

3/10/89

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding)
)
 between)
)
 Charter Township of Commerce)
)
 and)
)
 AFSCME Council 25)
 Local 2720)

Michigan Employment
Relations Commission

Case No. D87 K-2482

REPORT OF THE FACT FINDER
RAYMOND J. BURATTO

REPRESENTING THE PARTIES

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

FOR THE CHARTER TOWNSHIP OF COMMERCE

Dennis DuBay, Attorney

Robert H. Long, Township Supervisor

Thomas K. Zoner, Township Clerk

Patrick Dohaney, Township Treasurer

FOR THE EMPLOYEES' ASSOCIATION

Michael R. Landsiedel, Staff Representative
AFSCME Council 25

Ruth E. Montgomery, Staff Representative
AFSCME Council 25

Pat Pifer, Commerce Township AFSCME

Liz Piggott, Commerce Township AFSCME

Carol A. Beauchamp, Commerce Township AFSCME

Commerce Township

PRE-APPOINTMENT ACTIVITIES

On July 21, 1988, the Township implemented its final offer to the Union on unresolved issues. By petition dated August 9, 1988, AFSCME Council 25, Local 2720 requested Fact Finding for a unit of sixteen (16) "full-time and regular part-time maintenance workers, clerk-typists, secretaries, ordinance enforcement officers, and appraisers".

On November 9, 1988, the Michigan Employment Relations Commission notified the parties and appointed Raymond J. Buratto, Esq. as its Fact Finder to conduct a hearing pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commission's Regulations, and to issue a report on the matters unresolved between the parties.

An unfair labor practice charge was filed by the Union and was pending through the completion of the Fact Finding.

ACTIVITIES SUBSEQUENT TO THE APPOINTMENT OF THE FACT FINDER

Telephone conversations with the parties established the hearing dates as Friday, February 3 and 10, 1989 at the Township Hall, 2840 Fisher, Walled Lake. The record in the case closed on February 10, 1989, following the second day of hearing.

The recently expired contract was the first negotiated between the parties and was effective from April 9, 1985 to and including December 31, 1987. The contract was extended during negotiations. Except for the issues presented for Fact Finding, the terms of the expired contract were utilized.

For purposes of this report, I have taken the issues in their order of appearance on the Petition for Fact Finding.

ARTICLE 47: "WAGES"

By letter dated July 21, 1988, Carol Beauchamp, AFSCME Chapter Chairperson, notified Township Supervisor Robert Long of the Union's intentions to pursue fact finding over wages. Additional issues were added to the Petition for Fact Finding which was actually filed on August 9, 1988.

The Union's position at fact finding provided across-the-board increases of 4% January 1, 1988, and an additional 4% July 1, 1988, similar increases in the second year for the clerk/typist classification, and a 5% increase for all other employees effective January 1, 1989.

Extensive comparable data was submitted by the parties and each of their submissions contain comparisons of wage rates for this unit over recent years. Township Exhibits 3, 4, 5, 6, 8, 20 and 21 relate directly to rates of pay. Exhibits 7, 7(a), 9, 10, 11, 12 and 13 contain economic and budget data.

FINDINGS OF FACT

At issue are the rates of pay for the following classifications: clerk/typist; secretaries, appraisers and maintenance workers; ordinance enforcement officer, building inspector and assistant to the assessor. Current rates for those classifications are \$8.54, \$10.58 and \$13.07 respectively, assuming two years service to the Township. Rates proposed by the union for these positions would be \$9.17, \$11.22 and \$14.04, also assuming two years service to the Township.

Eleven of the sixteen members of this bargaining unit are clerk/typists. There is one employee in each of the remaining five job titles, i.e. secretary, maintenance worker, building inspector, appraiser and assistant assessor.

The Union's comparables establish 1989 hourly wage rates for "clerk/typist" ranging from a low of \$7.43 in the City of Wixom, to a high of \$10.11 in Waterford Township. Brownstown Township pays a maximum of \$9.69 to a "Clerk Typist (2)" after two years, without an intermediate step increase at the first year. Independence Township's highest rate for a "Clerk II" is \$9.27, effective January 1, 1988. No 1989 rates for Independence Township were provided.

The City of Wixom pays a "secretary" \$8.25 effective July 1, 1988 and \$8.58 effective July 1, 1989. Auburn Hills pays \$8.68 to a "Clerk I" and \$9.80 to a "Clerk II". It should be noted these Auburn Hills rates are from 1988 and that the Clerk II position may be the equivalent of a Commerce Township secretary. The 1989 rate for a clerk/typist with one or more years experience in Orchard Lake Village is \$7.65 per hour based on an annual rate of pay of \$15,908.75 divided by 2080 hours.

The 1989 rate of pay in Commerce Township for a secretary, appraiser or maintenance worker is \$10.58. Similar positions in Independence receive \$9.45 to \$9.68, \$10.01 to \$11.14 and \$10.02 to \$10.35. The highest rate for a "clerk typist (2)" in Brownstown Township is \$9.69, while "township maintenance labor" receives \$11.15 per hour. No data was provided for an appraiser.

Department secretaries in Harrison Township are paid \$11.49, a maintenance worker receives \$11.99 and an "assessing aide" is paid \$13.19 based on rates effective July 1, 1988. Similar job titles receive \$11.10 (steno-clerk), \$10.75 (maintenance worker) and \$10.46 (assessor aide) in Waterford.

A secretary with two years experience is paid \$8.58 in Wixom and an "administrative secretary" in Walled Lake is paid between \$9.43 and \$9.80 per hour, depending upon length of service. Without further information, it would appear that the Walled Lake rate was established for an incumbent on July 1, 1987 and progresses with the seniority of the incumbent. Pay rates for appraisers and maintenance workers are not available for either Wixom or Walled Lake.

Employees in the final classification of ordinance enforcement officer, building inspector and assistant to the assessor are paid \$13.07 in Commerce Township. No one is listed on the unit seniority list, Township Exhibit 2, as an ordinance enforcement officer. From comparables cited by the union, only Waterford Township pays a higher rate (\$13.37) to an ordinance enforcement officer. Rates for building inspectors range from \$9.92 (Independence Township) to \$15.86 in Auburn Hills. Rates for assistant to the assessor range from \$8.89 in Waterford, to \$13.19 in Harrison Township.

The Township's comparables, submitted in Exhibit 8 establish 1989 rates of pay for Commerce Township employees currently on the seniority list are higher than comparable communities, at the one year, two year and top rate levels, with the exception of appraisers employed by Highland Township.

Township Exhibits 20, 21 and 22 present private employer rates for clerk/typist, secretary and general maintenance. These rates range from \$7.00 to \$8.28 for a clerk-typist; \$7.79 to \$10.56 for a secretary; and \$6.15 for general maintenance. There are no comparable private sector rates for building inspector, appraiser or assistant assessor. Commerce Township employee wages are higher in both comparable categories.

Township Exhibits 9 and 9(a) entitled "% Change in SEV" illustrates the dollar value increase (decrease) in 1988 v. 1987 SEV for both the Union's and the Township's comparable communities. While Commerce Township retains its number one position in SEV among the Township's comparables, its percentage increase over 1987 ranks last. Township Exhibit 9(a) also shows Commerce Township would rank last in percentage change in SEV when compared to the comparable communities offered by the union.

Exhibit 7, a comparison of the Township's comparables based on 1986 population, 1988 SEV and 1988 millage rate show Commerce Township as first in population and SEV, but last in millage rate. Supervisor Long testified that two millage increase proposals were soundly defeated last August.

Township Exhibit 10 introduced through the testimony of Supervisor Long, is the approved revenue budget for Commerce Township for January 1 through December 31, 1989. It shows a decrease in revenues of \$1,770,095 and a substantial reduction in the allocated fund balance. Township Exhibit 11 shows a 6.95% decrease in revenues between 1988 and 1989. Supervisor Long projects an allocated fund balance of \$26,349.62 at the end of 1989.

Township Exhibit 12 is a copy of the "Consumer Price Index - Annual Averages, All Items" published by the U.S. Department of Labor, Bureau of Labor Statistics. The total percentage increase since 1986 has been 9.61.

Township Exhibit 13 is a comparison of the three year wage increases to the increase in the Consumer Price Index for the same period, 1986 - 1988. In 1986 and 1987, members of this bargaining unit received wage increases totaling 12% while the CPI increased by 5.21%. 1988 increases for this unit average 3.61% against a CPI change of 4.40%. Percentage increases achieved by each classification over the past three years have exceeded the increase in the CPI by at least 5.22% (ordinance enforcement officer/building inspector).

Township Exhibit 6 is a "Salary History of Hirees Hired in 1987 and 1988" showing nine new employees, with eight coming from the private sector. All but Patricia Freeland, an appraiser, appear on the Township's seniority list as "clerk/typists" (Township Exhibit 2). Comparing Township Exhibit 2, 3, and 6, only Sandra Abrams is paid less than she was in the private sector.

Township Exhibit 4 presents the percentage increases paid from 1988 to 1990 to the township's general employees and its union-represented firefighters. General employees received 3% in 1988 and 6% in 1989. No data was presented for 1990. The organized firefighters received 3.5%, 3% and 3% in 1988, 1989 and 1990. Township Exhibit 5 shows the general and step increases of the unit employees hired since 1986, as well as their percentage increases, which range from 9.28% to 29.03%.

The Union exhibit also included minutes of a Special Board Meeting of the Township held November 1, 1988. Highlighted therein was a reference to a 6% raise approved for the "Elected Officials Supervisor, Clerk, Treasurer and Management Employees (Non-Union) for the Fiscal Year of 1989", and employee lists for January 1, 1988 and January 1, 1987 containing employee names, dates of hire, job classifications, grade/level and salary.

RECOMMENDATION

Based on the record as a whole and the foregoing findings of fact, it is recommended that the pay rates implemented by the Township be retained for all classifications.

Given the financial status of the Township, its prospects for additional revenues in the future, recent increases in Township employee wages, and a comparison to similarly situated employees in comparable communities, I conclude the employees in this bargaining unit have fared well.

The record establishes the Township employees, with one exception, enjoy higher rates of pay than those in similar classifications in communities comparable based on form of government, population, SEV and millage rates. While Commerce Township ranks first in population and SEV and fifth in millage rate among the Township's cited comparables, its employees, with one exception, also rank first in rates of pay.

In reaching this conclusion, I have not overlooked the Union's comparables. However, I am compelled to examine them critically, particularly when asked to compare different forms of government, and therefore differing means of raising revenues, radically different SEV levels, and widely disparate millage rates. As an example, the City of Auburn Hills which has a 1986 population of 16,000, a 1988 SEV of 262,437,049 and a 1988 millage rate of 13.95 (versus 2.24069 in Commerce) pays \$9.80 to a Clerk II.

Of the townships cited by the union as "comparables" paying higher rates to similar classifications, only Waterford is geographically proximate. Its population is two and one half times that of Commerce, has double the SEV rate and a millage rate nearly five times as great as Commerce.

A more accurate comparable might be found in the example of Independence Township. It closely parallels Commerce in population and SEV, but has a millage rate more than three times that of Commerce Township. It pays \$8.32 to a Clerk I, \$9.27 to a Clerk II, \$9.45 and \$9.68 to Secretary I and II. Rates for maintenance workers range from \$10.02 to \$10.35. Appraiser I and II are paid \$10.02 and \$11.14, a building inspector \$10.63, and an appraiser assistant \$11.59 (all rates are 1988). No 1989 rates are available.

ARTICLE 10: "POSTING OF VACANCIES/NEW POSITIONS"

Transfer Language

Article 10 of the expired agreement describes the procedure whereby an employee may elect transfer or apply for a promotion within the bargaining unit. While a "promotion" is defined in Section (3) as "movement to a higher rated pay classification than the one currently held", the term "transfer" is not expressly defined by the contract. For purposes of this fact finding, I will conclude that a transfer encompasses all employee assignments within the bargaining unit, other than a promotion. Section (4) of Article 10 states that "...transfers shall be made on the basis of seniority, qualifications and ability."

During negotiations, the Township proposed, then later imposed, the following language, to replace Section (4):

An employee in a classification may request to be reassigned to a position within the same classification, in another department, when a vacancy occurs. The reassignment may only occur when both department supervisors agree.

The Union argues that the imposed language locks employees into their current department, thereby depriving them of career advancement. Imposition of the employer proposal "precludes transfer based on seniority and qualifications." (Landsiedel's presentation)

The Township imposed the language to clarify the "collective bargaining agreement to conform with current practice". Exhibit 1 further alludes to the employer's concern that allowing employees to "bump" others in the same classification is "totally without merit" and "would result in an unworkable situation".

All of the communities used by the union as comparables provide language for transfers and/or promotions based on abilities and skills. In Harrison Township, the Employer expressly reserves the right to determine abilities and skills.

None of the communities cited by the Township as comparables provide transfer language.

FINDINGS OF FACT

The expired collective bargaining agreement provided for promotions and transfers based on abilities and skills. There is no language permitting the Employer the unfettered right to select an employee for transfer or promotion, absent the requisite abilities and skills.

The Employer contention in its Exhibit 14 that "contractual reference to transfers refers to movement between classifications, not movement to an assignment within a classification" (emphasis added), as well as its concern that the language in the expired agreement would lead to "musical chairs", are virtually unsupported by the record. The Township did not establish that the prior language presented unworkable situations.

I do not see, as the Township does, that the prior language invites employees to "bump" others at will in the same classification (Township Exhibit 1). The contract provides that an employee may transfer or be promoted only to a newly created position or to a vacancy. I do not believe this language permits an employee to "bump" an existing job in the same or different department or classification. Moreover, the Township did not establish any abuses of the transfer language. Nor did it present any evidence to prove the "original intent" which it seeks to re-establish.

RECOMMENDATION

Based on the foregoing discussion, it is recommended that the language of the original contract be retained.

NEW ARTICLE: "LONGEVITY PAY"

The expired agreement did not contain a provision for longevity pay. The union proposed the following language for longevity pay:

Employees after five years of employment,
shall be paid on their anniversary date in
accordance to the following schedule.

Beginning 5 years through 9 years	- 2% of base salary
Beginning 10 years through 14 years	- 4% of base salary
Beginning 15 years through 19 years	- 6% of base salary
Beginning 20 years through 24 years	- 8% of base salary
Beginning 25 years and over	- 10% of base salary

The Township, opposed to the concept of longevity pay, rejected the union's proposal without a counter-offer.

Supporting its proposal, the Union contends longevity pay is a necessary element to attract and retain well qualified individuals. The communities cited in its presentation as comparables all offer some form of longevity pay, either as a percentage of base salary or on a "flat rate" scale. The comparables range from a low flat rate for five years employment of \$130 (Brownstown) to a high flat rate of \$2,000 after seventeen years in Independence Township. Percentage longevity pay ranges from a low of one percent after five years (Orchard Lake Village) to a high of ten percent at twenty years (Harrison and Waterford Townships). Walled Lake's percentage longevity pay is capped at four percent after ten years.

After establishing a foundation for the testimony, union witness, Carol Beauchamp, testified of at least four former Township employee leaving because of "low pay and benefits". The record does not establish any direct, causal connection between the overall compensation package, or the absence of

longevity pay in particular, and the departure of the four employees for work elsewhere.

Counsel for the Township stated that longevity pay is typically an issue of management concern in the recruitment and retention of quality employees. Township Exhibit 19 was presented to illustrate that there has been no shortage of applicants for clerk/typist positions advertised in 1987 and 1988 in the Spinal Column, a local publication. Township Exhibit 16, the longevity policies of the Township's comparable communities illustrates that two of five communities maintain longevity provisions. Independence Township has discontinued longevity pay for employees hired after August 1, 1986. Flat rate schedules are in effect at Highland and White Lake Townships (Employer Exhibit 26). The record also establishes a percentage longevity pay in effect for Commerce Township firefighters, ranging from 2% of base beginning with the fifth year, to 8% of base at twenty or more years. The record does not establish the bargaining history of either parties' submitted comparables.

RECOMMENDATION

Based on the above findings of fact, I find no basis to recommend adoption of the union's proposed longevity pay provisions. The record does not support the union's contention that employees have taken other jobs because of "low pay and benefits" at the Township. No direct testimony was presented from the former employees to establish exactly why they left, nor was any evidence produced that their new employers offered longevity pay.

As fact finder, I cannot equate the payment of longevity pay to the Township's firefighters to its payment to office employees. Fire fighters are highly skilled public safety officers whose training and risk of personal injury warrants payment of longevity pay to retain these people. I see no such corrolary with respect to the employees in this unit. Therefore, I recommend rejection of the union's offer.

ARTICLE 2: "EMPLOYEE DEFINITIONS"

Part Time Employees

The expired agreement defined a part time permanent employee as "one that is regularly employed to work a schedule of less than 37.5 hours per week but more than 30 hours per week".

During negotiations, the union proposed to reduce to twenty (20) the minimum weekly hours worked by a part-timer. The Township imposed a work week reduced to a minimum of twenty-eight (28) hours.

The union offered comparables relating to hours worked by part-timers. The Township offered comparables establishing other part-timers hours and fringe benefits.

FINDINGS OF FACT

Part-timers in Commerce Township work a minimum of twenty-eight and a maximum of thirty-seven and one-half hours per week. They are entitled to, on a pro-rata basis (Article 2.E.); vacations, holiday, sick leave, funeral leave, jury duty and "approved absence days" (Articles 17, 14, 16, 19, 20 and 18, respectively).

The only part-time position within the unit, "ordinance enforcement officer" is currently vacant.

Comparable communities cited by the Union have provisions for part time employment. However, no evidence was presented which indicated part-time employees in any of the comparables received any fringe benefits. No benefits are paid to part-timers in White Lake, Highland or Independence, the comparables cited by the Township.

RECOMMENDATION

Based on the forgoing discussion and the record as a whole, particularly the Employer's financial condition and the absence of any proof of payment of fringe benefits to part-timers in the Union's comparables, it is recommended that the Union's proposal be rejected.

ARTICLE 18: "APPROVED ABSENCE DAYS"

Use of Personal Days

The expired agreement contained the following language:

...approved absence days, not to exceed three (3) days per year may be used for medical or dental appointments, mortgage (land contract) closings, attorney appointments that cannot be made during non-work time or family illness for those members listed below. Approved absence days taken will be deducted from the employee's accrued sick leave.

Language proposed by the union would remove the limitations on the use of approved absence days, allowing the employee to use the days "for personal business".

The Township objects to such change, contending its adoption would produce additional expenses and that the expired contract provision was competitive with other communities.

FINDINGS OF FACT

Of the seven communities cited by the Union as comparables, four require prior notice and two require approval of supervision for the use of sick days. Only Orchard Lake Village permits two days personal business leave without either advance notice or supervisor approval. Both Brownstown and Independence Township deduct personal days from accrued sick leave.

Township Exhibit 17 illustrates the personal days provided by its comparable communities. Days provided vary from two to six. Commerce affords its employees three days. Milford also applies restrictions on taking of the days. Township Exhibit 24 relates the personal days provided by three private sector employers in the immediate vicinity of Commerce Township which range from zero to five. No evidence was presented as to any limitations imposed by the private sector employers. The Township contends its personal days policy is competitive to both the private and public sectors and any change is unwarranted and costly.


RECOMMENDATION

Fully cognizant of the concerns of each of the parties, I recommend that:

1. The parties reconsider the income protection purpose designed into the sick leave provisions of Article 16, and realize that said income protection is jeopardized whenever available leave days are abused.
2. The parties recognize that "approved absence days" were intended to afford an employee time off, without loss of income, for those inevitable appointments or emergencies which might arise during working hours and are enumerated in Article 18 of the agreement, but do not constitute "sick days" as described in Article 16 (E).
3. The existing language remains unchanged. The Township employees are allowed to take three of their sick days to conduct personal business, or tend to family emergencies, without loss of pay. Absent a convincing argument from the union for the removal of the restrictions contained in the collective bargaining agreement, I cannot agree to their removal which would present the potential for abuse and negate the income protection intent of the sick days.

CONCLUSION

The above Report represents the Findings of Fact and Recommendations arrived at following the hearings conducted by the Fact Finder. All submissions of the parties, whether or not cited, were reviewed and considered in the preparation of this Report.


Raymond J. Buratto

Dated: March 10, 1989