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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICE
EMPLOYMENT RELATIONS COMMISSION

*In the Matter of the Fact Finding
between:*

CITY OF BERKLEY

-and-

MERC Case No. D04-C-0802

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
MICHIGAN COUNCIL 25 and its LOCAL 1021

APPEARANCES:

FOR THE CITY OF BERKLEY:

Howard Shifman, Attorney
Lisa Dolan, Finance Director
Jane Bais-DiSessa, City Manager
Bruce Jerome, DPW Director

FOR MICHIGAN AFSCME COUNCIL 25
and its Local 1021:

Ben Frimpong, Staff Attorney
LeRoy Carter, Staff Representative

**FACT FINDER'S REPORT, FINDINGS OF FACT
AND RECOMMENDATIONS**

Local 1021 of AFSCME, MI Council 25 represents approximately 11 employees in the City's Department of Public Works. Local 1021 and the City of Berkley had a five-year Collective Bargaining Agreement expiring on June 30, 2004. Prior to the expiration of this contract the parties engaged in collective bargaining for a successor contract.

The bargaining resulted in eight sessions with a state mediator on September 1 and 22; October 13; November 8 and December 15, 2004; January 15 and 21 and June 10, 2005.

These mediation sessions did not result in an agreement being reached. Subsequently, Local 1021 and Council 25 filed a Petition for Fact Finding on March 1, 2005 listing as the

issues in dispute between the parties as:

1. Contract language
2. Wage schedule;
3. Job classifications;
4. Length of contract; and
5. Employee Health Retirement Savings.

The undersigned was thus appointed as Fact Finder under date of June 1, 2005.

A fact finding hearing was conducted on Wednesday, July 6, 2005. At the time the fact finder arrived, the parties listed more than 15 issues and sub-issues. After discussion among the parties, certain agreements were reached on pending issues, leaving essentially four areas of dispute between the parties, namely, duration of the contract, wages, health care, and certain pension issues requiring the Fact Finder to make findings of fact and recommendations.

As to the issues the parties agreed upon, the Fact Finder will set forth in his recommendations these agreements without further discussion in this report. The report will only discuss the remaining issues in dispute between the parties, following the agreement on certain issues after the Fact Finder arrived for the hearing.

The Criteria

Though the statute providing for fact finding does not specifically set forth the criteria to be followed by a Fact Finder, Act 312 of Public Acts of 1969, dealing with compulsory police and fire arbitration, does set forth in Section 9 certain criteria to be followed in resolving disputes under Act 312. Section 9, which can also serve as a guide as to the criteria to be applied by fact finders, provides:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 9(h) in particular merits discussion because it refers to criteria followed by fact finders not enumerated in Section 9. Two of these criteria are the bargaining history of the parties both previously and currently, and the art of the possible.

The art of the possible is a discussion of the projected agreement the parties would have reached if the circumstances required that the parties reach agreement.

Though a fact finder should apply all the criteria listed in Section 9 where applicable plus the art of the possible and bargaining history, any given case or circumstance might cause a fact finder to emphasize particular criteria.

The Financial Ability to Pay

The City of Berkley has a population of approximately 15,500 individuals. It covers about 2 ½ square miles in Oakland County and is surrounded by other communities. It is basically a “bedroom” community with some light manufacturing and a modest retail area. The City is essentially built up, although there is ongoing recycling of property.

The City depends upon real estate taxes and state revenue sharing for its principal finances. Though the City is solvent, it has limited resources because of its nature. In addition, as is well known among communities in Michigan, the state has been providing less state shared revenue because of the state’s own financial health.

Thus, in 2004 and on, the fact finder must recognize that there are limited resources available to address the financial issues set forth in these contract negotiations.

The Bargaining History

As noted, Local 1021 represents approximately 11 employees of the City’s Department of Public Works. The City has two other bargaining units represented by the Police Officers Labor Council, namely, the public safety officers and the command officers. There are approximately 27 members of the Public Safety Department. In addition, there are approximately 41 other employees of the City known as merit employees who are not represented by any labor organization.

Through bargaining and otherwise, the wage pattern for City employees for the several years, including Local 1021 members, has been as follows:

	07/01/01	07/02/02	07/01/03	07/01/04	07/01/05
Public Safety					
Command Officers	3%	0%	1%	1%	2%
Public Safety Officers	3%	0%	1%	1%	2%
Merit Employees	3%	0%	1.50%	2%	2%
AFSCME	3%	3%	3%		

City of Berkley
Wage Increases
July 6, 2005

	07/01/01	07/01/02	07/01/03	07/01/04	07/01/05
Public Safety Command Officers	3%	0%	1%	1%	2%
Public Safety Officers	3%	0%	1%	1%	2%
Merit Employees	3%	0%	1.50%	2%	2%
AFSCME	3%	3%	3%		

In addition, as to health care, the following is the fact:

Effective July 1, 2000 the AFSCME group received an ortho benefit increase over all other employee groups of \$750 versus \$600.

Effective 2002, AFSCME received an optical benefit increase to \$400, Police Officers and Command receive \$300.

AFSCME has a \$5 prescription drug rider, all other employee groups switched to \$10-\$20 on Dec. 1, 2003.

What this information reveals is that Local 1021, in terms of health care and prescription drug co-pay, has had a \$5.00 drug card whereas, since July 1, 2003, the other employees of the City including represented employees have had a \$10.00 generic and \$20.00 brand name drug card.

In terms of wages, during the three year period beginning 2001, while the police received a 4% increase and the merit employees received a 4 1/2% increase, Local 1021, coming off of a five year contract, received a 9% increase.

The merit employees have for some time contributed to their pension plan, namely, 4%. The police are covered by Act 345 and now make no contribution toward pension.

Local 1021 has had no contribution toward pensions since 1985.

This is the past bargaining history. Presently, the fact that the parties had eight mediation sessions and reached impasse and opened the fact finding hearing with approximately 15 issues

and sub-issues separating them, highlights that negotiations have been difficult, causing the parties to not reach agreement.

As the Fact Finder assessed the situation, the City was maintaining that, financially, Local 1021 has done better than the other employees; as a result, this has impact upon the limited resources of the City.

The Comparables

In this situation, the most persuasive comparables are the internal comparables. As just explained under the bargaining history, the internal comparables reveal that Local 1021 has fared quite well when compared to other City employees. For this reason, the City's argument that there should be some moderation in the economics for the contract succeeding the contract that expired June 30, 2004 has merit which is influential in this Fact Finder making the recommendations he will make.

The Art of the Possible

When one considers the bargaining history and the internal comparables, the art of the possible requires balancing the interests of the parties. For more than a year since Local 1021's 1999-2004 contract expired June 30, 2004, the members of Local 1021 have received the benefit of a \$5.00 drug co-pay card whereas other City employees have had a \$10/\$20 drug co-pay card. This has cost the City more money in health care premiums when compared to the money spent for other employees and has been an economic benefit to the 1021 membership. Thus, the City not only has pushed for the \$10/\$20 drug co-pay for 1021 employees but has also urged a change in the health care insurance for employees represented by 1021 hired after July 1, 2004. For these employees, the City has proposed a Blue Cross Network program.

As to wages, the City believes that since the contract has remained unresolved for one year, July 1, 2004 to July 1, 2005, with the employees receiving benefit of a \$5.00 co-pay, the City should not make a retroactive wage increase. The City was prepared to offer a 1% wage increase effective July 1, 2004 but this was on the assumption there would be a \$10/\$20 co-pay beginning July 1, 2004. When the City did not accomplish this drug co-pay, the City withdrew the 1% beginning July 1, 2004. The City had also offered a 1% wage increase for July 1, 2005 and a 2% increase for July 1, 2006.

The City was also opting for a five year contract. Local 1021 was urging the adoption of a three year contract which would expire June 30, 2007 and commence July 1, 2004. In the area of pensions, the City was seeking to have the employees hired after July 1, 2004 pay forthwith 4% toward their pension. As of the date of the fact finding, July 6, 2005, there have been three employees hired since July 1, 2004.

Local 1021 has resisted any contributions toward pension on behalf of any of the employees, any change in drug co-pay or health insurance.

It is these competing interests, along with the bargaining history, the comparables, the ability to pay that has caused this Fact Finder to make the recommendations that follow, for the reasons set forth herein, balancing the respective interests of the parties.

The Duration of the Agreement

The Fact Finder believes that in the economic climate faced by the parties and the uncertainty of Michigan's economic future, that in order to stabilize labor relations between the parties and consistent with the City's financial ability, a three year contract commencing July 1, 2004 at 12:01 a.m. and expiring midnight June 30, 2007 is in the best interests of the parties.

This means that the contract will expire in about two years, at which time the parties can again review the economic picture and their particular interests. This is not a situation for a five year contract, at least with Local 1021, because of the economic factors involved. A shorter period is necessary to permit a more current economic review. This explains the three year contract recommendation.

Wages

Given the internal comparables and the bargaining history, this Fact Finder will recommend that, in the first year, July 1, 2004 - June 30, 2005, there be no wage increase; that in the second year of the contract, July 1, 2005 - June 30, 2006, there shall be a 2% increase; that effective July 1, 2006 through June 30, 2007, there shall be a 2% increase. These increases will be across-the-board.

The reason for no wage increase for the period July 1, 2004 - June 30, 2005 is that there must be an adjustment in the wage pattern between Local 1021 and the other employees, noting that Local 1021 has had an advantage over the other employees in terms of total wage increases, as explained above. More importantly, however, during the period July 1, 2004 - June 30, 2005, the members of Local 1021 received an economic benefit not available to other City employees, namely, the \$5.00 drug co-pay card. This economic benefit must be factored into the wages. Furthermore, the history shows that in at least one year (2001) during the past four years, Local 1021 members were receiving a 3% increase while other City employees received no increase.

Applying the art of the possible and this bargaining history explains the reason for no wage increase for the year July 1, 2004 - June 30, 2005. The rationale for the 2% beginning July 1, 2005 is that, under the City's offer, by July 1, 2005, Local 1021 members would have been

paid 2% more across-the-board more than the wages as of June 30, 2004. It would only seem fair, particularly when there is no retroactivity for the period July 1, 2004 - June 30, 2005, that this 2% increase be effective July 1, 2005.

The rationale for the recommendation that the wage increase effective July 1, 2006 be 2% is because this is consistent with the City's offer.

Another factor in this so-called three year contract with 2% each in the second and third year is that, with the exception of the Local 1021 drug card, there would be no changes in health care, even though the City can anticipate increases in its costs for providing health care insurance to its employees.

There is one more point on wages. During the presentation of the fact finding evidence, the City proposed a three-tier wage system. Presently, there is a two-tier system.

Applying the art of the possible and recognizing that the two-tier system has been in for a number of years, there should be no change in the two-tier system and, therefore, the Fact Finder will recommend that the present two-tier wage scale shall continue and that the third tier urged by the City be rejected.

Health Care

As noted, the City proposed a change in the health care insurance for employees hired after July 1, 2004. Local 1021 resisted this change. In return for the wage package this Fact Finder will recommend that there be no change in the health care, for this is the art of the possible. This is a balancing of the interests of the parties, addressing two critical areas, namely, wages and the cost of health care. The City pointed out that in the last two years, health care costs have risen 8% in 2003-04 and 4% in 2004-05. The employees did not have to pay for this

increase, yet it was a cost to the City, causing one to moderate the wage increases. In the end, it is all money; in the end, the City must pay for same. Thus, the balancing of the two economic interests and these recommendations. As already stated, there will be the recommendation that the drug co-pay will be \$10.00 generic and \$20.00 brand name, to be effective as soon as same can be implemented by the City of Berkley.

Pensions

The issue of contribution by the employee to the pension became a point of serious concern to both parties. Local 1021 resisted any contribution and the City insisted that there be contribution.

Again, the art of the possible and bargaining history. The police unions are not paying any contribution but this is a factor of being governed by Act 345 and its impact on the ability to raise money for the police. But the 41 merit employees are paying 4% toward pension and have been doing so for some time. Couple this with the fact that recently MERS has advised the City that there is to be an increase in the cost to the City for pensions of 4%, an increase the City did not anticipate. The City therefore has been urging that employees hired after July 1, 2004, and the Fact Finder is advised there are three, pay the 4%, suggesting that this be done by July 1, 2005 if not before. Local 1021 resisted this.

The Fact Finder is faced with balancing the interests, for the City does make an argument, namely, its treatment of 41 other employees of the City as well as the raise in pension costs. The art of the possible would dictate that the three employees now employed who were hired after July 1, 2004 commence making a 4% contribution to their pension plan beginning on July 1, 2006 which would presumably be on an installment basis to be worked out by the parties. The

reason for this delayed payment, even though the City makes a reasonable argument that it should begin July 1, 2005, is that by that time, the employees would have received the equivalent of a 4% increase. On July 1, 2006, the second 2% will have kicked in.

This approach is only fair. Furthermore, any employee hired after the date of this Fact Finding Report shall be required to pay the 4% commencing on the date of hire. The reason for this is that any new employee hired after July 8, 2005 will not expect to be hired without a pension contribution. The recommendation will include this point.

Conclusion

These are difficult economic times. As a result of this report, Local 1021 has continued the health care program with a modest change in drug co-pays to \$10.00 and \$20.00. This is a major continued benefit to the Local 1021 represented employees. Though there is no wage increase for the period July 1, 2004 - June 30, 2005, when one reviews the bargaining pattern and the economic concerns that face the City and the fact that for a year, the employees represented by Local 1021 had a distinct health care insurance advantage over the other City employees at a cost to the City of the \$5.00 drug co-pay, it is reasonable and consistent with the art of the possible to have the wage pattern of no increase the first year of the contract and 2% across-the-board in each of the second and third years of the contract.

As to pensions, for employees now employed who were hired after July 1, 2004, it is reasonable to have the 4% contribution when 41 other employees of the City are doing so. This recommendation has been moderated in that it does not kick in until July 1, 2006 when the three employees hired after July 1, 2004 will have received a 4% pay increase, namely, 2% commencing July 1, 2005 and a 2% increase commencing July 1, 2006. This approach

represents the art of the possible.

Likewise, the bargaining history of having two tiers and not three tiers dictates that the City's offer of a three tier wage system will be rejected. In the end, in these difficult economic times, the recommendations here represent a feasible and reasonable settlement of the parties.

As indicated by their respective bargaining positions, neither party can be completely satisfied with this report. But the parties have bargained long and hard, including eight mediation sessions which resulted in no agreement. There comes a time when there must be an end to bargaining and an agreement reached. This fact finding report and the following recommendations, though reluctantly recognized by the parties, should be accepted for it is the only feasible approach when one considers the totality of the circumstances.

RECOMMENDATIONS

1. Section 1604.1 (page 22) will be changed to read: "Employees shall be eligible to receive one pair of work shoes or boots each fiscal year not to exceed \$150.00 at the City's expense pursuant to the following terms: ..." (As already set forth in the contract.)
2. Section 707.1 (page 12) shall be changed to read: "Any employee assigned to work a minimum of one (1) hour in a higher classification will be paid according to the regular rate in that classification."
3. Section 802.3 (page 12) shall be changed to read: "Compensation for holiday work shall be two (2) times the regular rate of pay for all hours worked on the holiday."
4. Section 1401.40 (page 19) shall read: "Employees to be eligible for retirement must be at least fifty (50) years of age and have twenty-five (25) years of service credit, may retire with full retirement allowance."

5. Establish an Employee Health Retirement Savings Account for all new hires beginning July 1, 2005.

A Health Retirement Savings Account is a program that allows employers to contribute monies on a tax-free basis to accounts established by employees. It is designed to replace retiree health, optical and dental insurance for employees hired after July 1, 2005.

These accounts may be used by the employee, their spouse, or qualified dependents to help offset the cost of health care after the employee retires or separates from service.

The employee does not pay taxes on the contributions, investment earnings, or distributions for medical reimbursements.

The City, at its sole discretion, can determine which plan will be provided and the same plan will be provided to all non-union employees.

A sum will be determined by the City which will be provided to the employee's accounts.

After death, any remaining account balance may be used by the employee's surviving spouse or surviving dependents for the reimbursement of qualified medical expenses.

6. Duration. The contract shall commence July 1, 2004 at 12:01 a.m. and ending midnight June 30, 2007.

7. Health Care. Health insurance shall be as follows: The City shall assume the cost of the following plans: Blue Cross-Blue Shield Blue Preferred PPO, Blue Cross-Blue Shield Community Blue PPO, or Health Alliance Plan and a \$10.00 generic and \$20.00 brand name prescription drug rider. In addition, commencing as soon as the City can implement, employees shall have a co-pay on drugs of \$10.00 for generic and \$20.00 for brand name.

8. Wages. There shall be no wage increase over the present wage scale for the period July 1, 2004 - June 30, 2005; that commencing July 1, 2005 through June 30, 2006, there

shall be a 2% wage increase across-the-board; that commencing July 1, 2006 through June 30, 2007, there shall be a 2% wage increase across-the-board. The present two-tier wage scale shall continue. This recommendation rejects the City's proposed third tier.

9. Pensions. Effective July 1, 2006, employees now employed who were hired after July 1, 2004 shall pay 4% toward their pension costs, presumably on an installment basis or any other basis agreed to by the parties. Any employee hired after the date of this fact finding report, July 8, 2005, upon being hired, shall be obligated to pay 4% toward their pension costs per annum.


GEORGE T. ROUMELL, JR.
Fact Finder

July 8, 2005