

1844
REPORT OF FACT FINDER
APPOINTED BY THE EMPLOYMENT RELATIONS COMMISSION
OF THE STATE OF MICHIGAN

IN THE MATTER OF:

NEWAYGO COUNTY

AND

TEAMSTERS LOCAL 214

MERC FACT FINDING CASE NO: G86 J 859

CHARLES AMMESON - FACT FINDER

APPEARANCES

FOR THE EMPLOYER

PETER A. COHL
STEPHEN FREDERICKS, COUNTY
ADMINISTRATOR
GERALD DESLOOVER, C.P.A.
WILLIAM RYE, PERSONNEL MANAGEMENT
CONSULTANT

FOR THE UNION

FRED W. BENNETT, BUSINESS
REPRESENTATIVE

EXHIBITS

FOR THE EMPLOYER

- | | |
|-------|--|
| No. 1 | Employer's Memorandum in Support of Comparable Communities |
| No. 2 | State Map of Michigan |
| No. 3 | Unused Sick Leave Comparables |
| No. 4 | Longevity Pay Comparables |
| No. 5 | Paid Holiday Comparables |
| No. 6 | Wage Comparables |
| No. 7 | Consumer Price Index Comparison -- Grade 5 |
| No. 8 | Consumer Price Index Comparison -- Grade 7 |

- No. 9 1985, 1986 and 1987 Health Insurance Costs
- No. 10 May 12, 1987 Correspondence to Fred Bennett
 from Stephen Fredericks

FOR THE UNION

- A Salary Grade Adjustments at 5.2 Percent Wage
 Increase
- B United States Department of Labor Bureau of
 Labor Statistics Release No. 87-349
- C 1987 Consumer Price Index Increase Calculations
- D Wage Comparables

Exhibits will be retained by the Fact Finder for 12 months.

BACKGROUND

There is a collective bargaining contract between Newaygo County (Employer) and Teamsters Local 214 (Union), which expired December 31, 1986, pertaining to the wages and conditions of employment of the professional, technical and office employees of the Employer. Negotiations for a new contract commenced October 22, 1986, and subsequent negotiations continued on December 4, 1986; February 5, 1987; and May 1, 1987. Mediation was exhausted, and the Employer requested fact finding by filing a petition on May 7, 1987. This fact finder was appointed on June 11, 1987, and, after several aborted attempts, a fact finding hearing was scheduled and noticed on September 10, 1987 for a hearing date of October 29, 1987. Negotiations continued until the week before the fact finding.

PETITION

The Employer filed its petition, identifying nine unresolved issues in dispute, as indicated below:

1. Past practice clause.
2. Election of remedies clause.
3. Sick leave.
4. Job vacancy clause.
5. Vacation language.
6. Wages.
7. Reduction of work week in lieu of layoffs.
8. Subcontracting.
9. Duration of contract.

CONDUCT OF HEARING

The hearing was conducted as scheduled on October 29, 1987 at the offices of the Employment Relations Commission, Mediation Division, in Grand Rapids, Michigan. Both the Employer and the Union were represented by their respective chief negotiator, identified on the petition. A prehearing conference was held at 9:30 a.m., at which time adjournment of the hearing was discussed. The fact finder entertained arguments for and against adjournment, and determined that the hearing would continue, but would consider allowing the Union to present expert testimony at an adjourned hearing. After further discussion, it was agreed that the hearing would continue as scheduled, until conclusion.

The prehearing conference continued, and the parties reached a tentative agreement on seven of the nine identified issues, those issues being:

1. Past practice clause.
2. Election of remedies clause.
3. Sick leave.
4. Job vacancy clause.
5. Vacation language.
6. Reduction of work week in lieu of layoff.
7. Duration of contract.

The tentative agreements were initialed on the December 4, 1986 Employer proposal, copies of which were distributed to the fact finder and the Union representative by the Employer representative. The Employer representative retained the initialed copies. The fact finder does not deem it necessary to

review the individual tentative agreements on these resolved issues, and only finds it necessary to indicate that he reviewed these tentative agreements with the parties, and adopts same as part of his fact finding recommendations.

The hearing commenced and evidence and argument were entertained by the fact finder on the issues of wages; "me too" language; and subcontracting language. The Employer presented its case first, and ten exhibits were received. The Union then presented its case, offering four exhibits. The parties requested that the fact finder set forth the reasons and basis for his findings, conclusions and recommendations, pursuant to R423.435.

ISSUES

The first issue concerns wages. The Employer's last proposal (made after the petition) was to freeze wages for 1987, and increase wages by three percent during 1988. The Union proposed a \$300 net payment to each employee in the bargaining unit for the first year of the contract (after taxes and all other required deductions); and a three percent increase across the board during the second year of the contract.

The second issue is a corollary issue to wages. This issue concerns the "me too" language of Article 24, Section 2 (page 34) of the present contract. This language provides as follows:

"The following fringe benefits shall not be less than other county employees for the duration of this contract:

- A. Mileage.
- B. Retirement.

- C. Sick leave.
- D. Longevity.
- E. Leave of absence.
- F. Maternity leave."

The Employer proposes to delete this language, and the Union proposes to keep the status quo.

The third and final stipulated issue pertains to subcontracting language proposed by the Employer. The Employer proposes to insert the following language:

"The Employer reserves the right to subcontract; to purchase any or all work processes or services when, in the determination of the Employer, it does not have the facilities or equipment, or the available personnel, or when it is deemed more economical to have the work performed elsewhere."

The Union objects to this proposed language, and proposes to maintain the status quo.

CRITERIA

As fact finder, I am commissioned to ascertain the facts and apply recognized criteria in making a recommendation as to the collective bargaining agreement being negotiated by the parties. This fact finder recognizes that in virtually every collective bargaining situation, three essential economic criteria are involved:

1. A comparison with other similarly situated employers and employees.
2. Comparison to economic conditions.
3. The Employer's ability to pay.

These economic criteria follow because the collective bargaining agreement is influenced by the economics of the market

place.

In a noneconomic sense, a fourth criteria mandates the fact finder to make fair and reasonable recommendations which both accomodate the parties' particular situation and which will assist to effectuate a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties. To this end, the fact finder's recommendations must be legal and workable within accepted and established collective bargaining practices between employers and unions, and between the particular parties.

This fact finder has received evidence and argument, and made inquiry into the essential facts of the subject collective bargaining relationship, and makes his recommendation within the criteria set forth above.

FINDINGS OF FACT

1. Since 1984, the Employer has incurred deficits in its general fund each year, creating financial problems for the Employer, and affecting its ability to pay (other than merely on a cash flow basis) to some extent.

2. The Employer has been steadfast in its position with all its employees that a wage freeze during 1987 is required, and has not granted an increase to any employees, other than correction officers, who received an increase in 1987 due to the fact that they received no increase in 1986.

3. The Employer's financial audits do not indicate that the Employer has attempted other budget cuts to combat the financial

problems confronting it.

4. Both the Employer and the Union have demonstrated and argued the need to maintain substantial parity between all county employees, whether part of the Union's bargaining unit, another bargaining unit, or no bargaining unit, as to their respective wages and working conditions. The Employer argues that this Union should accept a wage freeze in 1987 because all other county employees have accepted a wage freeze. The Union proposes that the "me too" language, which preserves parity, be maintained.

5. A substantial reduction has occurred in the Union's bargaining unit, disproportionate to other employer's employees, and there is a legitimate and real concern to the Union and its members that their employment may be subcontracted away.

6. The parties have tentatively agreed upon the past practice clause; election of remedies clause; sick leave; job vacancy clause; vacation language; reduction of work week in lieu of layoff; and duration of contract issues, which respective positions and agreements will be maintained pending resolution of the three issues presented to the fact finder.

RECOMMENDATIONS

1. The fact finder recommends that there be no pay raise, nor supplemental payment for 1987; and that there be a three percent wage increase for 1988.

2. The fact finder recommends that the "me too" language of Article 24, Section 2, remain in the contract to preserve the status quo.

3. The fact finder recommends that the subcontracting language proposed by the Employer not be included in the collective bargaining contract, in order to preserve the status quo.

4. The fact finder recommends that the parties maintain their tentative agreements as to all other issues which were in dispute.

REASONING AND BASIS

WAGES

At the hearing, the Employer took the position that it has been faced with financial problems since 1984, affecting its present ability to pay increased wages. The Employer argues that its pay either matches or exceeds the pay to comparably situated employees in comparably situated counties. The Employer argues that its proposed wage increases equal its proposals to all other employees within the county for the same years. Finally, the Employer points out that its employee wage increases have exceeded the inflation rate since 1980, thus improving the employees' standards of living, and that a one-year freeze would not wipe out the six years of gain.

On the other hand, the Union asserts that the county, even if it is facing financial problems, does, in fact, have the cash flow and ability to pay a one-time \$300 (net) supplement to its union employees, which supplement will not be rolled into future wage increases, inasmuch as it is a one-time payment. The Union argues that the Employer wants to "have its cake and eat it too",

inasmuch as the Employer wants to treat all its employees alike regarding wages, but, on the other hand, requests the deletion of the "me too" language which would treat the Union's employees the same as other county employees.

The Employer presented testimony by Mr. William Rye, B.B.A., M.I.L.R., a management consultant experienced in making wage comparisons. This fact finder reviewed Mr. Rye's report and his testimony, and finds that Mr. Rye did make a comparison in a logical and acceptable manner.

Mr. Rye prepared Exhibit 6, which showed that the Union employees enjoy wages which are competitive with comparably situated employees. The Employer also presented evidence regarding comparables as to fringes, holidays, sick leave, and longevity pay, which, while not exactly on point, did demonstrate that the apparent competitiveness of the Union's wages was not due to the fact that the Union is receiving lesser fringes than the comparably situated employees.

Finally, Mr. Rye prepared Exhibits 7 and 8 in support of his conclusion that the Union's employees' wage rates have exceeded the Consumer Price Index, at least as to grades 5 and 7.

On cross-examination, the Union brought out that most of Mr. Rye's comparables did not pertain to organized employees, thus demonstrating that the Union's employees are exceeding the average wages of both nonunion and union employees situated in other counties.

The Employer next presented the testimony of Mr. Gerald Deslover, B.B.A., C.P.A. Mr. Deslover testified that his review of the Employer's financial records show that the general

fund incurred a deficit of \$255,000 in 1984; \$410,000 in 1985; and \$497,500 in 1986. Mr. Desloover further testified that the county's revenue sharing was \$395,000 in 1984; \$435,000 in 1985; \$285,000 in 1986; and zero dollars in 1987. The county has a total budget of 4.5 million dollars, and its deficits are running almost ten percent.

Mr. Desloover is of the opinion that the county has financial problems.

On cross-examination, the Union brought out the fact that for the past two years, the county's revenues have increased by 5.3 percent and 6.5 percent respectively. At the same time, the county's expenditures have increased by 8.6 percent and 8.7 percent respectively. Mr. Desloover had to agree that there is nothing in the financial reports which indicate that the county is attempting to remedy its financial problems in areas other than employees' wages. Nevertheless, the bottom line is that the county has financial problems.

Finally, the Employer presented the testimony of Mr. Stephen Fredericks, County Administrator. Mr. Fredericks testified that the F.O.P. accepted a wage freeze for 1987, and no other employees of the county received a wage increase in 1987. On cross-examination, the Union brought out the fact that correction officers did, in fact, receive a wage increase in 1987. Mr. Fredericks explained that this wage increase was due to the fact that the correction officers received no wage increase in 1986.

Regarding wages, the Union put forth four exhibits. Exhibit B indicated that major collective bargaining agreements for state

and local government employees in 1987, throughout the United States, demonstrated an average wage increase of 5.2 percent for the first year, down from an average 5.9 percent in the last collective bargaining agreement between the canvassed parties. The median increase for the first year is 5.0 percent. This fact finder notes that the above statistics provided in Exhibit B cover contracts with 1,000 employees or more. It is also recognized that Exhibit B indicated that 11 percent of the employees in contracts covering 1,000 to 5,000 employees received no wage increase.

Union Exhibit C indicated that the Consumer Price Index for the first 8 months of 1987 increased 3.59 percent, which would corollate to an approximate \$500 increase for each employee.

The Union set forth its wage comparables in Exhibit D, using neighboring counties only. These counties included Kent and Muskegon Counties. It was acknowledged that Kent and Muskegon Counties were chosen for comparables only because of their proximity, and for no other reason. However, even including Kent and Muskegon Counties, the comparables do show the Union employees are receiving wages competitive with comparably situated employers.

The fact finder has reviewed the above evidence and argument in light of the economic criteria set forth at the beginning of this report. The Union's employees do appear to be receiving comparable compensation to similarly situated employees in other counties. The Union's employees have experienced a real increase in their standard of living, as compared to the Consumer Price Index, over the last six years. Finally, there is no

evidence to indicate anything other than the fact that the Employer is faced with financial problems at this time.

Even so, the Employer certainly has not demonstrated that it has attempted to resolve its financial problems in areas other than employees' wages. Beyond this, the Employer must be expecting enough of an increase in its situation to grant a three percent wage in 1988. Thus, this fact finder, recognizing that the Employer is faced with financial problems, does not conclude that the Employer is wholly unable to pay any increased wages in 1987. Based upon economic criteria, it is a very close call whether or not the requested wage increase should be recommended.

From a noneconomic standpoint, however, it is apparent that the Employer is steadfast in its position that wages for most all county employees should be frozen in 1987. The Employer apparently has stuck to that policy regarding its other employees. This fact finder recognizes that the parties have historically attempted to maintain parity between the various organized employees, as well as the unorganized employees. This is evidenced by the "me too" clause and the arguments of the parties at the fact finding hearing. Thus, the fact finder, recognizing his responsibility to make workable and reasonable recommendations which accomodate the parties' particular situation, concludes that no wage increase of any sort should be included for 1987. This wage freeze recognizes the fact that the lost gains will not set the employees behind the Consumer Price Index since 1980, nor behind other comparably situated employees.

This recommendation recognizes the Employer's financial problems. Finally, this recommendation recognizes the parties' historical "parity seeking" evidenced by the parties' arguments and the "me too" language existing in the contract.

"ME TOO"

The Employer argued at the fact finding that the "me too" language of Article 24, Section 2, ties its hands, and that the F.O.P. eliminated the "me too" language from its contract.

On the other hand, the Union points out that the Employer argues "me too" as to wages, but now wants to eliminate the "me too" as to fringes.

This fact finder, having set forth his reasoning and basis in the "WAGES" section above, will not unnecessarily repeat his reasoning again. Historically, the parties have attempted to maintain parity between all employees. The Employer has asked all employees to take a wage freeze in the face of its financial hardship. Together, the employees have sacrificed; when things get better, together the employees should benefit. Let it suffice to say that the Employer cannot "have its cake and eat it too." Thus, the fact finder recommends that the "me-too" language remain, to preserve the status quo.

SUBCONTRACTING

The Employer argued that subcontracting language is necessary because it provides the Employer another avenue to save dollars.

The Union, on the other hand, points out that the subcontracting language is unlimited, and could virtually wipe out the Union's membership. The Union argues that it has already sacrificed, and having done so, needs protection from subcontracting.

This fact finder recognizes that the bargaining unit has incurred a reduction, and that several members are laid off. Now, the Employer proposes a wage freeze. The Union has, in fact, sacrificed, and experience clearly demonstrates that the employees' concerns regarding subcontracting are real and legitimate.

Even though the Employer has demonstrated financial problems, and argues an inability to pay, it certainly has not demonstrated that it has attempted to resolve its financial problems by methods other than asking its employees to make concessions. The economic criteria do not justify a recommendation of "unlimited" subcontracting language.

From a noneconomic stance, this fact finder finds that it is reasonable to maintain the status quo, which has provided a workable relationship between the parties in the past.

CONCLUSION

Fact finding recommendations are just that -- recommendations. The parties have demonstrated the extent of their convictions, and their representatives have effectively set forth their positions at the fact finding hearing. This fact finder is committed to making recommendations that are workable

and fair to all interests involved. The Department of Labor Reports indicate that 1 out of every 10 local or state government employees were faced with a wage freeze in 1987. Thus, even though wage freezes are not common, they are certainly not unheard of. The present situation warrants a wage freeze. By the same token, this fact finder firmly recommends that during this time of financial problems, the status quo be maintained, and the parties work together in attempting to resolve the financial crisis with methods other than freezing wages, laying off employees, or subcontracting out work.

Dated: November 10, 1987



CHARLES AMMESON, Fact Finder