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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
FACT FINDING
BETWEEN

VAN BUREN COUNTY FRIEND OF THE COURT,

Employer,

MERC Case No: L98 I-7020

-and-

AFSCME, LOCAL 2628,

Union.

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FACT FINDING REPORT AND RECOMMENDATION

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2000, Mar 13

APPEARANCES

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REPORT

A petition for fact finding for the Friend of the Court Unit was filed on July 15, 1999. Local 2628 includes five separate units: the General Employees Unit, the Supervisory Employees Unit, the District Court Employees Unit, the Juvenile and Probate Court Employees Unit and the Friend of the Court Employees Unit, who are at issue in this matter. Contracts have been reached with all other Local 2628 units, and this group rejected a tentative agreement.

The first issue is wages. The Union wants 3% for the years 2000, 2001 and 2002. The Employer's position is:

WAGES

January 1, 2000	Wage increase 2% & 1% in July
January 1, 2001	Wage increase 2% & 1% in July
January 1, 2002	Wage increase 2% & 1% in July

The Employer would not provide for retroactivity of the wage improvements; the Union wants full retroactivity.

The Union notes that the Sheriff's POLC Unit received 3% across the board. Also, it is denied that there is an inability to pay. The Union contends that 3% is a fair settlement, and that a denial of retroactivity is punitive.

The Employer argues that there has always been consistency in settlements with the various AFSCME units, and that the other units have ratified the Employer's wage proposal. Further, it is maintained that the wage proposal was accepted by the unit in the tentative agreement. The Employer also believes that retroactivity is inappropriate due to the unit's failure to accept the pattern settlement.

The next issue involves retroactivity of a pension plan that both the Union and the Employer agreed to in the tentative agreement. The Union argues that employees should be made whole through retroactivity, and if there isn't full retroactivity, they should be made whole in an alternative manner. It is emphasized that to do otherwise would cause the employees to lose benefits.

The Employer contends that there should be no retroactivity of the pension improvements. It points out that all other units received the pension plan upon ratification, and for three of the units this was in September of 1999. Another AFSCME unit received retroactivity from October of 1999 when it ratified the contract. The Employer also asserts that the IRS will not permit retroactive contributions to the year 1999. Additionally, the Employer argues that employees should not be rewarded for holding out for a better settlement.

Next, the rejected tentative agreement calls for a reduction to seven sick days from nine, starting in the year 2000 contract. The Union maintains that the Employer lacks an economic justification for reducing the number of sick days. It further denies that there has been an abuse of sick days. The average number of sick days in the other counties is said to be 9.53 days.

The County contends that the reduction of sick days was the quid pro quo for the wage increases and the pension improvements. Further, the Employer wants bargaining unit members to have an incentive for attending work. The County also asserts that in the prior agreement it established an income protection plan, and moreover, bargaining unit members have access to the FMLA. The Employer wants the loss of sick days to be retroactive.

Also at issue is the elimination of longevity pay starting in 2001. It is asserted by the Union that the majority of Circuit Court units did not have longevity pay to lose. The Union additionally

notes thatsenior employees will suffer the most, and will have the effect of their pay increases drastically reduced.

The County contends that bargaining units should be treated alike, and all of the others have had their longevity pay eliminated in 2001. The pattern of bargaining, it is argued, must be maintained.

The final issue concerns binding arbitration. The Union notes that under the contract there is binding arbitration, which was infrequently used. It is asserted that the District and Probate Courts only had permissive arbitration, and that the Sheriff's Department and the General and Supervisory Units have binding arbitration.

The Union contends that there isn't a justification for removing binding arbitration from the Friend of the Court employees. The Union asserts that the District and Probate Courts never had binding arbitration, and therefore they had nothing to give up in their contract settlements.

The Employer maintains that the Circuit Court would not agree to a contract with binding arbitration, and that only voluntary arbitration was acceptable. It notes that there hasn't been a problem since arbitration was eliminated in the unit 18 months ago.

RECOMMENDATION

The statutory purpose of fact finding is to facilitate a settlement. In evaluating the respective positions of the parties, it is useful to employ the criteria used by arbitrators in Act 312 cases, where the arbitrator chooses last best offers in police and fire interest arbitrations. Among the statutory criteria in Act 312 cases are comparability, both internal and external, a consideration of factors that are normally used in collective bargaining, and a consideration of the value of the entire package. With this perspective, a recommendation will now be made.

WAGES

The other AFSCME units have accepted the Employer's proposal. There is a history of pattern settlements on wages. This is a strong factor in favor of the Employer's position.

Further, in Act 312, Union's often "buy" pension improvements through wage or other benefit reductions. There is no indication that the Employer's wage offer was markedly affected by the inclusion of a pension improvement.

Accordingly, the Employer's offer on wages is recommended.

The Union argues that these wages should be retroactive. The Employer asserts that retroactivity is inappropriate. The other units have received their full wages, without a denial of retroactivity, and it would be unfair for this unit to lose its wage benefits. Also, the unit has suffered by not having the use of the wage improvements to this point.

Therefore, it is recommended that there be full retroactivity in wages.

PENSION RETROACTIVITY

The parties agree on the new, significantly improved pension plan. They disagree on retroactivity.

I am persuaded by the Employer's IRS argument that it would be inappropriate to grant retroactivity to 1999, and that to do so would jeopardize the plan.

However, there should be retroactivity to January of 2000. A reason for supporting the Employer on wages, and later on sick days and longevity, is that they represent the quid pro quo for pension improvements. If the bargaining unit is denied allowable retroactivity on the pension plan, the rationale for supporting the Employer on these other issues is eliminated.

Therefore, to justify the Employer's position on other issues, there should be retroactivity

to January of 2000. However, to facilitate a settlement of this matter, and to avoid additional costs occasioned by delay, there should be a loss of one month of retroactivity for each month that the contract isn't ratified after receipt of the final fact finding report. If the Union ratifies within one month of the report, there should be no loss of retroactivity from January of 2000.

It must be strongly emphasized that the union must ratify this contract immediately. If it delays ratification, the IRS regulations will prohibit retroactivity to the year 2000.

SICK DAYS

Internal comparability among the other bargaining units supports the Employer's proposed reduction in sick days. It wasn't established that this group requires a superior leave benefit to the other AFSCME groups. Further, a reduction in the number of sick days can be seen as part of the quid pro quo for the pension improvement.

Accordingly, it is recommended that the Employer's proposal on a reduction in sick days to seven be adopted. The sick leave reduction should not be retroactive, insofar as the unit will have lost a year of its pension improvement, due to the IRS requirements.

LONGEVITY

Again, a loss of longevity in 2001 is consistent with the result in other bargaining units. It is also part of the quid pro quo for the pension improvement.

Accordingly, it is recommended that the Employer's proposal on longevity be accepted.

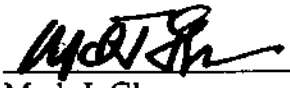
ARBITRATION

To establish consistency within the courts, there should be advisory arbitration in contract disputes. However, consistent with the current approach for even non-union employers, the employer should consider binding arbitration in discipline and discharge cases.

This will serve as an important protection for bargaining unit members. However, it will also protect the Employer against expensive wrongful discharge and related statutory litigation, which, in both the short and long term, could be a greater problem for the Employer than binding arbitration in discharge and discipline cases.

Alternative dispute resolution is now recommended across the legal spectrum. The Employer will not have its authority diminished if there is binding arbitration in discharge and discipline cases.

However, in order to provide consistency with the other courts, it is recommended that there be advisory arbitration in both contract and discipline matters. The prompt resolution of this contract is imperative, in order to allow the bargaining unit to have retroactivity for its pension improvements. A recommendation for anything other than advisory arbitration could adversely affect the bargaining unit. Therefore, only advisory arbitration is recommended.



Mark J. Glazer
Fact Finder

November 9, 2000