

In the matter of Fact-Finding Between
CITY OF STERLING HEIGHTS, MICHIGAN

and

TEAMSTERS LOCAL 214

MERC Case No. D02D-0629

Appearances: For the City: William L. Hooth, Esq.
For the Union: James Markley, Secretary-Treasurer, Local 214
and Michael L. Fayette, Esq.

Introduction

The undersigned was appointed to serve as Fact-Finder on January 16, 2003, in the matter between the City of Sterling Heights and Teamsters Local 214 pursuant to Public Act 176, 1939. He was directed to schedule a hearing and to prepare a report with recommendations on the issues in dispute.

The current agreement between the parties ran from April 21, 1998 to June 30, 2002. Teamsters Local 214 represents employees in the Department of Public Works (DPW), numbering 67 employees at the time of this dispute. The parties have had a collective bargaining relationship since 1964. The City of Sterling Heights has a population of approximately 127,000. It has agreements with eleven bargaining units in addition to Teamsters Local 214.

The parties started negotiations for a new contract in June 2002. They engaged in eight bargaining sessions. A state mediator participated in four of the meetings. The parties were in disagreement over some 25 issues.

In a letter dated February 15, 2003, the Fact-Finder urged the parties to limit the disputed issues and to agree on a number of public sector bargaining units in cities that they considered comparable to the DPW unit at Sterling Heights. On March 12, 2003, the parties notified the Fact-Finder that seven issues would be presented for fact-finding: Wages (including Retroactivity), Mandatory direct deposit of payroll, Commercial Drivers License, Promotions, Residency, Longevity and Pensions. They further agreed to use comparable information from the

following cities: Warren, Livonia, Ann Arbor, Southfield, Dearborn, Troy, Farmington Hills, and Westland.

A hearing was held in the office of the Michigan Employment Relations Commission on July 16, 2003. Principal spokespersons were Attorney William Hooth for the City and James Markley, Local 214 Secretary-Treasurer and Attorney Michael Fayette for the Union. Post-hearing Briefs were submitted under date of August 28, 2003, and exchanged between the parties.

The Fact-Finder has considered the oral and written presentations of the parties and makes the following findings and recommendations:

WAGES

City Last Best Offer: 3.0% increase each year over the period 2003-2007.

In addition, the City proposes to reduce the number of steps in the Labor Classification from 17 to 10 and to upgrade the Water Service Worker and DPW Inspector by including those employees on the same wage schedule as the Equipment Operator B Classification.

Union last best offer: 5.0% increase in the first year of the period 2003-2007.

(The Union presents no demand for the remainder of the five-year contract.)

Party Arguments

Comparing hourly wage rates by job category, the Union finds that, as of July 1, 2002, Sterling Heights was ahead of other comparable cities in 8 categories, averaging 25 cents per category, and behind in 9 categories averaging 75 cents. (After subtracting employee contributions to pensions in 3 cities and in Sterling Heights.)

The Union concludes: "We believe that these figures, plus the rates granted to Supervisory Units which directly supervise the Teamsters unit and the unit which supervises those supervisors gives the Union a solid claim to a more than 3 percent retroactive pay increase."

Based on a salary survey conducted by the City as of April 2003, the City finds that Sterling Heights ranked first in 12 classifications, second in 4 classifications, and third in one classification among the comparable communities.

The City contends that the Union comparison with the comparable cities is flawed for several reasons: Sterling Heights 5.0% contributions to pensions is based upon an employee's entire earnings including overtime and longevity pay whereas the Union's deduction for employee pension contributions is made only from the employee's base hourly rate and does not include longevity pay.

Analysis

In view of the different base rates used by the Union and the City in comparing pay rates by category in Sterling Heights with comparable cities and the Union's deduction for employee contribution to pensions in 3 cities and Sterling Heights, it is not possible to reach a reliable conclusion regarding the job categories in which Sterling Heights is ahead or behind comparable cities.

Settlements reached by the comparable cities is not a reliable indicator for Sterling Heights because no other city has negotiated contracts for the 5 year period agreed upon by the Union and Sterling Heights. Only one city (Ann Arbor) has negotiated increases for the period 2003-2006 and no other city has reached agreement beyond 2002-2004.

Recommendation:

I recommend that the parties agree on a contract providing for increases of 3.0 percent per year for 2003, 2004 and 2005 contract years. The Union may exercise a right to reopen the contract on wages only for the years 2006 and 2007. If the Union fails to reopen the Contract within 30 days of the end of the 2005 contract year, increases will automatically continue at 3.0 percent per year in the 2006 and 2007 contract years.

The rationale for this recommendation is that the Union has not presented persuasive evidence to justify an increase in excess of 3.0% per year over the foreseeable future. However, should the economy improve significantly beyond the next three years and/or the comparable cities negotiate increases in excess of 3.0 percent for 2006 and 2007, the Union will have an opportunity to make a case for larger increases in the final years of the five year contract.

RETROACTIVITY

The current Agreement terminated June 30, 2002. The parties agree that normally final agreements are often delayed and retroactivity is generally accepted. However, in this case the Employer argues that the standard of retroactivity does not apply.

Party Arguments

The City notes that negotiations were delayed in part because of a challenge by another union to the Teamsters continuing to represent the DPW employees. The City presented a final offer on October 3, 2002, which was rejected by the Union membership and a new final offer on March 12, 2003 which was likewise rejected. The City proposes that retroactivity be granted to July 1, 2003, assuming that a final agreement is reached either on the basis of the Fact-Finder's report or otherwise.

The Union submits that it has followed procedures under PERA when it requested Fact Finding after the parties were unable to resolve their differences in negotiations and after

mediation was not successful. Therefore, the Employer's position is without merit and retroactivity should be granted to July 1, 2002.

Recommendation:

The Union position is sustained and the contract should be retroactive to July 1, 2002, when the parties reach agreement.

LONGEVITY

The parties are not in dispute on Longevity Pay. However, the City's Brief takes the position that the Longevity increases be contingent upon acceptance of the City's 3% annual wage proposal. The Union agrees to the City proposed Longevity pay increases, but not to the proviso that they be contingent on acceptance of the City proposal on wage increases.

Recommendation

Longevity pay to be granted as follows, regardless of whether the City's proposal on wage increases is accepted.

	<u>2003</u>	<u>2005</u>
5 years	\$1050	\$1100
10 years	\$1525	\$1600
15 years	\$2000	\$2100
20 years	\$2475	\$2600
25 years	\$2675	\$2900

PROMOTIONS

Promotions are dealt with in Article 9 of the current contract on "Job Vacancies" which deal with Vacancies, Layoffs, and Recall. These provisions call for job posting for 10 working days, and an examination which may include written and oral components. Applicants deemed qualified are placed on a promotion eligibility list. The City selects from the top three candidates based on qualifications. Article 19, Section 3 (a) provides that "The decision of the appointing authority shall be based upon the employee's qualifications, experience, work record, prior education and training, and bargaining unit seniority." In calculating the passing grade on the written examination, the Contract provides that "... one point [shall] be added for each year of accredited city employment seniority" (Section 2 (c)).

Party Positions

The City proposes to retain the current promotion procedures.

The Union proposes that senior qualified members be promoted first. If the senior qualified person is not promoted, the City should be required to explain why. The Union admits that there have been few conflicts over the manner in which the City has exercised its authority in applying the promotion procedure. However, there have been some cases in which the Union has filed for arbitration. It contends that "The oral examination effectively swallows up the seniority component. While imperfect, seniority is the least imperfect system for making promotions once an employee is deemed qualified."

Each party interprets promotion procedures in comparable cities as supporting its position.

Recommendation:

Retain existing promotion procedure.

There is little or no evidence that it has been interpreted unfairly in the past and, in any event, the Union is free to invoke the arbitration provision to resolve grievances which occur over promotion.

COMMERCIAL DRIVERS LICENSE (CDL)

The current contract provides in relevant part as follows:

"All employees who operate City equipment for which a Commercial Drivers License is required by Federal law, shall as a part of their regular job duties obtain a State of Michigan Commercial Drivers License (CDL)." (18.1)

* * *

"Those who do not obtain or maintain the license while employed in a position requiring a CDL, shall be demoted to the position of Laborer and shall remain ineligible for any promotional opportunity that requires the license until such time as they obtain their CDL." (18.2)

* * *

"All new employees in the Bargaining unit after July 1, 1997 must have a CDL at the time of appointment and maintain it as a condition of continued employment. All employees hired after January 1, 1991 must maintain a CDL as a condition of employment." (18.3)

Party Positions

The City proposes that a CDL "A" endorsement be required for promotion (only) to Equipment Operator, Parks and Grounds Maintenance Worker, Sewer Service Worker (maintenance), Sewer Service Worker (clean). It offers to pay a \$500 one-time bonus to all employees who already possess or acquire an "A" endorsement. All existing employees in the above classifications without the "A" endorsement will be "grandfathered."

The Union proposal is that the number of employees required to have a CDL be reduced. (It does not specify which classifications should be required to have a CDL.) The Union has no objection to the Employer position that a class "A" endorsement be required for promotion. It wants to remove the CDL requirement except where it is required by law. The Union also expressed a concern that an employee might lose his job as a result of a medical condition.

Recommendation:

The Employer admits that all employees presently have a CDL. Therefore, its proposal would apply only to future hires who are already required by the Contract to have a CDL, if hired after July 1, 1997. The main difference would appear to be that they have Class "A" endorsement. Since the Union has no objection to the Class "A" endorsement, the parties should be able to agree to this aspect of the City proposal.

The Employer should also allay the Union concern over an employee losing a job due to a medical condition.

RESIDENCY

The current Agreement provides that "Employees residency shall be governed by the City Charter that is in place on July 1, 1997." (17.14)

State law provides that "a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area . . . as a condition of employment or promotion by the public employer." (Sec. 2 (1))

However, Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles. (Sec. 2 (2))

Party Positions

The City states that the parties have separately agreed that employees be required to reside in Macomb County, or within 20 miles of the nearest City boundary. It notes that all City employees are presently in compliance with the residency requirement. The City proposes to retain the status quo.

The Union proposes that the residency requirement be abandoned.

Recommendation:

The Union has submitted no evidence that the current residency requirement has resulted in a hardship for any member of the bargaining unit. The parties agree that most of the comparable communities do not have a residency requirement.

The Fact-Finder recommends that the existing residency requirement be continued.

MANDATORY DIRECT DEPOSIT

There is no provision in the current contract that deals specifically with this issue. The only provision that refers to method of payment states: "The Employer shall provide for bi-weekly pay periods. Each employee shall be provided with an itemized statement of his earnings and all deductions made for any purpose." (17.3)

Party Positions:

The City proposes mandatory direct deposit for employees in this unit. At the present time, direct deposit is voluntary and 42% of the employees participate.

The City argues that both parties would benefit from direct deposit. The City would realize significant cost savings. Employees would benefit since funds would be immediately available on pay day without having to go to the bank for deposit, paychecks would not get lost in the mail, and employees would always be paid promptly on payday even if not at work that day. Of the comparable communities, only Troy provides for mandatory direct deposit.

The Union argues that no contract in the comparable communities provides for mandatory deposit of payroll. Mandatory deposit lends itself to abuses of power and authority, to payoffs to financial institutions, and to politicians. It would be a violation of employee rights and should not even be a mandatory issue of collective bargaining.

Recommendation:

The present arrangement whereby an employee can choose to participate in direct deposit of paychecks is sensible and should be continued.

PENSIONS

The current agreement provides:

Eligibility: Any age with 30 years of service, age 55 with 25 years of service, or age 60 with 10 years of service.

Pension Multiplier: 2.30% of final average compensation (FAC). FAC is based upon the best 3 of the last 10 years of service. FAC includes all taxable income received by employee.

Employee Contribution: 5% of employee earnings.

City Proposal:

Retain current eligibility, pension multiplier and employee contribution rate. Add a \$500 annual contribution to employee's deferred compensation account (ACT 457 Account), and add an annuity withdrawal option.

Union Proposal:

Reduce eligibility to 25 years of service at any age for regular retirement (25 and out); increase pension multiplier to 2.8%; reduce employee contribution rate to 2.5%.

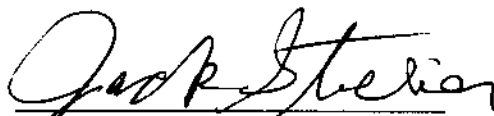
Recommendation:

Unlike other issues where comparisons with other comparable city provisions are fairly clear cut, pensions are much too complex to be decided by simply comparing years of eligibility, pension multipliers and employee contribution rates.

The Fact-Finder recommends that the parties jointly employ a pension specialist to assess the parties respective positions and their impact upon employees in the DPW bargaining unit.

10/9/03

Dated



Jack Stieber
Fact-Finder