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FACT FINDING

STATE OF MICHIGAN - EMPLOYMENT RELATIONS COMMISSION

CHARTER TOWNSHIP OF FLINT

-and-

Case No. L04 J-8008

TEAMSTERS STATE, COUNTY &
MUNICIPAL WORKERS, LOCAL 214

BACKGROUND

The Commission, pursuant to Public Act 176 of 1939, appointed Richard Mittenthal to serve as fact finder in the above case. The parties' collective bargaining agreement (CBA) expired on December 31, 2004, and has evidently been renewed periodically on account of their inability to negotiate a new CBA. Just two issues remain unresolved, namely, Union proposals for (1) a contracting out limitation and (2) a fixed shift (hours per day, days per week) arrangement along with a set procedure for replacing absent employees. The Union says there is a third matter as well, "comparables", but that concerns only the standards the fact finder may choose to follow in making his recommendations.

The parties submitted their evidence and arguments by mail on September 8, 2006. No hearing was held. Briefs were received on October 5, 2006. The Township was represented by Thomas A Basil, Consultant; the Union was represented by Les Barrett, Business Representative.

The bargaining unit, as of 2005, included some twelve Communication Operators, five of whom apparently worked full-time and the others part-time. Their job description says the Operator requires "excellent communication and interpersonal skills in dealing with the public and the members of the [police] department". He/she is expected to have "the ability to work rotating shifts, holidays, weekends", either independently or under direct supervision. Some of the duties are secretarial in nature - serve as a

receptionist and telephone operator, process requests for complaints and copies, receive monies, issue receipts, complete forms, and operate standard office equipment (typewriter, computer and so on). In addition, he/she must operate a police radio, maintain radio logs and other files, and interact with other organizations to facilitate effective maintenance of police records. Operators presently appear to earn \$9.50 to \$12.08 per hour depending on their years of service. They also receive a benefit package including, among other things, health insurance and a defined contribution retirement plan.

DISCUSSION AND FINDINGS

The first issue involves a Union proposal for the following limitation on contracting out by the Township:

~~Section 2.4 The Township shall not sub-~~
contract any work performed by the Communication Operator if it will result in the layoff of a Communication Operator.

The Township objects, largely on the ground that "public employees have an obligation to provide services to its taxpayers in the most economical and efficient manner possible" and that "if a private agency can deliver comparable quality at a lesser price, the Township has a duty...to use the less expensive service". It stresses that no such contracting out limitation exists in the Township's CBAs currently in effect for Command Officers (UAW), Patrol Officers (P.O.A.M.), Fire Fighters (Fire Fighters), and Secretaries (AFSCME). The Union disagrees, urging that contracting out restrictions similar to its proposal are present in effect in the Township's CBAs for Command Officers and Patrol Officers and in other CBAs for the same kind of employees elsewhere in the region.

The Union argument is more compelling. True, the Secretarial CBA has no contracting out limitation. But Article II of the Township's CBAs for the Patrol Officers and the Command Officers states that the Township has the right "to study and use improved methods and equipment and outside assistance (that does not erode the bargaining unit) ... (Emphasis added). These are not the same words as are

Section 18.3 The employee with the lowest number of regularly scheduled hours shall be offered available hours of absent employees if the time does not conflict with their regularly scheduled shifts. If they are not available or do not accept the assignment, then the next lowest number of hour employee shall be offered the time. This process shall continue until the slot is filled.

The Township objects, emphasizing management's need for "flexibility to operate efficiently and economically". It believes the Union proposal would interfere with its long-standing right to determine shift schedules based on need and employee availability. It states too that the kind of restrictions found in the Union proposal are not found in any of its other CBAs. The Union disagrees. It asserts that the Township has over the years provided Communication Operator coverage 24 hours a day and seven days a week and has provided full-time employee coverage on all shifts Monday through Friday. It believes its proposal simply "is attempting to codify this established practice..." It alleges further that the Township has "abus[ed] employees by manipulating their hours of work" as illustrated through two earlier arbitration awards. It maintains that such "abuse" could be prevented through its proposal and that other Township CBAs contain somewhat similar restrictions.

The Union request is not persuasive. It would require four full-time shift schedules each week and require the workday of three of these four schedules to begin at 7:00 a.m., 3:00 p.m., and 11:00 p.m. To grant that request would apparently change the Township's scheduling practice and undermine the flexibility it has achieved through Section 18.1 ("Hours of work are to be determined by the Employer"). Indeed, the proposed Sections 18.2 and 18.3 would largely eliminate the discretion provided to the Township through Section 18.1.

Moreover, the Communication Operator job description originally contemplated that this job would be strictly a "part-time position". And the evidence shows that a large number of Communication Operators have always worked on a part-time basis. The Union proposal would go a long way toward making the Communication Operator a "full-time

position" even though the job description remains unchanged. Management has needed the flexibility of part-time positions to insure 24-hour coverage, seven days a week. And, finally, the Union has failed to demonstrate that Section 18.1 permits the mistreatment of employees. The cited arbitration awards show that any mistreatment has been, and can be, corrected through the grievance procedure and arbitration, notwithstanding the broad language of Section 18.1. The other CBAs do not call for a different conclusion. Hence, I recommend that the Union withdraw its Section 18.2 proposal.

As for the Section 18.3 proposal, it would require that every Communication Operator absentee be replaced no matter what the surrounding circumstances might be. For instance, another Operator on the absentee's shift may be perfectly capable of handling the anticipated workload without calling in a replacement for the absentee. The Township will no doubt summon a replacement whenever there is a need. It should be free to respond to workload considerations in making this kind of judgment. Hence, I recommend that the Union withdraw its Section 18.3 proposal.



Richard Mittenthal
Fact Finder

October 17, 2006