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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

CITY OF PONTIAC

-and-

TEAMSTERS LOCAL 214
_____/

MERC Fact Finding
Case No. D05-0102

Report

Thomas L. Gravelle, Fact Finder

April 10, 2007

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on February 7, 2007 in Pontiac, Michigan.

The City is represented by Dennis B. DuBay. Testifying for the City at the hearing were Carl Johnson, a municipal finance accountant with Plante & Moran, and Larry Marshall, the City's Director of Human Resources and Labor Relations. Debbie Hooper also appeared for the City.

The Union is represented by Joseph Valenti, President of Teamsters Local 214. Also present for the Union were David Sutton, Tuesday Redmond, and Debra Woods.

I have reviewed the parties' exhibits, testimony and post-hearing written arguments.

FACT FINDING LAW AND RULES

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

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

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

> Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:
>
> (a) The names of the parties.
>
> (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
>
> (c) Recommendations with respect to the issues in dispute.
>
> (d) Reasons and basis for the findings, conclusions and recommendations. ...

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

BACKGROUND

The City of Pontiac is the Employer.

Teamsters Local 214 (the "Union") represents numerous classifications of the City's civilian employees.

The previous contract between the City and the Union was for the term July 1, 2000 through June 30, 2004. (The City's fiscal year is July 1 through June 30.)

On February 6, 2006, the City filed its amended Petition for Fact Finding. (City Ex. 19). Attached was a list of 32 unresolved issues.

Except for the issues discussed below, the parties tentatively have agreed to the terms of a new collective bargaining agreement.

The following 12 issues have been presented to me:

1. Article II – Recognition, Section 3, Subcontracting
2. Article IV – Seniority, Section 6, Layoff, subsections A and F
3. Article VI – Conditions of Work, Section 1, Hours
4. Article VI – Conditions of Work, Section 3, Overtime
5. Article VI – Conditions of Work, Section 4, Call Back Time
6. Article VII – Promotions and Reclassifications, Section 3, Reclass.
7. Article IX – Fringe Benefits, Section 7, Health Insurance
8. Article IX – Fringe Benefits, Section 10, Retirement Benefit
9. Article X – Wages and Benefits, Section 3, Longevity, subsect. F
10. Article XI – General Provisions, Sect. 14, Duration and Renewal
11. New Article – Cessation of Operations
12. New Article – Police Cadets

OVERVIEW: INABILITY TO PAY

In recent years, the City of Pontiac has experienced acute financial distress. The issues must be considered with the City's dire financial condition in mind.

The City's financial distress is revealed by the following recent history:

For the 2002-2003 fiscal year, the City – because of auditor error – had an unreported deficit of $8 million. This major error was discovered by a new accounting firm – Plante & Moran – whose services the City retained in October 2004 to reconcile the City's accounts and general fund for fiscal year 2004-2005. Plante & Moran did not discover the error until the City had adopted annual budgets for the three year period July 1, 2002 – June 30, 2005. The upshot was that whereas the City had a slight general fund deficit for the fiscal year ending June 30, 2002, *i.e.*, $325,459 or .6% (6/10ths of 1%), by June 30, 2004 the deficit had ballooned to $20.8 million (or 37% of the City's general fund revenues for this one year period). (City Ex. 1). City expert Carl Johnson of Plante & Moran testified that a prudent annual general fund balance would be 15% of annual general fund receipts. Under this standard, the City's negative general fund balance would have been $29.2 million less than a positive general fund balance of 15% or $8.4 million.

Mr. Johnson testified that funding for collective bargaining agreements must come out of the City's general fund.

In addition, the State Uniform Budget and Accounting Act requires that the City have a balanced budget.

By letter dated July 26, 2005, the Michigan Department of Treasury wrote to the City a demand that the City file a Deficit Elimination Plan within 30 days as required by state law under MCL 141.921, in order to address its (revised) general fund deficit of $21,278,858. (City Ex. 2).

The Plan filed by the City states (a) a general fund deficit for the fiscal year ending June 30, 2004 of $21,278,858, and (b) an anticipated shortfall of $5,000,000 in its self insurance fund. The sum of these two deficits was $26,278,858.

In the City's Plan to balance its budget, the City (a) the City was able to turn a property tax refund it owed to General Motors into long-term debt; (b) issued $18 million ($17.6 million net of fees) in budget stabilization bonds (which it became obligated to repay); (c) drew on its budget stabilization funds ($2.8 million); and (d) allocated $1.3 million from its next year's budget.

The State accepted the City's Plan. The City's deficit was capped at $22 million, with the City having five years to eliminate it.

The repayment schedule for the $18 million bonds liability is $1.4 million for 2006-2007 and then $2.4 million a year for the next 19 years. These repayments are to be made from the City's general fund.

On April 12, 2006, the State approved the City's Deficit Elimination Plan for the fiscal year ending June 30, 2005 with starting general fund deficit of $31.8 million. The State's approval explains:

> The reported deficit in the General Fund reflects the reported accumulative deficit at June 30, 2004 as well as the additional amount of deficit resulting from fiscal 2004/2005 operations. The June 30, 2004 deficit was not known until after the close of fiscal 2004/2005, and the approved 2004 deficit elimination plan contemplated an increase of the deficit for 2005.

The City's $31.8 million general fund deficit was "eliminated" by (1) no longer booking as a current obligation $6.3 million owed to General Motors for a tax refund; (2)

transferring $2.9 million from other City transferrable funds; (3) budget stabilization bonds of $21.9 million; and (4) allocating $1.75 million from the 2005/2006 budget.

Even with these adjustments, Mr. Johnson prepared a projected financial statement for the year ending June 30, 2006 showing a general fund deficit of $6 million:

Revenues:	$50,216,223	
Expenditures:	55,503,627	
Expenditures over Revenues:	– 5,287,404	
Other Financing Sources:	6,274,122	General Motors refund refinance
	22,558,700	Fiscal Stabilization bond proceeds
	(719,811)	Bond issuance costs
	2,849,729	Budget Stabilization fund transfer
Beginning Fund Deficit:	– 31,697,547	
Ending Fund Deficit :	– 6,022,211	(City Ex. 4, pp. 1,3)

To balance its budget, the City also has taken the following difficult steps: (a) reducing its work force through attrition (not filling vacancies) and layoffs; (b) closing all recreation centers and libraries; and (c) for the year ending June 30, 2007, exhausting its last transferable fund with any money in it ($2 million).

Because the City is legally required to perform various services, it cannot continually engage in employment reductions and shutdowns. Further, because the City has exhausted its other transferrable funds, the City's general fund must stand or fall on its own.

Despite all the above actions undertaken by the City, Mr. Johnson testified that the projected general fund deficit for the two years ending on June 30, 2008 will be $10.7 million. If this projection is anywhere near accurate, this consequence for the City would be dire.

In recent years, the City's annual revenues have not kept pace with the City's expenses. For 2000-2001, the City's general fund revenues were $52.9 million. (City Ex. 1). The City's projected general fund revenues for 2005-2006 are $50.2 million. (City Ex. 4). This shows that the City's revenues have stagnated in recent years. However, health insurance premiums have sky-rocketed (as have City contributions to the District Court). Other costs also have increased, although less dramatically.

City Exhibits 7, 8, and10 show the following receipts by the City:

Years ending	Income Tax Receipts	Property Tax Receipts [1]	State Revenue Sharing [2]
June 30, 2001	$15.3 million	$9.4 million	$17 million
June 30, 2002	$14.3 million	$9.8 million	$15.4 million

[1] Property tax receipts have been seriously hindered by amendments to the Michigan Constitution. Under the 1978 Headlee Constitutional Amendment, increases in real estate taxes are limited to increases in the inflation rate, which have been very low for a number of years. Further, the following interplay of the Headlee amendment, the Proposal A Constitutional Amendment, and the Michigan General Property Tax Act, as amended in 2000, creates a perverse result when real estate is sold (or transferred): When real estate undervalued for local millage taxation is sold (or transferred) above the inflation rate, the millage rate must be reduced for every remaining taxable real estate parcel within the community. In other words, such sales or transfers have the consequence of reducing taxable value below millage value. Another concern about the City's property tax revenue is that the General Motors Corporation and its allied corporation (Centerpoint) account for 33.75% of the City's taxable value.

[2] The Michigan Constitution requires the State of Michigan to share a percentage of the state sales tax collection with local units of government. However, the state legislature has been using a significant portion of the state sales tax collection to fund the State's own enormous deficits.

June 30, 2003	$15 million	$10.5 million	$14.1 million
June 30, 2004	$14.5 million	$11.4 million	$12.7 million
June 30, 2005	$14 million	$11.3 million	$12.6 million
June 30, 2006	$14.4 million	$12.5 million	$12.4 million

In other words, for the 2000-2001 fiscal year the City's receipts from the above three primary sources of the City's revenue was $41.7 million. However, for the 2005-2006 fiscal year the City's receipts from these three sources were only $39.3 million – a decline of $2.4 million from five years earlier. In addition, if these three sources had merely held constant at their 2000-2001 levels, the City's receipts for the ensuing five fiscal years would have been an additional $13.6 million! [3]

For the 2000-2001 fiscal year, the City's general fund balance was only 3% (or $1.7 million) of the general fund revenues of $52.9 million. However, for that year the City's general fund expenditures were $59.4 million – a clear danger signal because these expenditures were 12% in excess of revenues. After 2000-2001, the City began its unbroken string of annual general fund deficits. As mentioned above, a prudent general fund balance is 15% of annual revenues.

Meanwhile (even with reductions of employees through attrition and layoffs) the City's annual health insurance costs increased almost 50% from the fiscal years ending June 30, 2001 ($10.2 million) and June 30, 2006 ($15.13 million). (City Ex. 11). This

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[3] If the City's state revenue sharing had merely held constant at $17 million (2000-2001), the City would have received an additional $17.8 million over the ensuing five fiscal years. If the City's income tax receipts had held constant at $15.3 million (2000-2001), the City would have received an additional $4.3 million over the ensuing five fiscal years. Only property tax receipts increased after the 2000-2001 fiscal year.

computes to a total increase of $19 million over what the City paid in 2000-2001. Further, for the 2005-2006 fiscal year, the City paid $581,582 in medicare premiums for retirees.

In addition, the City's payments to fund the District Court rose 60% from the fiscal years ending June 30, 2001 ($1 million) and June 30, 2006 ($1.6 million). This computes to a total increase of $1.9 million over what the City paid in 2000-2001.

In summary, for the fiscal years following 2000-2001 the City has received $13.6 million less than what it received for taxes and revenue sharing in 2000-2001 whereas it has paid out $20.9 million more than in 2000-2001 for health care and district court costs.

In addition, the City is obligated to repay its recently obtained deficit elimination bonds at the rate of the $1.4 million for 2006-2007 and beginning in 2007-2008 and thereafter $2.4 million annually.

The City is seeking to control its expenditures. Also, several of the City's proposals are designed to give it greater flexibility or discretion in making managerial decisions. Because the City's management staff (like other employing units) has constricted in recent years, it seeks some contractual streamlining so that it can more efficiently do its duties (which in recent years have included its efforts to restore the City to solvency).

DISPUTED ISSUES

1. ARTICLE II – RECOGNITION, SECTION 3, SUBCONTRACTING

The City has proposed to revise Article II as follows:

Section 3. Subcontracting

The rights of contracting or subcontracting are vested in the City; however they ~~shall~~ *will* not be used for the purpose ~~of~~ or intention of undermining the Union or to discriminate against any of its members. ~~No employee shall be laid off or demoted or caused to suffer a reduction in overtime work as a result of the same or substantially the same work being performed by an outside contractor on a regular basis.~~

The City argues that the second sentence of the current language is "pointless – the City could only contract out work which would not involve the layoff of unit personnel. But to effectively privatize any department, or portion thereof, the City will need the ability to reduce the size of the workforce; otherwise there would be no financial saving to the City."

Six of the nine employee groups in the City have no "contracting out" language. (City Ex. 35). The absence of such language does not preclude contracting out in various circumstances. See *e.g.*, ELKOURI & ELKOURI, HOW ARBITRATION WORKS, 6TH Edition (BNA Books 2003) 743-757.

Because of the City's dire financial condition, it may have sound financial reasons at some time in the future to engage in some privatizing. Under the language proposed by the City, the City still would be precluded from privatizing work if it did so to "undermin[e] the Union or to discriminate against any of its members."

For the above reasons, I recommend adoption of the City's proposal.

2. ARTICLE IV –SENIORITY, SECTION 6, LAYOFF, SUBSECTIONS A & F

The City has proposed to revise Article IV as follows:

Section 6. Layoff

A. Layoffs shall be made in conformity with the principle of seniority i.e., the last one hired being the first one laid off, and the first one laid off shall be the last one recalled. In the event layoffs become necessary, senior employees shall be entitled to transfer to any other jobs, in equal or lower classifications, ~~in their bargaining unit held by less senior employees , provided they are able to perform the duties~~ *provided that they previously held status in those classifications and were not previously removed from the classifications for misconduct or inability to perform. Alternately, senior employees my be eligible to transfer to a job in an equal or lower classification provided that they can perform the duties. The Human Resources Department shall have the sole discretion to determine the eligibility of an employee to transfer to a job where the duties are different than those that the employee is currently performing.* The exercise of bumping rights, under this section, by seniority, employees shall be directed to the position or job held by the least senior employee in the class or title. The employee will be given a ~~ten (10)~~ *five (5)* working day trial period (which can be extended five (5) days at Management's discretion) to ~~satisfactorily~~ *familiarize* themselves with job duties and to demonstrate the ability to perform.

F. ~~Employees laid off shall have recall rights equal to the length of seniority. However, those employees who are on the recall list as of July 1, 2000 will be removed from the recall lists on the effective date of ratification.~~ *If there is no position available the employee involved should have the choice of taking a voluntary demotion to a position that the employee previously held status, or a layoff. As soon as a position is available in the former class however, or any classification of equal or lesser pay covered by the Pay Plan contained in this agreement that the employee previously held status the employee shall request to be transferred to it within fourteen (14) days without examination. The employee will be given a five (5) working day trial period (which can be extended five (5) days at Management's discretion) to satisfactorily familiarize themselves with the duties of the job and demonstrate their ability to perform.*

The proposed language does not eliminate layoff and transfer rights. The key principle of layoffs and recalls by seniority is preserved (with ability to perform as a condition of recall tightened up). In other words, the proposed language reduces (but does not eliminate) employee challenges to the City's decision-making.

I recommend that the City's proposed revisions be adopted.

3. ARTICLE VI – CONDITIONS OF WORK, SECTION 1, HOURS

The City has proposed to revise Article VI Section 1 A, retain 1 B, and delete 1 C as follows:

Section 1. Hours

A. *The City of Pontiac reserves the right to establish the standard workday and workweek for all bargaining unit employees.* The *current* standard duty day for ~~all bargaining unit~~ employees ~~shall consist of~~ *will be* eight (8) consecutive hours, exclusive of lunch periods, ~~The~~ *and the current* standard workweek shall consist of five (5) consecutive ~~duty~~ days. ~~Beginning and ending times shall be established by the City on a reasonable basis in relation to the needs of the City.~~ *The City, however, at its discretion shall have the authority to change the standard work day and/or workweek of bargaining unit employees. Should the City of Pontiac revise the workweek and/or work day pursuant to the above-referenced language, said change shall in no way modify an employee's tenure as a full-time employee of the City of Pontiac, nor shall such days without pay reduce the employee's accrual of any benefits that are awarded on the basis of hours worked. Such days taken off without pay shall be considered as time worked for allocation of all benefits and for purposes of eligibility for overtime payment and retirement.*

Most of the external comparable communities and employee units within the City allow the employer to determine work schedules.

While it is true that the proposal would permit the City to reduce the workweek (for example, in lieu of layoffs), any reduction would not change an affected employee's tenure as a full-time employee, nor reduce the employee's accrual of any benefits awarded on the basis of hours worked, *i.e.*, such days taken off would be considered as time worked for allocation of all benefits and for purposes of eligibility for overtime pay and retirement.

Because of the City's need for some flexibility in its ongoing efforts to right itself financially and because of the protections contained in it, I recommend that the City's proposed revisions be adopted. However, to avoid conflict with Article VI, Section 3, Overtime, I would add the following language at the end of subsection A:

> Overtime eligibility in this subsection shall take precedence over the limit on overtime eligibility contained in Article VI, Section 3, Overtime, or elsewhere in this Agreement.

4. ARTICLE VI – CONDITIONS OF WORK, SECTION 3, OVERTIME

The City has proposed to replace the first paragraph of Section 3, with the following new language:

> **Section 3. Overtime**
>
> *Upon the implementation of the July 1, 2004 through June 30, 2009 Collective Bargaining Agreement overtime will be paid at time and one half for all hours actually worked over forty (40) hours in a scheduled work week. Paid time off for sick, vacation, personal leave, holiday, bereavement leave, and/or jury duty shall not be considered as time worked. This constitutes the entire understanding between the parties as it relates to the rate of overtime that will be paid to any employee for any reason. It is further understood between the parties that any existing contract language inconsistent with this understanding shall be rendered null and void.*

The City next proposes to delete current subsection A and reorder subsections B and C as A and B, to delete current subsection D, and to add the following new subsection C:

> *C. An employee may receive overtime payment in compensatory time off instead of cash; however all compensatory time accrued must be used in the same calendar year earned or it will be paid in cash at the end of the year. No employee may accrue more than forty (40) hours in his or her compensatory bank at any given time. No compensatory time earned in one calendar year can be carried over to the next calendar year.*

In calendar years 2005, 2006, and 2007, the City huge paid huge amounts of contractual overtime and double time. (City Ex. 79). Payments of overtime, double time and comp time (paid or used) for this bargaining unit have been proportionately less than for the entire City work force; however, for calendar years 2005 and 2006 these payments still amounted to $297,000. (*Id.* p. 3).

The proposed language adopts a strict standard of time and one half pay only for hours actually worked in excess of 40 hours in a scheduled work week.

Because of the City's financial distress, I recommend that the City's proposed amendment be adopted.

5. ARTICLE VI – CONDITIONS OF WORK, SECTION 4, CALL BACK TIME

The City proposes to revise Article VI by deleting Section 4 and by reordering the remaining sections of Article VI. Section 4 states:

> **Section 4. <u>Call Back Time</u>**
>
> Employees called back outside of their regular hours shall be paid overtime rates for the total time worked with a minimum of three (3) hours

at time and one-half for each call back. Overtime rates shall be discontinued at the beginning of a regular work day. Where possible, call back time shall be evenly distributed among the employees of the department.

Here, the City is interested in eliminating the minimum hour guarantee.

I think that when an employer calls an employee back outside of the employee's regular hours, the employer should bear some responsibility for some time to be paid. I think that a two hour minimum is reasonable. This way if the employer were to change its mind on the employee's arrival at work outside regular hours or were to provide a very short amount of work, the employee would be treated inequitably. On this point, the employer would control the length of the call back.

For these reasons, I recommend that the City's proposed language be modified to state:

> Employees called back outside of their regular hours shall be paid regular rates for the total time worked, with a minimum of two (2) hours of pay for each call back. If a called back employee is paid for more than 40 hours in a scheduled work week, the employee will be paid at time and one half for all hours worked over forty (40) hours in the scheduled work week.

6. ARTICLE VII – PROMOTIONS AND RECLASSIFICATIONS, SECTION 3, RECLASSIFICATION

The City has proposed to amend Article VII – Promotions and Reclassifications as follows:

> **Section 3 Reclassification**
>
> A. Should an employee feel that the duties of their position represents a substantial change in work responsibilities, the employee can submit a request to the Union and the City for an audit of the position. Such

request shall be limited to not more than one each ~~twelve (12)~~ *twenty-four (24)* month period.

A reason for this proposed change is that some employees request a position audit every 12 months, and this is both unnecessary and an administrative burden.

Because of its staff reductions, the City is required to run a "tight ship," and needs to avoid redundant exercises.

For these reasons, I recommend the City's proposed revision.

7. ARTICLE IX – FRINGE BENEFITS, SECTION 7, HEALTH INSURANCE

The City proposes to revise Article IX – Fringe Benefits, Section 7 Health Insurance as follows:

Section 7. Health Insurance

A. The City shall provide all bargaining unit employees with *health insurance in the following plans:*

1. *Health Alliance Plan – HMO*
2. *HAP – PPO*
3. *Blue Cross/Blue Shield – Traditional*

Employees shall pay a ten dollar ($10) deductible drug rider for all generic drugs and a twenty dollar ($20) deductible drug rider for all brand name drugs.

B. *Effective with the implementation of the July 1, 2004 through June 30, 2009 Collective Bargaining agreement, employees will be responsible for paying ten percent (10%) of all health insurance premiums. All such payments will be deducted from the employee's payroll using pre-tax dollars.*

C. The City shall provide all ~~retiring~~ bargaining unit employees *retiring from the General Employee Retirement System* and their spouses *with* the above described health insurance coverage. *Individuals retiring after*

implementation of the July 1, 2004 through June 30, 2009 Collective Bargaining agreement shall also pay the above-referenced preferred prescription riders and premium co-pays.

D. In order for a person hired after implementation of the July 1, 2004 through June 30, 2009 Collective Bargaining agreement to be eligible for post retirement health care coverage, the employee must have completed ten (10) years of services with the City of Pontiac and be at least sixty (60) years old and/or the employee must have completed twenty-five (25) years of service and obtained the age of fifty-five (55). The employee shall be responsible for making all insurance premium co-payments on a monthly basis to the Department/Division designated by the City of Pontiac.

Reorder current subsections D – H as subsections E – I. Also delete the word "one" from "one calendar year" in current subsection F/proposed subsection G.

The City has proposed (a) to increase the drug rider to a $10 generic/$20 brand name deductible; (b) employees pay 10% of all health insurance premiums; (c) for an employee to be eligible for post-retirement health care coverage, the City would require 10 years of service and at least 60 years of age and/or 25 years of service and age 55; and (d) the eligible retiree would be responsible for making all insurance premium co-payments on a monthly basis to the City.

Even with reductions of employees through attrition and layoffs, the City's annual health insurance costs increased almost 50% from the fiscal years ending June 30, 2001 ($10.2 million) and June 30, 2006 ($15.13 million). (City Ex. 11). This computes to a total increase of $19 million over what it paid in 2000-2001. Further, for the 2005-2006 fiscal year, the City paid $581,582 in medicare premiums for retirees. These medical care costs can be expected to increase.

AFSCME and the City have agreed to negotiate an employee health care contribution.

The non-union management group has a $10/$20 drug co-pay and employees currently contribute 10% to their health insurance premiums.

A recent Act 312 Award (between the City and the MAP/Pontiac Police/Fire Dispatchers Association) directed that employees hired after July 1, 2006 to pay 20% of their health insurance premiums.

In another recent Act 312 proceeding, the parties' agree to a $10/$20 prescription co-pay and further:

> Although the City's request for a 10% employee contribution to their health care premium was not accepted by the Arbitration Panel, Arbitrator Barnes suggested that, given that the national average for employee contribution to health care premiums is between 15-27%, in the future the City should consider laddering the contributions upward, beginning at 5%.

I agree with the suggestion of Arbitrator Barnes cited above.

For these reasons, I recommend that employees pay 5% of their health insurance premiums for the 2007-2008 contract year, and 10% annually for ensuing contactual year(s). I also recommend adoption of the $10/$20 prescription drug co-pay and the new provisions for retirees.

8. ARTICLE IX – FRINGE BENEFITS, SECTION 10, RETIREMENT BENEFIT

The City has proposed to revise Article IX, Section 10 as follows:

Section 10. Retirement Benefit

The parties agree that the interpretation, meaning and application of any pension benefit negotiated under this section shall be made by the

Director of Human Resources subject to challenge only by the Union through the grievance procedures contained in the Collective Bargaining Agreement. This includes the determination of a member's service years and applicable salary for determining final average compensation.

A. Eliminated.

B. To be eliminated.

C. The City agrees to modify the method of determining the employee's retirement annuity by utilizing the highest consecutive three (3) years of the employee's last twelve years to calculate the final average compensation. *The Human Resources Director subject to the grievance procedures of the Collective Bargaining Agreement shall determine any disagreement between the employee and the retirement division as to the benefit years eligible for use.*

D. Effective July 1, 2000, employees can retire with twenty-five (25) years of service at age fifty (50) through age fifty-four (54) with a one-half (½) percent penalty for each year under thirty (30).

E. delete 1, 2 and 3 and add:

Employees who elect to retire from the City of Pontiac under the GERS shall have the ability to begin said retirement on the date selected by the retiring employee as long as the employee has obtained the required age and service years. Employees should give at least thirty days' notice to the City's Retirement Division to allow for the processing of the employee's application for retirement and any related administrative procedures required by the system. Failure by a retiring employee to give thirty days' notice of pending retirement may result in a delay in receiving pension benefits but it shall not result in a change in the retirement date selected by the member.

F. Any employee hired after implementation of the July 1, 2005 through June 30, 2009 Collective Bargaining Agreement shall not be allowed to participate in the General Employees Retirement System defined benefit plan. These employees will however be allowed to participate in a defined contribution plan, established by the City of Pontiac and administered by the Human Resources Department. The employer will make a contribution to the plan equal to eight percent (8%) of the employees' base salary and the employee shall be required to contribute three percent (3%) of their base salary to the plan.

This proposal provides that the City's Director of Human Resources will make interpretations and applications of any pension benefit, with this decision subject to the parties' grievance procedure. This proposal also provides that employees hired after implementation of the parties' new agreement will have a defined contribution plan rather than the defined benefit plan.

Authorizing the City's Director of Human Resources to decide pension questions in the first instance is another instance of the City's effort to clarify and streamline procedures.

Providing a defined contribution plan for new hires was recently agreed to by the City and AFSCME in those fact finding proceedings. The benefit to an employer of a defined contribution plan is that it allows the employer to budget accurately its contributions, i.e., the employer would not bear "the risk of loss" if investments soured. If the City recovers financially, the parties could agree to increase contributions level to the defined contribution plan.

Because of the City's problems, I recommend that its pension proposals be adopted by the parties.

9. ARTICLE X – WAGES AND BENEFITS, SECTION 3, LONGEVITY, SUBSECTION F

The City has proposed to revise Article X – Wages and Benefits, Section 3 Longevity as follows:

> F. ~~Such longevity payments will be made annually during the first part of December of each year.~~ *Longevity payments will be eliminated for all bargaining unit employees after the 2009 longevity allotment. In addition,*

longevity payments for 2007, 2008 and 2009 will be paid based on the following schedule:

2007 Longevity payments will be calculated at 75% of the longevity paid in 2006.

2008 Longevity payments will be calculated at 50% of the longevity paid in 2007.

2009 Longevity payments will be calculated at 50% of the longevity paid in 2008.

Of the City's employing units, the non-Union management employees receive no longevity pay. For the City's bargaining units, longevity pay has been eliminated for new hires as early as October 1, 1995 (Pontiac Professional Mgt. Assn.) (City Ex. 70).

Under the City's proposal, longevity for all bargaining unit members will be totally eliminated after the 2009 longevity allotment.

For 2005, the City paid $1.2 million in longevity pay to all eligible employees, of which Teamsters members received $94,468. For 2006, the City paid $1 million in longevity pay to all eligible ernployees, of which Teamsters members received $71.281. (City Ex. 79, p. 2).

Because of the City's financial condition, I am recommending that the City's proposal be adopted. I would add, however, that should the City become restored to financial health in future years, the parties might wish to re-examine the total elimination of longevity pay (which does provide some incentive to senior employees to remain in the City's employment). In addition, if it would aide in reaching settlement, the parties might consider the AFSCME resolution of this issue, *i.e.*, no longevity for new hires.

10. ARTICLE XI – GENERAL PROVISIONS, SECTION 14, DURATION AND AUTOMATIC RENEWAL

The City has proposed to revise the beginning of Article XI, Section 14 to provide:

> This Agreement shall become effective *upon implementation and shall represent the time period of July 1, 2004 through June 30, 2009* and its terms and conditions shall remain in full force and effect until June 30, 2004 and from year to year thereafter, etc.

The Union has proposed a contract termination date of June 30, 2008.

The advantage of the City's proposal is that it would provide about two years of contractual stability. The advantage of the Union's proposal is that if the City's financial condition improved significantly in the next year (not very likely, as I have explained above) the parties could consider some financial improvements for bargaining unit members.

If the parties can promptly ratify a new agreement, I would recommend June 30, 2008 term. However, if the parties are unable to ratify a new agreement within a reasonable time, I would agree with the City's proposed June 30, 2009 term.

11. NEW ARTICLE – CESSATION OF OPERATIONS

The City proposes to add the following new article:

Article _____ – Cessation of Operations

Effective with the July 1, 2004 through June 30, 2009 Collective Bargaining Agreement, any department may cease operations curing the period of Christmas Day through New Year's Day. Such closure will be unpaid time off except for City recognized holidays as referenced in Article IX, Section 6 of the Collective Bargaining Agreement. It is

understood between the parties that any existing contract language inconsistent with this understanding shall be rendered null and void.

The City's Supervisory & Administrative Employees Association has accepted this proposed language. Mr. Marshall added that he thinks the AFSCME unit also will accept this proposed language. Employees laid off for this period would be free to apply for unemployment benefits. Further, banked compensatory time or vacation time could be used during the layoff (although this could affect eligibility for unemployment benefits).

Because of the City's financial condition, I recommend that the parties' adopt the City's proposal.

12. NEW ARTICLE – POLICE CADETS

The City proposes to add the following new article.

Article _____ – Police Cadets

Effective with the implementation of this Agreement, the classification of Police Cadet, Class Code 1625 and all duties and responsibilities currently performed by employees so classified shall be eliminated from the Teamsters Local 214 Bargaining Unit. It is further understood between the parties that the classification of Police Cadet and the duties and responsibilities of the classification shall be transferred to non-union status.

Currently, there are no police cadets employed by the City. Should the City hire a police cadet who fails to become a Police Officer within a certain time period, it does not make sense to continue the failed cadet as a "career failed cadet" in the Teamsters

bargaining unit. It would make more sense for the City simply to replace the failed police cadet with a new cadet capable of qualifying to become a Police Officer.

For the above reasons, I recommend that the City's proposal be adopted by the parties.

Respectfully submitted,

TL Gravelle

Thomas L. Gravelle, Fact Finder.