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STATE OF MICHIGAN  
GOVERNMENT RELATIONS COMMISSION  
DETROIT OFFICE

**Factfinding  
-between the-  
City of Detroit  
-and the-  
Service Employees International Union (SEIU)  
Local 808M, AFL-CIO**

# Fact Finder's Report

City of Detroit  
and the  
Service Employees International Union (SEIU)  
Local 808M, AFL-CIO

Case No. D00 C-1016 (Non-Supervisory)  
Case No. D00 G-0128 (Supervisory)

## Appearances

### Employer

Linda Hightower, *Manager*  
Allen Lewis, *Economist*  
Kathy Sewell, *HR Specialist II*  
James E. Bledsoe, *Supervisor*  
Pamela Osborne  
Ulysses Burdell, *Director DPW*  
Gwendolyn Johnson, *Asst Corp Counsel*

### Union

Mavis Williams, *President*  
*Local 808M*  
Derron Jones, *former ECI*  
Anthony Baker, *former ECI*  
Rodger Webb, *Attorney*

## Background and Issues

The petitioning party filed for fact finding on behalf of Supervisors and Non-Supervisors on February 15, 2001. Fact finding was preceded by four mediation sessions that took place on June 26, 2000; October 10, 2000; January 25, 2001 and February 15, 2001. The contract between the parties expired on June 30, 1998.

The initial unresolved issues were 1) Wages; 2) Use of employee's cars in employment; 3) Mileage; 4) Promotion; 5) Vacation Selection; 6) Reimbursement of Pesticide Licenses; 7) Career Development and Training; 8) President Release Time; and 9) Flex Time.

Following mediation, fact finding sessions were conducted over six days. Testimony was taken over four days and the parties engaged in open discussion of unresolved matters on and off the record over two days.<sup>1</sup>

The remaining unresolved issues were 1) Reimbursement for pesticide license; 2) Use of Personal Vehicles; and 3) the Special Wage Adjustment.

<sup>1</sup> Session dates were: July 10, 11, 12; August 28, 29; and October 2.

## Reimbursement for Pesticide License

There was testimony indicating that employees, as a matter of practice, have purchased their pesticide licenses. Since the City requires Environmental Control Inspectors to have such licenses, the Union believes that the City should pay for them. It is not a high cost item but for the Employer it means a break with an established precedent. Whatever the case, the City relies upon established practice as insulation against unwanted and, perhaps, potentially obtrusive change. The Union as the moving party against an established precedent had the burden of showing that the practice constitutes an injury against its members.

In May, 1977, the City points out, the Union accepted a seventy-five cent special wage adjustment to cover reimbursement of the pesticide license fee.<sup>2</sup> This, the City notes, is much more than a fee of fifty dollars (\$50.00) over a three year period. The adjustment, in fact, amounts to slightly more than two hundred sixty-five dollars (\$265.00) a year.<sup>3</sup>

The Union points out that special wage adjustments are used by the City to make up for inadequate across-the-board wage increases.<sup>4</sup> It offered three exhibits in support of its claims.<sup>5</sup> Exhibit 6 shows that the City requires Environmental Control Inspectors to have pesticide licenses and Exhibits 6A and 6B show that a fifty dollar (\$50.00) fee accompanies the application for the license. These exhibits do not contradict the City's claim that it folds the cost of the pesticide license into the special adjustment.

The Union points out further that there is an ancillary cost for books that brings the actual cost of the pesticide license to sixty dollars (\$60.00).<sup>6</sup>

Once again, the Employer's explanation that the special adjustment more than covers this cost requires the Union to submit evidence to the contrary or, at least, evidence that shows that combining license monies with other monies obscures an injury. The fact finder notes that the Union did not submit proofs in support of its claim that other city employees are reimbursed for fees when they pay for mandated licenses. Nor did the Union show that its members are injured by receiving monies as part of a special adjustment rather than as a dollar for dollar reimbursement.

<sup>2</sup> Employer Brief p. 3: Ms. Hightower testified that in May 1997, the City offered and SEIU accepted a seventy-five cent (\$.75) "special wage adjustment" (for the contract period 1995-1998) for the reimbursement of the pesticide license fee. Mavis Williams, SEIU President, testified that when SEIU accepted the special wage adjustment for the 1995-98 contract period, they knew they needed the pesticide license, which costs \$50. And that, "...of course, the seventy-five cent special adjustment is much more than a fee of \$50 over a three year period." The City maintains that, in fact, Senior EC's and EC's received a seventy-five cent (\$.75) special wage adjustment (totaling \$600 per annum) for the requisite pesticide license, which was reflected in their wages for 01/01/96, 01/01/97, and 01/01/98.

<sup>3</sup> See Employer Brief, p. 4 and taped testimony by Hightower (Tape 1, Side 1).

<sup>4</sup> See Union Brief, p. 3-5.

<sup>5</sup> See Union Exhibits 6, 6A and 6B.

<sup>6</sup> See Union Brief, p. 12.

1 The fact finder believes that the City's denial of the Union's claim for reimbursement  
 2 for pesticide licenses is for the reason that it asserts: namely, that the costs are covered  
 3 through the special adjustment. Secondly, the City is asking for the continuance of a  
 4 procedural practice that it believes is known to both parties. The difference between  
 5 the parties, the fact finder believes, is not so much a difference involving whether, but  
 6 how employees will be reimbursed. The Union wants to separate the reimbursement  
 7 for pesticide licensure from that part of the special adjustment intended for other  
 8 purposes. The Employer wants to continue to lump the reimbursement monies with  
 9 the special adjustment monies.

10  
 11 To meet its burden the Union had to demonstrate that other Employees already enjoy  
 12 the benefit that is denied to its members and that the Employer arbitrarily denies its  
 13 members a benefit that it readily affords other employees. Or the Union may have  
 14 shown that the Employer by including the licensure fee reimbursement with the  
 15 special adjustment monies actually pays its members less than they would receive if  
 16 the monies were awarded separately. This would constitute an injury in need of  
 17 redress. However, the Union did not meet its burden in either regard.

#### 18 19 **Recommendation 1**

20  
 21 The practice of merging the pesticide licensure reimbursement with the special pay  
 22 adjustment shall be continued over the life of the successor agreement.

#### 23 24 25 **Use of Personal Vehicles**

26  
 27 Article 47, Section A of the predecessor collective bargaining agreement reads in part : . . .  
 28 *when an employee covered by this Agreement is assigned to use his/her automobile to perform*  
 29 *his/her job, he/she shall be paid twenty-six (26¢) per mile for all reimbursable mileage. In*  
 30 *addition, two dollars and nineteen cents (\$2.19) per day is to be paid for each day an*  
 31 *employee is required to use his/her car for City business.*

32  
 33 The City argues that the contractual language authorizes it to require Environmental  
 34 Control Inspectors to use their personal vehicles.<sup>7</sup>

35  
 36 James Bledsoe, Interim Supervisor of the Department of Public Works (DPW) Environmental  
 37 Control Division and a City employee for thirty-two (32) years, testified that the Union  
 38 acknowledged the City's right to require use of a personal vehicle since the mid 1970's.  
 39 Bledsoe went on to testify that supervisors routinely sought volunteers on a seniority basis  
 40 before requiring use of a personal vehicle. Presently there are forty-four Environmental  
 41 Control Inspectors although the division is budgeted for forty seven. There are thirty-three  
 42 (33) trucks assigned to the Environmental Control Division. Occasionally, Bledsoe testified,  
 43 there are not enough City vehicles to perform the duties and responsibilities of the division.

<sup>7</sup> See Joint Exhibit 1B, p. 46

1 He noted also that there has never been a problem with the volunteer system until January,  
2 1999.<sup>8</sup>

3  
4 The Union President, Mavis Williams, agreed with Bledsoe's claim that the City has required  
5 ECI's to use their personal vehicles for employment purposes for a period of years. What is  
6 different, the Union notes, is that the City has not required employees to possess vehicles as a  
7 condition of employment. Nor has the failure to possess a vehicle constituted grounds for  
8 disciplinary measures up to and including discharge. The Union notes further that what the  
9 City is now proposing contains no restrictions whatever on the number of individuals who  
10 may be ordered to use their personal vehicles; provides no incentive for ECI's to volunteer to  
11 be placed on the list; and provides no mechanism for alternative assignments. All of these  
12 conditions exist within the framework of present practice. Article 47 as a matter of practice,  
13 the Union notes, governs the City's obligation to reimburse Union members who are assigned  
14 to use their private automobiles for City business and does not limit the City to voluntary uses  
15 of private vehicles.  
16

17 The Union agrees with the Employer on the historical practice requiring ECI's to use their  
18 personal vehicles. But the Union notes that in the past the City had only a few more ECI's  
19 than it had City-owned trucks. As an incentive to bridging this gap, the City solicited  
20 volunteers and paid them mileage along with a minor per diem allowance. Environmental  
21 Control Inspectors, strictly on a voluntary basis, signed up on a yearly list offering the use of  
22 their own cars in order of seniority (most senior first). If there were insufficient volunteers  
23 available on a given day, the Employer, by reverse seniority, assigned ECI's to use their own  
24 vehicles. This occurred only infrequently, and never resulted in any disciplinary action. As a  
25 practical matter, if an assigned ECI did not have transportation the employees themselves  
26 worked out the arrangements. Sometimes they doubled up and sometimes they alternated  
27 assignments. Possession of a vehicle on a required basis had never been a condition of  
28 employment, either officially or unofficially, nor was the requirement ever established in  
29 divisional policy or practice.  
30

31 In 1999, the Union notes, the division proposed to add the provision that ECI's may be  
32 required to provide their own motor vehicle as a condition of employment to the title's job  
33 specifications. The Union objected and the matter was contested in two different forums and is  
34 presently under appeal in a third forum.  
35

36 The fact finder is aware of the opinion by the administrative law judge and of the ruling by the  
37 Commission on this matter. The following facts, however, persuade his judgment in the  
38 matter.  
39

40 There are many unpredictable circumstances involved in prioritizing the use of a vehicle in a  
41 household on any given day. There are, in addition, fiscal incentives for ignoring

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<sup>8</sup> See Employer Brief, pp. 4-5.

Environmental Control Inspector (ECI) Must and Support Equipment Costs						
	Personnel Cost	Vehicle Cost	Repair & Maint		Gas/Oil	Total Costs
1	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
2	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
3	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
4	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
5	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
6	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
7	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
8	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
9	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00
10	\$ 30,000.00	\$ 16,000.00	\$ 3,000.00	\$49,000.00	\$1,200.00	\$50,200.00

Table 1: Employer Costs in hiring and maintaining an ECI staff of ten.

employee hardship when determining whether to pass on the full cost of vehicle purchase, repair, maintenance and fueling to employees during times of fiscal constraints. During our committee-of-the-whole discussions there were off-the-cuff figures cited about the approximate costs of vehicles and vehicle maintenance. Though the above figures are only approximations, derived from formal discussion, they suggest that the actual costs to the City of providing an ECI staffer is from forty per cent (40%) to sixty per cent (60%) above the wage that is paid. The full complement is the worker and the vehicle that the worker uses to perform assigned tasks.

The City acknowledges its obligation to complement the worker with the means or vehicles to perform the assigned task but recognizes that in most cases the vehicle is also available at the worker's expense. During times of shortage, for reasons beyond the Division's control, the City needs to be able to require workers to use their own vehicles. This need is acknowledged in the contract by both parties. The workers, on the other hand, are resisting an erosion of contractually protected conditions largely established through practice. They want incentives that will encourage volunteers and discourage the Employer from relying solely on the tools of mandamus and punishment to achieve the Division's goals. As shown in Table 1 above, the Employer will save upwards of forty-two hundred dollars (\$4,200) for every vehicle year that it passes on to employees. There was a need for from fourteen to sixteen vehicles for budgeted positions at the time fact finding was ongoing. This shortage means that savings in vehicle maintenance adds up to just under seventy thousand dollars for the vehicles that are yet to be provided just in terms of savings in maintenance costs. Some portion of these savings can be used to provide volunteer incentives to staff while helping them defray their personal vehicle maintenance costs.

To achieve the ends that the parties are seeking, the fact finder recommends the following language that is based largely upon the Employer's proposal of August 28, 2001.

## Recommendation 2

The parties recognize that employees covered by this Agreement who are regularly assigned to a job that requires the use of an automobile may be required to use his or her automobile in accordance with Article 47, Section E, Private Car Mileage

Reimbursement. Since there are currently an insufficient number of City vehicles available for employees in the classifications of Environmental Control Inspector and Senior Environmental Control Inspector, the method of implementing this contractual provision shall be as follows:

1. The City shall continue to provide available vehicles assigned to the Environmental Control Division for employees in the classifications of Environmental Control Inspector and Senior Environmental Control Inspector to use to perform their work assignments.

A list of volunteers to use their personal vehicles for work related purposes shall be established on a yearly basis. A copy of such list will be furnished to the President of SEIU, Local 808-M.

2. Up to twenty (20) employees, as determined by the operational needs of the Department, on the volunteer list in order of the highest classification seniority shall be required to bring their own vehicles to work every day and shall receive the daily rate as specified in Article 47, regardless if the vehicle is used for work related purposes on that date except that the rate shall be increased in accord with this provision.  
*Whenever the number of employees required to use their personal vehicles exceeds five on a given day, the per diem shall be raised from \$3.00 per day to \$3.50 per day in addition to the allowable mileage.*

3. If there is an insufficient number of available vehicles assigned to the Environmental Control Division on any given day, volunteers from the list, as referenced in Item 2 above, shall be required in order of the highest classification seniority to use their own vehicles to perform their work assignments. *Volunteers shall be entitled to the per diem benefits specified in Section 2.*

4. If there is an insufficient number of volunteers, employees in the classifications of Environmental Control Inspector and Senior Environmental Control Inspector may be ordered by inverse classification seniority to use their own vehicles to perform their work assignments. *When a shortage of volunteers is the basis for requiring the use of personal vehicles, the allowable per diem shall not exceed \$2.25 per day.*

The intent of the recommended language is to set a new and higher automobile per diem that is tied to the success of promoting the volunteer system. Proposed Section 4 is intended to encourage promotion of the volunteer system.

## Special Wage Adjustments

The following document was submitted on August 29 at the fact finding session.

The City proposed that:

*In recognition of operational improvements in the 1998-2001 Master Agreement (see Memorandum of Understanding Re: Use of Personal Vehicle for Work Related Purposes) and to maintain traditional wage relations between various classes which share a close working relationship, the minimum and maximum rates for the classifications listed below, as well as all employees on the payroll as of those dates, shall receive the following Special Adjustments:*

Assistant Market Master	.25	.25
Market Master	.25	.25
Environmental Control Inspector	.25	.25
Senior Environmental Control Inspector	.25	.25

The fact finder was not persuaded by the data presented on external comparables. In most instances nomenclature dissimilarities and task assignment within the various classifications eroded the reliability of the comparability standard. Further erosion occurred because of the time lapses in data collection and the absence of comparable data on the fiscal similarities of the various jurisdictions under comparison. What the fact finder relied upon was the Bureau of Labor Statistics Index data. In addition the fact finder looked at internal comparables as a reliable indicator of the Employer's fiscal capacity.

The Union proposes that the Classifications of Environmental Control Inspectors (ECI's), Senior ECI's, Assistant Market Masters, Market Masters, and Sanitation Control Room Operators receive a special adjustment of two dollars per hour effective January 1, 2001.<sup>9</sup> The Employer proposes that ECI's, Senior ECI's, Assistant Market Masters, and Market Masters receive special wage adjustments of \$.25/hour effective July 1, 2000 and January 1, 2001, or a total of \$.50/hour.

The Union notes that the Employer acknowledged that general wage increases for members of this unit over the past nine years (from 1992-2001) have been 0.0%, 0.0%, 0.0%, 4%, 2%, 2%, 2%, 3% and 3%. This amounts to an average of 1.78% per year.<sup>10</sup> CPI increases for urban wage earners and clerical workers in the same area over the same period were 1.8%, 2.5%, 3.0%, 3.2%, 2.6%, 2.2%, 2.2%, 2.7% and 3.7%. Increases averaged 2.66% per year within this Standard Metropolitan Statistical Area while nationally they averaged 2.64%/year for those years.<sup>11</sup>

The fact finder notes that the gap in income losses is cumulative. He notes further that the CPI average increases vary from the average increases paid to ECI's by less than one per cent. This is found to be a tolerable difference that is offset by the special wage adjustment.

<sup>9</sup> See Union Exhibit 3.

<sup>10</sup> See Union Brief, p. 4

<sup>11</sup> See Union Exhibit 10.



Internally Comparable Classifications	
	Special Pay Adj
Bricklayer	\$ 0.25
Carpenter	\$ 0.25
Electrical	\$ 0.80
El. Mech	\$ 0.25
BT Wor	\$ 0.75
Millwright	\$ 0.50
Painter	\$ 0.25
Plasterer	\$ 0.25
Plumber	\$ 0.80
Steamfitter	\$ 0.80
Sheet M	\$ 0.80
Cable	\$ 0.50
Line	\$ 0.50
Line	\$ 0.50
Electrical	\$ 0.25
Electrical	\$ 0.25
	\$ 0.48
Table 2: Selected Classes	

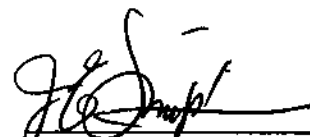
Table 2 above shows that the Employer's proposed special pay adjustment is not out of line with the average for the above cohort group. The average for the group is forty-eight cents whereas the Employer has offered fifty-cents. If the seventy-five cent adjustment is restored to include compensation to employees for the required pesticide license, the Union will retain the parity that existed at the onset of negotiations and this is what the fact finder recommends with an additional twenty-five cents to be added to the adjustment of the twenty employees who are required to bring their automobiles to work each day.

### Recommendation 3

A special pay adjustment of seventy-five cents (.75) is recommended except that those employees who are required to bring their automobiles to work each day shall receive an adjustment of one dollar (\$1.00). The intent of this recommendation is to provide the Union with the same special pay benefit that it enjoyed prior to the expiration of the predecessor agreement and to compensate those employees who will have the additional responsibility for providing their personal automobiles on a daily basis. It is not, in any way, intended to reduce the benefit below the previous levels. It is intended that the benefit extend across all of the contract years that span the impasse through the years of the successor agreement.

1/28/02

Date



J. Edward Simpkins, Fact Finder