

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRIAL SERVICES
EMPLOYMENT RELATIONS COMMISSION

In re Fact Finding:

CITY OF DETROIT

-and-

Case No. D00 A-1035

ASSOCIATION OF PROFESSIONAL
CONSTRUCTION INSPECTORS

Before: Maurice Kelman,
Fact Finder

REPORT OF THE FACT FINDER

The undersigned was appointed by the Commission to examine into and make recommendations for the resolution of a dispute between the City of Detroit and the Association of Professional Construction Inspectors (APCI) concerning wage rates for 1998-2001. Because of that dispute the parties have been operating for the past three years under the terms of the expired 1995-1998 collective bargaining agreement. Fact finding hearings were conducted on August 8, September 10, and September 13, 2001, with submission of post-hearing briefs on November 19.

APPEARANCES:

For the Union

Mary Ellen Gurewitz, Esq.	Attorney
Stephen Hill	APCI President
Willie Rankin	Pr. Construction Insp.
Robert Johnson, Jr.	Pr. Construction Insp.

For the Employer

Daryl Adams, Esq.	Asst. Corp. Counsel
Lesa Wardlow	Labor Relations Specialist
Jonathan Makela	Human Resources Generalist
Zelda Mays	DPW - Human Resources
Alan Lewis	Labor Relations Manager
Sunday Jaiyesimi	City Engineer
Sheila Johnson	Asst. Director - Bldgs. & Safety

The dispute

The APCI represents 91 employees in non-supervisory construction inspector classifications in two city department, DPW and Water and Sewerage. The 1995-1998 agreement incorporated a special nine percent upgrade for the Construction Inspector series that was granted in May 1995, as well as the general City employees' annual wage improvements for 1995 to 1998. The pay scale in effect for the APCI unit in 1997-98 was this:

Jr. Construction Inspector	21,500 - 25,700
Construction Inspector	30,000 - 32,100
Construction Insp.-Investigator	30,000 - 32,100
Sr. Construction Inspector	33,300 - 36,000
Sr. Construction Insp.-Investigator	33,300 - 36,000

Materials Lab. Tech.	26,100 - 27,100
Sr. Materials Lab. Tech.	29,200 - 31,500
Sewer Safety Inspector	29,600 - 31,000

In negotiations for the successor agreement covering 1998-2001, the City has offered the APCI the same package of wage increases that was negotiated with AFSCME and the other general employee unions: a 2% increase in the first year (1998-99), a 3% increase in the second year (1999-00), and for 2000-01 a 3% across-the-board pay raise plus a further 1% merit increase. APCI is agreeable to those annual improvements but only in the context of a special adjustment of the salary scale by 25%

The union's avowed objective is to equalize the maximum salary of senior construction inspectors with the salary paid to Building Inspectors, a job classification within the Department of Buildings and Safety Engineering represented by another collective bargaining agent. After the APCI submitted its demand, the building inspectors were granted a ten percent special adjustment of their own, effective July 1, 2000. As of 2000-01, the salary of Building Inspectors is \$53,704 (a unitary rate rather than a minimum and maximum). Even though the APCI realizes that its salary proposal will no longer achieve full parity with building inspectors, it seeks at least to narrow the pay gap between the two

classifications. The union's salary demand would bring the top rate for Senior Construction Inspector to \$49,182 for 2000-01 - 9.2% below the building inspectors, in contrast to the 36.5% disparity if, as the City proposes, current APCI base rates are maintained without special adjustment.

Other Issues

At a prehearing conference with the fact finder, the union raised two ancillary issues: changes in the time limit provisions of the grievance procedure (CBA Article 7) and an increase in the clothing allowance (Article 27). These matters were not pursued at the hearing and are considered to be withdrawn from fact finding. The City, for its part, proposed deletion of the "protection clause" (Article 41), which extends to the APCI unit the benefit of any compensation terms subsequently negotiated with other city unions. The same clause is included in all the City's other 1998-2001 CBAs and since the APCI is one of only three remaining unsettled contracts, the issue is effectively moot and need not be addressed in this proceeding.

Parties' arguments

The Union's case for a special wage adjustment is based on several assertions: first, that the job qualifications for construction inspectors - especially the senior inspectors - are closely comparable to building inspector qualifications, and the nature of the work performed by the former is similar to and often more demanding than the work of the latter; second, that the salaries of Detroit construction inspectors are low in relation to other cities in Michigan and in the metropolitan area and in comparison with the private firm to which the City of Detroit has recently outsourced some construction inspection work; third, that as a direct consequence of low salaries, the City is unable to recruit new construction inspectors and regularly sees its senior construction inspectors migrate to building inspector openings.

The City, in turn, dismisses any suggestion that the skills or hiring qualifications of the two kinds of inspectors are interchangeable. Rather, it views building inspectors as having much more extensive training and background in construction trades. The employer also disputes the relevance and reliability of the union's wage comparisons with other public and private employers and asks the fact finder to bear in mind the sad reality that most

of Detroit's municipal work force is underpaid from a comparative perspective.

**Qualifications and duties of construction
inspectors and building inspectors**

Members of the APCI unit are more or less evenly distributed between the DPW and the Water Department. As of June 2001, there were 48 senior CIs, 36 CIs, 3 junior CIs, 4 sewer safety inspectors, and no materials lab technicians. In the Water Department, the inspection work relates to new water mains and sewer systems, as well as the construction of new facilities such as water treatment plants. At the DPW, a handful of inspectors are assigned to the demolition division. They monitor the destruction of condemned buildings, certify completion of the work for payment to the contractor, and ensure that necessary repairs are made to adjoining property and sidewalks. But most of the DPW inspectors are assigned to street and highway construction and resurfacing projects, where they maintain a continuous on-site presence, checking on every phase of the road contractor's work to assure compliance with codes and job specs. Inspection involves, among other tasks, the performance of various tests in the field, and on all federally-funded and MDOT projects the City's inspectors must be state-certified for the tests they perform (aggregates, bituminous concrete mixtures, cement concrete mixtures, etc.).

Each certification typically requires a week of classes, a performance test, and a written exam. Certifications are good for only two years and the same process must be repeated for recertification.

The Junior CI title is a training position which entails working "under immediate supervision." Minimum qualifications are high school graduation and "some recent experience in general construction work." Construction Inspector can be an entry-level position for persons with "2 years of experience in general construction work on major construction or field engineering projects, to include conducting inspections." A high school diploma is the only formal educational prerequisite but it is considered "preferable" to have two years of college-level engineering or construction-related courses. Senior CI is a promotional position with greater responsibilities but the same educational requirements. The official job description of Senior Construction Inspector was revised in 1995 to set out more fully the skills and duties associated with that job title.

To hold a job as Building Inspector, one must have finished high school and completed an apprenticeship in one of the building trades. The position also calls for at least four years of "journeyworker level experience in the construction of buildings

and related structures." It is "preferable" but not obligatory that the applicant have "some advanced training in an engineering college of a university." Those who are hired as building inspectors must also "acquire and maintain registration as an inspector and plan reviewer with the State of Michigan" and are allowed six months to become state-certified. That certification requires passing a written examination that tests familiarity with the state construction code.

On paper at least, the status of building trades journeyman sets Building Inspectors apart from Construction Inspectors. However, union witnesses testified that a considerable number of CIs have transferred to positions as Building Inspectors although (anecdotally) some lacked journeyman credentials. Of the current complement of 43 building inspectors, no fewer than 9 are former construction inspectors. Two of nine building inspectors terminated since 1996 and three of five recent retirees also started with the city as construction inspectors. In other words, nearly a quarter of building inspectors came from APCI ranks.

The City insists that it has not relaxed the requirement of a completed building trades apprenticeship for transferring construction inspectors. It is undisputed that the employer rigorously enforces the obligation of building inspectors to obtain

state registration. According to the State's Rule 37 the minimum eligibility standard of four years of experience in the construction industry can be satisfied by a combination of "complet[ing] a recognized curriculum at an institution of higher education in a construction-related field" (counting for two years) and two years of "experience as a skilled worker" in one of four enumerated building trades: carpentry, masonry, steel erection, or concrete construction. Although the rule does not in so many words speak of completion of a building trades apprenticeship, the combination of classroom education and on-the-job experience alluded to by the rule appears to describe the typical four-year formal apprenticeship programs with which the fact finder is familiar. On the evidence presented to me, I cannot conclude that journeyman credentials are not a seriously enforced qualification for appointment as a Detroit building inspector.

In any case, the ACPI's drive for wage parity with building inspectors is undercut by thirty years of collective bargaining history. I have learned that in labor relations as in law, a page of history is worth a volume of logic. If there was a long-ago time when both job classifications were compensated at the same rate, building inspectors have been drawing higher salaries at least since the early 1970s. Even when the Senior Construction Inspector job description was rewritten in 1995 and a special

adjustment was made to the CI series, the city did not base its action on comparisons to building inspector salaries; the motivation was a re-examination of the salaries being paid to the eight Principal Construction Inspectors - the supervisors to whom the APCI-represented classifications report. The special adjustment for the principals had the effect of leveraging the compensation of the subordinate bargaining unit positions, rather than vice versa.

And when one looks to other municipalities that have an identifiable job classification corresponding (despite different nomenclature) to the Detroit position of construction inspector, what one discovers is that the wage rate is lower than for the same employer's building inspectors. The "comparables" are considered in detail elsewhere in this report, but for present purposes it is of pertinence that with the exception of the City of Warren, all the other municipal employers - Flint, Saginaw, Grand Rapids, Troy and Farmington Hills - exhibit a pay differential in favor of their building inspectors, a disparity ranging from Troy's 5% to Flint's 37%.

Finally, there is another distinguishing feature about construction and building inspectors in Detroit. Because of the proliferation of road repair and reconstruction projects in recent

years, particularly those sponsored by MDOT, construction inspectors have been working huge amounts of overtime, for which they receive time-and-a-half or even (for Sundays and holidays) double-time wages. I suspect that few members of the bargaining unit would gladly exchange their current gross earnings for the compensation of a building inspector with only limited overtime.

Comparable wages in other cities

The APCI's original rationale for a special salary upgrade was gaining equality with building inspectors. The union did not invoke comparisons to the pay scales of other public employers. Nonetheless it is entirely appropriate as the dispute has moved to fact finding for both parties to buttress their positions by citing "comparables."

One difficulty in drawing comparisons is that many cities do not have discrete job classifications that correspond to Detroit's construction inspector series. The union has identified counterpart positions in six other cities and the State of Michigan's classified service. But it also makes use of a generic category found in the Salary & Wages Report compiled by the Michigan Municipal League. The MML's report defines "Key Class #7 - Public Works" as follows:

This position is responsible for overseeing projects in one or more areas of the public works department. Duties include organizing the work, assigning it to a crew, arranging for special equipment, inspecting work in progress, and enforcing safety requirements. In addition, this employee maintains records of time worked by the crew and expenditures made. Entrance requirements for this position include graduation from high school and three to five years of responsible public works experience.

Using Key Class #7 salary data, the union asserts that the city's wage proposal relegates Detroit construction inspectors to last position among the thirteen largest communities in the metropolitan area, whereas the union's proposal would elevate Detroit to mid-rank. Likewise based on Key Class #7 salaries paid by the ten most populous cities in Michigan, the employer's bargaining offer leaves Detroit dead last while the union-sought salary would move Detroit to third place, behind Bay City and Grand Rapids.

In my opinion these comparisons are wide of the mark. The MML definition, except for the reference to "inspecting work in progress," bears almost no resemblance to the positions at issue here, which involve performance of a specialized function at construction sites rather than organizing and supervising work crews. (Despite the construction inspector's power to interrupt the contractor's work if he deems it unsatisfactory, the inspector

is not the overseer or supervisor of the contractor's employees.) It is evident, too, that municipalities -- including Detroit itself -- do not categorize construction inspection as a Key Class #7 job when they report salary information to the Municipal League.

Considerably more probative to the fact finder are comparisons based on individual job titles whose described duties closely track Detroit's CI or senior CI classifications. The union's research has turned up these analogs:

<u>Employer</u>	<u>Job Title</u>	<u>Min. Salary</u>	<u>Max. Salary</u>
Warren	Construction Specialist	39,478	52,874
Troy	Inspector (Engineering)	34,691	52,037
Grand Rapids	Engineering Asst. I	33,388	42,468
State of Mich.	Construction Tech. E10	29,650	39,254
Flint	Construction Inspector	31,045	39,214
Farmington Hills	Engineering Aide II	33,388	37,395
Saginaw	Engineering Asst. II	32,440	36,565

Within this small and eclectic universe, the employer's offer of a Senior Construction Inspector maximum for 2000-01 of \$39,346 and a Construction Inspection minimum for 2000-01 of \$32,464 places Detroit in a respectable middle-of-the-pack position -- and slightly ahead of the only cities, Flint and Saginaw, that the employer

accepts as demographically similar to Detroit. On the other hand, were Detroit salaries to be adjusted by 25% as the union asks, Detroit would be paying the highest minimum (\$40,579) and the third highest maximum salary (\$49,182).

Private sector comparisons

As a general matter, the City resists wage comparisons with private employers for the reason that government, being less able to pass on labor costs to the public, traditionally pays lower wages, and also because public pension and other fringe benefits as well as better job security compensate for lower salaries. But the City does recognize that it still has to compete with the private sector in recruitment of new workers and if it hopes to retain its most marketable employees.

This competition is most visible in respect to building tradesmen. According to Al Lewis of the city's labor relations bureau, Detroit finds it necessary to keep its tradesmen salaries within ten percent of metro area prevailing rates, and that also was the thinking behind the special adjustment for building inspectors and other trades-related inspector classifications in the Buildings and Safety Engineering Department a year ago. In a September 2000 report the city's Auditor General noted that only

two of 49 budgeted building inspector positions were unfilled, but found a disturbing number of vacancies for electrical inspectors (8 of 22 positions) and housing inspectors (21 of 53), which he attributed to "the healthy local economy." While that adjective can no longer be applied to the current national, state, and local economy, there still has been no curtailment of highway construction projects and the City remains conspicuously short-staffed when it comes to construction inspectors. The 2000-01 city budget listed 117 positions in APCI-represented classifications, 27 of which were vacant. And Detroit has recently resorted to private subcontracting with the explanation that the city "has had difficulty for some time in recruiting Construction Inspectors."

The stipulated rates for the private employees are well above the city's pay scale. The contract executed in June 2001 with HNTB Michigan, Inc., commits the City to an hourly wage rate of \$20 to \$22 for the private inspectors and \$22 to \$25 for private senior inspectors. That contrasts to a \$15.76 - \$16.87 range for city inspectors and \$17.50 - \$18.92 for senior city inspectors if the City's salary offer were to be implemented - a pay disparity on the order of 30% at the top of the scale.¹ When the City previously

¹The City also paid HNTB a multiplier of 1.84 of hourly wages to cover fringes, overhead, and the contractor's profit - as opposed to the more modest 0.48 fringe-cost factor of Detroit city employees.

contracted out for construction inspection services in 1996 with a company known as CMTS, the contractor's employees also received higher hourly rates but the disparities in relation to the civil servants were not as pronounced. Admittedly it is risky to draw generalizations about "the private sector" from one or two subcontracts. Yet it seems clear that the union's complaint about uncompetitive salaries does have merit.

Recommendation

Even a much watered-down version of the principle that the City applies to its building tradesmen calls for some salary adjustment for construction inspectors beyond the employer's general wage increase package. In the context of Detroit's 1998-2001 labor negotiations, a boost in APCI base salaries would not be an extraordinary action. As Mr. Lewis acknowledged, special salary adjustments were made during the 1998-2001 cycle for one or more job titles in about half the City's forty-four bargaining units, and many of those adjustments were directly related to recruitment and retention concerns.

I recommend acceptance of the annual increases offered by the City but with a 5% salary adjustment effective in the third year of the contract (2000-01). Such a settlement would be in line with

salaries for similar positions with other public employers. It also would narrow the gap between public and private sector compensation and should alleviate, at least in some measure, the City's current recruitment difficulties.

As a closing comment, I wish to thank the union and city representatives for their illuminating presentations and to express the hope that this report will help them to arrive at a long overdue settlement.

Maurice Kelman

MAURICE KELMAN, Fact Finder

Dated: January 3, 2002