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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

CITY OF PONTIAC

And

MERC Case DO4 A-0155

AFSCME COUNCIL 25, LOCAL 2002

Report

A. Robert Stevenson, Fact Finder

November 6, 2006

FINDINGS, OPINION AND RECOMMENDATIONS

The Fact-Finding hearings on this matter were held August 1st, 2nd, 2006 in the City of Pontiac, Michigan.

Present of AFSCME Council 25, Local 2002:

Ben K. Frimpong	Attorney for the Union
Brenda Adams-White	Council 25
W. D. Baldwin	President 2002
Vince Jimenez	Vice President 2002
Paul Mosher	Negotiating Committee 2002

Present for the City of Pontiac:

Dennis B. DuBay	Attorney for the City
Larry Marshall	Labor Relations Director
SamJuana Lopez	Temporary Executive Assistant
Ed Hannon	Former Finance Director, Consultant (August 2 nd)

My findings, opinion and recommendations follow.

INTRODUCTION

Petitioner AFSCME Council 25, Local 2002 ("Union") filed for Fact Finding January 20, 2006, seeking to resolve the ongoing contract negotiations between the parties. The Union issues included Article XV-Hours Premium Pay and Overtime; Article XV-Work Week Adjustment Cutting Hours; Article XX Health Insurance; Article XXII Wages; Article XIX-Retirement and Article XXI-General Provision. The City has also filed a Petition for Fact Finding on January 26, 2006, and amended it on February 6, 2006. In the City's Amended Petition it listed 41 issues.

According to its Petition AFSCME Local 2002 represents 150 employees. The bargaining unit has all classifications of City employees excluding temporary employees, office, clerical, police, fire and supervisory employees. The Union's contract with the City expired of June 30, 2005. According to the City Exhibit 10 the City also deals with 8 other labor organizations with no contracts currently in effect as of the date of the hearing.

The City and the Union agreed as to the scope of the Fact Finding in an Agreement dated June 20, 2006 as follows:

1. The parties agree to a new four (4) year contract to be in effect from July 1, 2005, through June 30, 2009.
2. The parties agree that the issues in dispute as listed the City's Last Best Offer (see attached Agreement of June 20, 2006).

The Agreement of June 20, 2006 presented 22 issues to be discussed. During the hearing before the Fact Finder the issues were further narrowed, as the parties were able to agree on the following:

Article XX Insurance

Section 1 Health Insurance, Subsection B. Prescription Drug Coverage
(drug co-pay)

Article XX Insurance

Section 3 Dental Insurance (current employees)

Article XX Insurance

(New provisions to be added to Section 1- new hires 2.5% contribution into a VEBA for retiree health).

Article XV Hours

Premium Pay, Overtime (1 ½ for Saturday or Sunday work). Letter of Understanding- Holiday Pay for actual holiday for Sewage Treatment Plant Operations, Water Plant Operators and Sewage Treatment Laboratory Technicians.

Article VI

Representation-Sections 1, 2 and 3.

Article XIV

Earning and Using Sick Leave, Section 1 Sick Leave (Sick Leave Accrual).

Article XIV

Earning and Using Sick Leave, Section 1 Sick Leave (Maximum Sick Leave Accrual).

Article XIV

Earning and Using Sick Leave, Section 1 Sick Leave (not earned during probation).

Article XIV

Earning and Using Sick Leave, Section 1 Sick Leave, Subsection F (sick leave in Final Average Compensation).

Article IX

Seniority, Section A (probationary employees ineligible to use sick or vacation hours during the first three months of employment) (City Brief pg. 15)

The Union presented comparable cities as to the City's Last Best Offer in Union Ex 3, 4. However, they did not testify or present union contracts that showed their relevance to the City's proposals.

The City takes the position that because of the City's poor financial condition there are no comparable cities. Because of its financial condition the City is only looking for cost savings in this negotiation. The City however, provided no cost saving data for the evaluation of its proposals. The City did submit contracts for the cities it proposed to have been historical comparables but no City testimony was given in support of specific proposals (City Ex.35-40).

Details of the City's financial condition and action taken found in testimony of Ed Hannon, Former Finance Director of the City and Larry Marshall, Director of Human Resources include attrition, layoffs, closing of Departments and State of Michigan deficit elimination plans (see pg. 4-11 of City Brief). The Union did not challenge any of the financial testimony or documents presented. The City's Last Best Offer has been turned down twice by the Union membership.

Vince Jimenez, Vice President for the Union testified as to the Union's position of the City's Last Best Offer. According to Mr. Jimenez the Union at this juncture is trying to hold on to the benefits that protect and help the employees to function as dedicated employees of the City and it has exhausted its share of concessions to the City (Union Brief p.1).

ARTICLE XXIII- WAGES

The parties in the Agreement of June 20, 2006, agreed to a four- year contract. The City had originally proposed a four- year pay freeze. The Union does not dispute the need for a pay freeze in the first three years of the contract but seeks a wage re-opener in the fourth year with the hope that the City's finances will improve. The City's position is that the wage issue can be addressed in the preparation of a new contract after the four years has expired (City Brief pg. 14). At the hearing it was mentioned by the Union that since these are departments that are generating income that additional consideration be given to them. The City position is that equity requires that all bargaining units be treated equally.

In a four- year contract while it is unlikely that the City's financial condition will change judging from the evidence presented, there is merit in having a wage re-opener in the fourth year to assess any change in circumstances. As to whether the departments are income generating I think equity would dictate that all bargaining units be treated equally.

ARTICLE XX-INSURANCE

Section 1 Health Insurance page 2 of the City's Last Best Offer

The Union agrees to page 2 of the City's Last Best Offer Section 1, A. -F and proposes the addition of H on page 50 of the original contract. The Union wishes to retain H which states, "Retiring bargaining unit employees and their spouses shall receive the above described health insurance coverage". The Union's position is that leaving this paragraph off will "alienate" the insurance benefits that the spouses have enjoyed for all these years (Union Brief p.2,3) The City's position is that the retirees would be eligible for Blue Care Network coverage but would have to pay for any other additional coverage which the City is willing to offer (City Brief p.15,16).

The Union does not object to Blue Care Network for current employees and while their concern for retirees is commendable there must a recognition that a larger share of the health cost go to the retirees. Also because of rising costs the trend to look for less costly health insurance coverage is almost universal. Under the financial circumstances facing the City, I would recommend that retirees have the same benefits as active employees.

Section 2 Health Insurance - (Employees hired BEFORE the ratification of the July1,2005 thru June 30, 2009, collective bargaining agreement.)

The Union has no objection to the City's Last Best Offer p. 2 whereby the City will only pay for Blue Care Network coverage and additional cost over the premiums for Blue Care Network will be paid by the employee (Union Brief pg.3).

As the parties agree I have no recommendation on this issue.

Section 3 Health Insurance - (Employees hired AFTER the implementation of July 1, 2005 thru June 30, 2009 collective bargaining agreement).

On page 3 of the City's Last Best Offer the City is proposing that new hires would be provided with Blue Care Network health insurance and would pay 20% of the health care premiums. Human Resources Director Marshall testified that the non-union employee group currently now contributes 10% and the PPSA unit has a tentative agreement under which they would pay 10% of the premiums (City Brief p 16). Mr.

Jimenez for the Union submits that the 20% payment of premium is quite substantial and the Union asks the premium to be cost reduced to 15%. This is because there have been various concessions by the Union and increasing the premium will only add to the burden that the members face. (Union Brief p.3,4).

While the parties agree to some contribution I would leave it up to the parties to bargain as to what that contribution should be.

Section 3 Health Insurance (New Employees Retiree Health Insurance Eligibility).

The City proposes that new hires would be eligible for post-retirement health coverage if certain age and service requirements are met (see p. 3 of the City's Last Best Offer). This proposal according to the City compares favorably with comparable communities (City Brief p.17, City Exhibit 46). The Union addressed the percentage of the premium paid by new hires but did not address the retiree eligibility proposal (Union Brief p3,4).

As there is no agreement, but no objection, I would recommend that the City's position be given serious consideration in the bargaining process.

Section 2, Retiree Health Insurance Premium Contributions for New Employees.

The City is proposing the premium for new employees retirees would be responsible for making the 20% premium contributions. City Exhibit 48 and 49 sets forth current required contributions of the comparables and current required contributions in other city units (City Brief 17). The Union in its brief does not address this issue.

If the new employees are paying a percentage of their health care it is not unreasonable that they continue in retirement however, this is a bargainable issue.

ARTICLE XV-HOURS, PREMIUM PAY, OVERTIME

Work Week

The City proposes on page 5 of the City's Last Best Offer that the City reserves the right to have employees work an adjusted schedule no fewer than 32 hours per week.

This would allow the City to schedule shortened work weeks in lieu of layoffs.(City Brief pg.17).

The Union in testimony objected to the language and sees the City trying to drastically eliminate the work hours of employees. The Union claims that this language will effectively give the employer the constant ability and an unfair power to reduce the workweek to 32 hours a week. Accordingly the Local asks that this language be kept out of the collective bargaining agreement. The Union further says that under the management rights clause the employer has the ability to reduce the workweek but before it may do so, it has to sit down and negotiate in good faith with the local (Union Brief pg.5).

It is always a good idea to give the Union notification of any change in the work hours in advance so that they have an opportunity to present alternatives to such changes. I would recommend that the parties negotiate a solution as to this bargainable issue.

Overtime (Overtime to be Paid for Hours Actually Worked Over 40 Hours in a Scheduled Work Week)

The City proposes that overtime would only be paid for those hours actually worked over 40 hours in a scheduled work week. In other words, if a paid day off occurred during the week and the individual worked an additional 6 hours, the individual would not meet the overtime threshold because he or she had actually worked only 32 hours in that work week (City Brief pg.18). The Union does not want any changes to the current contract language pg. 38-39 which makes provision for employees who have worked over certain required hours (Union Brief pg.5,6).

Traditionally the workweek is 40 hours at straight time with overtime at 1 ½ after 40 hours. This is the law under the Fair Labor Standards Act. The City's proposal is not unreasonable under its financial conditions and presents a bargainable issue. The City in support of its position cites City Exhibit 54, 55.

Call Back

The City proposes revising the minimum amount of guaranteed call-back pay to three hours (from the current three hours at 1 ½). At issue is the minimum guaranteed call-back payment. Currently it is 4 ½ hours (3hours at 1 ½) even if the work took only 10 minutes.

Under the City's proposal the employee would receive a three hours minimum. If otherwise eligible the employee who actually worked sufficient hours would be eligible for overtime payments. The Union's position is that if the Fact Finder recommends the City's position they request that the current contract language - vacation, sick leave, personal leave, and bereavement shall be considered as time worked.

Under the current contract it seems that under certain conditions there appears to be a windfall in payment in some call back situations. I would recommend because of the City's financial condition that this be a bargainable issue.

Name Change

The City is proposing on page 8 of the City's Last Best Offer that any reference to "permanent employees" throughout the contract be changed to "regular employees". The Union position is that this is not necessary. This is due to the fact that if the employer considers all permanent employees as regular employees, what is the definition for part time employees. The fact remains that the contract clearly defines the two categories of employees as full time and part-time. Currently there is not definition of part time and full time employees. The Union submits that the current contract remain as it is the only way to identify the employees for various provisions under the contract ranging from lay off to seniority to grievance filings.

The City has not demonstrated any need for the change. It is not clear what the effect this would have on the contract. If the City wants to pursue this issue they will have to establish the need and treat it as a bargainable issue.

ARTICLE XIX- RETIREMENT

Military Buyback

The City is proposing that Military Buyback be eliminated from the contract. The proposal is prospective only and would have limited, if any, impact on current employees (City Brief pg.19). The Union objects and Mr. Jimenez testified that there are employees in the forces who benefit from this language. (Union Brief pg. 12)

If the provision only is to operate prospectively I do not understand the Union's reasoning that it would effect current employees. As to the merits of a Military Buyback I recommend that parties negotiate as to the merits of the issue and its economic impact.

New Language

City proposes that any new employees shall not participate in the City of Pontiac GERS defined benefit plan. However they will be allowed to participate in the defined contribution plan. The employer will make a contribution equal to 8% of employee's base salary and the employee will be required to contribute 3% of base salary (City Last Best Offer p12. The Union accepted this proposal (Union Brief pg. 12)

As the parties agreed on this issue I will not make a recommendation.

ARTICLE XXI SECTION 10 -SUBCONTRACTING

The City is proposing that contracting and subcontracting rights are vested in the City: however they shall not be used for the purpose of undermining the Union or to discriminated against any of its members. (City Last Best Offer p.13). The change proposed by the City is the elimination of the current phrase in the contract prohibiting the lay-off of any employees arising from subcontracting. The City, in the event of subcontracting, would have to fulfill its obligations under the Public Employment Relations Act and any layoffs would follow the layoff provisions bumping procedures so that the least senior employees would be affected (City Brief p.19). The Union position is that the layoff language in the contract is the best way to deal with this issue. The

management rights clause under p.52 and the layoff language on p. 55 take care of this matter.

The issue of elimination of the requirement that subcontracting would not result in the lay-off of existing employees is a very important issue from both the City's and the Union standpoint. This is a very volatile issue from the Union prospective that can erode or eliminate the bargaining unit. Certainly the City does not want to pay for the same work twice. The current contract provide some latitude and additional latitude can be the subject of further negotiations.

ARTICLE XVIII - LONGEVITY

The City's position is they would like to phase out the payments of longevity through 2008. Mr Jimenez testified that 8 years ago, the local gave up longevity for new hires. As such it takes unequal cut for current employees because anyone with less than eight years is not receiving longevity. The Union feels that this is an unfair concession. The Union therefore asks that the current contract language on p. 45 be maintained (Union Brief pg.14).

When new hires do not receive the same benefits and working conditions there is a two tier structure that is common in light of the current competitive environment. Under the previous contract this condition existed for new hires and presented a question of equity. In the current negotiation I would recommend treating the phasing out of the longevity as a bargainable issue.

ARTICLE X- LAYOFFS

Layoffs, Section 1 (c) (Eliminate Requirement That All Temporary Employees be Laid-Off First)

The City would like the current language requiring that all temporary employees be laid off first be eliminated from the contract. Mr. Marshall testified that the current provision is unworkable. In a recent case, the Union wanted a temporary laboratory technician laid off first before several employees in the DPW were laid off (City Brief pg.20). The Union gives as an example if this provision was changed that a 25 year

employee may be laid off whereas a three month employee is kept on the job. They feel this will erode the bargaining unit and would like to keep the current contract language (Union Brief pg.15).

The City cites the case of the Union wanting a temporary laboratory technician laid off before several employees in the DPW were laid off. In that case if the employee has skills that are unique and not possessed by other employees in the unit then this would be a bargainable issue for further negotiation. If the City is trying to eliminate all temporary employees being first in layoffs it would seem to be an unreasonable request but nevertheless subject to bargaining in the City's current financial condition.

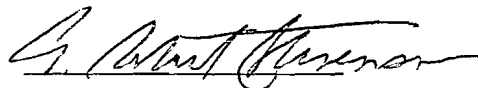
The Union in its brief is in agreement with pages 16-21 of the City's Last Best Offer (Union Brief pg.15-19). As the parties are in agreement no recommendation is offered.

SUMMARY

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

November 6, 2006

Respectfully submitted,



A. Robert Stevenson

Fact Finder