seeking parity for its members with the wage rates which have been approved for the court reporters in the circuit court and recorders court as part of the collective bargaining agreement negotiated by AFSCME Local 3309 (Union Exhibit 4). These Local 3309 court reporters have received the following percentage increases and annual wages:

October 1, 1986 - September 30, 1987: 5% to \$35,782.50

October 1, 1987 - September 30, 1988: 3.5% to \$37,030.50

October 1, 1988 - September 30, 1989: 3.5% to \$38,317.50

This is a total increase of 12 percent over three years.

7. Local 3308 is also seeking to eliminate the tier system by bringing all employees with at least four years of experience up to the highest rate, and instituting a step system for new employees.

8. The State Judicial Council has offered to increase the lowest tier (tier 3) by the same percentages as the Local 3309 employees were increased, namely 5%, 3.5%, and 3.5%. The State Judicial Council has offered to increase tiers 1 and 2 at the lower rate of 3%, 2%, and 2% because the State Judicial Council considers these tiers to be "over grade."

9. The State Judicial Council stipulated that the Local 3308 court reporters in all three tiers have the same job duties, responsibilities, work loads, skills, and assignments.

10. The job duties, responsibilities, work loads, skills, and assignments for the court reporters in the 36th district court are quite similar to those for the court reporters in the circuit and recorders courts. One difference is that many of the district court reporters have some clerical duties in addition to their court reporter duties.

11. In general, the district courts handle a higher volume of shorter cases, whereas the circuit and recorders courts handle a lesser volume of longer cases. In particular, the traffic and real estate dockets in the district court handle a very high volume of cases.

12. On the district court criminal docket, the court reporters are under strict time constraints, with only ten days to prepare the transcripts of preliminary examinations.

13. The district court civil docket includes cases with a dollar value of less than \$10,000. In addition, approximately 35% of the cases on the general civil docket are remands from circuit court. Particularly on the remanded cases, the trial may last many days and may involve expert witnesses similar to what would be expected in circuit court.

14. Based upon Employer Exhibit 1, the 36th district court reporters earn an average of an additional \$6,000 to \$7,000 per year from preparing transcripts for parties who have appeared in court. Based upon the Union witnesses, approximately half of this amount is net earnings for the court reporters, after deducting necessary expenses for secretarial services, supplies, transporta-

tion, and such. This results in an average net additional income of approximately \$3,000 to \$4,000 per year. On the average, circuit and recorders court reporters would expect to earn more than district court reporters from preparing transcripts.

15. The district court reporters are paid for a 7-1/2 hour work day. This translates into 1,950 hours per work year. The circuit and recorders court reporters have the same work day. In both cases, the court reporters normally have one to two hours during this paid work day when they have time available to work on preparing transcripts. In addition, the court reporters often need to spend some time outside their normal work day in order to complete transcripts on time.

16. Most of the district courts throughout the State of Michigan now use court recorders rather than court reporters. Basically, the court recorders operate tape recorders instead of using the traditional court reporters' equipment.

17. While transcripts prepared from tape recordings may be satisfactory for many purposes, a capable court reporter can be expected to produce a better transcript. In particular, tape recordings have more problems when two people are speaking at the same time. The circuit courts throughout the State of Michigan continue to use court reporters, although a few are experimenting with using tape recorders.

18. The court reporters in the 36th district court are currently the highest paid district court reporters in the State of Michigan. The 36th district court reporters earn more than some

circuit court reporters in other counties. A few counties pay their circuit court reporters more, including Genesee County with a maximum of \$37,391 and Ingham County with a maximum of \$36,440. The maximum given for state classified civil service employees is \$33,909. Per Employer Exhibit 2, these pay rates are for the year 1989, but it is not clear when these rates originally took effect.

19. In the 36th district court, the different wage rates for the three tiers has caused discontent and morale problems for the lowest paid tier.

20. The State Judicial Council stipulated that ability to pay was not an issue.

21. During the three years to be covered by this contract (October 1986 - October 1989) the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) increased by a cumulative total of approximately 13.5% in the Detroit area (Union Exhibit 5).

Recommendations

It is my recommendation that the parties resolve their dispute concerning wages for the years 1986-1989 as follows:

1. For the first year (October 1, 1986 through September 30, 1987), the wage rate for tier 1 be increased by 3%, the wage rate for tier 2 be increased by 4%, and the wage rate for tier 3 be increased by 7%. This will result in salary figures for tier 1 of \$35,108, for tier 2 of \$34,751, and for tier 3 of \$31,881.

2. For the second year (October 1, 1987 through September 30, 1988), the wage rate for tier 1 be increased by 2%, the wage rate

for tier 2 be increased by just over 3%, and the wage rate for tier 3 be increased by 5%. This will result in salary figures of \$35,810 for both tier 1 and tier 2, and \$33,475 for tier 3.

3. For the third year (October 1, 1988 through September 30, 1989), the wage rate for tiers 1 and 2 be increased by 2% to bring them both to \$36,526, and the wage rate for tier 3 be increased by 5% to bring it to \$35,149.

4. These recommended salary rates and percentage increases are summarized in the following table:

<u>YEAR</u>	<u>TIER 1 (%)</u>	<u>TIER 2 (%)</u>	<u>TIER 3 (%)</u>
1986-1987	\$35,108 (3%)	\$34,751 (4%)	\$31,881 (7%)
1987-1988	\$35,810 (2%)	\$35,810 (3%)	\$33,475 (5%)
1988-1989	\$36,526 (2%)	\$36,526 (2%)	\$35,149 (5%)
	7%	9%	17%

5. Beginning in the third year of the contract, for new employees hired on or after October 1, 1988, a step system shall be instituted. Under this step system, the starting salaries for such new employees will be discounted by 5% per year for their first three years (calculated at 1,950 hours per year). This results in a starting salary for these new employees of \$30,362, increasing to \$31,881 after one year, to \$33,475 after two years, and to \$35,149 after three years. (These new employees will also be eligible for whatever general increases are negotiated for future years.)

Reasons Behind Recommendation

My reasoning for the above recommendation is as follows:

1. The State Judicial Council has agreed to general wage increases for Local 3309 of 5% in the first year, 3.5% in the second year, and 3.5% in the third year. For Local 3308, if these percentages are used as a middle ground, then reductions for the highest paid tier can be offset by increases for the lowest paid tier. In effect, during the first year, 2% is taken from tier 1 and given to tier 3, which results in a 3% increase for tier 1 and a 7% increase for tier 3. For the second and third years, 1.5% is taken from tier 1 and added to tier 3, resulting in a 2% increase for tier 1 and a 5% increase for tier 3. Tier 2 is increased at an intermediate rate until it matches tier 1 in the second year.

2. As a result of these differential rates, the gap between the tiers will be substantially reduced during the three years of the contract. At the end of the contract, the gap will be only \$1,377, in contrast to the existing gap of \$4,290.

3. A step system will be started for new employees, under which new employees will be paid less during their first three years of employment. After three years of employment, it is reasonable to expect that an employee will be fully familiar with the job and be able to function comparably to long-term employees.

4. As of the end of the contract, the tier 1 and tier 2 court reporters will be earning 95% of what the court reporters in circuit court and recorders court will be earning. I believe this is a reasonable differential, considering that the circuit court

employees handle civil cases which are of greater dollar value, and handle felony trials in contrast to misdemeanor trials. In this respect, I would note that the judges in the district courts in this state generally are paid approximately 5% less than the judges in the circuit courts. In other types of employment also, it is not uncommon to pay employees somewhat more if they handle matters of greater dollar value or which have greater consequences.

5. While it is beyond the scope of this fact finding, part of my reasoning in making the above recommendations is to enable the parties in future years, if they so desire, to fit their salary schedule into the schedule which has been agreed upon for Local 3309. Specifically, the schedule given in Union Exhibit 4, for the period from April 1, 1990 through September 30, 1990, could be used for this bargaining unit also, with the modification that only pay ranges A through D would be available to Local 3308 bargaining unit members. Essentially, the final 5% increase which is found in pay range E would be available only to court reporters in circuit and recorders court. In order to fit into this schedule, the gap for the tier 3 court reporters would need to be closed at some future date. In effect, the gap between the tiers would be replaced by a step system for new employees.

6. The result of this 5% differential may well be that district court reporters will continue to look for opportunities to move to the circuit and recorders courts, in order to get the salary increase.

Ruling on Additional Exhibit

I decided not to admit the proposed additional exhibit, after determining that it did not give effective dates for the circuit court or district court reporter salaries which were listed on Employer Exhibit 2.

Proposal Concerning Study

The Employer also proposed that the parties work together to complete a comprehensive study of the court reporter functions and positions. A study of this type may be a good idea. However, considering how long the parties have gone without a new contract, I do not believe the 1986-1989 contract should be held up further while a study is done. My responsibility as the fact finder is to make recommendations on the issues in dispute. In this case, this means making recommendations on the wage issue. I have therefore made specific recommendations on the wage issue, as outlined above.



Kathleen R. Oppewall, Fact Finder

DATED: November 16, 1990

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