

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING**

CITY OF GRAND RAPIDS

And

MERC Case L04 D 7013

GRAND RAPIDS EMPLOYEES INDEPENDENT UNION

Report

A. Robert Stevenson, Fact Finder

February 11, 2005

FINDINGS, OPINION AND RECOMMENDATIONS

The Fact-Finding hearings on this matter were held November 10-11, 2004 and December 15-16, 2004 in the City of Grand Rapids.

Present for Grand Rapids Employees Independent Union:

Ted Iorio, Attorney for the Union
Krista Durchik, Attorney
Philip Pakiela, Union President
Cheryl Tutson, 1st Vice President
Megan White, 2nd Vice President
Kay Moul, Secretary for Union
Tracey Roerig, Treasurer
Belinda Scott, Negotiating Team
David Karus, Negotiating Team
Victor Vasquez, Asst. City Manager

Present for the City of Grand Rapids:

John H. Gretzinger, Attorney for the City
Mari Beth Jelks, Labor Relations Manager
Ken Deering, Labor Relations
George Childers, Labor Relations Specialist

My findings, opinion and recommendation follow.

INTRODUCTION

The City of Grand Rapids and the Grand Rapids Employees Independent Union (GREIU) are signatory to a collective bargaining agreement that expired December 31, 2002. The Union represents a broad non-supervisory unit of City employees not working as sworn officers in the Police Department or the Fire Department. The Union consists of some 716 employees and is the largest unit that is recognized by the City. (Union 31)

At a Prehearing Conference held on Oct 7, 2004 it was stated that there had been 20 bargaining sessions with the City, however the parties had not met in 5 months. Other unions recognized by the City including the Association of Public Administrators (APA) and the Fire and Police Department Unions in the meantime reached four-year settlements. (Union #1 City 1G)

The City's position in a letter of October 15, 2004 is that the Union has rejected its major proposals since bargaining commenced back in February of 2003. (Union 25) The GREIU states that they have not been given sufficient information as evidenced by the GREIU and the City's correspondence. (See for example Union 4- 27) The Union alleges that the City has put off mediation until they could "divide and conquer" and then attempt to jam a contract down the GREIU members' throats. (City 3 C)

The City, through its City Manager Kurt Kimball, stated that the City has been experiencing financial difficulties and has initiated cost reduction programs. They have reduced employment by some 250 jobs over the last several years. The City's position is that if just because a certain level of benefits was provided to employees in a prior

contract does not mean that the same level of benefits must be provided in the next contract. (City Brief p21)

The Union's position has been according to Phil Pakiela, GREIU President, that because of the unions lower wage structure which is below other City Unions it is being asked to sacrifice more to make the changes in the face of the City's demands (Pakiela Testimony). The average wage of the GREIU is \$19.32 per hour, the Police Officers and Sergeants is \$25.44, the Fire Fighters is \$25.75 and the APA is \$29.33. (Union 31) This wage difference is significant according to Pakiela as to the proposed changes in the Unified Health Plan, especially true when viewed as to the substantial improvements given to the Police and Fire Fighters in past contracts. (Union 68)

Tentative Agreements have been reached on Labor Class Vacancies, Sick Leave, Tuition Reimbursement, Natural Progression, and Return to Eligible Pool. Other tentative agreements include pretax parking, demotion language, letter of instruction, alternative arbitration services, non-permanent employee reports, performance evaluation system, classification upgrades, direct deposit and Carhartts. (City Brief Attach A)

Mari Beth Jelks, Labor Relations Manager, claimed that the City had not met with the GREIU for the five-month period because the union had not moved on major City issues. President Pakiela testified that the GREIU after the June 4, 2004 mediation session moved significantly in its mediation proposal, including the Unified Health Plan that was rejected by the City. (Union 89) Other City unions during this period have

received improvements according to Ms. Jelks that the City would be willing to discuss with the GREIU even though they were not a part of the GREIU proposals. (Union 30)

The Union's position is that the following issues should not be part of the fact finding process as they were submitted well after the mediation/fact finding process had been initiated: 1) a proposal regarding the pension plan including language to delete the "additional 1%" language from the contract; 2) a proposal with respect to the health care benefits of retirees/future retirees; and 3) a \$86,000 per month offset penalty to be applied to unit members' wages. (Union Brief p8-15)

The GREIU's last proposal to the City dated November 22, 2004 covers the following subjects: wages, health insurance, pension, doctor appointments, no smoking, civil service, pension evaluation date and all previously agreed to items. (Union Brief, City 11) The City's last proposal to the GREIU dated November 23, 2004 and was to expire November 29, 2004, covered the following subjects: wages, health care, pensions, civil service, new or changed jobs, H Step advancement, Housing Inspector, OA 1, clerical staff, smoking, overtime, doctor appointments, tool allowance, ratification incentives and all previously agreed to items. (City 1H, L, J)

JURISDICTION

The City argues that the issues objected to by the GREIU are issues that have been part of the bargaining process and are necessary for a negotiated contract. They maintain that the bargaining process continues while the Fact-Finding Petition is pending and the nature of the dispute changes as the parties continue the collective bargaining process. The GREIU argues that these issues (1% pension contribution, retiree health care, and \$86,000 per month penalty until health care acceptance) were presented at the

fact finding stage and the Fact Finder does not have the jurisdiction to consider issues that were not identified in the Fact Finding Petition or in a party's Answer to the petition. In fact, the City filed no Answer in this case.

It is noted that the GREIU in its Fact Finding Petition has reserved the right to add, subtract, modify or remove any parts of this proposal. The GREIU has also asked to have other issues that were given to other City Unions discussed even though they were not a part of the original Petition. (Union 30)

The fundamental duty of the Fact Finder is to inquire fully into the facts involved in the proceeding and to issue a non-binding recommendation regarding the matter in dispute.

The City cites *County of Wayne*, 1984 MERC Lab 1142, 1144, that Mediation and Fact Finding are extensions of the bargaining table intended to assist the parties reach a negotiated settlement. It has even been suggested that Fact-Finding, while not mediation, should be characterized as a vehicle to facilitate ongoing discussions between the parties and I would agree. This has been the GREIU's alleged motivation in filing the Fact-Finding Petition. (Union Rebuttal p2)

Even though the ground rules contained in Union 63, such as all proposals shall be in writing, where not always followed, adequate time has been allowed in the hearing and in the post-hearing period so that no party has been surprised by the issues under discussion. Also, the parties have had a chance to respond and bargain during the Fact-Finding. At the hearing, the parties had the opportunity to present sworn testimony, to cross-examine witnesses and to offer documentary exhibits into evidence.

Over the course of 4 days (November 11-12 and December 15-16) there was a full and complete hearing with both parties being afforded every opportunity to present any evidence they thought necessary. In addition, both parties filed comprehensive and helpful post-hearing briefs.

ELIMINATION OF CIVIL SERVICE LANGUAGE

The Union would like the elimination of Civil Service language Article IX, XVII and Memo of Understanding #8. Ed Muste, retiree and past president, testified as to the history of civil service and that the union won binding arbitration in the early 70's which covered everything but disputes over classifications. He thought the Union did not get a fair shake on classifications from the Civil Service Board. Jim Turner, retiree and past Union official, testified about a Greenskeeper position reviewed by the Civil Service Commission where a lower rate of pay was recommended than proposed by the Union and upon which an Unfair Labor Practice was filed. Phil Pakiela, Union President stated that Civil Service Board does not have any expertise in job classifications as the current Board has two ministers, a social worker, a florist and one member who is a VP HR at a community college with past experience in a non-union environment. (Union 94) He further stated that the majority of cities do not use civil service. Pakiela also mentioned that the Chief Examiner (Ethridge) speaks for management.

Mari Beth Jelks, Labor Relations Manager, testified that they try to discuss and work out new job duties before a classification dispute gets to the Civil Service.. She stated that The Civil Service Board has a 40-year history and has addressed comprehensive classification and compensation on an overall basis with few appeals and

no union specifics of bias. Ms Jelks testified that Civil Service example of the Greenskeeper worked in that they found additional duties eventually to resolve the pay increase requested to everyone satisfaction. D. Etheridge, Vice President Human Resources stated that arbitrators do not have the big picture which can cause a compression effect and that a new Hay System has been instituted to properly evaluate all workers. Jelks also mentioned that the Union could promote candidates for the Civil Service Commission if they were not satisfied with the Boards' composition. (Union 45)

After reviewing the evidence I do not see any compelling reason to remove review of classification from the Civil Service Commission. If the GREIU does not like the results of a classification they can file an Unfair Labor Charge.

MEDICAIRE- ARTICLE XXVII

President Pakiela testified that the GREIU was concerned given the current political climate that Congress could change the Medicare eligibility age. If this would happen a gap would result as dependents of a member who dies in service will lose health insurance benefits from age 65 until reaching the new Medicare eligibility age. The proposed language would allow benefits to continue to the later of eligible for Medicare or similar national health insurance benefits or age 65. Past history would indicate only a few people would be involved.

The City's position is that nothing is on the legislative agenda at the present time and they do not want to create unknown liabilities but would be willing to bargain when changes do occur.

There is no doubt that retiring workers generally face a health care quagmire of unknowns. Since bargaining for retired workers is not a mandatory subject of bargaining it is recommended that the language requested by the GREIU be adopted.

PENSION

The City provides retirement benefits to employees represented by the Union through a defined benefit plan. It is the City's position that it maintains a retirement plan that provides significantly greater retirement benefits than the benefits provided to employees of most other public and private employers. (City Brief p1) Three issues are discussed including, the multiplier increase from 2.5 to 2.7%, the valuation date and the language in the contract requiring an additional 1% contribution.

Increasing the Multiplier from 2.5% to 2.7%

The Union wants Article XXVIII to increase the multiplier from 2.5 to 2.7 effective January 1, 2005. (Fact Finding Petition) The plan currently provides for a multiplier of 2.50% and a benefit of 100% of the employee's final average compensation who works a full 40 years with the City. (City Brief p30) After five years of retirement, retirees are eligible to receive a "Thirteenth Check" payment of the investment return received in that year exceeds the actuarially assumed rate of return (City Brief p30). The City has agreed to increase the multiplier from 2.5 to 2.7% for the APA bargaining unit whose members are in the same pension plan as the GREIU members. (City 1 G) The GREIU, like the APA, is willing to cap pension benefits at 90% of salary. (Union Brief p. 18) Currently there are no caps on benefits.

Mari Beth Jelks testified that other City unions paid for an increase in the multiplier through increased employee contributions. (City 2B) For example, the

Teamsters bought an increased multiplier from 2.5 to 2.7 paid fully with an increased employee contribution rate of an additional 2.9% effective 1/1/06 and a 90% cap on all hires after 7/1/04. The actuarial valuation for the GREIU to increase from 2.5 to 2.7% with a 30 amortization is an employee contribution of 2.12% of payroll. (Union 43)

During the bargaining the GREIU proposed in exchange for an increase in the multiplier it would agree to amend the current pension language in the contract to delete the City's obligation to make the "additional 1% employer contribution to the pension plan effective January 1, 2005". (Union Brief p18) The GREIU values the additional 1% at about \$290,000 per year above the actuarially required employer contribution amount (Union Brief p19). The GREIU claims that they should receive the same 1.51% credit given to the APA since that credit was based on illusory cost saving in pension litigation and income maintenance. (Union Brief p37, Union Rebuttal p24) A subsequent GREIU and City blended proposal for settlement will be found in this Fact-Finding Report after the discussion on Health Care starting on p24.

Additional 1% Contribution

The additional 1% employer contribution issue has a long history of litigation. The Union has maintained that a violation of the contract has occurred by the City failing to contribute an additional 1% to the pension plan which was upheld in the Circuit Court and is subject to a grievance dated May 25, 2004. (Union 2) This issue is currently in arbitration. The City paid the contribution for a short period of time. The City stopped paying the contribution and continues to refuse to pay it, despite being ordered to do so in three arbitration awards and by the Kent County Circuit Court. (Union Brief p 13)

Article XXVIII states that the pension plan as amended shall be continued for the life of this agreement. The Unions position is that the provision is beyond the Fact Finders jurisdiction. (Iorio letter of December 3, 2004)

As to the past liability on the additional 1% issue I make no recommendation and leave it to be decided in another forum.

As to this negotiation the City does not assign any value to the additional 1% contribution language and wishes to eliminate it from any new contract going forward. They wish to have language similar to the Police Command Officers contract which allows the Police and Fire Retirement System ordinance to be changed as long as it does not conflict modify or diminish in any way benefit levels. (City 2 C) The City says they will never negotiate an agreement to make a 1% contribution above any actuarial recommended amount. No other City unit has such language. (City Brief p32) The City further says that the past obligation has been referred to arbitration and should not be part of this fact finding.

As to the current bargaining and as to the future funding the City maintains that the 1% is a permissive subject of bargaining and that the end of the contract does not require them to bargain. (City Brief p34) They cite *County of Washtenaw* MERC Lab Op 351(1998) that in order for any particular pension plan provision to be a mandatory subject of bargaining, it must therefore have a direct effect upon the pension benefit.

On this jointly funded pension plan it is my opinion the additional 1% was bargained into the contract at some expense and should be bargained out in a similar manner. I would recommend that the 1% be evaluated in the process of an overall settlement.

Valuation Date

In a May 19, 2004 letter the City advised the GREIU that a change in the valuation date of the pension system would result in an estimated cost savings of \$1,394,230 for the GREIU if the changed valuation date was moved from a fiscal year to a calendar year. (Union 32) The Union responded that it was interested and asked for specific language. (Union 32-35, 78, 80, 81, 83) The City advised the GREIU in June 2004 that the proposal was off the table. However, Mari Beth Jelks said at the hearing that the City could have still achieved savings had the change been made in December of 2004.

The City has now determined that such a proposed change would not result in any savings to the City and declines to further consider this issue. (City Brief p31) The time to accept the proposal expired and the City finalized its budget. (City Rebuttal p22) The City has described the savings as a one time accounting event and currently conditions will not generate any savings for the City to be passed on to the GREIU. (City Rebuttal p22)

I am of the opinion that rightIy or wrongly the GREIU missed an opportunity and I would recommend that this be dropped from further negotiations.

RETIREMENT BOARD COMPOSITION

The Retirement Board is made up of seven trustees with three members to be elected by the pension system members (Union 42). According to Mari Beth Jelks there

about 11,000 members in the plan and all City unions other than police and fire participate in the system.

The GREIU proposes that the composition of the pension board be amended to allow for equal representation of City and Union trustees. (Pakiela testimony) The GREIU rationale for the change is that it is the largest contributor to the fund as the members have a vested interest in overseeing the fund.

Since the trustees are presumed to look out for the overall welfare of the pension plan and there is more than one union involved I would not recommend a separate representation for the GREIU. It is noted that the GREIU has dropped this from their November 22, 2004 proposal.

TOOL ALLOWANCE

The GREIU would like the tool allowance in Article XXIX to be increased from \$30.00 to \$150. (Fact Finding Petition) About 35 employees are required to provide their own tools that range in value from \$10,000 to \$15,000. The tool allowance according to Phil Pakiela has been in the contract for the last twenty to thirty years. The Union has provided comparables in other union contracts substantially in excess of that amount. (Union 65)

The City, according to Ms. Jelks, is willing to accept the \$150 tool allowance but not without an accountability system. She mentioned new accountability regulations governing municipal expenditure without any specific citation.

Mr. Pakiela feels because of the nature of wear and tear that such a system would not be workable. Union comparables show no system of accountability in the contracts

covered. (Union 65) Ed Hillyer, union steward for the police officers, stated that police officers are not required to submit receipts for clothing allowances.

Since these employees are providing their tools and there is no specific regulation mandating accountability, I would recommend that an increase be made in the tool allowance without an accountability system. The rationale is that in effect the employer is renting the tools from the employees. I leave the amount of the increase to the bargaining of the parties.

RESOLUTION TO H-STEP GRIEVANCES

Cheryl Tutson, 1st Vice President of the GREIU states that over fifty grievances were filed protesting the application of the H Step to promotions. The H Step is a lower rate than the normal starting rate for the classification. It is her contention that the H Step applies only to new hires. Two of the fifty were advanced to arbitration with one arbitration favoring the union and one favoring the City. (Union 46) Ms Jelks' position is that one of the decisions allows the H Step to be used for promotions and she would not recommend the final decision be left up to a third arbitration to be controlling. The GREIU would like third arbitrator to settle the matter.

With fifty grievances I would recommend a third arbitrator to decide the matter but only if the cases are identical and there is no negotiated contract resolution. It is noted that the GREIU has indicated a willingness to withdraw all of these grievances in its November 22, 2004 proposal. (City Brief p 19)

HOUSING INSPECTOR PROPOSAL

The GREIU proposes that the Housing Inspector salary rate should be reclassified from its current salary range 17 to salary range 18. Megan White, Second Vice President of the GREIU, testified that inspection of smoke detectors was assigned to the Housing Inspector. A grievance was filed protesting the assignment and was arbitrated. (Union 47) The arbitrator ordered the parties to negotiate a wage rate, and if one could not be agreed, to submit the issue to the Civil Service Board. Ms White is proposing a one-range increase to all Housing Inspectors. The City would like to take the issue to the Civil Service Board.

Because of the issue of equity with other City unions I would recommend that the issue in the absence of a negotiated settlement be taken to the Civil Service Board and if the GREIU is not happy with the result a ULP charge can be filed.

OFFICE ASST I IN NEIGHBORHOOD IMPROVEMENT

It was agreed that a job study would be performed as Office Asst. I being assigned Office Assistant III work. This study was not done. (Union 50, Tutson testimony) Mr. Etheridge acknowledged that a job study had not been performed. He claimed that was because only one completed job study questionnaire had been submitted. In the City's proposal of November 11, 2004 they would include this position with the classifications to be reviewed. This was not part of the GREIU's offer of settlement of November 22, 2004.

I would however recommend that additional job study questionnaires be executed and that the City follow through on its commitment.

CLERK ELECTION PROPOSAL

The GREIU has proposed to limit the type of physical assignment management can assign to clerical employees in the Clerks office. The GREIU want all clerical staff assigned to the clerk's office not be required to do additional duties as described in Grievance #37-01 which is not covered in their job description. (Union 49) Cheryl Tutson, Union 1st VP, stated that this issue involved physical lifting of election equipment and voting booths (up to 80-100 lb.) and transfer cases (40 to 50 lb.) which they had not done before.

Mari Beth Jelks, Labor Relations manager, stated that it is within management right to assign other related duties and no safety issue was raised. Ms Jelks mentioned that manual lifting is not listed as a job duty in the Office Assistant job description. However, no employee has been required to perform any function that are not within his or her physical abilities. (City Brief p 20)

Even though this was not part of the GREIU November 22, 2004 proposal I would recommend that the parties negotiate a settlement in relation to this job assignment.

WAGES

According to the City's brief the parties appear to be in agreement on the wage increase aspect of the overall economic package. Further the GREIU should anticipate receiving the same level of increase provided to all other unions represented

City employees unless the parties agree that this wage increase should be decreased as part of an overall economic settlement. (City Brief p23)

The City's wage proposal is as follows:

| | |
|-------|---|
| 0.00% | 1-1-2003 |
| 2.00% | Ratification or 1-1-2004 whichever is later |
| 3.00% | Ratification or 1-1-2005 whichever is later |
| 3.00% | Ratification or 1-1-2006 whichever is later |

The GREIU proposes the following wages

| | |
|----|------------------|
| 0% | 1/1/03-12/31/03 |
| 2% | 1/1/04-12/31/04* |
| 3% | 1/1/05-12/31/05 |
| 3% | 1/1/06-12/31/06 |

* Or retro waived 1/1/04 thru 7/31/04 for longevity package, the same as given to the APA (GREIU Proposal to City Nov.22,2004 Union 37, City 1G)

According to GREIU President Pakiela the wage increase proposed is justified due in large part to the significant costs assessed to the changes in the health care plan which will have a tremendous impact on its members. The GREIU also seeks the same retroactivity given to other units. (Union 39) The economic improvements not offered to or requested by the GREIU are recorded in Union 30.

The GREIU further stated the APA negotiated an economic package; wages 0%,2%,3%,3% increase in the pension multiplier from 2.5% to 2.7%. Also, the APA got ¼ (35 out of 155 members) pay range upgrades (Union 52A) of \$312,806 or 3.3% of payroll. (Union 52A) Further, the APA received longevity pay outs totaling \$1,046, 454 covering the period 2004-2008 an increase of over \$200,000 over previous longevity pay scales. (Union 37) The City claims that many of the pay range changes were new

positions rather than upgraded old positions and suggest that the 32 GREIU classification in the GREIU March 3, 2004 proposal be processed on their own merit. (City Rebuttal p11) The GREIU feels that in relation to the APA longevity package Mr. Etheridge testified that there were no cost savings in the reorganization or savings in overtime and thus they should be given same credit as the APA.(Union Brief p19) The City, however maintains that the APA earned those credits for value received.

All other bargaining units negotiated wage packages of 0%,2%,3% and 3% or 8 % over 4 years.(Union 30) The Police Officers and Sergeants negotiated a one time payment of \$2500 to each of its members and the fire fighters a one time payment of \$500 for changing the actuarial pension valuation date. (City 1G)

On the question of retroactive wage increases it is the City's position that a retroactive increase to 1/1/2004 was contingent upon the City receiving all of the changes in the Unified Health Plan in a timely fashion. Also the City has offered the GREIU an implementation date for the 2004 and 2005 wage increases adjusted to cover the loss in savings alleged would have taken place with the health care changes. (City Brief p24)

Further the City is willing to stop the loss of retroactive pay if the wage and health care issues are resolved separately from an overall settlement which would result in a total loss of 2004 retroactively if the health care changes are not implemented by March 1, 2005. (City Brief p25)

The City cites *City of Madison Heights* MERC No D02 E-0675 (May 5, 2004) in which the union was alleged to drag out the bargaining process for two years and the Fact Finder ruled that the fairest solution was to give some but not all retroactivity to the union. (City Brief 24)

I am of the opinion that because of the legitimate question on the GREIU health care proposals being offered and the City's reluctance to meet over an extended period of time that retroactivity is a bargainable subject taking into account the credits negotiated by each of the parties.

HEALTH CARE

History

The City provides health, dental and vision benefits to employees represented by the Union through a fully self-insured health care plan. The benefits of this health care plan are also provided to the rest of the City employees and to employees of the 61st District Court, the Grand Rapids Library and the Grand Rapids Museum.

Retirees of these entities are also eligible to receive benefits under this self-insured health care plan. In 1998 in response to the City's request to cut health care costs by demanding employee contributions, all the City's bargaining units, including the GREIU submitted a proposal to unify all health plans for each bargaining unit in one plan. (Bylsma, Jelks Testimony) The purpose of the plan was to consolidate the health plans of every bargaining unit, creating "one plan for everyone, thereby increasing the efficiency of the plan and the ability to contain costs". (Bylsma testimony)

Union 67 contains the Memorandum of Understanding concerning the Unified Health Plan. The plan was set up in 1999 to consolidate City union health plans and to freeze benefits for 5 years. While other unit received additional benefits no credit was given to the GREIU on the implementation of this plan. (Pakiela Testimony) The Union claims the retire/future retire issue regarding health care insurance is not before the Fact Finder. The City's position is that a proposal made by a party may nonetheless be an

issue properly before an arbitration panel even if it was not the specific subject of mediation or negotiations. (Gretzinger letter of Dec 3rd)

It is the City's position that it provides a health care plan that has significantly higher benefit levels for active and retired City employees than those provided by most other public and private employers. (City Brief p1) Sheldon Freilich of Gabriel, Roeder, Smith (Consultants & Actuaries), testified that at the end of 1999 when the plan was initiated it cost \$13 million and at the end of 2004 it is projected to cost \$29 Million. The City provides the following comparisons: (City4Q)

| <u>Average Wage</u> | <u>Employee Contribution</u> |
|---------------------|---|
| GREIU \$19.31 | - \$4/\$8 Co-pay for prescriptions - \$5 Co-pay office visits - All other benefits covered 100% |
| Kent County \$16.68 | 2004-10% of premium with max \$30 - \$5/\$10 prescription co-pay |
| State of Michigan | - \$23 per employee per pay period - \$10 office visit - \$7/\$15 co-pay for prescriptions |

In March 2004 the City notified the GREIU that it was seeking cost saving of approximately \$2.5 million and planned to change the terms of the United Health Plan. (Pakiela, Jelks Testimony) Pat Coleman, a self employed health care plan consultant, testified concerning deductibles and co-pays in the 150 plans he works with in trying to save the City about \$2 million in health care costs. He mentioned that unions generally would prefer co-pays and deductibles to employee contributions.

The City cites *Comstock Public Schools* MERC No L02 D-4024 (July 8, 2003) Cost sharing (premium sharing) is becoming the rule rather than the exception with regard to health care insurance. The City is looking for savings either in an employee contribution or deductible and other cost savings techniques. (Jelks Testimony)

On April 29, 2004 all other unions agreed to a revised Unified Health Plan that saves about \$ 2,022,448.00. (Union 70)

The proposed benefits under the Unified Health Plan are as follows:

| | |
|---------------------------|-----------------------------------|
| Prescription Drug Co-pays | \$10/\$20 co-pay |
| Emergency Room Visit | \$150 co-pay |
| Co-Insurance | 10% \$500 max per family per year |
| Office Visit | \$100 per visit |
| Chiropractic | \$10 per visit |
| Mental Health | \$10 per visit |

(Union 70)

A grievance was filed by the GREIU stating that all signatory parties had not concurred with any change in benefit levels, cost sharing or terms of health insurance coverage citing Paragraph 5 of the Unified Health Plans. The City filed an unfair labor charge claiming that GREIU cannot stop the City from reaching agreement with other unions. (Union 67) The unfair labor practice charge (MERC CO4 F-143) was scheduled for hearing on November 29, 2004. The ULP charges involving the Unified Health Plan is now scheduled for hearing March 23 and 24, 2005.

Whether the City can make changes in the Unified Health Plan is being decided in another forum and I have no need to comment or make a recommendation.

Retiree Health Insurance

For the GREIU an important component of the Unified Health Plan is how it related to current and future retirees. Historically prior to the Unified Health Plan all City employees, including GREIU members have enjoyed “vested” health care benefits that are “locked in” at the levels in place at the time of retirement. (Turner, Bylsma, Muste Testimony) This GREIU understanding is reflected in a letter dated November 13, 1998 from former GREIU President Charlie Bylsma to City Manager Kurt Kimball that states, “It remains the Union’s understanding, consistent with what the city indicated in bargaining, that the retiree medical benefits are vested and absent any agreement between the parties, which would cause an improvement in benefits, that no changes can be made in retiree medical benefits.” (Union 93) The letter was never acknowledged. (Bylsma Testimony) Bylsma was told retirees continue as before which he interpreted to mean vested. He stated you would get the increase but not the decrease. He got no response to his letter but did not expect an answer and never followed up. Kurt Kimball, City Manager testified that he did not know if he received the letter and noted that it was unsigned. Frank Smith, Director of Human resources 1987 to 2000 testified his understanding was the benefits changed in the bargaining process with no vesting.

The original commitment in the Memorandum of Understanding does not so state. Turner testified that in the 1992-1994 agreement Family deductible of \$100 did not apply to retirees or those employees insured under the HMO health plans. (Union 95)

Turner's drug situation is shown under Union 69 retiree Family Two as currently paying \$88 co-pay with a proposed \$220 or \$132 per month increase in co-pay. However this could be reduced by 1/3 if prescriptions were order for three months by mail.

Vested health insurance for retirees is important to the GREIU. (Pakiela Testimony) This especially important because of the "30 and Out" retirement, which allows employees to retire after reaching thirty years of service and attaining age 50 years.

The City's position now, whether there was a clear understanding of it at the time of the agreement, is that under the Unified Health Plan that the active and retiree benefits will be the same. (Jelks Testimony) The City believes this is fair since the retirees utilize a greater portion of the health care dollars than the active employees. (City Brief p28) It also states that the union could have maintained lower drug co-pays etc. by agreeing to employee contributions. (City Brief p28)

The GREIU however maintains its position that retirees and actives retiring during the term of their contract shall continue to vest with whatever the level of benefits are in effect at the time of retirement. The City is now willing to vest employees who retired between January 1, 2003 and November 11, 2004 to vest at their former level and for all future employees after that date to float with the actives. (City Rebuttal p15)

After a review of the record it is my opinion that since the health benefits have been frozen for 5 years no determination can be made as to whether or not vesting has occurred and I have no recommendation as to past retirees. If the unions wanted to protect the retirees more they could have opted for an employee contribution as stated by the City. As to future retirees, even though the GREIU questions my jurisdiction, by way

of argument, it appears to me that this is a bargainable subject. Further, with the high cost of health insurance I think it is not unreasonable to have the benefits of the actives and retirees remain the same.

\$86,000 Offset

On August 27, 2004 the Union was advised that if they did not agree to the changes being made in the Unified Health Plan the loss saving of \$86,000 per month after September 1, 2004 would result in a deduction from their economic package. (Union 10) The union's position is that the \$86,000 is beyond the fact finders jurisdiction. The Union in response stated that in a mediation proposal they tentatively agreed to the Unified Health Proposal if the retiree question was addressed.

The City claims that its original wage package was tied to the health care based on the language contained in the proposal. (City 1B) President Pakiela testified that it was not his understanding that the City intended to assess penalties against the GREIU for not agreeing to the health care changes. Ed Hillyer, Chief Steward for the police union, confirmed Paliela's testimony that the City never made known to the Union Presidents that it intended to assess any penalties against any units who did not agree to the proposed health insurance. Contrary testimony was offered by Ms Jelks on behalf of the City. (Jelks Testimony)

The GREIU's position is they could not agree to the health care changes because they did not have the initial implementation date and City failed to provide or even discuss its position regarding future retirees. (Paliela Testimony)

The City's position is that future retiree receive the same benefits changes that active employees receive in the future. City witnesses Jelks and Childers testimony showed some confusion on the subject and it appears that there may be some disagreement with the Police union as they are under the impression that future retirees vest at the time of retirement. (Hillyer Testimony)

Sheldon Freilich, the City's actuary, stated on cross examination that the \$86,000 offset was based on immature data that did not include data regarding the cost saving associated with retiree insurance. (Freilich Testimony)

It is the GREIU's position that I do not have jurisdiction in this matter to make a recommendation. However, with the uncertainty of the data and the lack of clear communication to the GREIU and the other issues than need to be bargained I do not feel the GREIU should be penalized on a monthly basis for the delay in implementing the United Health Plan. However, if parity is sought with the other bargaining units the GREIU has had a benefit for a period of time not enjoyed by other unions and the City could claim a credit in the bargaining.

Blended Package Proposed by the GREIU

The GREIU has now proposed that the Fact Finder make a recommendation on blending wages, health insurance and pension into a single proposal. (Union Brief p16)

The wage package is as follows:

0% effective 1/1/03-12/31/03
2% effective 1/1/04-12/31/04
3% effective 1/1/05-12/31/05
3% effective 1/1/06-12/31/06

The wage payments are retroactive to January 1, 2004. In the alternative, the GREIU would agree to make wage payments retroactive to July 1, 2004 (like the APA) if longevity payments are increased in the same manner that the City increased longevity payments to the APA members. (City 1G Union 37)

Regarding the health insurance the GREIU would accept the change to the Unified Health Plan if the future retirees were vested. (Union Brief p 17) Also, the GREIU would like the same "opt out" benefit granted to other bargaining units. The Union argues that the cost savings to the City and the shifting of costs for health care coverage to City workers justifies this resolution. (Union 97) The amendments to the Unified Health Plan have been calculated to result in a yearly \$2,022,448 saving to the City. (Union 70)

Regarding the pension, the GREIU wants the multiplier increased from 2.5% to 2.7% effective January 1, 2005. Their justification is that the City has already agreed to make this increase for the APA bargaining unit whose members are in the same pension plan as the GREIU members. (Union Brief p 18) The GREIU in exchange will agree to eliminate the "additional 1% employer contribution language" effective January 1, 2005. (Union Brief p 18) The Union states that this cost saving to the City is approximately \$290,000 per year. (Union 23,31)

It is the GREIU's position that this blended proposal is consistent with the package granted by the City to other bargaining units especially the APA. (City 1G) In addition the APA received upgraded pay increases for approximately $\frac{1}{4}$ of their 155 members for a total salary increase of \$312,806 per year or 3.3% of payroll. (Union 52A) Further, APA employees received \$1,046,454 from 2004-2008 an increase over \$200,000

over previous longevity pay scales. (Union37) As to other bargaining units Union Exhibit 30 details a number of economic benefits that have been achieved that have not been offered to the GREIU.

Blend Package Proposed by the City

For an increase in the pension multiplier from 2.5% to 2.7% it would require the employees to increase their contribution by 2.12% to 5.40%. (City Brief p36) The City would offer the GREIU a .58% credit which would eliminate an employee obligation to pay 55.76% of the \$9,800,000 increase in the unfunded liability and would be worth \$5,684,000. (City Brief p36)

According to the City this would compensate for the change in the doctor appointment language and abandonment of the 1% payment grievance and would eliminate any reference to any employer contribution levels. (City Brief p36) The increase in the average benefit would be \$2,409 which would cover the anticipated additional cost that retirees would incur by having their retiree health insurance benefits float with the active employees. (City Brief p36)

After reviewing the record and arguments in my opinion a blended approach makes sense and I would recommend it to the parties. However, I am not in a position to evaluate the various elements proposed by the GREIU and the City and I would leave this to the bargaining process.

DOCTOR APPOINTMENTS

The City is requesting to have paid time lost from work due to doctor appointments charged to sick leave. (City 1E) The City desires to bring the sick leave

provision in conformity to the contract language applicable to employees under all other union agreements. The City also wishes to eliminate the language that, "if less than 2 hours the employee's sick leave will not be charged."

The City's position is that notwithstanding an agreement to assist the City to prevent the use of unnecessary paid sick leave, the usage of time for doctor and dentist appointments has helped to increase the total paid off works hours. (City 3A) The City in 2002 was able to negotiate the change proposed with all other bargaining units with a .58% credit given. (City Brief p8)

According to Phil Pakiela the language of the contract has remained unchanged since 1968. Mr.Pakiela mentioned that this benefit is especially significant to the GREIU in taking care of aging parents and that any abuse should be handled on a case by case basis. He stated that if the City feels that employees are abusing the system they have a right to discipline those employees. Ms. Jelks testified that the City has never disciplined anyone for abusing the doctor appointment benefit and when problems arise the parties have always worked out an agreeable solution. (Jelks Testimony) Because of the usage of this benefit it is worth 0.71% to GREIU. (Union 72)

I would recommend that if the City wants this language removed from the contract it might consider a amount higher than the .58% be considered in a blended negotiation settlement.

SMOKING

The City is proposing to eliminate smoking in all City owned facilities and vehicles.(City 1E) The City's position is that the negative impact of smoking is not subject to legitimate dispute. (City Brief p10) The contract language states that,

“Designated smoking areas shall not be amended without the mutual agreement of the parties during the life of the agreement.”

Ms White testified that approximately 38% of the GREIU membership smokes. She said that the GREIU was willing to address the City’s proposal incrementally but to stop suddenly would negatively impact the bargaining unit. She is not aware of any complaints from employees relating to smoking but realizes this is a sensitive issue.

Ms Jelks testified that the parties joint committee on smoking has worked well in the past. The City’s Exhibit 5A shows other comparables including State of Michigan, Kent County and the City of East Grand Rapids that do not allow smoking. The GREIU points out however, that in other comparable contracts smoking was not made a subject of negotiation. (Union 59)

In a City proposal dated January 11, 2005 the City proposes to eliminate all smoking through a gradual process: all vehicle by 6/1/05, coordinate a cessation program by 6/1/05 and eliminate all smoking from City facilities by 1/1/06. (City Brief p12)

I am of the opinion that smoking is indefensible however, because of the impact on the bargaining unit, I would recommend at least a one-year phase out of smoking in city facilities accompanied by a cessation program.

MISSED OVERTIME OPPORTUNITIES

Under current practice, employees who miss a potential overtime opportunity are entitled to receive pay for the missed overtime opportunity without being required to perform any services. The City’s proposal is to assign the employee at the next overtime opportunity. (City I E)

Mari Beth Jelks testified as to how an employee would be paid for overtime missed.(City 6B) If the missed opportunity were 2 hours the employee would be paid for 2 hours and put on the next rotation and given opportunity to earn additional overtime minus the two hours already paid with in a one month period.

Mr Pakiela testified that these are supervisor errors and that the City should talk to supervisors. He visualizes problems with what is being proposed as the work varies and the uneven availability of employees. He feels it would be hard to administer. In addition he mentioned these mistakes amounts to 10 to 15% of overtime budget and the GREIU should get a credit in any contract settlement of this issue.

The City's position is that the overtime assignment system was never intended to guarantee absolute perfection since the contractual language only obligated the City to distribute overtime "as equally practical." (City Brief p14)

After examining the record and arguments, I can see that there may be problems in the recommended solution by the City. The City and the GREIU should work to establish a system that cuts down on supervisor error and provides an efficient and equitable way of distributing overtime. The parties need to bargain further as to what that might be.

SUMMARY

These recommendations are being issued with the hope that they will be utilized by the parties to resolve the numerous issues in dispute.

February 11, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Robert Stevenson", written over a horizontal line.

A. Robert Stevenson
Fact Finder