

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
FACT FINDING

CITY OF MADISON HEIGHTS

and

MERC Case No. D02-E-0675

TEAMSTERS LOCAL 214

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**Report**

Thomas L. Gravelle, Fact Finder

May 5, 2004

**FINDINGS, RECOMMENDATIONS AND REASONS**

James Markley represents the Union; and Howard L. Shifman represents the City.

A prehearing conference took place in Madison Heights, Michigan on July 7, 2003.

The fact finding hearing of this matter was held on March 29, 2004 in Madison Heights, Michigan.

During the intervening months, the parties resolved all but one issue: Wage retroactivity.

At the hearing, each party submitted an exhibit book in support of its position, and made oral arguments.

I have reviewed the entire record, including the parties' arguments.

## FACT FINDING LAW AND RULES

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R 423.137, explains the contents of the fact finder report as follows:

Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:

- (a) The names of the parties.
- (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
- (c) Recommendations with respect to the issues in dispute.
- (d) Reasons and basis for the findings, conclusions and recommendations. However, the parties may waive the requirements of this subdivision and the fact finder may then issue a report containing only items set forth in subdivisions (a), (b) and (c) of this subrule.
- (e) The date the report issued.
- (f) The signature of the fact finder.

(2) The fact finder shall file the fact finding report and 6 copies with the commission in accordance with commission requirements and at the same time serve a copy on each of the parties.

MERC has explained that "factfinding is an integral part of the bargaining process." County of Wayne, 1985 MERC Lab Op 244; 1984 MERC Lab Op 1142; *aff'd* 152 Mich App 87 (1986). The fact finder's report reinstates the bargaining obligation and should be given serious consideration. City of Dearborn, 1972 MERC Lab Op 749.

#### ISSUE

The parties have agreed to all terms of new contract (for the period July 1, 2002 - June 30, 2005) except for one issue: Wage retroactivity.

The City proposes that the agreed on wage increases not be retroactive because (1) the City incurred higher medical insurance costs by reason of the Union's unwillingness for a considerable time to agree to some medical cost savings which other City bargaining units had agreed to (or received under Act 312); (2) the City doesn't have unlimited revenues; and (3) the terms of the parties' new agreement are favorable, even without wage retroactivity.

The Union proposes that the wage increases be retroactive because (1) wage retroactivity is a common term of contractual settlements; and (2) the Union had the right under PERA to hold out as long as it did against agreeing to a medical cost increase for its bargaining unit members.

#### **A. Findings of Fact**

The parties have agreed to all terms of a new collective bargaining agreement (see City Ex.8) except retroactivity.

The parties' agreement includes 3% annual wage increases for the contractual term of July 1, 2002 - June 30, 2005. These increases are higher than the average for comparable communities, and are comparable to the increases for the City's other bargaining units.

Agreement on a new contract was delayed because of the Union's unwillingness to agree to a \$10/\$20 drug card in place of the \$2 drug card.

Other City bargaining units have agreed to a \$10/\$20 drug card (or received it under Act 312). The Union now also has agreed to it.

At the hearing, the City presented the following exhibit (City Ex. 10) on the Financial Impact of Wage Retroactivity:

Cost of Retroactive Wage Increases (3%) with Roll-Up :

|                                        |               |
|----------------------------------------|---------------|
| Fiscal Year 2002-03 (7/1/02 - 6/30/03) | \$49,408      |
| Fiscal Year 2003-04 (7/1/03 - 6/30/04) | <u>38,168</u> |
|                                        | \$87,576      |

Pre-Fact Finding Deductions :

|                                                                                                |                 |
|------------------------------------------------------------------------------------------------|-----------------|
| Lost Health Care Savings* from Implementation<br>of MEU Health Care Changes (2/1/03 - 3/31/04) | <u>\$69,214</u> |
|------------------------------------------------------------------------------------------------|-----------------|

|                                                    |                 |
|----------------------------------------------------|-----------------|
| <b>Retroactive Wage Cost Prior to Fact Finding</b> | <b>\$18,362</b> |
|----------------------------------------------------|-----------------|

\* Community Blue PPO 1 as Base Plan  
with \$10 Generic/\$20/Brand Rx Co-Pay

**B. Recommendation**

Having carefully considered the evidence and the parties' arguments, I recommend as a fair compromise solution that the bargaining unit members receive one-half (50%) wage retroactivity.

**C. Reasons**

Both parties have made strong arguments on the wage retroactivity issue. This issue has been in play for a long time.

On March 31, 2003 (which was eight months after the expiration of the prior agreement) the City wrote to the Union (City Ex. 30):

[T]he City has raised the question of retroactivity in several sessions prior to our most recent session on March 5, 2003. The reason for that position was clear: **Other City Bargaining Units had agreed to changes in health insurance which included a \$10/\$20 card. On the other hand, the Teamsters Bargaining Unit had refused to agree to those changes. The Teamsters have continued to maintain a \$2 drug card.** Lost savings due to the Union's failure to accept these changes, while the City has been faced with double digit health insurance premium increases, required the City to withdraw retroactivity from the bargaining table and make it an issue. It would be unfair to City bargaining units which have settled early to provide the same package to members of the Teamster Bargaining Unit who refused to accept these needed changes and have continued to maintain the \$2 drug card for an extended period of time.

...

The City regrets that its proposal which was made on March 5, 2003 was rejected out of hand by the Union. We would indicate that it almost appears that the Union strategy has been to delay the Contract for as long as possible to continue the \$2 drug card with the belief that the City's position will be to provide them with the same contract provided to members who settled a year earlier. Our position is clear: **That will not occur.**

The drug card change was agreed to some time prior to the March 29, 2004 fact finding hearing, with only wage retroactivity remaining in dispute.

Had the Union agreed earlier, at most there would have been less than one year of wage retroactivity in issue. As of today, retroactivity is approaching two years.

The fairest solution to this dispute is to give some but not complete retroactivity. This solution recognizes that parties cannot be expected to agree to new contracts at once on

pain of no wage retroactivity. This solution also recognizes that withholding agreement for a protracted time with the expectation of no adverse effect is not reasonable.

In addition, (1) the terms of the new agreement agreed upon by the parties appear fair; (2) the wage increases exceed the average wage increases of comparable communities; and (3) the terms of the new agreement are in line with the terms of other City bargaining units.

May 5, 2004

Respectfully submitted,

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Thomas L. Gravelle  
Fact finder