STSTE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25 AND ITS AFFILIATED LOCALS 1600 & 1799

UNION,

-&-

CITY OF FLINT, MICHIGAN,

EMPLOYER.

CASE NOS. L00 C-8012
L00 C-8013
FACT FINDER: MICHAEL P. LONG

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FINDINGS OF FACT
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RECOMMENDATION

On February 13, 2002, after reaching an impasse in contract negotiatons with the City of Flint, Michigan (hereinafter referred to as the "City"), Locals 1600 and 1799 (hereinafter referred to as

"Local 1600" and "Local 1799," respectively - both affiliated with Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO) each filed a petition for fact-finding with the Michigan Employment Relations Commission. The City filed a preliminary answer on March 8, 2002. On April 1, the undersigned was appointed the FactFinder.

On June 19, 2002, a pre-hearing conference was conducted by telephone. A list of issues were agreed upon and hearing dates were scheduled for July 1, 2 and 3, 2002. On June 26, 2002, the Union informed the fact finder that it would not be able to proceed on July 1, 2 and 3. Hearings were rescheduled and eventually held on October 17, October 18 and October 30, 2002.

Following the conclusion of the hearing, each party was directed to submit its formal position on each of the outstanding issues. The City's response wassubmitted on November 8, 2002. The Union's response was also submitted on November 8, 2002.

During the fact-finding hearing, the Union was represented by the law firm of Miller, Cohen, P.L.C. through Attorney, Richard G. Mack, Jr. The Employer was represented by the law firm of Keller, Thoma, P.L.C. through Attorney, Fred B. Schwarze.

The parties have agreed that the new collective bargaining agreement will consist of the parties preceding July 1, 1996 through June 30, 2000 respective agreements exceptas modified by the eventual resolution of the issues in dispute.

Except as otherwise noted, the issues in dispute in each agreement are as follows:

Issue 1 - Wages
Issue 2 - Health Insurance
Issue 3 - Retiree Health Insurance
Issue 4 - Full-Time Union Representation
Issue 5 - Subcontracting
Issue 6 - 26/27 Pays - FAC
Issue 7 - Defined Contribution Plan
Issue 8 - Reduction in Annual (Accrual and Maximum Accumulation)
Issue 9 - Severance Provisions

Issue 10 - Use of Interims/Temporaries - Local 1600 only
Issue 11 - Workers' Compensation/Supplemental Pay - Local 1600 only
Issue 12 - Pension/FAC - Local 1799 only
Issue 13 - Length of Agreement

RELEVANT BACKGROUND INFORMATION

According to the 2000 census, the City of Flint has a population of 124,943. Flinthas lost over 68,000 residents, a 35.4 % decline in population. Flint's declining population is matched by a decline in taxable value. By 2001, Flint's taxable value had actually declined 5.6 % below 1990 SEV levels. Flint's residential SEV/taxable value component has increased less than 1.5% a year compared with average increases of 5 % in the Flint's selected comparable cities and 6.3 % in the Union's selected comparable cities. The same basic pattern holds true with commercial property.

Over the past eleven years, Flint's industrial real property has lost $117 million dollars in value, a decline of 37.5 %. Flint's 37.5 % decline compares with a 39.5 % increase among Flint's selected comparable cities and a 65 % increase among Union selected comparable cities. The same is true of the personal property component. The personal property component includes the equipment and machinery in the automotive plants, which are no longer present. Flint's personal property declined $112 million dollars, a 22 % drop. Flint's 22 % decline compares with a 43 % increase in Flint's selected cities and a 95.8 % increase in the Union's selected cities.

The City of Flint currently employs approximately 1,000 employees. Most of the City's employees are represented by labor unions. There are six separate bargaining units within the City. The three largest unions are the AFSCME Local 1600 and 1799 and the Flint Police Officers Association. There are two smaller units in the Police Command and a Firefighters' Union. The latter three unions were each in 312 arbitration at the time of the fact finding proceeding. The City also has low and high level exempt employees, and appointees.

The City of Flint is in serious danger of financial collapse. On July 3, 2002, Governor John Engler appointed Edward J. Kurtz to take over as the City's Emergency Financial Manager. The Governor adopted the findings and conclusions of a hearing officer. These findings and

conclusions were based on an extensive analysis of the City's financialcondition performed by the expert financial review team appointed by the Governor, pursuant to State Public Act 72.

The specific findings cited to support the takeover were "that the City's general fund deficit doubled from $13 million to $26 million in one year, the City's cash reserves had been depleted by $74 million over three years, audit reports during the last three fiscal years reflected the City's inability to accurately budget revenues and expenditures and the City's inability to adhere to its current deficit elimination plan."

There has been much turmoil over the administration of the City. The City Council challenged the appointment of the Emergency Financial Manager. Ingham County Circuit Judge James Giddings ruled that Governor Engler had violated the statute, and enjoined Mr. Kurtz from taking over. The State filed an Emergency Application for Leave to the Court of Appeals on August 20, 2002. The Court of Appeals vacated Judge Giddings' Order and reinstated Mr. Kurtz. The matter was sent back to Judge Giddings.

On September 3, 2002, Judge Giddings issued another Order finding that the Governor's hearing was incomplete and again removed Kurtz.

The State moved for a peremptory reversal of the decision. On October 4, 2002, the Court of Appeals again reversed Giddings and Emergency Financial Manager Kurtz finally gained control of the City's finances.

In fiscal year 1997, Flint had general fund revenues of $81.8 million dollars and General Fund expenditures of $75.2 million dollars. Revenues exceeded expenditures by $6.6 million. In FY98, revenues declined while expenditures increased, leaving a $2.3 million budget shortfall. The General Fund, however, still had a fund balance of $4.5 million.

In FY99, revenues picked-up slightly but expenditures shot upwards. Expenditures exceeded revenues by $7.9 million. The City's fund balance went down to $3.1 million.

When the same scenario repeated itself in FY2000, the City's financial troubles deepened. In FY200, revenues went up $2.4 million, but expenditures continued to increase by another $6.4 million. The result was a $11.9 million budget shortfall. As a result, the fund balance was over $13 million dollars in the red.

Recognizing the City had a serious problem, Mayor Stanley, began totake steps to address the matter in the FY01 budget by drastically reducing expenditures by $12.4 million dollars. This brought expenditures to $83.9 million dollars. Revenues the preceding year had been $84.5 million. Had revenues continued at the prior years level, the City would have been able to reduce the previous deficit by $600,000. Unfortunately, the City's revenue forecast for FY01 was substantially overly optimistic. Rather than the forecasted and budgeted $93.3 million dollars in revenue, revenues fell $4.2 million dollars to $80.3 million dollars. As a result, the City's deficit rose to over $26 million dollars.

According to the City, its serious revenue decline can be traced to several factors. First is the steep reduction in the City's revenues as a result of a tax base that not only failed to keep pace with inflation, but actually declined. Second, income tax collections declined. Both of these factors are in large part attributable to actions taken by General Motors.

In 1985, General Motors employed 63,000 employees in the City of Flint. The City collected $15 million dollars in income tax revenue. By the Year 2000, General Motors employed only 30,600 people, and the City collected only $9.7 in income tax revenue. The cumulative evenue losses in 1998, 1999 and 2000, based on the 1985 level of 15 million, alone amounted to $12.9 million dollars.

Under State law, if a fund of a local unit of government ends its fiscal year in a deficit, the local unit of government must formulate and file a financial plan with the Department of Treasury to correct the deficit. The plan must be filed within 90 days of the filing of the official City audit. The deficit must then be corrected in no more than five years.

Since the General Fund ended fiscal year 2000 in a $13 million dollar deficit, the City had to file

a deficit reduction plan. The plan was not filed until August 8, 2001. The delay in filing the plan is attributable to the fact that the City did not have its audited FY2000 financial statement until May 10, 2001.

At the time the City prepared the deficit reduction plan, the City did not have an audited financial report for FY01. The City was anticipating a $10.9 million dollar shortfall for FY01. It projected going into FY02 with a $25.6 million dollar General Fund deficit. The deficit turned out to be even higher.

The City and Union entered into discussions regarding how to handle the defecit. The City put together a budget reduction plan premised on a comparable sacrifice from all employee groups. There were two parts of the plan. The first part was further cuts to balance the FY02 budget. Numerous expenditures were reduced and positions were eliminated in all areas. The City estimated General Fund revenues for FY02 at $75.4 million. It planned to cut expenditures to $72.3 million dollars.

The second part of the City's budget deficit reduction plan was to realize a $5.3 million dollar yearly cost savings over a 5-year period in order to reduce the $25.6 million dollar deficit. The plan was premised on re-amortizing the Police Pension Plan and obtaining economic concessions from its employees.

The cornerstone for the Union concessions was a projected four-year Police non-supervisory Union economic freeze followed by other employeegroup give-backs in the form of days off without pay or wage cuts equal to the increases these groups received while the Patrol officers took the wage freezes. In the case of the two AFSCME Locals, their wage increases were 4.625 % and 5.25 % per annum, respectively. The deficit reduction plan also was based on significant reductions in health care, retiree health and annual (i.e., vacation) costs.

From August of 2001 until the present, no contract has been reached between the City and five of its unions. Three are currently in Act 312 arbitration, and this fact-finding proceeding addresses the matters at issue between the two AFSCME Locals and the City. In addition, the

projected Police Pension Plan re-amortization never became a reality. The City's most recent financial projections for FY02 have expenditures at $76.1 million with revenues at $75.97 million dollars. For FY03, revenues are currently projected to decline, to $66.49 million dollars. In just three years, General Fund revenues will have declined $18.5 million dollars - from $84.5 to $66.5 million.

AFSCME, Council 25, and its affiliated Locals 1600 and 1799 point out that they have been in contract negotiations with the City of Flint for over two years. The life of the previous contract was from July 1, 1996 through June 30, 2000. The City states that because it is facing a $26 million deficit, it has asked AFSCME to assist in trimming the deficit. AFSCME asserts that it has come up with many ideas to increase the revenue of the City andto cut spending. AFSCME proposed: to charge Flint residents for the inspections on their homes, to have waste collection employees who are paid per route to work longer routes, to allow employees to take voluntary days off, to perform fire arson investigations, to charge for hazardous material rescue work, and other services. AFSCME stated that these proposed budgetary trimmings caused significant turbulence within the AFSCME membership, but the AFSCME leadership moved forward regardless, in hopes of convincing both the City and AFSCME membership to reach a mutually satisfactory agreement. Unfortunately, there was no agreement.

AFSCME complains that the savings target for a negotiated settlement has continually moved, causing the Union to consider concessions to meet spending goals, only to be told that the growing deficit requires even more concessions. It asserts that the City's most recent proposals are attempts to burden its hourly employees with the burden for the mistakes of management. It states that the City's $26 million deficit was caused by millions of dollars of waste of its management and elected officials. It asserts that fruitless private contracts, missing money, and much more have occurred. The Union points out that the City's own recods show millions of dollars in uncollected debts that citizens and debtors of the City owe it. Almost $12 million in property taxes alone remain uncollected. AFSCME urges the City to enhance efforts to collect money from its debtors, instead of compensatng for this debt by reducing the wages and benefits of it employees.

After comprehensive negotiations, the City and its AFSCME represented employees reached the first tentative agreement on or about May 17, 2002. The agreement called for a 5% pay decrease for AFSCME Local 1600 members', as well as significant reductions in benefits. This agreement was scheduled for a Union ratification vote on May 23, 2002. A number of events occurred, however, which impacted the employees' votes concerning this ratiftation.

Prior to that tentative agreement, the City of Flint had proposed outsourcing the Waste Collection Department's compost collection work. Compost (leaves, tree bark, etc) is collected by employees within the City of Flint Waste Collection Department. The City and AFSCME met and, according to the Union, decided that the cost of having AFSCME perform the collection work by working additional hours would be more economical to the City. However, on May 20th, without prior warning, the Flint City Council voted to contract with a private vendor to have the work done. The vendor (Republic Waste) was called in to begin collection, and given use of the City trucks. On May 20th, AFSCME Local 1600 leadership received telephone calls from irate compost collectors, who were asking the leadership why they received lay-off notices. The first notice of the compost employee lay-offs to AFSCME was after the notices had been issued. AFSCME proceeded to court, and received a temporary order restraining the City's implementation of the plan to sub-contract the compost collection work. Union members were upset that even after they had agreed to a 5% pay cut, the City had attempted to subcontract bargaining unit work. They also believed that the contractor would receive twice as much as City employees would receive for the same work.

Also during the week of ratification, AFSCME members learned that many upper-level management employees of the City were receiving double digit raises while AFSCME bargaining unit employees were being asked to take a 5% pay cut. The record indicates that a number of exempt City employees received very substantial pay increases during the years 20002002, the period of the City's financial crisis. The employees objected to having the payof bargaining unit members reduced while many exempt employees received raises.

The Union asserts that as a result of the series of events that had occurred between the tentative agreement and ratification, the employees voted to reject the tentative agreement.

Several days after the rejection of the tentative agreement, on May 28, 2002, the City informed AFSCME that it planned to outsource the entire Waste Collection department. From that point, the City told AFSCME that it would have to bid against private contractors to keep the work. Three weeks later, on June 19th, the City awarded a contract, subcontracting waste collection work to Republic Waste, Inc. The decision to outsource went before an arbitrator, who ruled that AFSCME should perform the work for a six-month trial period, to determine if AFSCME could successfully compete with the outside contractors.

AFSCME asserts that the City is wasting funds, and that ceasing such waste will make more funds available to pay Union represented employees The Union quotes the report of the former Governor's Flint Financial Team that came to the conclusion that Flint had "no satisfactory plan to resolve [the] serious financial problem."

The Union argues that specifically, the Flint Financial Team foundthat:

- The City "administration had failed to address serious financial matters confronting the city;"
- The City failed to collect almost $12 million in taxes;
- The City's deficit grew from $13 million to $26.5 million in one year, coupled with an "extreme imbalance of expenditures greatly exceeding revenues, as has been the case in most recent fiscal years, continuing during the 2001 fiscal year";
- The City budgeted revenues for fiscal year 00-01 were "overestimated by $13 million", and the City administration's use of these revenues resulted in the "adoption of an unrealistic budget for the general fund by the city council".
- This "significant variance" between budgeted and actual expenditures/revenues demonstrated the "inability of city officials to accurately monitor revenues and expenditures throughout the year and to amend the budget accordingly";
- The pooled cash of the City has deteriorated from $83 million to $22.9 million in three years, because City officials "have borrowed the assets of other fundsto supplement the general fund";
- For the past five years, the City has not prepared timely financial reports. In fact, the
- City's internal financial audits reflected "numerous deficiencies in financial reporting, record keeping, and internal controls systems" such as the failure to maintain an "accurate and timely general ledger" and maintain "timely reconciliation of bank balances to the general ledger".

The Union also cites a Michigan Court of Appeals decision in an action brought by the Flint City Council members, regarding the former Governor's appointment of a Financial Manager to

oversee the administration of the City. On the issue of the City's deficit elimination plan, the Court relied upon findings of the state's review team:

> "Although a deficit elimination plan was approved by the Department of Treasury for fiscal year 2001 [2000-2001], the city had not adhered to it. The review team report noted that 'there was a surprising difference of opinion among city officials regarding what the general fund deficit will be for the current fiscal year ending June 30th [2002].' The report concluded that the fact that 'city officials could not even agree upon the magnitude of the accumulated deficit, let alone upon a credible plan for its elimination, was troubling and suggestive of an inability to resolve the serious financial problem confronting the city." The Financial Review Team further found that "it did not appear that city officials have moved with the degree of vigor commensurate with the seriousness of the existing financial condition."

Based on these findings, the Union argues that the City should not act to cut employees wages and benefits until the City has a viable long term plan to accurately assess its financial condition and resolve its financial problems.

Vicki Rose (president, Local 1799) and Samuel Muma (president, Local 1600) testified that dozens of employees in their bargaining units have received a substantial amount of additional duties, but not received a pay raise.

Lawrence Roehrig, AFSCME Council 25 Secretary-Treasurer testified that a number of exempt employees, who did not receive a certain amount in a pension contribution, received that amount in cash payment from the City. He indicated that the City Retirement SystemTrust was making payments of 28.35% of payroll for the employees. Thus, under the "nonqualified deferred compensation" arrangement, the City is paying these exempt employees 28.35% of their salary in cash. These payments did not necessarily stop once the exempt employee began to receive the pension contribution, but in fact continued. He indicated that the cost of this program in its entirety is almost $600,000 ($595,254) for one year. The record indicates that this deferred compensation arrangement was discontinued by action of the City Council.

The Union states that the City has developed a reputation for wasting money. It accuses the City of formulating and relying on inaccurate budget information, incorrect and improper budget transfers, undocumented and inaccurate vehicle costs, inappropriate charges to certain accounts, and failing to charge the proper account and payment of previous fiscal years bills

with budgeted money from the current fiscal year– all causing the cost attributed to maintaining employees to perform services to the City to be substantially overstated.

The Union asserts that the City has entered into many contracts for services where it pays the company many times more than what the City employees would receive for providingthe same or a better level of services.

The Union asserts that AFSCME Locals 1600 and 1799, and their memberships, have made significant sacrifices on behalf of the City, and should be given credit for such. AFSCME Local 1600 lost more that 80 members by layoff in 2001, and Local 1799 lost 39 members. In the year 2000 Flint spent $22,828,377 in wages on Local 1600 members, and $6,304,620 on Local 1799 members. That figure declined steadily over the next two years, and as of September 2002 (three-fourths of a year), Flint had only spent $14,078,332 ($18,771,096 if extrapolated for the whole year) on Local 1600, and $3,452,579 ($4,603,438 if extrapolated for the whole year) on Local 1799.

The Union states that, therefore, Flint has incurred a savings of$4,057,280 in Local 1600 wages and $1,701,181 in Local 1799 wages, a total of $5,758,461 in AFSCME wages total. These figures reveal an 18% savings in Local 1600 wages and 27% savings in Local 1799 wages. If the fringe benefit factor is included, using the current fringe benefit rate used by the City- 101.33% for Local 1600 and 96.95% for Local 1799- a much greater savings is found. For Local 1600, the savings is $8,168,522 and for Local 1799 the savings is $3,350,476; the total savings to the City is $11,518,998 in only two years. This substantial savings, made on the back of the unions and its membership, should be taken into consideration in setting wage and benefit rates.

One of the criteria to be considered in setting the wages, hours and workingconditions in a fact finding proceeding is the wages, hours and working conditions of employees performing similar services in comparable communities. There has been no evidence presented showing any other unit of government comparable to Flint, Michiganbased on the economic crises that Flint has faced in the past ten years. I must agree that the City's position that "comparability" is for the most part irrelevant when a city is on the verge of bankruptcy, as is the City of Flint. No other

city was shown to face Flint's financial emergency.

The City's unprecedented fiscal emergency makes a reference to external comparabili1y inappropriate and unnecessary. Nonetheless, each of the parties recognized the uniqueness of Flint's situation, but submitted names of cities for comparison by the fact finder, as much as is practical under the circumstances, and the proposed comparables have been considered where appropriate.

Flint recently went through a lengthy and thorough 312 arbitration procedure with its Patol Officers' Union before Arbitrator Mark Glazer. The Patrol Contract had expired on June 30, 1998. The Arbitrator's decision was issued on July 12, 2002. The major issues in the 312 involved wages, health insurance, 26/27 pays and retiree health care.

Arbitrator Glazer awarded the City a four year freeze on wages. Wages were frozen at the June 30, 1998 level for four consecutive years. During the period of the freeze, AFSCME Local 1600 received wage increases totaling 4.625 %. AFSCME Local 1799 receive wage increases totaling 5.225 %.

On the issue of health insurance, the Arbitrator awarded the City its demand to change to a $10/$20 prescription drug rider and a $25 monthly increase in the employer's health care contribution. That is the same proposal being submitted by the City in this fact finding proceeding.

On the 26/27 pay issue, the Arbitrator agreed with the City's position to clarify FAC language to make it clear that final average compensation could only cover one year of 52 weeks (i.e., 26 pays) not the 54 or 55 weeks of pay some had managed to manipulate the system to obtain.

The Employer asserts that the evidence clearly and unequivocally demonstrates that the City is in a dire financial condition, and that the City is on the brink of bankuptcy, and has no ability to increase any of its costs. It states that over the long term, the City must obtain permanent, long-term relief in such areas as retiree health care, annual accruals and accumulation, full-time paid union officials, and workers' compensation costs. The City must also have contract

language, which allows it to use its employees efficiently and costeffectively, eliminating what it calls the strangling subcontracting provisions, the restriction on use of interims, and the costly severance pay provisions. Finally, it indicates that the parties would be remiss in not cleaningup the 26/27 pay issue.

The City points to the Police Officers' 312 arbitration award and indicates that it is asking nothing more from the two AFSCME Localsthan what the Patrol Officers have already given in 312 Arbitration. It states that the four-year freeze granted by the Patrol Officers will collapse like a house of cards if the AFSCME units do not agree to a similar package.

The City argues that the Fact-Finder must consider the impact on the citizens of Flint. When times were good, the citizens provided City employees with wages, benefits and contract provisions that were built on the basis of Flint being a General Motors town and the accompanying need to provide a General Motors-type package to be fair to employees. The City asserts that as General Motors is a shadow of its former self in Flint, the City's financial crisis is, in large part, directly related to General Motor's diminished presence. The City does not have the ability to maintain its current levels of wages, benefits and contract protection.

Recommendations

The Fact Finder had the parties present their arguments and evidence on an issueby-issue basis. While the Fact Finder found the data each party presented on comparability helpful, his recommendations do not turn solely on the acceptance of one theory over the other. Based upon the Fact Finder's analysis of the record evidence, including the bargaining history and arguments presented, he makes the following recommendation.

The currently expired collective bargaining agreement shall remain in effect with the following changes.

Issue 1 – Wages

The City argues that based on the City's unprecedented troubled financial condition, thehigh level of wages already existing, the fact that AFSCME members have already received an average of five percent (5 %) since July 1, 1999 (while Police Patrol had a wage freeze), the

need for AFSCME to do its fair share, and the need to maintain the integrity of both the Patrol 312 and the bargaining process, the City proposes an across-the-board wage reduction of 7.5 %, effective for the first year of the contract with a wage restoration of 2.5 % thereafter[1]

The Union proposes a wage freeze with a wage reopener after six months.

The Employer argues:

- The deficit is in excess of $26 million dollars; revenues have declined dramatically; and the City has yet to be able to balance its budget.
- A 7.5 % wage reduction is critical to the City's attempt to balance the budget and begin to pay off the deficit.
- A 7.5 % wage reduction represents nothing more than AFSCME's fair share in helping deal with the financial crisis.
- A substantial wage reduction is essential to maintain the integrity of the Patrol 312 Award.
- A 7.5 % wage reduction, followed by restoring 2.5 %, would be consistent with the Mediator's Recommended Settlement, and it would protect the integrity of the bargaining process.
- A 7.5% reduction is critical to the City's attempt to balance thebudget and pay off the deficit.

The City asserts that AFSCME unit members have, on average, received approximately a 5 % wage increase since July 1, 1999 (4.625 % for 1600 and 5.25 % for 1799), while the Police Patrol Officers have received a 5% cut in pay. Local 1600 payroll, however, has decreased somewhat in FY01 and FY02 as a result of position reductions.

At the time Arbitrator Glazer rendered his Patrol 312 Award, a State Mediator had recommended, and the Union leadership had agreed to, a 5% wagecut. Arbitrator Glazer made the following comments in the Patrol 312 Award:

> "This Award will only be appropriate if it is supported by internal comparability. There must be equality of sacrifice throughout the City, and the Patrol Officers should not be

1 This is extrapolated from the Employer's proposal that the AFSCME represented bargaining units catch up to the Patrol Officers in terms of a pay cut. The original pay cut would have been lasted for approximately six months until June 30, 2003.

> asked to play a role greater than any other group of Flint employees. The City has represented that it is seeking concessions from its largest group, the AFSCME Unit, to place it on a par with its offer to the Patrol Officers. So long as this occurs, the award for the Employer will be consistent with internal comparability."

AFSCME asserts that it finds itself hopelessly aiming at a moving wages target. During negotiations, the City began by asking for a 12%wage cut, and AFSCME asked for 4% pay increase. With the first tentative agreement, on May 17,2002, AFSCME Local 1600 and the City agreed upon a 5% pay cut. The Union argues that based on this tentative agreement, the City obviously believed that it could continue its "deficit reduction plan" with only a 5% pay cut.

The City and AFSCME Local 1600 signed a second tentative agreement, on September 12, 2002, which called for a 4% pay cut for Local 1600. Thus, as of September 12th, the City's negotiators believed that the City could afford a 4% pay cutand still continue its deficit reduction plan.

At the October 17th Fact Finding hearing, however, one month after the second tentative agreement, the City argued that it could not afford anything less than a 7.5% pay cut.

For its wage comparables, AFSCME relied upon the cities of Warren, Flint, Sterling Heights, Ann Arbor, Livonia, and Westland. The cities for comparison with Flint were selected by the Union based upon similarity in population. The Union states that these comparisons reveal that the city of Flint employees are being paid much less than the comparable cities of Warren, Flint, Sterling Heights, Ann Arbor, Livonia, and Westland.

It has been shown that the City is in dire financial condition. AFSCME members must do their fair share in order to protect their own careers with the City and accomplish their mission in providing valuable services to the public.

It is recommended that the parties adopt a plan to reduce wages by 7.5% effective July 1, 2003 until June 30, 2004, and then automatically raise that wage by 2.5% for six months, until the contract expires. (December 31, 2004; see Issue 13– Length of Agreement).

Issue 2 - Health Insurance

The City proposes three changes:

- Change the prescription drug for all plans to a $10 generic/$20 brand.
- Increase the employee premium payment from $50 to $75 retroactive to July 1, 2002.
- Cap future premium increases at the rate in effect on June 30, 2003.

The language to implement the City's proposal is as follows (Local 1600 is Article 60;Local 1799 is Article 55):

1. Add the following as a new Section l(f):

   "Effective January 1, 2003, or as soon thereafter as is practical, the prescription drug co-pay for all health care plans shall be changed to a $10 generic / $20 brand plan."

2. Add the following to Section 1(a):

   "Effective July 1, 2002, the Fifty Dollar ($50.00) per month employee payment shall be increased to Seventy-Five Dollars ($75. 00). "

   Also, amend the second paragraph of Section l(b), changing $50 to $75.

3. Add the following as a new Section (g):

   "Effective June 30, 2003, health care premiums shall be capped at the rate in effect on June 30, 2003. Employees shall pay any future cost increase in addition to the applicable employee premium payment set forth above.

The Union states that in both tentative agreements the City was satisfied to have the Prescription Drug Rider for all employee prescription drug plans increased from $10 to $20. As to the employee premium payment, the City agreed that the premium cost to the employee could be increased $25, from $50/month to $75/month. The Union strongly objects to having any future premium increases be capped at the rate in effect as of June 30, 2003, thus requiring the employees to pay the full amount of the increases in cost after that date.

The City argues that the Fact-Finder should recommend adoption of the City's proposals because

(1) the City is in dire financial condition; (2) it is nothing more than the Union's share; (3) the City's proposals are consistent with the Arbitrator's Patrol 312 Award; and (4) there is a long-term need to control future health care cost increases.

It is recommended that the parties adopt parts one and two of the Employer's plan as set forth above. This provides some relief to the City in terms of premiums, but passes the cost on to the employees. The parties should share the cost of premium increases for the term of the contract; therefore, the parties should adopt a plan under which effective one year after the commencement of the contract, employees shall pay half of any cost increase from the premium then in effect in addition to the applicable employee premium payment paid at the time.

Issue 3 - Retiree Health Insurance

The City states that in view of the City's dire financial condition and the long-term survival of the City, it is imperative that the City control future retiree health care costs. In order to do this, the City proposes five things:

1. Clarify that retiree health care for current employees is "For the life of this Agreement. "
2. Cap cost of retiree health care for employees retiring on or after January 1, 2003, at the rates in effect on June 30, 2003. "
3. Require active employees pay 1.5 % of gross wages toward the cost of retiree health.
4. Require a minimum of 25 years of service and age 55 to qualify for retiree health for current employees.
5. Eliminate retiree health care for new employees.

The language suggested by the City to implement its proposals is as follows: Local 1600 (Article 60, Hospitalization Insurance, Section 1, Benefits and Coverages, pages 63-65):

1. Add the following statement to the beginning of Section I(d), page 65: "For the life of this agreement . . . "
2. Add to the following to Section 3, Retiree Health Care Cost Containment, page

66:

"For employees retiring under this agreement, the retiree shall be obligated to pay the applicable monthly cost for active employee health insurance until the employee has a total of thirty (30) years with the City as well as the difference between the City's applicable cost for retiree health insurance in effect on June 30, 2003 and the actual cost of said retiree health care (i.e., the City's cost will be capped at the rates in effect on June 30, 2003). Any subsequent applicable premium increases will be paid by the retiree."

3. Add the following new Section 6, Retiree Health Care Contribution:

"Active employees shall be required to contribute 1.5 % of annual earnings toward the cost of retiree health care. A payroll deduction is hereby authorized. "

4. Add the following as a new Section 7, Retiree Health Care Contribution:

"Notwithstanding the above, no current employee shall be eligible for retiree health care unless the employee retires from the City on or after age 55 and has a minimum of 25 years of experience.

5. Add a new Section 8:

"Employees hired on or after July 1, 2002, shall not be eligible for retiree health care."

Local 1799 (Article 55, Health Insurance, pages 60, 61 and 62):

1. Add the following statement to the beginning of Secton l(d), page 61: "For the life of this agreement . . . "

2. Add to the following to Section 3. Retiree Health Care Cost Containment, page 62:

"For employees retiring under this agreement, the retiree shall be obligated to pay the applicable monthly cost for active employee health insurance until the employee has a total of thirty (30) years with the City as well as the difference between the City's applicable cost for retiree health insurance in effect on June 30, 2003 and the actual cost of said retiree health care (i.e., the City's cost will be capped at the rates in effect on June 30, 2003). Any subsequent applicable premium increases will be paid by the retire."

3. Add the following new Section 6:

"Active employees shall be required to contribute 15 % of annual earnings

toward the cost of retiree health care. A payroll deduction is hereby authorized. "

4. Add the following as a new Section 7, Retiree Health Care Eligibility:

   "Notwithstanding the above, no current employee shall be eligible for retiree health care unless the employee retires from the City on or after age 55 and has a minimum of 25 years of experience."

5. Add a new Section 8:

   "Employees hired on or after July 1, 2002, shall not be eligible for retiree health care."

The Union points to both of the previously rejected tentative agreements, that provided that active and future employees contribute to a Voluntary Employee Beneficiary Association (VEBA), under section 501(c)(9) of the Internal Revenue Code, for current and future retiree healthcare. Under such a program, each active employee would contribute 1.5% of pretax compensation toward the fund, and the VEBA funds would be invested with the proceeds used to fund retiree healthcare. Any increases in retiree health care costs beyond July 2002 would be paid out of the VEBA fund.

The Union asserts that retired employees should not be forced to absorb any increases in insurance costs beyond June 30, 2002 levels. On fixed incomes, it will be impossible for many, if not most, to undertake that expense.

The City points out that in FY90, retiree health care costs were $3.47 million dollars per year. This represented 5.7 % of the General Fund balance. There were 1,629 active employees in the City and 1,037 retirees. By FY0l, retiree health care expenditures had risen to $11.7 million, against a General Fund revenue of $80.3 million or 14.6%. Almost. 15 % of the City's entire General Fund went to pay for health care for retirees. In 11 years, retiree health care costs increased a 238 %. Compounding the problem was the additional fact that the number of retirees had risen to 1,663, while the number of active employees had shrunk to 1,222, and as of the time of the fact-finding hearing, there were only approximately 1000 active employees. The City did not have audited numbers for retiree health care spending in FY02 and FY03, but it is reasonably anticipated that retiree health care costs have continued to escalate.

Since 1997, retiree health as a percent of active payroll has risen from 13.36% to 21.46% in FYOI. While retiree health care costs are increasing, General Fund revenues are decreasing. The City estimates FY03's revenues at $66.5 million. Projecting that retiree health care only rose 5 % in FY02 and 5 % in FY03, projected FY03 retiree health costs would be $12,940,378. The City estimates that retiree health care represents in excess of 19.4 % of the entire General Fund revenue.

Predicting future costs is not only dependent on the cost of premiums, but the number of active retirees. AFSCME asserts that there has been a surge in retirements during the last few years, and that the number of employees retiring in the future will be much lower.

The parties with the assistance of a Labor Mediator studied this problem, and conferred about it in good faith. They reached a tentative agreement that included, among other provisions, the following:

B. Recognizing that the City's overall retiree health can obligation must be brought under control, the following steps will be taken to begin to address the problem:

1) The City will establish a Voluntary Employee Beneficiary Association (VEBA) pursuant to Section 501(c)(9) of the Internal Revenue Code to provide for health insurance coverage for active and future retirees. The VEBA will establish a trust to hold monies to invest and use to provide retiree health as provided herein.

2) The VEBA will be funded by each employee contributing 1.5% of his/her pre-tax compensation on a salary reduction basis to the VEBA (see Paragraph 4 below) and the transfer of the money in the AFSCNE Merrill Lynch Retirement Life Insurance Fund (approximately S1.1 million dollars) to the VEBA.

3) For the term of this Agreement, for eligible employees retiring on or after October 1, 2002, the City will pay for retiree, health insurance up to the rates in effect on July 1, 2002 and costs over the rates in effect on July 1, 2002 will be paid out of the VEBA.

4) The City agrees to an employer pick-up through salary reduction of the employee's required Pension Plan contribution. The employer pick-up shall be under and in accordance with Section 414(b) of the Internal Revenue Code of 1986. The employer pick-up will allow employee contributions to be made from pre-tax income (although the employee shall effectively have to pay FICA). In effect, this will enable employees to contribute to the health insurance VEBA with savings realized from the 414(h).

5) During the term of this Agreement, new employees hired on or after October 1, 2002, shall only be eligible for a flat dollar amount based on years of service toward the cost of retiree health care. Said dollar amount shall be $5 per month per full year of service with the City. An employee hired on or after October 1, 2002, must have a minimum of 25 years of service and be 55 years of age or older at the time of retirement to qualify for this retiree health cam stipend. To be eligible for said stipend, the employee must apply for Medicare Part B when eligible.

6) For the term of this Agreement, eligibility for retiree health for deferred retirements is limited to employees with 25 years or more of service, provided any current employee will be grandfathered under the existing ten-year provision.

7) Article 64, Retirement Benefits, Section 5, shall be amended to provide for the term of this Agreement, $5,000 of life insurance death benefit for members who retire on or after October 1, 2002. Furthermore, employees who take a defined retirement on or after October 1, 2002, shall not be eligible for the $5,000 death benefit.

8) For members who have retired prior to October 1, 2002, the City shall have the option of purchasing life insurance for them using the, proceedings out of the "Death Benefit" fund and/or continue to pay said death benefit in the current manner.

It is recommended that the parties adopt what was agreed to in the above set forth tentative agreement in a fashion updated to take effect immediately upon agreement by the parties.

Issue 4 - Full-Time Union Representation

Currently, Local 1600 has two full-time City-paid Union Representatives: One is the Local 1600 President and the other is the Grievance Chairperson. Local 1799 has one full-time City-paid Union position - the Local President. Local 1799 currently has 69 members.

It is the City's position that in view of the City's weak financial condition, coupled with the changes in the numbers of bargaining unit employees, full-time City-paid Union Representation is something the City cannot afford to continue. The City points out that when the parties agreed to two full time Union officials back in the 1970's, AFSCME Local 1600 had in excess of 1,200 members. Today, Local 1600 has less than 500 members. The City proposes to eliminate the City's obligation to pay salary and benefits for full-time Union officials. The City would agree to allow a Union leave of absence for either a full-time or a part time Union representative,

provided any pay or benefits would be paid by the Union. The City's proposed language to facilitate this change is as follows:

Proposed Contract Language - Local 1600 (Letters of Understanding - Local 1600, Full-Time Union Representative" at page 98): Eliminate Paragraphs 1, 2, 7 and 8. Add a new Paragraph 1 to read:

> "At the written request of the Local 1600, the Local President and/or the Chairperson of the Grievance Committee shall be granted a Union Leave of Absence without pay or benefits. Seniority shall continue during the leave. At the conclusion of the leave, the President, and/or Chairperson shall return to the classification from where they came, consistent with their seniority."

Proposed Contract Language - Local 1799 (Letters of Understanding - Local 1799, Union Time on page 73): Eliminate Paragraph 1 and replace it with the following:

> "At the written request of the Local 1600, the Local President shall be granted a Union Leave of Absence without pay or benefits. Seniority shall continue during the leave. At the conclusion of the leave, the President, and/or Chairperson shall return to the classification from where they came, consistent with their seniority. "

The Union submits that the costs of full time union representation do not justify their elimination, especially given the difficulty and responsibility faced by these union representatives. AFSCME officials' jobs in facilitating appropriate implementation the contract have become much more challenging, given the extreme amount of turmoil occurring at this time. The Union states that full time representation is especially important in these times of significant change in the dynamics of the City workforce due to the financial situation of the City and the changes in wages, hours and working conditions that have resultantly become necessary.

Union officials are not a "luxury" as the City contends. Theyprovide valuable service to the parties in formulation and enforcement of the collective bargaining agreement. Because of the changes in a myriad of areas concerning employment responsibilities and rights occasioned by the financial condition of the City, it can reasonably be anticipated that Union representatives will be much more active in the near future than ever in working with the employees and the

Employer's representatives in implementing the collective bargaining agreement. Both the City and Union have the common interest of assuring that the City succeeds in overcoming the City's economic difficulties. The welfare of the public in general as well as the City employees depends on it. While there are areas of disagreement between the Union and the City as to how this can be accomplished, it is anticipated that the parties will work toward this common goal, cooperating "at arms length" to facilitate success. At the rate of 2 representatives for 500 employees, less than ½ of 1% of the Employer's payroll for Local 1600 is spent on Union representation. Local 1799's rate at 1 representative for 69 employees is a little under 1.5%.

While it is reasonable that the number of representatives eventually be reduced, now is not the time to do so, as there is adequate justification to maintain the status quo in to facilitate the implementation of the changes in wages, hours and working conditions occasioned by the extraordinary financial difficulties.

Issue 5 - Subcontracting

The City asserts that it needs to make long-term changes in the way it operates in order to maintain the City's economic viability. The City proposes that the current subcontracting language in the collective bargaining agreement be eliminated and replaced with language that leaves the City free to contract or subcontract bargaining unit work at will.

The language the City suggests to implement its proposal is as follows:

Proposed Contract Change - Local 1600 (Article 15, Job Security, pages 21-26):
Delete the provisions of Article 15, and replace with the following:

> "Article 15 - Job Security
> The right to contract or subcontract bargaining unit work shall be vested exclusively in the City. The City's right to contract or subcontract shall only be limited by the City's obligation to meet and confer with the Union President about the affects of the contract/subcontract on bargaining unit employees."

Proposed Contract Change - Local 1799 (Article 15, Job Security, pages 19-25):
Delete the provisions of Article 15 and replace with thefollowing:

> "Article 15 - Job Security
> The right to contract or subcontract bargaining unit work shall be vested exclusively in the City. The City's right to contract or subcontract shall only be limited by the City's obligation to meet and confer with the Union President about the affects of the contract/subcontract on bargaining unit employees."

The current language concerning subcontracting of bargaining unit work was negotiated in 1992. Both City contracts with its AFSCME represented employees contain identical language, which the City asserts, makes it virtually impossible for the City to outsource bargaining unit work if the Union chooses to oppose the outsourcing. Article 15's outsourcing language covers six and one-half pages.

Under the Preamble, in cases where the City seeks to contract-out work, where the anticipated value of the contract would require City Council action, the City must hold discussions with the Union sixty days prior to submission of the contract to City Council. The City mus notify the Union of the nature, scope, approximate duration and reasons why the City is contemplating the work. If the City's reason for contracting is based in any way on cost or financial consideration, the City shall have the obligation to prepare and make available to the Union a cost analysis detailing both the current costs of performing the work with bargaining unit employees and the estimated cost to subcontract. This "initial" cost analysis must be provided the union at the time the 60-day notice is given.

Section 1 requires the Employer to make every effort to assure and maintain jobs and work done by employees in the bargaining unit. Section 2 purports to provide that the guiding principle shall be that work which is capable of being done bybargaining unit employees, which is normally done by bargaining unit employees, and which may be performed at a "competitive cost" by bargaining unit employees, shall be performed by such bargaining unit employees. The contract goes on to provide that, therefore, the City will not contract out any work unless it

demonstrates that such work meets one of the following exceptions.

(1) by mutual agreement;

(2) a "consistent" practice already exists;

(3) where new construction is involved;

(4) where work is associated with leased equipment where the leased equipment is available only with a commitment to use the employees of the contractor;

(5) when it is more reasonable for the City to contract out the work; and

(6) when it is not "economically competitive" for the City to use its employees.

The contract goes on to state if the reason to contract out work is due solely to the issue of reasonableness, the City has the burden of showing it is "not reasonable" to use bargaining unit employees. A reading of the "reasonableness" tests suggests this exception is, in reality, limited to short-term projects where no one is laid-off, there are no employees who could be recalled who possess the necessary skills, or a capital expenditure is required for equipment to do the work, and such expenditure is not a "reasonable expenditure."

If economic competitiveness is the issue, (a) unit employees are always entitled to the benefit of any bid preference and (b) even if it is more expensive to do the work by bargaining unit employees, the expense must be 6.5 % above the contracting-out price, before there is a presumption it is not economically competitive.

If there is no mutual agreement on proposed contracting, the Union can protest the decision through expedited arbitration. While the expedted arbitration is supposed to be scheduled within 30 days, and briefs filed within 21 days from the close of the hearing, the contract is silent on how many days of hearings can be held over what period of time.

The City asserts that the current system does not work. The City points to the Union Chief Negotiator testified in a recent subcontracting arbitration that it was the parties' intent when the language was negotiated to make it "as difficult as possible," in fact, "make it impossible to do."

Second is the parties' actual experience in the current, ongoing outsourcing case. This case

dates back to July 30, 2001. After two days of hearings, the case was placed on hold until March or April of 2003. Despite a dozen meetings over a threemonth period, the parties never could agree on cost figures. For example, the parties never could agree on how to charge workers' compensation expenses, vehicle usage expenses, retiree health care changes, fringe benefit changes, etc., etc. The Union filed an unfair labor practice charges, as well as a circuit court action, both were still pending at the time of the fact finding hearing. In the meantime, the City believes it continues to lose as much as $1 million dollars a year having its waste collection done by City employees.

The City points out that none of the other City Union contracts have restrictions on subcontracting, and that the City argues that the Financial Manager must have the flexibility to deal promptly and decisively with the budget crisis. If this means privatizing certain City services, so be it. To give the Union a veto power over the decision is simply wrong. The City states that the current contract provisions are unreasonable, and that the City must have the right to decide the services it will provide and who provides these services.

The Union argues that this proposal was exhumed from the early stages of negotiations, as a bargaining chip for the City in the fact-finding proceeding. Both tentative agreements excluded the proposal. The Union states that the subcontracting language of the AFSCME agreements was agreed upon by both the City and Union, and provides a very practical and essential protection against costly outsourcing to let the bargaining unit members keep the work if they can supply it in a competitive manner.

AFSCME presented several examples, in which it asserted that the City outsourced bargaining unit work in a manner that, in effect, wasted money. It states that the contracts for compost collecting, electric support services, lab specialists, and workers compensation administrator all reflect instances where the City employees were able and available to perform the same work, but for significantly less than the contractors.

The Union argues that the purpose of Article 15 is to prevent the waste of money, and is quite practical. Under it the City shall evaluate specific criteria of the contractors. These completed

forms, as well as the proposals of the contractors, are to be given to AFSCME. AFSCME then shall review the costs of the City to perform the work in question, and indicate to the City whether it can provide the services in a competitive manner. This gives the City the best of all worlds: it can assure that the contractors are not overcharging, and it can assure that if the work in question remains with the City, the City employees will do it at a competitive price.

The Union rejects the City's argument that Article 15 is too cumbersome and prevents outsourcing in an emergency by stating that the Articlesimply recites various considerations that the City should make when determining whether or not to outsource, such as the reasonableness and competitiveness of the decision. The steps are not complex and are ones that a competent management should undertake as a matter of course: the City has the duty to inform AFSCME of its intent to outsource and provide information about the nature of the proposed outsourcing. The City provides information on how much it costs the City to perform the work and the costs of outsourcing; the City gives the requests for proposals to AFSCME when sent to the potential contractors and the bids submitted by these contractors; the City makes an evaluation as to the costs of outsourcing versus the costs of keeping the work with City employees; the City analyzes the reasonableness of the outsourcing and whether it is economically "competitive" to do so; and the City makes a reasoned decision.

The Union argues that Article 15 will not prevent outsourcing in all emergency situations First, the expedited arbitration procedure protects the City's interests to promptly hire a private company. The union must file for expedited arbitration within 10 days of notification of the City's decision to subcontract, and thirty days later the arbitration must begin. Thirty-five days after the close of the hearing, the arbitrator shall issue a decision. Further, the contract's reasonableness factors require consideration as to when the work is needed. If there is an emergency that City workers cannot complete alone, the City can point to the reasonableness factors to initiate the process to outsource the work.

The Union notes that there are many contracts that are let every year under Article 15 without complication and in a timely fashion, and that the process has been and can be completed in short time, if the City provides the requisite information.

The Union refers to a situation in which the City attempted to outsource the work of waste collection. AFSCME did not learn of such a plan urtil two weeks before the contract was let- even though the City had from January 28th to May 28, 2002 been making statements to AFSCME representatives that the waste collection work would remain inhouse. AFSCME did not receive the request for proposals, the bids submitted by the private contractors, or any information about the nature of the contract until after the contract had already been let to an outside contractor. It states that had the City followed the process, AFSCME would have known exactly how much it costs to run the waste collection department, and how much the contractors were bidding, and been able to determine whether the City workers could compete. The Union acknowledges that the private contractors will always have access as to how much AFSCME will "bid", as it may access the City's financial information through the Freedom of Information Act. The reason for the notice provisions within Article 15 was to even the playing field, and allow AFSCME represented employees a chance to compete. A dispute arose as to whether Article 15 of the contract had been appropriately followed, and was taken to arbitration. The arbitrator has issued an interim ruling, and allowed bargaining unit employees to perform the work for a six-month trial period to see if AFSCME represented bargaining unit employees could compete with the price of the private contractors.

The current collective bargaining agreement recognizes the need of the City government to provide services to the public as well as protectthe investment of the City employees in their career with the City. A major part of the investment of the City employees lies in job security. Article 15 goes into great detail as to an evaluation process that must be followed when the City considers outsourcing those City services that it has provided on an inhouse basis, and has hired career employees to perform. The major shortcoming of the process lies in the ability of the parties to complete the process in an expeditious manner. It is recommendedthat the current process as outlined in Article 15 be continued with the proviso that in any dispute over subcontracting, the parties shall required to meet sufficient days to complete any arbitration within 30 days from its start; and a party unable to meet waives its rights to arbitration. The arbitrator chosen must meet the requirement that he or she will be able to complete the process within its time limits.

Issue 6 - 26/27 Pays – FAC

The City asserts that even if the City were not in dire financialcondition, the compelling injustice being perpetrated on the City and its pension system, compels clarification of the application of "final average compensation" to expressly prohibit FAC calculations which attempt to include compensation paid, but not earned in that same year as one of the highest annual compensation years used.

The language to implement the City's proposal is as follows:

Proposed Contract Language - Local 1600 (Article 64, Retirement Benefits): Add a new Section 7 to Part 1, Defined Benefit Plan, page 74, to read as follows:

> "Section 7. In order to clarify the application of "Final Average Compensation" to expressly prohibit FAC calculations which attempt to include compensation paid, but not earned in that same year as one of the highest annual compensation years used, the following shall be added to the definition of "Final Average Compensation" in the City of Flint.
>
> Compensation which was not earned in the year shall be excluded in the calculation of annual compensation paid so that only earnings for 26 consecutive pays shall be included in each of the three years. "

Proposed Contract Language - Local 1799 (Article 58, Retirement Benefits): Add a new Section 7 to Part 1, Defined Benefit Plan, page 69, to read as follows:

> "Section 7. In order to clarify the application of "Final Average Compensation" to expressly prohibit FAC calculations which attempt to include compensation paid, but not earned in that same year as one of the highest annual compensation years used, the following shall be added to the definition of "Final Average Compensation" in the City of Flint.
>
> Compensation which was not earned in the year shall be excluded in the calculation of annual compensation paid so that only earnings for 26 consecutive pays shall be included in each of the three years. "

The Pension Ordinance defines final average compensation as follows: "Final average compensation" means the average of the highest annual compensation paid said members during any period of three years of his credited service contained within his five years of credited service immediately preceding the date his employment with the City last terminates. This

formula is a generic one, commonly used for pension calculations in many such pension plans. It is used for each of the City/Union Pension Plans.

The history of the procedure for calculating the FAC is spelled out by Administrative Law Judge Nora Lynch on pages 4, 5 and 6 of her Opinion. Briefly summarized by the City, it is as follows:

For some years under the retirement system administration, an employee could choose his/her own period of years for use in the FAC calculation. In fact, an employee might be advantaged in doing so because he/she could more readily remember periods of substantial overtime pay received during a certain year or an illness or layoff which prevented him or her from working for a period of months during a given year, thereby receiving little or no pay for the period. There was no question, and it remains undisputed, that such employee waspermitted - indeed, had the right - to so select his or her period of years under these circumstances. According to Georgia Steinhoff, Payroll and Retirement Supervisor from 1984 to 1990, the only stipulation was that the annual periods not overlap, so that the employee was not being paid doubly. The assumption, however, has always been that such selection would continue to produce the singular highest FAC and as if the FAC had been routinely determined by the City's pension supervisor. Indeed, Lisa DeDolph informed prospective pensioners that if they made a mistake, they were responsible, as she did not have the time to do followup checking.

Thus, for every retiree, the calculation of retirement benefits pursuant to their CBA or the City Pension Ordinance was regularly and easily arrived at by the City's payroll and retirement supervisor, resulting in the pensioner's best, highest or richest three of the last five years of his/her service credit. According to Ms. Steinhoff, for as long as she could remember, the same formula, a precise well understood methodology, was used for every pensioner whose benefits she calculated:

> If somebody came in and made application for retirement effective- we'll use the date of April 1st, we would go back and review what their history was as far as their earnings. And if their contract provided for the best three out of five years, then we would list down their most recent five years of earnings and take which three of those would be their highest years of earnings.
>
> Their last year would be used in the calculation because it comprised their sick and annual payoffs. So if they retired 2001, then we would take what their

> earnings were from January 1st through whatever their final paycheck would have been in 2001. So it would be January through April, whatever the pay would have been there.
>
> Then I would have looked at, or they would have looked at, also what their next highest years of earnings were. If it had been 2000 and then '99, then I would have used those two years. If '98 was a low year and '97 was higher, then I would have gone to '97, gone to the pay date closest to their retirement date, and taken what they earned from that date to the end of the year to make up the balance of their third year so that they would have three full years of figures in their computation."

Likewise, Ellen Zimmerman, payroll and retirement supervisor from 1990 to 1997, who was Ms. Steinhoff's successor, testified that the "default method" of computing FAC was as follows:

> ... [W]hen somebody determined when they wanted to go [i.e., retire] they would choose an effective date, even in the case of an estimate. And what we would do is we would go back from that date for the five or the ten years and pull wage history on the individual, and based on their calendar year wages we would find the best three consecutive.
>
> * * *
>
> ... [W]e would go backward from their effective date in 12-month increments to the closest pay to their effective date. So essentially we would take that year's earnings and back out the year-to-date up to the closest pay, and that was the normal method.

This is also consistent with the testimony of Lisa DeDolph, the City's current payroll and retirement supervisor, who testified that, where an employee did not selecthis or her own years, she or her staff would use the employee's W-2 forms for the first and second highest years and create a "hybrid" year from January to the retirement date and from the retirement date to the end of the year in the third highest year.

At the MERC hearing, the City's Labor Relations Director, Marcantonio Morolla testified that the City discovered that some retiring employees had figured out a way to manipulate FAC calculations under the pension formula in the City Ordinance and CBA provisions. Specifically, some employees had established a way to manipulate the pension system wherein they would be credited for 55 weeks of pay in any one year as opposed to 52 weeks.

The City first learned of this situation when a Hurley Medical Center employee approached the City Retirement Board and asked to have his pension calculated using 27 pays. For the MERC hearing, the City prepared a chart providing an explanation of how employees were able to enhance their FAC using the 27-pay method. Upon investigation, the City determined that approximately 397 AFSCME bargaining unit members had retired from January, 1991 through March, 2000. During that time period, 186 AFSCME bargaining unit members retired utilizing the unauthorized 27-pay method to calculate their final average compensation while 211 AFSCME bargaining unit members retired with FAC calculations based on fewer than 27 pays during this same time period.

On January 11, 2000, a special Retirement Board meeting was convened where the Hurley Medical Center employee who brought this issue to the surface was allowed to address the Board regarding the "26 versus 27 pay" issue. On January 26, 2000, Matthew Grady, Director of Finance, sent a memo to the Payroll Department indicating that retirementshould continue to be calculated using 26 pays for calculating FAC for all employees.

On March 8, 2000, the Legislative Committee of the City Council met to consider proposed amendments to Section 35-6 of the Retirement Ordinance, which would clarify thatfinal average compensation could not be calculated utilizing the 27 pay days. On March 27, 2000, the City Council adopted the amendment to Section 35-6 of the Ordinance prohibiting FAC calculations based upon 27 pays. Subsequent to the Council passing this Ordinance, a litany of litigation, including MERC charges had been initiated.

On April 7, 2000, AFSCME filed an unfair labor practice charge with the Michigan Employment Relations Commission alleging that the City had refused to bargain in good faib by unilaterally changing the method of calculating final average compensation, thereby reducing the pension benefits of its employees. The Union alleged that the City's action constituted a midterm contract modification and a unilateral change in termsand conditions of employment, in violation of PERA and the City of Flint Patrol Union. MERC charges were also filed by the Flint Fire Fighters Union, Local 352. Three days of hearing were conducted before an Administrative Law Judge on March 9, 12 and 14, 2001.

On February 28, 2002, the Administrative Law Judge issued a Decision and Recommended Order that dismissed the Union's alleged unfair labor practice charge. Specifically, the ALJ found that the employer's March 27th amendment to the Ordinance specifying that annual compensation consist of wages earned and received annually over the course of 26 pay periods did not constitute a mid-term modification of the labor agreement, but simply clarified the existing definition. The ALJ also dismissed the parties' "past practice" argument. Specifically, the ALJ noted as follows:

> "Given the finding that the language of the ordinance defining annual compensation is unambiguous, the higher level of proof established by the Court in Port Huron, supra, is required. In other words, the practice must be so widely acknowledged and mutually accepted that it amends the contract, and there must be a meeting of the minds. I agree with the Employer that the Charging Parties have failed to establish these elements. There is no dispute that employees have been allowed to select their own years for calculation of FAC and that this was understood by the retirement office and labor relations personnel. However, the subsequent development, whereby one employee devised a method of increasing his pension by utilizing 27 pays in his FAC calculation, was never specifically discussed with responsible management officials. Payroll and retirement personnel who calculated pension benefits operated with a great degree of autonomy, with supervisory personnel assuming that calculations were being performed correctly. To the extent that the issue of the utilization of 27 pays was raised at all, it was not clearly presented or understood, possibly because so closely linked with the concept of the employees' ability to choose their own best years for FAC. Although many Union officials were aware of the methodology, it was never raised at the bargaining table or communicated formally to bargaining unit members to enable all members to takeadvantage of it. Instead, only certain employees who were "in the know" reaped the benefit. Although a great number of employees did take advantage of the method, over half of those who retired during this period did not. As soon as the finance director became aware that employees were utilizing 27 pays in the calculation of FAC, he directed that this method be discontinued. Under these circumstances, no mutual acceptance or meeting of the minds can be found. Rather, as argued by the Employer, a mistake was made which was generally unknown to management officials and unauthorized by City Council.
>
> In analyzing whether was intent to modify the agreement, the Supreme Court recognized in Port Huron, supra, (at 331 n 21) that the Commission has consistently found that a mistake does not create an enforceable past practice. For example, in Highland Park Sch Dist, 1976 MERC Lab Op 622, the employer had mistakenly made pension contributions for administrative employees over nine months. The Commission found that the payments made in error did not establish a working condition precluding the employer from immediately ceasing

such payments when the error was discovered."

On October 23, 2002, the three-member Michigan Employment Relations Commission issued a unanimous opinion, upholding the decision of the ALJ and dismissing the charges in their entirety. With respect to the meaning of annual compensation, the Commission stated:

> "Construed together, the words "annual" and "compensation" clearly means the amount of a member's pay for personal services rendered by him to the city within a year's time. Because anything more than 26 bi-weekly pay periods encompasses pay for services rendered beyond one year's time, we agree with the ALJ's plain meaning of the term, and therefore find no merit to Charging Parties' argument in this regard."

AFSCME is appealing the decision of MERC to the Michigan Court of Appeals, and urges the fact finder to maintain the status quo with regard to compilation of final average compenation.

The fact-finder notes that the ALJ concluded that the City's March 27 resolution did not constitute a mid-term modification of the labor agreement but, rather, a clarification of the existing definition of Final Average Compensation. It is time hat the matter be put to rest. It is recommended that the City's position on this issue be adopted and that the contracts of both Locals 1600 and 1799 be amended to read:

> In order to clarify the application of "Final Average Compensation" to expressly prohibit FAC calculations which attempt to include compensation paid, but not earned in that same year as one of the highest annual compensation years used, the following shall be added to the definition of "Final Average Compensation" in the City of Flint.
>
> Compensation which was not earned in the year shall be excluded in the calculation of annual compensation paid so that only earnings for 26 consecutive pays shall be included in each of the three years. "

Issue 7 - Defined Contribution Plan

The City proposes three changes:

1. Employees hired after July 1, 2002, shall only be eligible to participate in the Defined Contribution Plan. The Employer contribution shall be five percent (5%).

2. Employees hired after July 1, 2002, shall not be eligible to receive etiree life insurance.

3. All employees hired prior to July 1, 2002, shall have the option of converting to the Defined Contribution Plan with an Employer contribution rate of ten percent (10%).

To implement the City's proposals, the City proposes the following contract language.

Proposed Contract Language - Local 1600 (Article 64, Retirement Benefits, Part 11, Defined Contribution Plan, page 74): Rewrite ILA as follows:

"A. General Provisions. Eligible employees hired on or after July 1, 2002, shall only have the option of being covered by the Defined Contribution Plan. They shall not be eligible for participation in the Defined Benefit Plan.

Eligible employees hired prior to July 1, 2002, shall have the option of converting to the Defined Contribution Plan. If said employee elects to be covered in the Defined Contribution Plan, the employee is not eligible to participate in the Defined Benefit Plan. Such election shall be irrevocable. Retirement benefits for employees who participate in the Defined Contribution Plan, including eligibility thereafter, shall be in accordance with the provisions of the Adoption Agreement as set forth in Appendix E of the Agreement (and amended to reflect the changes set forth in this Agreement). "

Revise Article IID, page 75, as follows:

"D. Contribution Rates. For employees hired prior to July 1 2002, the Employer will contribute ten percent (10%) of the employee's gross earnings each pay period in the employee's personal retirement account. For employees hired on or after July 1, 2002, the Employer will contribute five percent (5%) of the employee's gross earnings each pay period into the employee's personal retirement account." The Employee Defined Contribution Plan Participants will contribute five percent (5 %) ofthe employee's gross earnings into the employee's gross earnings into the employee's personal retirement account."

Add the following as a new Paragraph ILG, page 76:

"G. Retiree Life Insurance. Employees hired on or after July 1, 2002, shall not be entitled to receive retiree life insurance. "

Proposed Contract Language - Local 1799 (Article 58, Part 11, page 69): Rewrite ILA as follows:

"A. General Provisions. Eligible employees hired on or after July 1, 2002, shall only have the option of being covered by the Defined Contribution Plan. They shall not be eligible for participation in the Defined Benefit Plan.

Eligible employees hired prior to July 1, 2002, shall have the option of converting to the Defined Contribution Plan. If said employee elects tobe covered in the Defined Contribution Plan, the employee is not eligible to participate in the Defined Benefit Plan. Such election shall be irrevocable. Retirement benefits for employees who participate in the Defined Contribution Plan, including eligbility thereafter, shall be in accordance with the provisions of the Adoption Agreement as set forth in Appendix E of the Agreement (and amended to reflect the changes set forth in this Agreement). "

Revise Article ILD, page 70, as follows:

"D. Contribution Rates. For employees hired prior to July 1. 2002, the Employer will contribute ten percent (10%) of the employee's gross earnings each pay period in the employee's personal retirement account. For employees hired on or after July 1, 2002, the Employerwill contribute five percent (5 %) of the employee's gross earnings each pay period into the employee's personal retirement account." The Employee Defined Contribution Plan Participants will contribute five percent (5 %) of the employee's gross earnings into the employee's gross earnings into the employee's personal retirement account. "

Add the following as a new Paragraph II.G, page 70:

"G. Retiree Life Insurance. Employees hired on or after July 1, 2002, shall not be entitled to receive retiree life insurance."

Currently, new hires have the choice of the Defined Benefit Plan or the current Defined Contribution Plan with a 10% City contribution. All employees also have a $10,000 retiree life insurance benefit. The City proposes that all new hires be put in the City's Defined Contribution Plan with a 5 % employer contribution and no entitlement to retiree life insurance.

The City asserts that AFSCME bargaining unit pension costs are among the highest in the City. They cost the City 17.5 % of payrdl and more than the Police. The City/AFSCME Pension Plan is currently under funded by $52.7 million dollars.

The Mediator's Recommended Settlement called for a switch to the Defined Contribution Plan and elimination of retiree life for new hires.

The remaining issue involves allowing all current employees to voluntarily switch to the Defined

Contribution Plan. As an incentive, the City is willing to retain the 10 % City contribution. This, too, was part of the Mediator's Recommended Settlement.

The Union argues that the City has presented no evidence as to the savings that would be generated by its proposals, other than that a projected $500,000 savings should come from the implementation of the defined contribution plan. AFSCME asserts that new employees should also be afforded the right to participate in the defined benefit program.

It is recommended that the parties adopt what is essentially an updated version of the Mediator's Recommended Settlement, which states that effective with the effective date of this contract, current employees shall have the option of converting from the current Defined Benefit Pension Plan to the defined Contribution Plan set forth in Article 64– Part I. The election by an eligible employee to convert to the DefinedContribution Plan shall be irrevocable; eligible employees hired on or after the effective date of this agreement shall only be eligible to participate in the Defined Contribution Plan set forth in Article 64, Part II. Said employees shall not be eligible to receive the $10,000.00 retiree life insurance set forth in Section 5 of part I of Article 64.

In light of the recommendation as to wage reduction, it is recommended that the contribution rates of the City for current employees remain status quo at least until the time of the wage reopener.

Issue 8 - Reduction in Annual (Accrual and Maximum Accumulation)

The City proposes to reduce the annual vacation accrual by 1.5 hours per pay (i.e., 39 hours) and cap the maximum accrual for all employees at 160hours.

The language to implement the City's proposal combined in the charts below with the current language:

Local 1600 (Article 26, Annual Leave, page 33):

Service Credits (Approximate Years)	Hours Accrued Per Payroll Period		Maximum Accumulated Hours for Employees		
	Current	Proposed	Current Pre-78	Current Post 78	Proposed
Less than 1825 (Under 5)	4.6	3.1	296	176	160
1826-3649 (5 through 9)	6.2	4.7	416	256	160
3650 (10)	6.5	5.0	440	272	160
4015 (11)	6.8	5.3	464	288	160
4380 (12)	7.1	5.6	488	304	160
4745 (13)	7.4	5.9	512	320	160
5110 (14)	7.7	6.2	536	336	160
5475 (15)	8.0	6.5	592	352	160

The following is also proposed:

> "Employees whose current accruals exceed the 160-hour maximum shall have a period of six (6) months to reduce their bank unless otherwise approved by the City Administrator."

Local 1799 (Article 24, page 36):

Service Credits (Approximate Years)	Hours Accrued Per Payroll Period		Maximum Accumulated Hours for Employees		
	Current	Proposed	Current Pre-78	Current Post 78	Proposed
Less than 1825 (Under 5)	4.6	3.1	296	264	160
1826-3649 (5 through 9)	6.2	4.7	416	344	160
3650 (10)	6.5	5.0	440	360	160
4015 (11)	6.8	5.3	464	376	160
4380 (12)	7.1	5.6	488	392	160
4745 (13)	7.4	5.9	512	408	160
5110 (14)	7.7	6.2	536	424	160
5475 (15)	8.0	6.5	616	440	160

The following is also proposed:

> "Employees whose current accruals exceed the 160-hour maximum shall have a period of six (6) months to reduce their bank unless otherwise approved by the City Administrator."

The current AFSCME contracts allow employees to earn and accumulate what the City asserts are excessive amounts of paid vacation days. Employees with fewer than five years of service

can earn 15 days of vacation. After five years, employees earn 20 days. After 14 years, employees have 25 days. These vacation accruals are in addition to 10 paid sick days and 9 paid holidays per year.

Manpower has been reduced almost 30 % in each bargaining unit over the last two years, thereby impacting the workload of each employee. It appears from all the circumstances that employees have to be more and more productive to provide services to the public. Productivity, of course, is impacted by the number of employees available for duty assignment.

The City's proposal calls for an across-the-board decrease of approximately five vacation days at each level. Employees with less than five years would have two weeks vacation. Employees with five years would still have three weeks vacation. Employees with 14 years would have four weeks vacation.

The exact cost savings is somewhat difficult to measure because it depends in part on whether the City has to replace an employee on vacation with overtime or whether the City is forced to employ more employees to cover vacation periods. The City estimates the savings for Local 1600 to be between $200,000 and $385,000. This represents a reduction in payroll costs of between 1.14 % and 2.2 %. A comparable percentage of savings would be realized in the Local 1799 bargaining unit. The City asserts that because there is no loss of pay, this is one of the least painful ways of reducing costs to the City.

The City's proposal also limits the amount of accrued annual leave time that the City would have to pay-off when an employee retires or quits. Currently, the maximum accumulation is 352 hours for post-1978 retirees and 592 hours for pre-1978 hires. Should employees not use all the vacation allotted on an annual basis, and be entitled to payout at the time they leave the City's employ, the City would be liable for cash payouts between $10,000 and $24,000 on a Level 37, $40.83 per hour, Local 1799 employee. The City proposes to limit the amount of annual payout to 160 hours.

The Union indicates that in the tentative agreements, the City and Union agreed that the City

could maintain its deficit reduction plan with a decrease of maximum accumulated annual leave hours, across the board, by 20%, and only for employees hired after 1978. Under the contract, employees who are hired after 1978 receive between 176 and 352 maximum accumulated hours, and the parties agreed to have those numbers reduced to a range of 141- 282.

The Union points out that a smaller work force means that the amount of dollars expended in annual and vacation time is also reduced. It stands to reason that the City has saved a substantial amount of money in the last two years because the reduction in the workforce caused a reduction in annual time, and accruals towards eventual cash outs for annual time.

The Union argues that the City is incorrect in its assertion that the reduction in annual time will not cost the employee. Because the employees earn annual time with every hour worked, it is the equivalent of earnings. When an employee takes off work and is paid, that is the equivalent of wages. When an employee cashes out the annual time, the employee receives cash for these stored hours. The City's proposal constitutes another reduction of wages for the union members.

The issue regarding annual vacation accrual was addressed in the Patrol Officers' arbitration award. The arbitrator held that the issue was not one which would bring immediate financial relief to the City. The same is true in this case, and the City has not demonstrated any immediate financial relief. Further, the proposal forces the employees with more than 160 accrued maximum hours to use their time in six months. As found in the Police officers' arbitration, that could hurt the City because dozens of employees will be forced to take a vacation very soon.

AFSCME asserts that the current contract language is appropriate, especially given the many concessions the AFSCME Locals and their membership have made during these last two years.

The parties are placed in a situation where the employees are to be paid less than before for more productivity than before. This is necessary to save the enterprise, which is in dire financial trouble. With the added workload, vacation, however, becomes more valuable in terms of

providing the employees with an opportunity to rejuvenate, as a result of being temporarily relieved of the responsibilities of the workplace.

It is recommended that the parties adopt the recommended settlement of the Mediator. Recognizing that the City's payout of large annual balances is a financialdrain the City can no longer afford, effective the beginning of the pay period on or after ratification, the annual leave maximum accumulated annual leave hours under Articles 26 (and 24 respectively for Local 1799) shall be reduced across-the-board by 20% for employees hired after January 1, 1978. Further, an employee whose annual accumulation as of the effective date of the contract exceeds the new maximum accumulated hours will be grandparented (i.e., the employee can still accrue and use vacation up to the old maximum but payout of annual at time of termination shall not exceed the new maximum accumulated hours).

Issue 9 - Severance Provisions

In view of the City's dire financial condition, the need to control labor costs and improve productivity to maintain the City's economic viability, the City proposes to eliminate the severance provisions in lieu of layoff.

The language to implement the City's proposal is:

> Proposed Contract Language - Local 1600 (Article 17, Layoff-Recall, Section 6, page 26): Delete Article 17, Section 6, Severance Provisions in Lieu of Layoff.
>
> Proposed Contract Language - Local 1799 (Article 17, Section 6, page 30): Delete Article 17, Section 6. Severance Provisions in Lieu of Layoff.

Both AFSCME contracts contain protectionfrom the result of contracting out and the permanent elimination of an employee's position. Under these provisions, an employee with 20 or more years of service (i.e., 7300.8 service credits) is eligible to receive five (5) free years of pension credit to satisfy both the length of service requirement for a full, unreduced pension (which is 25 years) and credit towards retiree health care contributions. If the employee has 10 years of

service but less than 20 years, the employees may receive severance ofsix months pay ($17,720 based on a $17.04 wage rate) and the employee can receive deferred retirement benefits payable after the employee would have completed 20 years, thereby drawing full retiree health.

The City indicates that this type of benefit isextremely expensive, and is one of the reasons the AFSCME Pension Plan is so underfunded. The provision is also unique to AFSCME. It is not in any of the Police or Fire Contracts.

The Pension Plan Actuary estimates that the total cost impact of the fivefree years under the Pension Plan for an employee at age 50 with 20 years is $140,000. This is in addition to the provision, which allows an employee who begins drawing retiree health five years earlier--a provision which presently costs the City between$57,000 and $67,000 in added retiree health contributions.

The Union points out that the parties have tentatively agreed that Section 6 of Article 17 provides employees with the right to five years toward retirement (if the employee has 20 service years), or a 6 month severance payment plus deferred retirement benefits (if the employee has between 10-20 service years), if they are laid off because of outsourcing or the elimination of a job classification. The provisions appeared in both tentative agreements.

The Union reports that the severance provisions came about during the 1994 negotiations. The City and AFSCME agreed to a two-tiered pay scale in exchange for the 5 years towards retirement once the employee had 20 years of service, and the 6-month severance payment if the employee had between 10-20 years of employment. These safety nets were deemed important protections for the employees who have put 20+ years of their lives into the city of Flint. It may be difficult for an employee who has worked 20 years in one place to find other employment. With the 6-month severance payment, this safety net allows the employee to financially maintain their household while finding other work. In exchange for these benefits, the City was permitted to hire new people on a second, lower wage tier.

The City mentioned the costs of these severance payments and 5 service years toward retirements, as well as the alleged burden on the pension program. However, it should be noted that many of the persons who received the 5-years and severance payments were non-union represented, exempt employees.

It is recommended that the parties adopt the recommended settlement of the Mediator, which contained the following "Letter of Understanding" relative to severance:

> "The following shall serve to confirm the parties understanding relative to their intent in providing the severance provisions (including the five years of pension service credit). Section 6 was intended, and should only apply to those situations where the employee's position is eliminated as a result of a decision made by the City to contract or subcontract out work under Article 17, Section 6, or in the permanent elimination of an entire classification."

Issue 10 - Use of Interims/Temporaries - Local 1600 only

The City proposes to amend the Local 1600 contract to do two things:

1. Prevent regular employees from bumping into temporary, interim or seasonal positions unless the employee has previously held the classification and the bump is approved by the Director of Labor Relations.

2. In the event a regular employee bumps into an interim, temporary or seasonal position, require the regular employee to assume the status of the interim/ temporary/seasonal (i.e., applicable pay and benefits of an interim/temporary/ seasonal).

The language to implement the City's proposal is as follows in the Local 1600 Contract is as follows (Article 3, Definitions, Section (a), page 3 and Article 17, Layoff-Recall, Sections 2 and 3, pages 24 and 25):

> Amend the Article 3, Section (a), to read as follows:
>
> > " (a) Regular Employee shall mean full-time hourly rated bargaining unit workers, including seasonals, who at the time of employment and thereafter are regularly scheduled to work a normal workweek or are regularly scheduled to work eighty (80) hours per payroll period in a continuous operation, provided, however, a regular employee whose status is changed as a result of lack of work or lack of funds shall assume the status of the interim, temporary or seasonal employee, including the pay rate and applicable benefits of said interim, temporary or seasonal."

Add the following new paragraph to Section 2, page 24:

> "Provided the Director of Labor Relations approves bumping into a temporary, interim or seasonal position.

Delete the last sentence of the second paragraph of Section 3, page 24, which reads:

> "No regular employee, however, shall be laid off while there are other regular employees serving in positions within the layoff sequence defined in Section 2. "

Also, add a new paragraph to Section 3, to read as follows:

> "If a regular employee bumps an interim, temporary or seasonal employee, the regular employee shall be paid the applicable pay and benefits to an interim/temporary/seasonal as set forth in Article 3.

The Local 1600 Contract provides that regular employees, whose status changes as a result of a lack of work or lack of funds, maintain their status as regular employees- Article 3, Paragraph 1, Page 3. Article 17 goes on to provide that regular employees can bump temporaryemployees (Article 17, Section 3, page 24: "No regular Employee, however, shall be laidoff while there are other than regular Employees serving in positions within the layoff sequence defined in Section 2"). Read together, Article 3 and Article 17 meanthat a regular employee can bump an interim/temporary/seasonal employee, and still maintain his/her regular wages and benefits.

The City employs approximately 50 interim employees. They work on the golf course, as laborers in waste collection, in the recreation program and in street maintenance. Interim and temporary employees have a separate pay scale included in Schedule C of the contract.

The level 8 interim top rate is $8.514 per hour. A level 10 interim top rate is $8.766 per hour. This compares with a regular employee level 8 and level 10 top rates of $14.034 and $14.476, respectively. Interim and temporary employees receive no fringe benefits (e.g., no annual or sick leave, no health insurance, no pension benefits, etc.).

The City points to the golf course as an example. For the golf course, a seasonal enterprise, to avoid losing money the City staffs the golf course with interim employees. The City employs as many as 30 interims at the City's golf courses. When and if the City has to reduceits workforce

in other areas, and regular employees are laid-off, they can bump into the golf course positions. Even if only 20 of them exercise their current seniority rights to bump, it would cost the City in excess of $400,000 a year more to run the gdf course.

The City argues that in addition to the actual outof-pocket cost differential, the City is faced with a serious productivity problem. Suddenly, employees who have been trained for a specific job are replaced with employees who may have never done that job before but have bumping rights. There resulting inefficiencies serve to compound the problem.

The City proposes two things: (1) if a regular employee bumps an interim/temporary/ seasonal, make the regular employee accept the wages and benefits of the interim/temporary/ seasonal so as not to jeopardize the financial condition of the program. Second, let the City determine whether or not to allow the bump. If the bump will have a significant negative impact on productivity, the City should havethe right to deny the bump.

The City adds that unless the language is changed, there is no way the City can continue to operate its golf courses, summer recreation programs and the like. If the City is forced to shutdown the programs, there are no jobs to bump to. Qualify of life in Flint deteriorates further. Employees lose the opportunity to work, albeit at a lower rate, and some 50 interims are no longer employed.

The Union once again points to the tentative agreement, which indicates:

> Recognizing the City's financial condition does not permit the City to utilize regular employee (with regular wages and fringe benefits) in certain, positions designated for and funded based on utilizing interim employees, the following is hereby agreed to:
>
> > The Golf Division will operate with all Interim employees except for 2 Senior Greenskeepers positions, which shall be regular employees. The Program Leader positions and Laborers in Waste Collection shall also be filled with Interim Employees only. Regular employees shall not be eligible to bump into these positions.

The Union asserts that the evidence supplied by the City is not sufficient to deny a full time employee who has been laid off the opportunity to continue working, and make at least a

fraction of the money s/he was making before. AFSCME asserts that this provision allows for full time employees to continue working if laid off, and is a provision that should remain in the contract.

The record does not indicate how often such bumping throughout the City actually happens, or how much the practice costs. The principle set forth by the City is sound. The language as proposed by the City does not affect employees who are on lay off status. For that reason, it is recommended that the proposal of the City– together with the City's proposed language as set forth above be adopted.

Issue 11 - Workers' Compensation/Supplemental Pay - Local 1600 only

The City proposes to eliminate the workers compensation supplemental payment and the payment for the first week of workers compensation in the Local 1600 Contract.

The language to implement the City's proposal in the Local 1600 Contract is as follows: (Article 32, Workers' Compensation, Paragraph (a), page 4 1):

> Delete Paragraph (a) of Article 32, in its entirety.

Under the current Article 32, Workers' Compensation, the City is obligated to pay an employee sustaining a workers' compensation injury, 80% of the employee's straighttime hourly rate for all injuries of less than seven days (entitlement to lost wagesbenefits under the workers' compensation statute begins after one week, and wage benefits a disability lasting two weeks or longer become retroactive to the time of disability), as well as a supplement to makeup 80% of the straight-time hourly rate in the event the workers' compensation benefit does not provide said 80 % after the seven (7) days. The supplement lasts 52 weeks.

The City states that combination of the two items cost the City $45,000 last year. While the amount itself is not terribly significant, the principle and long-term implications are another matter. The workers' compensation law has a seven-day waiting for period for a reason. It is absurd to pay employees for one, two and three day absences.

AFSCME asserts that this benefit assists employees who have been injured to maintain the financial stability of their household during the period of injury. Being injured and forced to live on a fraction of your salary is difficult for most, and this supplemental payment and payment during the first week helps bridge a gap for many employees. The City presented little evidence on the costs of this program, and did not justify its elimination.

It is recommended that the parties adopt the recommended settlement of the Mediator, which contained the following language relative to workers' compensation:

> The workers' compensation supplement in Article 32, Section (a), shall not apply to the one (1) week waiting period provided for under applicable workers' compensation law.

Issue 12 - Pension/FAC - Local 1799 only

The Union proposes to increase the pension multiplier for Local 1799 represented employees from 2.4% to to 2.5% and to use a final average compensation of the best 3 years out of 10.

The language being suggested by the Union to implement its proposal is as follows:

> "AFSCME Local 1799 proposes to have the final average compensation calculated using a 2.5% multiplier, as opposed to the 2.4% multiplier as provided for in Article 58, Section 1(a) of the Agreement. In that section, the 2.4% multiplier is changed to 2.5%.

The following sentence is added to the end of the language in Article 58, Section 1(a):

> "The final average compensation of the of the employees who retire shall be calculated using the best three out of the last ten years of the employee's employment with the City. The best three years is defined as the three years with the highest gross wage, which includes all compensation earned during the calendar year in question. This gross wage shall include all base wages, overtime, the value of the remaining accrued time off, and all other fringe benefits otherwise provided to the employee (whether or not provided by virtue of this Agreement."

Local 1799, the supervisory bargaining unit, points out that the City uses the 2.5 % multiplier for Local 1600 represented non-supervisory employees. It argues that there is insufficient justification for failing to pay the Local 1799 employees the same benefit, especially given the fact that there are only 70 members within the Local 1799bargaining unit. It makes no sense to have employees take a cut in pension as a result of being promoted; and such an adjustment will not be a significant drain on the City's resources to add .1 % to the multiplier.

The Union states that in the Police Officers Association award, the City also argued against adjusting the final average compensation calculation of the police officers union to parallel the calculation method of the sergeants, lieutenants and captains. The arbitrator found that the police officers union should have the FAC calculation adjusted, and part of the rationale was that the other police unions used the desired calculation. Similarly, in this case, Local 1799 asserts that its members should have the 2.5% multiplier, as do the Local 1600 members.

The City's proposal is to maintain the status quo, keeping the pension multiplier for Local 1799 at 2.4 and the current FAC of 3 out of the last 5 years.

The City asserts that while it is true that in the last round of bargaining, Local 1600 received an increase in the pension multiplier from 2.4 % to 2.5 %, it was only for employees hired prior to July 1, 1997, and it was only for future credited service (i.e., not past) accruing after July 1, 1998 (Article 64, Part 1, Section 1). More importantly, Local 1600 chose to pay for its increased benefit by accepting a lower wage increase. Local 1600 received an aggregate 4.625 % increase over two years while Local 1799 received 5.25 % in wage increase.

The City asserts that there is absolutely no evidence on the record to reflect the actuarial cost of the Union's demand, and that, accordingly, it would be irresponsible to even consider such an issue without an actuarial cost. To this it adds the fact that the AFSCME Pension Plan is already seriously underfunded.

The City addresses the second part of the Union's issue, which involves a change in the period for calculating the final average compensation. The current Pension Plan Ordinance establishes

the period for calculating final average compensation for AFSCME Local 1600, 1799, Fire, Police and others at "the average of the highest annual compensation paid said members by the City of Flint during any period of three years of his credited service contained within his five years of credited service immediately preceding the date of his employment with the City last terminates. Local 1799 seeks to change the 3-out-of-5 to 3-out-of-10.

In light of all the facts and the absence of evidence as to the financial impact of the proposal's change on the Pension Plan in the form of actuarial data, it is recommended that the status quo regarding this issue be retained.

Issue 13 - Length of Agreement

The City proposes an agreement expiring June 30, 2003.

The Union proposes a four-year (partially retroactive) agreement, with a wage reopener in June of 2003.

The language being suggested by the Union to implement its proposal is as follows:

AFSCME proposes that the "Termination" Article of the bargaining agreements, Article 63 of the 7/l/96 - 6/30/00 agreement (both the 1600 and 1799 agreements), be amended to state as follows:

> 'This Agreement shall be effective on the 1st day of July, 2000, to the extent feasible, and shall remain in full force and effect through the 30th day of June, 2004, when it shall terminate. If either party desires to renegotiate the Agreement, they shall notify the other of their desire in writing at least 90 calendar days prior to June 30, 2004. Notwithstanding this duration, the parties shall renegotiate the wages of the employees represented by this Agreement for the time period from 7/01/03 - 6/30/04. AFSCME shall have the right to initiate negotiations for this wage reopener as of 4/01/03."

The City argues that it needs both immediate financial relief and longterm systemic changes, and that both are imperative if the City is to survive. It points out that there is an Emergency Financial Manager now in place. The Financial Manager must be given time to evaluate all aspects of the City's operation. The City in stating that the issues addressed by the City in this fact-finding "only scratch the surface" as to what is wrong with the current AFSCME labor agreements. These agreements are based on the auto economy of the 1970's. To lock the

Emergency Financial Manager into a burdensome labor agreement could drastically reduce his ability to save the City from bankruptcy. For this reason, the City proposes a shortterm contract, which addresses the most pressing problems now, and then gives the City time to reevaluate the situation is at the end of the current fiscal year.

Based on all the evidence, coupled with the City's need to evaluate and reassess as well as the Union represented employees' need to have a modest degree of stabilization regarding their investment in their careers with the City, it is recommended that the contract be in full force and effect through December 31, 2004.

The Fact Finder thanks all those who participated in these proceedings.

Dated: July 9, 2003

MICHAEL P. LONG
Fact Finder