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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING
BETWEEN:

MERC CASE NO. D77-J2770

CITY OF ANN ARBOR (PLANNING DEPARTMENT)

-and-

MICHIGAN COUNCIL 11, AFSCME.

INTRODUCTION

Pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. Pursuant to an agreement between the parties, the hearing was commenced at 9:00 a.m. at the Ann Arbor Fire Station, Ann Arbor, Michigan, on March 27, 1978. The undersigned, Mario Chiesa, is the Fact Finder herein.

The City of Ann Arbor shall hereinafter be referred to as the City, while Michigan Council 11, AFSCME will be referred to as the Union.

APPEARANCES

FOR THE CITY:

Melvin J. Muskovitz, Attorney
Martin Overhiser, Planning Director
William P. Garrett, Director of Personnel
Joe Monroe, Asst. Planning Director

FOR THE UNION:

David L. Mitchell, Staff Council 25 AFSCME
Rodger Knight, President, Local 369 AFSCME
Earl Landesman

Ann Arbor, City of

HISTORY

In May of 1977, the employees in the City of Ann Arbor Planning Department voted to join the AFSCME bargaining unit. Article 1 of the Collective Bargaining Agreement which exists between the parties contains a provision allowing the accretion of proper city employees into the bargaining unit.

The parties met and engaged in collective bargaining in an attempt to resolve the outstanding issues. The parties reached an impasse and at that point, sought the help of a state mediator. The parties were still not successful in resolving their differences and have ultimately participated in this Fact Finding proceeding.

The dispute centers around the application of the terms of the Collective Bargaining Agreement to the Planning Department employees for the fiscal year beginning July 1, 1977.

ISSUES

The parties suggest, and the record establishes, that the issues which are in question revolve around salary and educational benefits.

The salary issue is multi-phase and must be explored before it can be understood. At the time the employees voted to become part of the AFSCME bargaining unit, they were being paid pursuant to a city-wide classification system which was the product of a 1972 study. The Collective Bargaining Agreement also contained pay classification schedules. When the new pay classification plan was implemented in 1973, it appears that the pay schedules, which were exhibited in the Collective Bargaining Agreement, were identical to the classification plan that existed for non-union employees assigned to the same pay range. However, as a result of collective bargaining through the years, the salary schedules

which appear in the Collective Bargaining Agreement are somewhat different than those which are applicable for non-union employees.

Thus, it is the Union's position that the employees in question should receive the forty cents per hour pay increase that the Union claims is implied by the Collective Bargaining Agreement, along with the COLA payments contained in the same agreement. Further, the Union maintains that since the employees do not fit exactly into the pay schedules annunciated in the Collective Bargaining Agreement, their pay rate should be upgraded to the next highest pay range.

The City's position is that the Union's demands are not justified. The City's final position is that it would increase the base rate of the employees in question by thirty cents per hour and would pay each employee a lump sum payment of $100.00 effective upon ratification. The $100.00 payment shall not be included in the employee's base salary. Further, the City's offer included a ten cent per hour COLA payments and would also have allowed the employees a six-step increase progression. This was accomplished by the City applying the approximately 2.65 percent which exists between each pay step to the salaries which would have been paid to the employees had the City's offer been accepted.

The second issue concerns educational benefits. The language contained in the Collective Bargaining Agreement states, inter alia, that the City would reimburse an employee at the rate of fifty percent of tuition and necessary class materials for any classes relating to his job classification. The Union maintains that the past practice, which has existed in this city, is for the City to reimburse an employee for one hundred percent of the above mentioned costs. The City maintains that whether that is the case

or not, the issue of educational benefits is not properly before this Fact Finder because its resolution should be sought at grievance arbitration.

DISCUSSION

Prior to discussing the more complex issue in this matter, your Fact Finder will address the issue regarding the educational benefits.

This Fact Finding proceeding was engaged in for the express purpose at arriving at a resolution regarding negotiations which the parties have entered into. The proceeding is designed to eliminate an impasse regarding the accretion of the Planning Department employees into the bargaining unit. This Fact Finding does not have as its purpose the mission of interpreting and applying the existing words of a collective bargaining agreement. If that is to be done, it is to be done by a grievance arbitrator after one or the other party has filed a grievance which suggests that contract interpretation is necessary.

The educational issue falls into that category of cases which should be decided by a grievance arbitrator. This Fact Finder is not in a position, nor does he have the jurisdiction to interpret and apply terms of a collective bargaining agreement in the manner suggested by the Union. In order to do so, it may be necessary to take extensive proofs on past practice, statements made and documents produced at negotiation sessions, along with other items which more naturally belong in a grievance arbitration hearing. Thus, your Fact Finder is of the opinion that the issue regarding the application of educational benefits should not and will not be considered at this hearing. The claim made by the Union is best resolved by application to the grievance procedure

contained in the Collective Bargaining Agreement. It should be noted that the Collective Bargaining Agreement does contain a grievance procedure which allows, if the grievance is not settled, the grievance to be heard by an impartial arbitrator and, thus, there is ample opportunity to have the matter decided by an impartial third party.

Thus, your Fact Finder is left with the issue regarding wages.

Perhaps the best way to explore the issue is to take each facet separately and then in summary combine all of the elements into a final recommendation.

First, the Union maintains that the employees in the unit, after receiving a salary increase in the COLA adjustment,should be dovetailed into the wage schedule contained in the Collective Bargaining Agreement by using the process of applying the next highest wage range, if, after adjustments, an employee's wage range falls between two ranges as annunciated in the contract. The City's position is that there is no valid reason for upgrading the applicable wage ranges because the responsibilities and the characteristics of the work performed have not changed.

To support its position, the Union points to the CETA Department and the limited duty employees, and indicates that when the CETA employees were integrated into the City payroll, the ranges were increased as were the ranges for the limited duty employees when they were integrated into the AFSCME contract. The evidence introduced by the Union (Union Exhibit 2) indicates that at least three CETA employees were upgraded in range, while certain limited duty employees (Union Exhibit 1A, 1B) received cash payments in addition to the upgrading in order to equal the $832.00 salary increase received by all the limited duty employees.

The City argues there is absolutely no justification for upgrading the salary range of the employees in question merely so they would fit into the salary schedules contained in the Collective Bargaining Agreement. The City points out, and the evidence establishes, that regarding the CETA employees, the City was involved with a group of employees that initially were hired as a result of federal funding. It maintains that subsequently when the employees were absorbed into the City payroll, there were recommendations made regarding the salary levels that would apply. Down the line, there were comparisons made between the functions being performed by the so-called CETA employees and those being performed by other counselors within the City. Thus, the City maintains that when the adjustments in pay ranges were made, they were made in light of the job functions involved. The City points out that when the limited duty employees were absorbed into the AFSCME unit, to some degree, even if small, job responsibilities changed. When this was considered with other items, the City took the position that the employees in the limited duty area should have an adjustment in their pay range.

After analyzing all of the available data, your Fact Finder comes to the conclusion that the employees in question should not have their salary range increased merely to fit within the salary schedules annunciated in the Collective Bargaining Agreement. The facts clearly indicate that none of the job responsibilities or characteristics have changed.

Further, what took place regarding the employees in the CETA group and in the limited duty group does not establish a practice which must be followed in this case. Both the limited duty and CETA groups were influenced by circumstances which do not exist in this matter. The CETA employees were changing from a federally

funded program and being absorbed into the City payroll. The evidence indicates that even though it was belated, a study was made regarding the job functions being performed by CETA employees and other counselors in the City payroll. The limited duty employees had left the police bargaining unit and were being absorbed into the AFSCME bargaining unit. Again, the circumstances were different than what exists herein. There was a change, even if it was small, in the job responsibilities being assumed by limited duty employees. In the present case, there is absolutely no evidence which would indicate that the job responsibilities and characteristics concerning the Planning Department employees had changed at all. Further, the mere fact that the employees had chosen to join the collective bargaining unit does not make them eligible for an automatic salary range increase. Whatever increases in salary, benefits or other items, which may be realized by these employees, will be as a result of collective bargaining.

Thus, after carefully examining the facts, the Fact Finder cannot agree that once the basic adjustments are made in salary, that the salary ranges applicable to the present employees be increased to the next highest range if the adjusted figure falls between two salary ranges. There is just nothing which would allow your Fact Finder to come to the conclusion that such a range adjustment is equitable and necessary.

The second portion of the wage question concerns the cents per hour increase that should be realized by these employees. The City's position is that it will increase the employee's base salary thirty cents per hour and offer a $100.00 cash payment upon ratification. The $100.00 cash payment would not be included in an employee's base salary. The Union maintains that the employee should receive a forty cent per hour increase as implied by the

Collective Bargaining Agreement.

The City maintains that its thirty cents per hour is a reasonable offer because these employees, while non-union, received increases in the base pay which were larger than the increases granted union employees. It maintains that the thirty cents per hour, when coupled with the ten cents per hour COLA would mean that the salary increase for these employees would be equal to all the union employees employed by the City.

Of course, the Union argues that the forty cent per hour increase is contained in the Collective Bargaining Agreement and should be applicable to these employees.

In examining the Collective Bargaining Agreement, while not specifically stated as a forty cent per hour increase, it becomes apparent that the schedules indicate that effective July 1, 1977, members of this bargaining unit will receive an increase of pay which is equal to forty cents per hour. There is really nothing in the evidence which suggests that this should be otherwise for the employees concerned herein. While it is true that these employees have received higher increases in base salary while they were non-union, this does not equate with the proposition that their base salary increase should not be that which is contained in Collective Bargaining Agreement. Since these employees have become members of this bargaining unit, there is no reason, contained in this record, which convinces your Fact Finder that they should not be afforded an increase in salary which is afforded other employees covered by the Agreement. Thus, your Fact Finder recommends that effective July 1, 1977, these employees be granted a forty cent per hour increase.

Along with the base increase, it is necessary to consider the COLA payments. Initially, the Union demanded that COLA payments

be made retroactive to February, 1977. Frankly, there is very little in the record which substantiates the Union's proposal. According to the Collective Bargaining Agreement, the first COLA payment to be made in any fiscal year will be made on October 1. Thus, if these employees were to receive benefits and wages as every other employee would, who is covered by this Agreement, their first COLA payment would be October 1. Your Fact Finder is of the opinion that there is nothing in the record which alters this scheme. Thus, your Fact Finder recommends that the COLA payments contained in the Collective Bargaining Agreement be made applicable to these employees with the first payment being made on October 1, 1977. Thus, the COLA payments should be made retroactive to October 1, 1977. Also, there is no question that the forty cent per hour salary increase should also be made retroactive.

The last item that must be considered in this Fact Finding is the City's proposal regarding the six-step salary schedule. In its last offer, the City suggests that it would be willing to offer each employee a six-step salary schedule. Thus, according to the City's proposal, these employees would be eligible for an anniversary increase for at least six years. According to the City's calculations, this increase would approximate 2.65% for each step.

Frankly, there was no union response to the City's proposal. In examining the Collective Bargaining Agreement, it becomes evident that in most classifications there is a six-step salary schedule. Thus, there doesn't seem to be any reason why the City's proposal regarding the implementation of a six-step salary schedule should not be adopted. In fact, the City's proposal provides potential increases for many of the employees who have already realized a step increase while they were non-union. Thus, your Fact Finder recommends that the City's proposal be adopted.

In summary, your Fact Finder suggests that the employees concerned herein be granted a forty cent per hour salary increase effective July 1, 1977. In addition, the COLA payments shall be made as stated in the Agreement, on October 1, 1977. Obviously, both of these items would have to be made retroactive. In addition, the City's proposal regarding the implementation of a six-step salary schedule should be adopted. Each of the salaries now paid to these employees should be considered separate and apart from the schedule contained in the Collective Bargaining Agreement. There is no reason why the Union's proposal of upgrading the salary ranges should be adopted.

CONCLUSION

Your Fact Finder has carefully studied the evidence in this matter before making the above recommendations. He believes that the above recommendations can serve as a basis for settling this dispute.

MARIO CHIESA

Dated: June 9, 1978