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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the
Fact Finding Between:

CITY OF ECORSE

-and-

MERC Fact Finding
Case No. D04 A-0197

MICHIGAN AFSCME COUNCIL 25
and its Local 1008

FACT FINDER'S FINDINGS OF FACT,
REPORT AND RECOMMENDATIONS

APPEARANCES:

FOR CITY OF ECORSE:

Larry Salisbury, Mayor
John Clark, Attorney

FOR MICHIGAN AFSCME COUNCIL 25
and its Local 1008:

Ben K. Frimpong, Attorney
Winston Johnson, Staff Representative
James Reasner, President, Local 1008
Taneesha Sillers, Chief Steward
Sylvia Jackson, Bargaining Unit

Background

The City of Ecorse is geographically located in the area known as the Downriver area of Wayne County. It consists of approximately 2.7 square miles, having a population of approximately 11,500 persons. It has a Mayor/Council form of government.

Among the full-time employees of the City are six clerical employees, five of whom are classified as Clerks, one of whom is classified as a Utility Clerk (Water Department). These six employees have been represented for some time by Michigan Council 25, American Federation

of State, County and Municipal Employees and its Local 1008.

The parties have had several Collective Bargaining Agreements. The most recent Collective Bargaining Agreement expired on June 30, 2004.

Prior to the expiration of the contract, the parties commenced bargaining. The parties were not able to reach agreement on a successor contract at the time of the June 30, 2004 expiration. The parties continued to bargain and had a mediation session which did not result in an Agreement. Subsequently, Council 25 filed a Petition for Fact Finding and the Undersigned was appointed as the Fact Finder.

The Issues in Dispute

As a credit to both parties, through negotiations and mediation, the parties did resolve a number of issues. What remained as the issues in dispute at the time of the fact finding hearing were:

1. Wages
2. Seniority Provision
3. Management Rights
4. Discipline
5. Holidays
6. Promotions

As it turns out, the parties in fact finding voluntarily agreed to resolve the issues of Management Rights, Discipline, Holidays and Promotions. The resolution of these issues will be set forth later in this Report. What remained in contention between the parties, to be resolved by the Fact Finder, is the matter of the seniority provisions and wages.

The Criteria

The recommendations of the Fact Finder are not made in a vacuum. They are based upon certain recognized criteria which serve as guides to fact finders when formulating

recommendations.

The statute providing for fact finding does not set forth the criteria. However, when the legislature enacted the provisions of binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 (MCLA 423.239) the list of criteria that arbitrators under that Act are to apply, namely:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.
>
> (a) The lawful authority of the employer.
>
> (b) Stipulations 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.

Though these criteria were adopted specifically dealing with interest arbitration of police and fire disputes, the criteria represents common sense guidelines that should be followed by fact finders when making recommendations.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the award, and comparables, both internally and externally with other similarly situated public and private employees in the geographical area involved.

Seemingly to recognize the correlation between the enumerated statutory guidelines under Act 312 to be followed by arbitrators and guidelines followed by fact finders, the legislature, in 9(h) refers to criteria used by fact finders not otherwise enumerated in section 9. This means that in addition to the enumerated Section 9 criteria, other criteria used by fact finders can be a factor. It also recognizes that the application of a particular criteria depends upon the circumstances.

Among the criteria utilized by fact finders is the bargaining history of the parties, both past and current, as well as the "art of the possible," namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In addition, fact finders do use the bargaining history of the parties, both the bargaining

history in the past and the bargaining history during the current negotiations, in an attempt to ascertain, along with the art of the possible, what the parties may have settled upon on their own when faced with outside deadlines.

It is this analysis of the applicable criteria that serves as a guide to this Fact Finder's recommendations for settlement of this dispute.

In applying the criteria in this case, the criteria that stands out as serving as a guide to resolving this dispute is the ability to pay, the bargaining history (both current and in the past) and the art of the possible.

Each dispute stands on its own. Although Act 312 sets forth numerous criteria, usually (and the Ecorse situation is no different) there are key criteria that serve as guidance to a given dispute.

In Ecorse, and in the negotiations affecting the Clerical employees, there are three critical criteria. One is the Act 312 enumerated criteria, namely, the financial ability to meet the cost of the proposed contract. The other two criteria encompassed by Section 9.H of Act 312 are the criteria used by fact finders, namely, the bargaining history of the parties plus the art of the possible. These two criteria are particularly apropos in this situation as to the issue of wages.

Wages

The consideration of wages cannot be divorced from the City's finances. In the not too recent past, the City of Ecorse was in receivership because of its finances. The City is no longer in receivership and, currently, does have the ability to fund a modest wage increase.

But the City's finances are under attack. The City's largest property tax payer, Great Lakes Steel, is challenging its tax base in the Michigan Tax Tribunal. The outcome of this

litigation could have a substantial impact on the City's financial viability.

Add to the fact that the parties have reached agreement on health insurance, which is a costly item, then it becomes clear that the wage pattern for this bargaining unit must be modest in order to maintain the stability of the City's finances which recently had been subject to receivership and, as just noted, could be under substantial pressure, depending on the tax litigation.

The bargaining pattern with this bargaining unit is that, in the contract just expired, the parties agreed to across-the-board increases without any special adjustments. There were wage proposals exchanged between the parties. There was a suggestion that there was a tentative agreement, but this agreement was rejected by the Union membership. There was also a proposal to have wage adjustments for four of the six members of the bargaining unit that would result in wage freezes for two of the bargaining unit members. Such a proposal was offered to the bargaining unit, but was rejected.

The wage pattern as a result of the last year of the expiring contract of the bargaining unit, annualized for each bargaining unit member, was as follows:

Sylvia	35,343.00
Melissa	29,723.00
Janis	24,478.00
Shawna	24,748.00
Teneesha	24,731.00
Kim	21,840.00

It is noted that Kim receives less than the other employees. The reason for this is that, as of the date of this Report, Kim had not completed two years of service in the City. Under the contract, new employees who are hired from zero to 12 months receive $10.50 an hour, from 12 months to 24 months receive $11.00 an hour.

In the case of Melissa, by contract, she is in a classification known as Utility Clerical Water Department for which there is a rate set forth in the expired contract which gives Melissa a higher rate than Janis, Shawna and Teneesha. This is historical.

In the case of Sylvia, she has been with the City for 16 years and in previous contracts she received adjustments for whatever reason. For this reason, her rate in the expired contract cannot be compared to the rates of the others. In the expired contract, the rates that were arrived at, except for Kim, whose rate was established as a new employee, came about by percentage increases across-the-board.

This is the bargaining history. There was a rejection by the bargaining unit of a proposal by the City to make wage adjustments, but would freeze the rate of pay of Sylvia and Melissa effective in 2005 for the remainder of the contract. This rejection causes the Fact Finder, applying the bargaining history criteria, to opt for another proposal made by the City which is an across-the-board increase, which proposal is:

July 1, 2004 - June 30, 2005	3%
July 1, 2005 - June 30, 2006	3%
July 1, 2006 - June 30, 2007	2%
July 1, 2007 - June 30, 2008	2%
July 1, 2008 - June 30, 2009	2%

These are rates across-the-board. The City is proposing a five year Agreement. The reason why the City is proposing a five year agreement is the need to have long-term economic stability. Given the financial history of the City, the Fact Finder agrees with this approach. These wage increases, though modest, when factored in what the City has done in other areas, including health care, represent a reasonable approach.

What this means is that, on a yearly basis, based upon rates that the individual employees were receiving in the last year of the expired contract, this across-the-board increase would result in the following wage increases: July 1, 2004 3%, July 1, 2005 3%, July 1, 2006 2%, July 1, 2007 2%, July 1, 2008 2%.

Duration/Retroactivity

The contract will commence July 1, 2004 and continue through June 30, 2009. The rates of pay will be retroactive to July 1, 2004 with retroactivity to be paid accordingly.

Seniority

The dispute over seniority is the proposition that an employee, for all purposes, have seniority as earned while in the bargaining unit; that if an employee leaves the bargaining unit and then returns, the employee would not be credited for any time served outside of the bargaining unit. But if the employee, for example, worked ten years in the bargaining unit and then five years for the City outside of the bargaining unit and then returned to the bargaining unit, the employee would have ten years of seniority in the bargaining unit for all purposes, including layoff and bumping rights. The parties discussed the seniority issue with the Fact Finder and, as the Fact Finder heard the arguments and the language presented by the parties, the Fact Finder agrees that the language presented by the City, as modified by the Fact Finder, accomplishes this purpose. The Recommendation that follows adopts the language as to seniority as modified by the Fact Finder.

The Art of the Possible

As this Fact Finder has indicated, one of the criteria to be considered is the art of the possible. The parties have been without a contract since July 1, 2004. This is over a year and one-

half. There comes a time when a contract must be consummated. There have been exchanges of offers and failure of ratifications. The question thus remains is what the parties would agree to when put to a final test, such as faced with a strike deadline? The Recommendation of the Fact Finder as to wages and seniority represents the art of the possible. This is what the parties, if left to their own devices, might very well consider to be their solution. At least it is a solution that the Fact Finder believes represents his best prediction as to what the art of the possible would bring.

Binding Effect

Both the City and AFSCME Council 25 and its Local 1008 advised the Fact Finder at the end of fact finding that they mutually would agree to be bound by the Fact Finding Report. Therefore, this Report is binding on both parties and will represent their agreement as to the outstanding issues and shall be incorporated into their Collective Bargaining Agreement. The Recommendation that follows encompasses some issues not discussed specifically in this Fact Finding Report. The reason for this is, except for wages and seniority, the proposals set forth in the letter dated December 9, 2005 from the City's attorney, John C. Clark, to Winston Johnson of Council 25 were acceptable. For this reason, the Fact Finder has incorporated these proposals in his Recommendation.

BINDING RECOMMENDATIONS

As indicated, the Recommendations that follow are binding on the parties by agreement. The Recommendations are:

1. The term of the Collective Bargaining Agreement shall be from July 1, 2004 and shall expire on June 30, 2009.

2. Article V, Management Rights, shall be modified to include language regarding the right of the City to "manage its affairs" as follows: "The City of Ecorse on its own behalf and on behalf of the electors of the City hereby retains and reserves, without limitation, all powers, rights, authority, duties and responsibilities, conferred and vested in it by the Laws of the Constitution of the State of Michigan, the Constitution of the United States and the City Charter to manage its affairs, except as the same are expressly and specifically limited by this Agreement."

3. Article X, Section 1, Discipline, shall be modified as follows: "It is understood that an employee shall have the right to Union representation at any meeting that may or will result in discipline. Should the employee choose not to be represented, he/she must sign a "Union Representation Waiver and Release Statement" to be provided by the Union (see Appendix B). The Union will provide the Employer with a copy of all executed "forms" within one (1) working day of the signing. The Union shall be notified, in writing, of any and all disciplinary actions.

4. Article XIII, Holidays, Section 1, shall be modified to indicate that the parties will make every effort to schedule holidays to maximize the employee's time off between the Christmas and New Year holidays.

5. Article XVII, Section 5, Layoff, shall be modified as follows: "G. Notwithstanding anything to the contrary herein contained in this Collective Bargaining Agreement, seniority as utilized in the parties' Collective Bargaining Agreement, including, but not limited to, determining layoffs and bumping rights, shall be determined by the actual time that a bargaining unit member is employed by the City as an active member of the bargaining unit. Any portion of an employee's career of employment with the City that is served outside of the bargaining unit shall not be counted towards that employee's seniority."

6. Article XVIII, Promotions, Temporary Promotions, working Out of Classifications and job Assignment, shall be modified to delete the duplicative language of Section 2, Temporary Promotions.

7. Article XIX, Wages, shall be modified to provide the following wage increases across-the-board:

July 1, 2004 - June 30, 2005	3%
July 1, 2005 - June 30, 2006	3%
July 1, 2006 - June 30, 2007	2%
July 1, 2007 - June 30, 2008	2%
July 1, 2008 - June 30, 2009	2%

8. All unresolved issues as set forth in the City's letter to the Union representative of September 24, 2004 are null and void.

9. All other terms and conditions of the parties' Collective Bargaining Agreement that

expired on June 30, 2004, not otherwise amended or modified by this Tentative Agreement, shall remain in full force and effect.

10. This Tentative Agreement shall become fully binding on all parties upon the appropriate ratification by both the Employer and the Union.

11. The wages set forth in Paragraph 7 in this Recommendation, as set forth above, are based upon the rate of pay that the individual employees were receiving as of the date of the expiration of the previous contract – June 30, 2004.

GEORGE T. ROUMELL, JR.
Fact Finder

January 25, 2006