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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WASHTENAW COUNTY ROAD COMMISSION

-and-

TEAMSTERS LOCAL NO. 214

George T. Roumelt Jr. 10-13-69

FACT FINDING REPORT
AND RECOMMENDATIONS

Appearances for the Road Commission:

Patrick Clisham
G. Franklin Killeen

For Local No. 214:

Joseph Valenti
G. N. McIhan
Earl Drake
Duane Westphal
Philip Gillis

Pursuant to a petition for Fact Finding filed by Teamsters Local No. 214 (hereinafter referred to as "Local 214"), the undersigned was appointed the Fact Finder by the Michigan Employment Relations Commission and the hearing was held on August 28, 1969. Following the hearing the parties were given the opportunity to submit additional information, the last information being submitted by letter dated September 16, 1969 from the Washtenaw County Board of County Road Commissioners (hereinafter referred to as "Commission").

At the time of the hearing, there were seven issues before the Fact Finder, but by agreement the parties narrowed the issues down to four.

Washtenaw County Road Commission

The issues are:

1. Wages.
2. An additional holiday.
3. Vacation pay.
4. Retroactivity.

The function of a Fact Finder is to examine the issues before him and apply the facts as he finds them in the circumstances involved to attempt to resolve the issues. It must be emphasized that facts are not sterile. They are found in circumstances. It is these circumstances that may to at least some extent influence the Fact Finder's Report. The Fact Finder of course must consider several guide lines. When speaking of economics, he must consider the ability of the employer to pay, comparisons with other communities and the reaction of the Union to past proposals. Theoretically, Fact Finding is suppose to be a substitute in public employment for a strike. Thus, always a potent factor in the thinking of any Fact Finder is an attempt to make recommendations based upon what the Fact Finder thinks the parties might have settled if a strike had occurred. This suggests that like collective bargaining, Fact Finding, subject, of course, to the facts as applied to the circumstances, is a compromise. Unlike arbitration, a successful Fact Finding Report is not one where one party wins and another loses. A Fact Finder's Report, as just indicated, is a compromise. Therefore, to be successful, a Fact Finder's Report is one that can be or should be "reluctantly" accepted by both parties.

Keeping in mind the above philosophical approach to Fact Finding, we now turn to the four issues separating the parties.

The basic issue, of course, is the question of wages. From the Commission's point of view, there are three elementary facts:

1. During the 1966-1969 contract, the Commission paid the following increases in wages: First year fifteen (15¢) cents, second year ten (10¢) cents, third year ten (10¢) cents. In addition during the three years, the Commission paid a cost of living adjustment based upon one (1¢) cents per hour per .4 change in the cost of living price index.

2. Currently, the Commission is offering, based upon a three (3) year contract, an increase of ten (10¢) cents the first year, ten (10¢) cents the second year and five (5¢) cents the third year. Presumably, the same cost of living formula would apply.

From the Union's point of view, there are two elementary facts:

1. The offer of ten (10), ten (10), and five (5) was rejected by the membership.

2. There are some Road Commissions who currently are offering increases of fifteen (15) and twenty (20¢) cents an hour, and more.

A fact that penetrates all of the economic issues between the parties including wages is the cost of living clause that was in the just

expired contract. The Commission points out that because of the galloping increase in the cost of living, it has paid to the employees from December, 1968, exclusive of the September cost of living increase, a total of sixteen (16¢) cents an hour plus the ten (10¢) cent an hour base increase. The Commission points out that with the cost of living benefit included, the Washtenaw County Road Commission has given a twenty-two (22¢) cents per hour increase per year in the years 1966, 1967 and 1968. Certainly, in the year 1968-1969, the increase has been twenty-six (26¢) cents per hour.

This galloping cost of living has caused concern with the Commission. The Commission suggested that it might be able to improve its wage offer if there was a limit to the cost of living. However, as the parties resolved the issues before the Fact Finder, the Commission was resigned to the fact that the cost of living clause would continue and worked out a seven (7¢) cent float with the Union and put the remainder cost of living increases in the base rate. But the Commission did emphasize that the cost of living was a serious economic factor and should govern any thinking on the part of the Fact Finder as to wages because in effect the cost of living increases add to the hourly rate.

Local 214 originally asked for a dollar an hour increase over three years. The Commission countered with the ten (10), ten (10) and five (5) cents offer. The parties have not varied from this economic position. Furthermore, the Commission has suggested that perhaps there should be a cap on the cost of living.

In examining the wage structure of the Washtenaw County Road Commission and comparing it with the more populous counties, it is clear that the Washtenaw County Road Commission has been among the highest paying counties in Michigan. As a matter of fact, among the fourteen (14) top income County Road Commissions, Washtenaw is tenth in income and third in wages paid. This factor would indicate that a dollar demand by the teamsters without any change in position is most unrealistic in view of the fact that Washtenaw is a leader in wages and is not bringing up the rear.

To illustrate the point, Local 214 advised the Fact Finder that Genesee County had just agreed to a twenty-three (23¢) cent an hour increase. Prior to granting this increase, Genesee County paid three and 22/100 (\$3.22) dollars an hour for a light truck operator. Washtenaw County paid three and 43/100 (\$3.43) dollars. Thus, the difference between Genesee and Washtenaw was twenty-one (21¢) cents an hour. Even with the twenty-three (23¢) an hour raise, Genesee is only two (2¢) cents an hour more than the present light truck rate. Similar comparisons can be made with other rates between Washtenaw and Genesee. Another county that has given a twenty (20¢) cent an hour rate increase is Berrien County. Berrien County light truck operators get two and 91/100 (\$2.91) dollars an hour as compared to the three and 43/100 (\$3.43) dollars an hour that Washtenaw light operators receive. Even with a twenty (20¢) increase, the rate of Berrien light truck operators will be three and 11/100 (\$3.11) dollars which is still less, without even a raise, than the Washtenaw rates.

It may be true that Berrien, Kalamazoo, Muskegon, Calhoun and Ottawa Counties have in fact offered rates from fifteen (15) to twenty-five (25¢) cents an hour increases. But comparing these counties with Washtenaw will clearly indicate that these counties are in the process of catching up with Washtenaw. Furthermore, the survey presented to the

Fact Finder would indicate that Berrien, Kalamazoo, Calhoun and Ottawa do not have cost of living clauses. The point is that it may be true that some counties are giving the fifteen (15), twenty (20), and twenty-five (25¢) cent an hour raises, but in most counties giving such raises there is either no cost of living or they are in the process of attempting to catch some of the wage leaders such as Washtenaw. Apparently, there have been some substantial wages increases in Jackson County, but again a comparison of the wage rates as presented to the Fact Finder between Jackson and Washtenaw County would show that Washtenaw still leads.

The above discussion indicates the reason why the Fact Finder cannot accept the Teamsters' last proposal of one (\$1.00) dollar per hour or anywhere near it.

On the other hand, the Commission must recognize that the employees have rejected raises of ten (10), ten (10) and five (5¢) cents per hour. The employees obviously recognize the value of the cost of living in the contract. Nevertheless, these employees are interested in improving themselves. The cost of living is designed to keep them abreast with what they have gained through previous collective bargaining. They now want to improve their position. The Commission, on the other hand, recognizes this has offered a limited improvement, limited because there is no cap on the cost of living. Furthermore, though receiving additional new funds from the recently enacted licensing and weight tax provisions, the Commission is still somewhat financially pressed because of the demands for increased road building and road improvements which the citizens of

Washtenaw County are requesting.

The Washtenaw Road Commission cannot complain about the comparisons that they find themselves in. In the past, the Commission those through collective bargaining to pay its employees well as compared with other Commissions. This pattern impressed the Fact Finder.

Thus, there are three threads running through this situation as applied to wages. The Commission has found itself in somewhat of a financial bind because of an unexpected increase in the cost of living. The employees wish to continue to improve their positions. The Commission, fearful of future increases in the cost of living has been cautious in the wage proposal it has made.

Analyzing these three threads and attempting to weave a suitable, acceptable wage package, it becomes clear that this Commission cannot be expected to pay the twenty or twenty-five cent increases given by other commissions because these other Commissions are catching up and some do not even have a cost of living clause. On the other hand, we cannot lose sight of the fact that there has been a rejection; that in this day and age employees do expect a reasonable wage increase; an increase that is somewhat comparable with increases which other similarly employees are receiving.

Therefore, the Fact Finder recommends a three (3) year contract with a fifteen (15¢) cents an hour increase the first year, a ten (10¢) an hour increase the second year and a ten (10¢) an hour increase the third year. Obviously the Commission was willing to give a ten (10¢) cent hour increase the second year. This recommendation adds five (5) cents to the offer of the Commission in the first year and in the last year. The Fact Finder suggests that such a recommendation is consistent with the cautious approach of the Commission. The Fact Finder further suggests

that such a recommendation does give the employees a wage increase that will improve their position over the previous contract and it is consistent with their favorable wage position as compared with other Road Commissions. When coupled with the cost of living clause, it is obviously consistent with Washtenaw Road Commission's past pattern of wage increases. It is contemplated by this Fact Finder that the cost of living clause shall remain as is except as the parties have agreed on the seven (7¢) cent float and agreed on an up-dated index. The recommendation of fifteen (15), ten (10) and ten (10) is exclusive of any cost of living adjustments that were made in May, 1969 or that would have been made subsequent to that time. In other words, the recommendation adds to the base rate amount. It is true that some of the counties that give higher increases will be catching up with Washtenaw. But the fact of the matter is a fifteen (15), ten (10) and ten (10) increase would still put the Washtenaw County Road Commission employees in a relatively favorable position.

Two examples of this illustrates the point. In Genesee the light truck operators with the twenty-three (23¢) cent an hour increase will receive three and 45/100 (\$3.45) dollars. In Washtenaw, with the fifteen (15¢) an hour increase, the new rate will be three and 58/100 (\$3.58) dollars. Under the old rates of three and 43/100 (\$3.43) dollars and three 22/100 (\$3.22) dollars, the difference between Genesee and Washtenaw was twenty-one (21¢) cents, but now the difference between Genesee and Washtenaw will be thirteen (13¢) cents. On the other, in Berrien County, the difference between the Berrien and Washtenaw light truck operator rate was fifty-two (52¢) cents; two and 91/100 (\$2.91) dollars (Berrien) subtract this from three and 43/100 (\$3.43) dollars (Washtenaw). Even with the twenty (20¢) cents an hour increase in Berrien, the difference will be forty-seven (47¢) cents (based on a fifteen (15¢) cent increase in Washtenaw) or a net change of five (5¢) cents an hour.

From a Road Commission's point of view, one must consider the fact that if when the contract expired on June 4, 1969 there has been a strike, whether or not the employee would have returned to work for ten (10), ten (10) and five (5) or what would it have taken to get the employees to return to work. It is suggested that fifteen (15), ten (10) and ten (10) would probably have prevented a strike if in fact there had been one.

A second item is the question of holiday pay. Local 214 has asked for the balance of the Good Friday holiday. Presently the employees are receiving four (4) hours on Good Friday. Originally the Commission had offered to give this the third year of the contract. On June 2, 1969, the Commission offered to make this effective the second year of the contract. Local 214 desires to have this effective during the first year of the contract. In view of the economic readjustments the Commission will have to make because of the recommendations as to wages, it is the opinion and recommendation of this Fact Finder that making the balance of the Good Friday holiday effective the second year of the contract is fair and in keeping with the economic realities of the situation.

As to the issue of vacations, the parties did reach agreement on most of the language of the vacation article. The Commission argues that there was complete agreement including agreement as to article XXIII, paragraph D which according to the alleged agreement provided for four (4) week vacations after fifteen (15) years. The Fact Finder appreciates the notes taken by the Commission's attorney. There was some misunderstanding on behalf of the representative of Local 214.

The current contract article XXIII, section 1(c) provides for a four (4) or twenty (20) day vacation after thirteen (13) years.

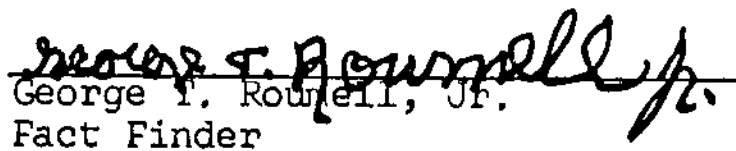
The argument made by the representative of Local 214 at Fact Finding was that he had no objection to the change language as presented by the attorney for the Road Commission except that in paragraph D, fifteen (15) years should be thirteen (13) years. As a representative of the Union stated, "It would be going backwards". He pointed out that the employees called this to his attention at the meeting where the proposals of the Commissions were discussed. The Fact Finder again emphasizes that he appreciates the position taken by the Commission through its attorney but the contract must be ratified by the Union membership. It just would not be comprehensible to an employee that an excellent benefit he had in the previous contract was now eliminated particularly when the recommendations in this Fact Finding Report are moderate, at least in the view point of the Union and its membership. For the convenience of the parties and so that there will be no misunderstanding as to how the vacation article should read, the Fact Finder is attaching his proposed recommendation as to the vacation article to this Report as Exhibit 1 wherein he does recommend the maintenance of the thirteen year rather than the fifteen year qualification.

The final issue between the parties is retroactivity. Apparently, public Act 336 of 1947 as amended by public Act 379 of 1965 (MSA 17.455(2)) prohibits strikes by public employees. This Fact Finder does not rule on whether this in fact is the law but only states that apparently this is what the statute says.

Local 214 in Washtenaw County chose to abide by the language of the statute rather than strike and test its validity in the courts. The local could not agree with the Commission on a contract. It then proceeded to file a

a petition, as provided by section 25 of Public Act 379 of 1965, for Fact Finding. It, along with the Commission, attended the Fact Finding hearing and presented relevant information both at the Fact Finding hearing and subsequently. The Fact Finder, within the thirty (30) day limit provided by the rules and regulations of the Michigan Employment Relations Commission has issued a Fact Finding Report and Recommendations.

To refuse to make this recommendation, retroactive to June 5, 1969, the day following the expiration of the contract would be contrary to the intentions of the no strike provisions of public act 379. It would encourage strikes. A public employer not wishing to have a strike and not being able to agree with his employees on a contract and finding himself in Fact Finding must take the consequences of a recommendation of retroactivity. If he does not wish to take this consequence, then he must be willing to take the consequence of a strike. Apparently, there are those that believe that although strikes might be tolerated in a private sector, they should not be tolerated in the public sector. This apparently is the reason for the legislation. This being the apparent public feeling then why not retroactivity as the price for avoiding a strike? If the Commission chooses not to make the wage increase retroactive, then the Commission is inviting a strike at this time or at the time of the contract expires in the future if at the time of expiration there is no new contract. Furthermore, there is no guarantee that the Circuit Courts in Washtenaw would necessarily grant an injunction in the event of a strike. Finally, even the Commission was willing to pay ten (10¢) cents an hour on June 5, 1969. Therefore, in fairness, the recommendations contained herein are to be retroactive to June 5, 1969.


George F. Rounell, Jr.
Fact Finder

Dated: October 13, 1969

EXHIBIT I

Article XXIII - Vacations.

Section 1. All regular full time employees shall be entitled to vacation time with pay on the following basis:

- (a) Such employees who complete one (1) year of service from date of hire shall be granted ten (10) working days vacation with two (2) weeks pay, to be used in the twelve months next following the anniversary of the employee's seniority date.
- (b) Such employees who have completed more than one (1) year service, but less than five (5) years of service, shall be granted, on a pro-rata basis, beginning January 1, 1970, to his next anniversary date in 1970, one-twelfth (1/12) of 10 days for vacation for each month worked during this period. Employees then will be granted, on their next anniversary date, in 1971, ten (10) working days vacation with two (2) weeks pay to be used in the twelve months next following the employee's anniversary date and each anniversary date thereafter.
- (c) Such employees who have completed more than five (5) years of service, but less than 13 years of service shall be granted, on a pro-rata basis, beginning January 1, 1970 to his next anniversary date in 1970, one-twelfth (1/12) of 15 days for vacation for each month worked during this period. Employees then will be granted, on their next anniversary date in 1971, fifteen (15) days vacation with three (3) weeks pay to be used in the twelve months next following the employee's anniversary date and each anniversary date thereafter.

- (d) Such employees who have completed more than thirteen (13) years of service shall be granted on a pro-rata basis, beginning January 1, 1970 to his next anniversary date in 1970, one-twelfth (1/12) of 20 days for vacation for each month worked during this period. Employees then will be granted on their next anniversary date in 1971, twenty (20) days vacation with four (4) weeks pay to be used in the twelve months next following the employee's anniversary date and each anniversary thereafter.
- (e) In the event an employee, who is eligible for vacation, with pay, under one of the four preceding subsections, shall retire, resign, die or be discharged, he or his estate will, at the time of termination, be paid:
- (1) For any unused portion of vacation time which has been granted to him on an annual basis as provided above, plus
- (a) The pro-rata amount of the annual vacation earned by him in the period between the last anniversary of his seniority date and the date of his termination, based on full calendar months worked by him during that period.

Section 2. Employees who lose time due to on-the-job disability up to a maximum of one (1) year shall be credited with vacation as though the time so lost was actually worked.

Section 3. An employee who returns from military leave of absence shall be credited with vacation days for the months during which he was on such leave within the twelve (12) months preceding the anniversary date on or before which he returns to active employment.

Section 4. Unused vacation days may be accumulated and carried over into the succeeding anniversary year to the following extent at the end of each of the following anniversary years:

(a) 20 days to end of anniversary in 1971, at which time it will be reduced to 15 days.

(b) 15 days to end of anniversary in 1972, at which time it will be reduced to 10 days thereafter.

Section 5. The Employer shall establish the available vacation periods for each District or working crew. Vacation schedules will be worked out as far in advance as possible. Seniority shall be the main consideration in considering preference for vacation requests, except when the number of employees absent from one working crew at one time will injure the services rendered by the crew.

Section 6. Vacations will be taken in a period of at least five (5) consecutive days. Vacations may be split into one or more weeks, but only with one preference, provided such scheduling does not drastically interfere with the operation.

Section 7. Vacations will not be permitted in advance of the time such vacation is earned that is between one anniversary date and the next anniversary date.

Section 8. An employee who is absent from work for other than on-the-job disability, for more than one (1) month will earn vacation for the first month of such absence only. Upon his return to work, his earned vacation will be figured on a pro-rata basis based upon full calendar months worked by him during the twelve (12) months preceding the anniversary of his seniority date. Such pro-rata vacation shall be used and paid in the next succeeding anniversary year as provided in Section 1 above.
