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4/17/72 FF (K)

Pursuant to Act 176 of the Public Acts of 1939, as amended, State of Michigan 277

Fact Finder:

Mark L. Kahn
Professor of Economics
Wayne State University

In the Matter of a Labor Dispute

Between

The City of
Dearborn, Michigan

and

City of Dearborn Registered
Nurses Organization (Units I and II)

Mark L. Kahn 4-17-72

REPORT WITH RECOMMENDATIONS

of

Fact Finder

Hearing held March 1, 1972
City Hall
Dearborn, Michigan

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

Dearborn's City of

For the Organization

Appearance:

Mitchell J. Biedul
Representative
Staff Services Consultants, Inc.

Also Present:

Nancy Freda
Public Health Nurse I

Judith Minshall, Chairman
City of Detroit Registered
Nurses Organization, and
National Federation of
Nurses

Joneth West
Registered Nurse

For the City

Appearance:

Dudley L. Sherman
Personnel Director
City of Dearborn

Also Present:

Emily Grell
Administrative Assistant
to Mr. Sherman

REPORT OF FACT FINDER

Dearborn, the fourth largest city in Michigan with a 1970 population estimated at 115,000, is located in Wayne County with Detroit to the east and north, Dearborn Heights to the west, and Melvindale and Allen Park to the south. Dearborn operates a Health Department which employs registered nurses. The Michigan Employment Relations Commission, in May 1971, certified two bargaining units of registered nurses: Unit I, which includes all non-supervisory nurses (currently, about six); and Unit II, for supervisory nurses (currently, one).

Negotiations began in June 1971 and interim salary increases were made effective as of July 1, 1971. Mediation was requested after an impasse was reached on August 8, 1971, and mediation sessions took place on November 3, November 26 and December 3, 1971. Fact Finding was requested by the Dearborn Registered Nurses Organization on December 13, 1971. The request, applicable to Unit I and Unit II, listed the issues in dispute as follows:

1. Management Rights - Subcontracting
2. Organization - Security
3. Waiver Clause
4. Salaries
5. Holidays
6. Longevity
7. Vacation
8. Cost of Living
9. Probation
10. Past Service Credit
11. Non-Discrimination Clause
12. Personal Leaves.

On January 19, 1972, the undersigned was appointed by the Michigan Employment Relations Commission to serve as Fact Finder for this dispute.

On February 7, 1972, a preliminary conference to establish procedures took place at Wayne State University. Mr. Mitchell Biedul represented the Organization, while Mr. Dudley Sherman and Ms. Emily Grell were on hand for the City. A hearing was scheduled for March 1, 1972, at the City Hall of Dearborn, Michigan. It was also agreed that each party would submit, prior to the hearing, a statement on the issues in dispute. These statements and related materials were received.

Each party had a full opportunity, on March 1, 1972, to present evidence and argument on behalf of its position. The City agreed, during this hearing, to provide the Fact Finder with a roster of bargaining unit personnel with date of employment and current salary. Receipt of this information on March 9, 1972, completed the record.

This Opinion will now consider each issue in the order they have been listed above. My summary of the arguments of each party on these issues will be extremely brief because, in my judgment, it would serve no useful purpose to recapitulate in detail all of the data and contentions that are a part of the record. The parties should understand, of course, that my analysis of each issue -- and of all of the issues as a "package" -- is based upon all of the evidence and argument presented by both parties.

The original contract proposal of the Registered Nurses Organization will hereinafter be cited as "Organization Proposal", and the text of the agreement proposed by the City on July 21, 1971, as revised to November 3, 1971, will be cited as "City Proposal". Except as otherwise indicated, the issues and my recommendations apply to both Unit I and II.

I. Management Rights -- Sub-contracting

The Organization has agreed to the adoption of the Management Rights article proposed by the City except for sub-paragraph B-(6). This reads, as proposed by the City:

(6) The right of contracting or sub-contracting is vested in the City.

The Organization has suggested that the following phrase be added to the above sentence:

. . . however, the City shall not attempt to erode the unit.

The Organization cites the sub-contracting provision in effect between the City of Detroit and its Registered Nurses Organization (Unit I) as a desirable type of clause:

C. Sub-contracting: The right of contracting and sub-contracting is vested in the City. The right to contract or sub-contract shall not be used for the purpose or intention of undermining the Organization or to discriminate against any of its members, nor shall any employee covered by this Agreement be laid off, demoted, or caused to suffer a reduction in overtime as a direct and immediate result of work performed by an outside contractor.

In cases of contracting or sub-contracting affecting employees covered by this Agreement, the City will hold advance discussions with the Organization prior to letting the contract. The Organizations representatives will be advised of the nature, scope and approximate days of work to be performed and the reasons (equipment, manpower, etc.) why the City is contemplating contracting out the work.

Such provisions are common in collective bargaining agreements and providing a desirable degree of security to employees without unreasonably restricting the employer.

Recommendation: that the parties adopt the above-quoted provision from the Detroit-Registered Nurses Agreement, except that "or caused to suffer a reduction in overtime work" should be deleted.

II. Organization Security

The Organization wants a "union shop" type of provision requiring membership as a condition of employment (commencing within thirty days for new employees). The City prefers a "maintenance of membership" provision as well as a "save harmless" clause.

It has become a widespread practice for public employee labor agreements to require union membership as a condition of continued employment, often with the proviso that any employee who prefers not to join may in lieu of membership pay a bargaining service (agency shop) fee equal to membership dues, fees and assessments. This type of provision would be appropriate in this case.

Recommendation:¹ that the parties adopt the agency shop provision contained in the June 1971 Agreement between the City and Local 412 of the International Association of Firefighters (Article III), with the addition of a "save harmless" clause reading as follows:

The Organization will protect and save harmless the Employer from any and all claims, demands, suits and other forms of liability by reason of action taken by the Employer for the purpose of complying with the terms of this Article.

III. Waiver Clause

The City Proposal includes (as Article XVII) the following "Waiver Clause":

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Therefore, the City and the Organization, for the life of this Agreement, each voluntarily and without qualification waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, and with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge and contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

1. I understand that the case of Smigel v. Southgate Community School District is currently pending in the Michigan Supreme Court and that the decision of the Supreme Court may affect the legality of the agency shop in Michigan public employment. Accordingly, the Agreement should contain a proviso that its Organization Security provision will be operative only if and when its legality is confirmed by the Michigan Supreme Court or will be modified in accordance with the Supreme Court's decision.

In my judgment, the inclusion of such a clause might hamper the effective and equitable administration of the Agreement. At best, it would be superfluous.

Recommendation: that the City's proposed Waiver Clause not be adopted.

IV. Salaries

The City's proposed salary schedule for 1971-72 was actually placed into effect as of July 1, 1971, on an interim basis:

UNIT I	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Clinic Nurse	\$8,876	9,145	9,414	9,683	
Public Health Nurse I	9,855	10,124	10,393	10,662	10,931
Public Health Nurse II	10,689	10,958	11,227	11,496	11,765
UNIT II					
Public Health Nurse III	12,485	12,828	13,171	13,514	13,857

This salary schedule represents an increase over the 1970-71 salary schedule of six percent for the three Public Health Nurse categories and an increase of approximately seventeen percent for the Clinic Nurse (previously called "Registered Nurse"). In addition, step increases at four years of service were added for the Public Health Nurses.

The Association proposal is that annual step increases should take place for all classifications up to and including five years of service, with salary ranges of \$10,000 to \$11,500 for the Clinic Nurse, \$10,600 to \$12,250 for the PHN I, \$12,000 to \$13,650 for the PHN II, and \$14,000 to \$15,650 for the PHN III (Unit II).

In view of the fact that the most senior Unit I nurse started her employment with the City on March 30, 1970, and that the PHN III was promoted into this supervisory classification on May 21, 1970, there is no pressing need at this time to determine whether a step increase at 5 years of service in the salary schedule is desirable.

I have been provided with a good deal of comparative information about the current salaries of nurses employed by other communities. In regard to the amount or percent of salary increases obtained by other nurses' organizations for 1971-72, however, the only information in my possession appears (somewhat vaguely) in Schedule I of Organization Exhibit VI, which is the Economic Agreement between Detroit and the Detroit Registered Nurses Organization, Unit I, July 1, 1971 to December 31, 1974. This indicates that the registered nurses in Detroit obtained an across-the-board increase of \$400.00 in their salaries as of July 1, 1971, and

an additional \$496.00 per year effective January 1, 1972. The dollar increases placed into effect for the Dearborn registered nurses on July 1, 1971, ranged, at the starting rate, from \$559.00 for the PHN I up to \$1,337.00 for the Clinic Nurse.

Based on my appraisal of all of the evidence of record, and bearing in mind both the present (interim) salary levels for both units as well as the size of the salary adjustments effected as of July 1, 1971, my conclusion is that the interim adjustments were appropriate for 1971-72.

Recommendation: that the Organization withdraw its proposal for salary increases (and additional step increases) above those placed into effect on an interim basis for 1971-72.

V. Holidays

The City presently provides to all of its employees (except policemen and firemen) eight paid holidays plus two half days, or the equivalent of nine paid holidays. The Organization proposes a total of thirteen paid holidays. Nurses employed by Wayne County and by Detroit enjoy substantially more holidays.

Recommendation: that the City agree to one additional paid holiday per year, the specific holiday to be determined by negotiation between the parties; and that if the particular holiday selected occurred prior to the issuance of this Report, that each member of the bargaining units receive for 1971-1972 one day of pay in lieu thereof.

VI. Longevity Pay

The Organization proposes a ten percent increase in the longevity pay currently provided by the City, which begins with the sixth year of service. A PHN I entering her sixth year would be entitled, under the City's present longevity pay schedule, to \$240 per year of longevity pay until her eleventh year of service, when the longevity pay increases to \$273 per year. A PHN III would receive \$267 during her sixth through tenth year of service, after which her longevity pay would increase to \$300 per year.

Information provided by the Organization indicates that Detroit does not pay for longevity until after ten years of service, and give \$150 per year during the eleventh through fifteenth year. Wayne County also waits until the eleventh year, and then pays \$300 through the fifteenth year. Oakland County, according to the

Organization, starts longevity pay after six years and pays 2 % for the seventh through ninth year, 4 % for the tenth through twelfth year, etc., up to 10 percent after eighteen years.

The available information indicates that the longevity pay schedule presently in force at Dearborn starts longevity pay sooner and, as constructed, is more generous at least through ten years of service than the other cited schedules (and more generous than Detroit through fifteen years of service).

Recommendation: that the Organization withdraw its proposal for increased longevity pay.

VII. Vacation

The City currently provides, under Civil Service Rule XVI, the accumulation of one work day of vacation per month of service, or twelve work-days of vacation per year, from the first through the fifteenth year of service. Upon completion of fifteen years of service, each employee is thereafter entitled to seventeen work-days of vacation per year (accumulated on the basis of 1-5/12 work days of vacation per month).

The Organization has proposed a Vacation Plan reading as follows:

Vacation Plan:

- A. Vacations shall be computed on the basis of hours worked in the fiscal year. A fiscal year is defined as commencing the first of July and ending the following June 30.
- B. All employees with up to five (5) years of service shall accrue vacation leave on the basis of two (2) [work] days for each 173 hours of credited service during a fiscal year.
- C. All employees with five (5) years of service and over shall accrue vacation leave on the basis of three (3) days for each 173 hours of credited service during the fiscal year.
- D. Full-time nurses having fifteen (15) consecutive years of service shall accrue vacation leave on the basis of four (4) days of leave for each 173 hours of credited service.

As I read this proposal, it is for approximately 24 work-days of paid vacation up to five years of service; 36 work-days of vacation from five to fifteen years of service; and 48 work-days of vacation after fifteen years of service.

The current vacation benefits provided by the City are more generous for employees with less than seven years of service than are the vacation provisions for the City of Detroit. Wayne County provides 13 days of vacation per year up to five years of service. Oakland County provides 10 vacation days in the first year of service, 12 vacation days for the second through fourth year, fifteen vacation days for the fifth through ninth year.

Especially in light of the short length of service of present members of the bargaining units, and in view of the fact that the City's vacation benefits are relatively favorable for junior employees, I am not persuaded that the registered nurse units are at this time entitled to more favorable vacation benefits than other City employees.

Recommendation: that the Organization withdraw its proposal for improved vacation benefits.

IX. Cost of Living

The Organization has proposed the adoption of a cost of living escalator provision based upon the national Consumers Price Index computed by the U.S. Bureau of Labor Statistics. The City of Detroit offered its Registered Nurses Organization a Cost of Living Allowance, geared to the Detroit CPI, on September 3, 1971 (with a 14-cent pay cap for any twelve-month period). This was not adopted, however, when Detroit and its RNO Unit I entered into a three-and-one-half year economic agreement on November 29, 1971. Instead, the parties agreed to an across-the-board increase of \$500 effective July 1, 1972, and a further increase of \$500 on the minimum, \$800 on the maximum, effective July 1, 1973.

I am not persuaded that a quarterly type of cost-of-living allowance is either common or desirable in public employment, while an annual salary change based on the Consumers Price Index does not seem necessary where the collective bargaining agreement itself is an annual one. There are many advantages to longer-term agreements for both parties, and such agreements must incorporate salary adjustment provisions effective during their terms in order to be acceptable.

Recommendation: that the Organization withdraw its proposal for a cost of living allowance, but that the parties consider the possibility of scheduling future salary improvements as part of a longer-term agreement.

X. Probation

The Organization proposes the following provision:

PROBATIONARY EMPLOYEES: All newly employed Registered Nurses shall be on probationary status for their first 90 days or 520 hours of employment.

The City's Civil Service Rule VIII deals with probation, and establishes a basis probation period of twelve months. The probation period may be ended after six months upon the appointing authority's decision to grant permanent status; and it

may be extended for up to an additional twelve months upon the request of the appointing authority. An employee on probation "may have his services terminated at any time during such probationary period without the right of appeal."

The Organization objects to the length of the City's probationary period, pointing out that professional employees come to the job already equipped with a body of knowledge and performance skills. The Organization notes that Detroit's probation period is ninety days or 520 hours (with a maximum extension to 180 days), while Wayne and Oakland Counties have a probation period of six months for new hires and for promotions to a new classification. The City, on the other hand, emphasizes that it requires a long time for a professional employee to be fully exposed to all phases of her work.

In my judgment, the present probation regulations require a needlessly long period in which a Registered Nurse may be terminated without the right of appeal. Recommendation: that the City accept for its Registered Nurses in Units I and II a probation period of six months for new employees and (in their new classification) for newly promoted employees, with the understanding that a promoted employee whose services prove unsatisfactory (subject to the Grievance Procedure) is entitled to return to her former classification on permanent status.

XI. Past Service Credit

The Organization proposes as follows:

PAST SERVICE CREDIT

All employees who are new hires shall qualify for past service experience credit at the rate of fifty (50%) per cent for work experience as a registered nurse at a comparable position. All employees who are former employees of the City and who are re-employed shall qualify for past service experience credit at the rate of seventy-five (75%) per cent for work experience as a registered nurse.

All nurses presently on role shall have their past service computed and placed on the appropriate step of the salary schedule. In all cases, the base pay period for computing any credit for past service experience shall be limited to a period of time defined as dating back eight years from date of hire.

Hours actually worked and or paid for shall be the standard for computing credit for past service experience. Credit for past service experience shall be computed and applied upon completion of the probationary period.

The City states that it employs people above the minimum rate at its option, but it has no obligation to credit prior work experience. The Organization states that Wayne County, Oakland County and the City of Detroit allow full credit for prior experience as a registered nurse.

In my judgment, the Organization's proposal is a reasonable accommodation to the relevance of prior related experience as against the wish of the City to retain some discretion in this area. If the City wants to hire an experienced registered nurse, it ought to be willing to give her half credit for that experience (or three-fourths credit for that experience gained in the employ of the City).

Recommendation: that the Organization's proposal relating to past service credit be adopted by the parties. It should be understood that the City, at its option, should remain free to give up to full credit for past service to new employees.

XII. Non-Discrimination Clause

The Organization proposes the following provision:

NON-DISCRIMINATION

The City, either in hiring, promoting, advancing or assigning to jobs or any other term or condition of employment, agrees not to discriminate against any registered nurse because of race, color, national origin, religious affiliation, sex, marital status, or membership or activity on behalf of the Organization or participation in the grievance procedure.

The City points out that the City Charter prohibits discrimination based on political or religious beliefs or affiliations and that State and other legislation prohibits legislation. The City therefore opposes the inclusion of such a clause in the Agreement. The City considers such a proposed clause as it relates to hiring to be a non-negotiable item, since persons not yet hired are not members of the bargaining units.

The Organization wants the inclusion of this provision for the purpose of making the grievance procedure available where there is a claim of discrimination, and adds that if the City does not discriminate it should certainly not object to a non-discrimination provision.

A non-discrimination provision now appears in a majority of collective bargaining agreements in the United States. I agree with the City that such a provision should not apply to the hiring of new employees, since persons not hired have recourse to the appropriate government agencies or courts. But claims of discrimination by current employees should be open to explicit determination under the grievance procedure. Moreover, the inclusion of a non-discrimination provision emphasizes conformance to a desirable public policy.

Recommendation: that the City accept the Organization's proposed non-discrimination provision except for the reference to "hiring".

XIII. Personal Leave

The Organization proposes the following provision:

Personal Business Leave

A nurse, provided she has a sick leave accumulation of at least six (6) days, may use up to three (3) days of sick leave with pay per calendar year for personal business use, upon reasonable notice to her department head. Personal business use of sick time shall be authorized by the department head for matters of importance to the nurse such as real estate transactions, attendance at graduations of relatives or close friends, attendance at educational programs not otherwise authorized or attending the funeral of a close friend, but shall not be authorized for recreational or vacation purposes.

The City points out that as a matter of practice, employees may already use sick leave days for medical and dental purposes. Otherwise, says the City, most facilities are now available outside of working hours and sick leave should not be used for such other purposes.

The Organization maintains that various types of other personal business, such as school enrollment or the need to consult a real estate broker, an attorney or a banker, should be a legitimate basis for drawing upon sick leave that has been earned (and which is not recovered upon termination).

Recommendation: The Agreement should contain a provision that makes explicit (and establishes as a right) the current practice of permitting employees to use accumulated sick leave for medical and dental purposes. I am not persuaded that sick leave should be made available for other personal business reasons at this time.

Concluding Remarks

In summary, I have recommended that the City accept in whole or in part those proposals of the Organization relating to sub-contracting, organization security, holidays, probation, past service credit, and non-discrimination. I have recommended that the Organization withdraw its proposals on additional salary increases for 1971-72 (above those placed into effect of July 1, 1971), longevity pay increases, vacations, cost of living allowances, and personal leaves (except for making explicit an employee's right to use sick leave for medical and dental purposes). Finally, I have recommended that the City's proposed waiver clause not be adopted.

I hope that this Report will assist the parties in resolving their differences and provide a basis for negotiations that will lead to an early agreement.

In view of the fact that the 1971-72 fiscal year has only two months left, I urge the parties to make every effort to complete, at this time, not only a 1971-72 agreement but one that will apply also to at least the 1972-73 fiscal year.

Mark L. Kahn

Mark L. Kahn
Fact Finder

DATED: April 17, 1972