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STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding

City of Wyoming,
Employer,

-and-

MERC Case No. L08 E-9016

Wyoming City Employees Union
Union.

FACT FINDING REPORT

STATEMENT OF THE CASE

Wyoming City Employees Union (WCEU/Union), filed a petition for Fact Finding on July 14, 2008. The City filed an Answer on July 24, 2008. On September 12, 2008, MERC appointed Kenneth P. Frankland pursuant to Act 176 of 1939 as Fact Finder. A pre-hearing conference was held on October 8, 2008 and a report was generated regarding the conference on October 9, 2008. (E Vol 1, Exhibit 2).

At the hearing, the Union withdrew three of its issues and agreed to City item 7(See, U Brief, Exhibit A). Thus, three Union issues and eight City issues remain for discussion. The parties also took under consideration the issue of comparability and agreed to meet and confer with respect to communities that might be comparable. However, the lists submitted by the parties disclose agreement on five, cities of East Grand Rapids, Grand Rapids, Holland, Kentwood and Muskegon. (E Vol 1, Exhibit 2). Additionally, the City proposes the cities of Grandville and Walker; and the Union proposes the cities of Kalamazoo, Lansing and Muskegon Heights and Kent County Road Commission.

A fact finding hearing was held on February 25, 2009, at the City offices in Wyoming , Michigan. Numerous exhibits were introduced and testimony was taken. Briefs were filed on June 12, 2009. The parties have agreed to incorporate tentative agreements into a new agreement.The remaining issues as identified in "Summary of Negotiations, dated July 15, 2008 are:

City Issues

1. Item 3, Shifts
2. Item 9, Employee Health Insurance Contribution
3. Item 10, Part-Time Employees
4. Item 11, Part-Time Employees (delete language)
5. Item 12, Wages, **only the question of retroactivity**. The parties have agreed to the language incorporating the amount of wage increase.
6. Item 13, Retiree Health Insurance
7. Item, 17, Wage steps
8. Item 18, Retroactivity of all items in dispute.

Union Issues

1. Item 6, Bereavement
2. Item 15, Pension, increase pre age 58 medical to $20 per month
3. Item 19. Longevity

BACKGROUND INFORMATION

Before going into the merits of each issue, a few prefatory comments are in order. Fact Finding is a process to present the facts to a neutral third party, along with the respective positions of the parties and thereafter a report is generated by the fact finder with recommendations to resolve the disputes and develop a new collective bargaining agreement. By bringing the issues to public scrutiny with public discussion, it is thought as a way to reach an accord.

Similar to mandatory police and fire arbitration, each party designates communities it believes to be comparable and uses data from those alleged comparable communities to support its position. More often than not, the communities that are selected will

have provisions in existing collective bargaining agreements that mirror or at least support the position that the party is taking in this proceeding.

The Union has not presented information at the hearing or in its Brief why its disputed comparables should be accepted. The City has presented information (E Vol 1, Exhibit 4) and argument at Brief, pp. 9-11.

As to the City suggestions of Walker and Grandville, I accept each for reasons stated by the City. Specifically, being adjacent to Wyoming and sharing a common main artery, 28th Street, are sufficient to include them.

As to Kent County Road Commission, I reject a county entity out of hand. Cities should be compared to cities. Counties or county road commissions have different political and organizational structures; funding sources are different and usually counties dwarf cities in population.

As to cities suggested by the Union, I adopt I adopt Kalamazoo but not Muskegon Heights or Lansing. First Wyoming is on the west side of the state as is Kalamazoo. The latter is only 48 miles from Wyoming and shares a common main artery US 131; it has the same square mileage; is close in population as well as taxable value. Lansing is in the central part of Michigan and does not share some of the anomalies of the western side of the state. Second, Lansing has almost twice the population of Wyoming and has a third more square miles but surprisingly, significantly less taxable value, thus less comparable. Muskegon Heights is only 39 miles away but that is the only statistic that is comparable. It has only 3 square miles; five times less population; has less than a tenth of the taxable value as Wyoming and the median household income and median housing values are at least 50% less than Wyoming. Thus, I will not consider the proffered CBA's of Kent County Road Commission, Lansing

or Muskegon Heights. That leaves eight cities to use for comparisons, definitely a wide cross section.

DEMOGRAPHIC AND ECONOMIC INFORMATION

The City of Wyoming contains 25 square miles in Kent County situated in southwestern Michigan with the major population center of Grand Rapids to the north and Kalamazoo to the south and bordered by Grand Rapids, Grandville, Kentwood and Walker. It has a seven person elected city council and the council appoints a city manager to run the day-to-day operations.

Wyoming had a 2008 census of 70,440, 15th largest in Michigan and 3rd largest in west Michigan. Its property tax base is 53% residential and 46% commercial or industrial. Of the latter, a 2009 closed GMC facility is the largest taxpayer at $109,513,457 taxable value and a Delphi facility is still in bankruptcy.

There are 401 employees in six departments including the employees in the 62-A District Court and the Housing Commission. The latter two are separate entities but their employees are part of the Union and are signatories to the expired CBA. (E Vol 1, Exhibit 25). There are five other internal bargaining units: police patrol, police command, firefighters, emergency communications operators and administrative and supervisory. The CBA's are in E Vol II, Exhibits 1-5. The status of each group is in E Vol I, Exhibit 7.

Wyoming uses a July 1 to June 30 fiscal year. The 2008-2009 budget is at E-Vol IV, Exhibit 2 and the last audited budget with the Finance Department Report is for June 30, 2008. (E Vol IV, Exhibit 1) The Report notes Wyoming received an unqualified opinion that its financial statements were fairly presented in conformity with GAAP. Further, the Report notes Wyoming has benefitted from the relocation of Metro Hospital from Grand Rapids to Wyoming as well as some residential and commercial growth in

the southwest sector.

Wyoming is self-insured for most risks and starting in FY1997-98 self-funded the health and dental plans with excess coverage of $125,000 per claim. In FY 2007-08 the Insurance Fund experienced an operating gain of $1,925,653, including investment earnings but did incur a 12% increase in claims costs.

Most employees are in a defined benefit pension plan. Wyoming fully funds each years contribution as determined by an actuary each year. As of June 30, 2008, the accrued assets exceeded the accrued liabilities by $3,330,000. Contributions to the plan were exceeded by benefits paid out in 2007-08, the tenth time this has happened.

Wyoming provides post-retirement health benefits for retirees and their dependents and 223 retirees received benefits in 2007-08. The Union points out that GAAP Statement 45 now requires cities to provide information only on funding progress of post-retirement health care benefits for retirees but does not require they be fully actuarially funded as Mr. Holt may have implied, as viewed by the Union. As of June 30, 2007 the unfunded accrued liability is approximately $52.3 million. There was considerable discussion at the hearing on this point. In reality, a City needs to have a Fund in place and demonstrate how the accrued liability will ultimately be satisfied. There is no immediate need to fund the entire accrued liability. The City projects a 30-year amortization schedule of $3 million which it states is not available under current projections.

FY 2008-09 budget (E-IV, Exhibit 2) has general fund total expenditures of $30.6 million and projected surplus of $7.5 million, 24.4% of operating expenditures. In contrast, the last audited report is for FY 2007-08 (E-Vol IV, Exhibit 1) and the Fund balance was $8.1million or 27% of expenditures. The combined fund balance as of June 30, 2008 was $21.6 million. (E-Vol IV, Exhibit 1, p.3). The auditors noted that 97% of the

fund balance was available for discretionary spending. The Union points out that the amount of discretionary spending in the FY 2008-09 budget is 6.62% not the 2.54% stated in the pie chart in E-Vol 1, Exhibit 26, p.15. They compute that to be $1.231million and a potential source to address some of the Union economic requests.

While these numbers are impressive and a tribute to the city's generally conservative approach to budgeting, Wyoming has economic challenges predicated upon a much bleaker picture of the revenue stream. The Union characterized the city presentation as a "worst case scenario". No matter how characterized, the facts are that revenue will decrease in 2009 and possibly beyond.

The property tax base will be affected by closing of the GM facility, the largest taxpayer, by far. Also the Delphi facility, second largest tax payer, is clouded by its bankruptcy. Further, recent economic conditions have adversely affected all property values and it is unknown what the taxable values will be in the future. Instead of an increase of an average of 2.81% for the last 10 years, the city anticipates a decline of 1.5%. State revenue sharing is in free-fall; it has declined since 2001 and current state legislative activity suggests further erosion.

While revenues are declining, expenditures continue to rise at or above COL. Wyoming estimates that 78% of general fund expenditures are for wage and fringe benefits of all employees. (E-Vol I, Exhibit 26). These are increased pension contributions, higher health care costs and wage concessions in existing CBA's. Wyoming has cut employees from 464 in 2001 to current 401.

The current contract expired June 30, 2008. The parties have agreed to a new 3-year contract from July 1, 2008 to June 30, 2011. There are 401 employees in Wyoming and all non-exempt employees are organized into 6 unionized bargaining groups,

including this one. Four of the units are subject to Act 312.

DISCUSSION OF ISSUES

[In the order of appearance in the Contract and at the hearing.]

1. City Item 3 - Work Shifts

There are two issues here.

Current Article VI, Section 7, fourth sentence says," Shifts shall be established for a minimum of eight (8) weeks and a maximum of twenty-six (26) weeks." The City proposes to change 8 to 4 weeks. The Union counters with 6 weeks.

The information at the hearing was brief on this point. Mr. Kohrnescher said the parks department may have seasonal work of short duration, less than 8 weeks and this provision requires at least 8 weeks and thus the City doesn't want to be tied to an 8 week minimum. The Union says the City proposal is too broad and might have applications elsewhere other than in the parks scenario but is willing to go to 6 weeks as a way of meeting some short term seasonal needs in the parks department or similar situations. The City says no other internal unit has this kind of limitation nor do any of the comparable communities. This may be true but adds little to the discussion without knowing the history of how the 8 weeks got into this contract. We have 196 members in this unit according to Mr. Gard almost half of all City employees and thus many employees could be affected.

RECOMMENDATION

The party proposing change has the burden of proof. Here, the City has a plausible explanation for the change but not convincing to change a provision that the Union claims in its Brief to be of long duration. There was no testimony on the history so

I have no way of knowing if this is an accurate statement. Suffice it to say, the Union is willing to go half way on this and in the absence of any compelling reason why not to accept the Union suggestion I **recommend the language be changed to six instead of eight weeks.**

The second issue on this Article is the City proposal to add a third paragraph to Section 7 as follows:

> Not withstanding the above, the City shall have the right to assign employees to shifts that are in the best interests of the City. The Union shall have the right to grieve the reasonableness of the City's decision.

The Union opposes the addition of this language.

Mr. Kohmescher testified the City wants this authority to fill in a gap in its ability to respond to an extraordinary emergency situation. A water treatment plant employee died unexpectedly and because of the skill and nature of the work involved, a volunteer replacement would be problematic. The issue was resolved with the cooperation of the Union but if no cooperation was forthcoming in the future and no volunteer emerged, this provision would allow the City to make a change immediately. The Union or individual would have the right to grieve the reasonableness of the assignment.

The Union counters that this is too broad and would jeopardize seniority rights conferred in Article VIII, Section 1, Seniority (2). Therein shift preference, subject to Article VI Section 7, is governed by departmental seniority. Mr. Gard testified that even if a grievance were successful, by the time it was arbitrated, the shift could well be over and the time on an undesirable shift cannot be replaced. While arbitrators have broad remedial powers in terms of economics, this seems to be a valid point. If a shift change creates a major impact in the quality of the employee's lifestyle or of his/her family that is irreplaceable.

The City cites the Police Officers and Police Command Officers CBA's as precedent for exceptions to seniority- based shift assignments. However, examination of the specific language in the collective bargaining agreement shows it is not a grant of broad discretionary management powers but rather controlled by many caveats and contingencies, none of which are in the language proposed here.

RECOMMENDATION

The proposed language should not be adopted.

The City has the burden and has not demonstrated why such broad language that would jeopardize existing seniority rights of union members is necessary. The Union cooperated in the solution of a difficult situation in the only example used as the rationale for this provision. The city could well look at Article 20, Section 1, d. of E-Vol II, Exhibit 3 for a possible change. Any provision should define and incorporate the emergency situation as a condition precedent, seek volunteers with the Union assistance and even consider an inverse seniority system to find a replacement. Only after such efforts are exhausted should the city then have discretion to name an involuntary shift replacement.

2. Union Item 6 - Bereavement - Article X

At the hearing the Union withdrew its proposal regarding 5 days for Mother or Father. Instead the Union proposed the following change to Article X, Section 2 (1):

> "... Five (5) days off shall also be permitted in the case of a medically determined miscarriage or still birth, experienced by an employee or the employee's spouse." (Delete balance of that sentence) The balance of Section 2 would remain the same as the current contract.

Wyoming opposes any change to the section.

Currently, the five day leave applies in the event of a miscarriage or still birth if

there was a funeral or memorial service, or if the fetus met the state standard of 20 weeks gestation. This proposal would eliminate those qualifying requirements and allow the leave with just a medically determined miscarriage or still birth. Ms Halrn testified any miscarriage is physically and emotionally significant and should qualify for the five day leave. Mr. Kohmescher testified that this provision is unique to Wyoming and has beeri in the contract for rnany years but he did not know how or why it became a part of the contract. He explained the current objective standards rnade application easy and the proposed language would create possible subjective decision-making by rnanage-ment - an undesirable result.

RECOMMENDATION

I recommend that the proposal not be adopted.

The Union has the burden here and has not provided sufficient credible informa-tion why the existing language is not working or what substantial past practice needs to be changed. No information was offered as to members being aggrieved or denied leave because the 20 week standard is too long. While Ms Halm offered a thoughtful and conscientious opinion, more facts are needed rather than reliance on opinions only. Clear objective standards are preferred over language that might lead to subjective interpretations.

3. City Item 9 - Employee Health Ins. Contribution Article XII, Section 5

Currently, employees hired after February 5, 2006 (26 persons) pay 10% of premium for health insurance up to a cap of 2% of base pay. Employees hired before that date, about 170, make no contribution. Wyoming proposes a 10% contribution for all employees effective July 1, 2008 the first year of the new contract. The Union proposes no contribution in the first year of the new contract, $22.50 per pay period

starting July 1, 2009 (the second year) and 10% up to 2% of base pay starting July 2010 (the third year)

Wyoming argues that internal consistency for all bargaining units is most desirable. This unit is the only one not making the 10% contribution. E-Vol I, Exhibit 9 identifies each unit and their contributions. Administrative and supervisory employees contribute 10% of the premium effective July 1, 2007. Police officers and dispatchers have been paying $22.50 per pay period and that will move to 10% of premium on July 1, 2009. Command officers paid $22.50 per pay period effective July 1, 2008 and 10% of premium July 1, 2009. The firefighters are currently in negotiation and the City has made the same 10% premium contribution proposal to that unit. All employees in these units have been making some contribution to health care and effective July 1, 2009 all employees (excluding firefighters) will be contributing 10% of the premium. The City argues that the Union proposal is for special treatment and is unreasonable on its face. Consistency within units fosters high morale in the work place and is a desirable goal. The City also argues this is a self-funded program and every penny saved increases the bottom line. They suggest that claims experience has shown that costs have risen almost every year. The monthly rates have jumped from $386 for family coverage in 1998 to $1131 for family coverage in 2008.

The Union counters that the insurance fund had a net gain of $1.895 million for the year ending June 30, 2008. Even if there was an increase in claims costs for 2008, not yet known, there is plenty of surplus to account for any increase in claims costs. Further not paying any contribution in the first year would not decrease this number and contributions would only add to the insurance fund surplus. The Union also points out that in 2006, 2007 and 2008 the medical payments were less than in 2005 and only in

the 2009 estimate would medical payments increase. The Union also pointed out that the police officers did not pay the full 10% immediately but paid $22.50 per pay period for two years. The police command officers also started slowly paying $22.50 per pay period for three years before the full 10% set in. In essence the Union argues its members should be allowed to "ramp up" and should not be burdened with the full 10% without some period of time to adjust their family budgets. The $22.50 would be consistent with what other bargaining units did during their start up.

RECOMMENDATION

Health care employee contribution is always a difficult issue. In Wyoming there is precedent for contributions among other bargaining units so the concept is not new - just new to this unit's older members. To its credit, the Union recognizes some form of contribution is inevitable and they have crafted a counter-proposal that "softens" the blow for its members. The end point is the same, a 10% contribution, like other units. The dilemma is should the contribution start July 1, 2008 as the City proposes or some other time such as July 1, 2010 as the Union suggests. Should this unit be permitted a staggered start as it proposes or something else?

I recommend a blend of each position. Starting July 1, 2008, the first contract year, employees contribute $22.50 per pay period; starting July 1, 2009 7.5% of premiums and starting July 1, 2010 10% of premiums.

This recommendation has less to do with the dollar impact upon the insurance fund and more with achieving consistency within all internal units. Since other units were allowed some period of adjustment it seems fair to do the same for this unit. At the same time, it would not be prudent to do nothing in the first year as the Union asks as I believe the record suggests that all units made some contribution in the first year. The sooner

parity is reached with all other units with contracts and with all members of this unit the better. I am cognizant of the Union desire to use the flex plan to pay this with pre-tax dollars. I rely upon the testimony of the city witnesses that waivers of enrollment periods have been done in the past to accommodate this kind of program since most flex programs are on a calendar basis. The 2008 contribution, is about 5% of the family rate as the record seems to indicate, is a problem since we are already in June 2009. If 2008 cannot be accommodated by pre-tax funding then I would suggest no retroactivity of this payment obligation. Thus, either 2008 is not retroactive (the City proposes no retroactivity of any wage increase or changes in contract terms) or if it is retroactive then wages for the same year should logically be retroactive as well. Since I envision this Report before July 1, 2009 I hope the parties will consider the provisions for 2009 as timely and not subject to retroactivity consideration. The 7.5% for 2009 is an increase from 2008 (if the $22.50 for 2008 does equate to about 5%) and seems a logical progression assuming consideration is given to the history of progression of rates in other units and would be a compromise of the positions suggested by the parties for 2009. The 10% starting July 1, 2010 would bring this unit into line with the four other groups under contract.

4. **City Item 10 - Article XIV, Section 2 (3) Part-Time Employees**

Currently, part-time employees become members of the Union after six or more consecutive months of employment. The City wants to extend that to nine months and the Union would agree to nine months but only for yard waste employees.

Testimony at the hearing demonstrated that yard waste employees usually work from April or May until October or November over six months. Mr. Kohmescher indicated that there may be some other employees in parks maintenance or building inspection that may also work more than six months. However, he conceded that the major

emphasis at the bargaining table was the yard waste personnel. The Union offered that they saw the wisdom of this change for yard waste only since that was the thrust at the table and thus would agree to nine months for those employees.

RECOMMENDATION

I recommend adoption of the Union proposed amendment to Section 2(3).

There was little discussion on this topic and since the City has the burden I do not believe there was documented information as to why a blanket extension to nine months for all part-time employees is warranted. Apparently this provision has been in the contract for many years without conflict. The Union recognized the reasonableness of extending the period to nine months for yard waste persons based upon information they obtained at the bargaining table and since any further extension could have a negative impact on Union revenue, no further exemption is warranted on this record.

5. City Item 11 - Article XIV, Section 2 Part-Time Employees

Article XIV, Section 2 (5) provides: "No part-time employee shall be employed while a full-time employee, who is capable of performing the work designated for the part-time employee, has been laid off". The City proposes to delete this sentence and the Union strenuously objects.

This provision has been in the contract since 1984 and was and is perceived by the Union to be a job security vehicle for its members, a protection for full-time employees from lay offs as opposed to part-timers. The genesis of this dispute was in 2004 when Wyoming laid off seven full-time employees while some part-time employees were still on jobs that could be performed by laid off people. The Union grievance was upheld by an arbitrator who interpreted this sentence not as a bumping provision but that no full-

timers capable of doing work done by a part-timer could be laid off while part-timers were still working. The arbitration award was sustained in the Circuit Court and the Court of Appeals.(For complete history and text of decisions, see U-Vol I, Exhibits 3-5)

The City position then and now is that this section allows full-timers designated for layoff to bump into part-time positions for which they are qualified. This would give them at least some hours, rather than none if they wanted to bump. The City calls this a "poison pill" since it can not retain any part-timers if full-timers proposed to be laid off could fill any of those spots. The City maintains that the net result of the ruling was more persons laid off. The City believes a "poison pill" provision is not in the best interests of the City, its taxpayers or its employees; it ties the City's hands during a layoff process. In its Brief the City says,"As long as the City's layoff rights as to a full-time employee are restricted by the status of part-time employees outside the specific classification involved, the provision constitutes an overbroad and arbitrary 'poison pill'"

The Union responds that their interpretation of this sentence has been sustained by an arbitrator and the courts and thus it is settled territory. While the Union won this battle earlier, they now propose to add "in that department" after full-time employee to allow the City more flexibility to work within a department's part-timers rather than city-wide part-timers when layoffs might be needed. Mr. Kohmeshcer said this would meet some City needs but not all. (Tr 138) The Union further points out that the city manager when discussing the budget for the 2009-2013 time frame did not assume any layoffs would be needed.

RECOMMENDATION

I recommend that the sentence not be deleted and that the Union amendment "in the department" be adopted.

The City was and is very disappointed with the arbitration ruling and fought the good fight in the courts - to no avail. Its interpretation that the sentence is and was intended to act as a bumping provision simply has been rejected. It is time to move on. It would be improvident for a fact-finder to ignore this history and now side with the City. Other than repeating the arguments advanced in the earlier proceedings, no new factual information was provided that might be a basis for their position.

There is merit to the Union suggested amendment. I assume that by using a departmental model for determining layoffs and only having to deal with and possibly layoff part-timers in that department before any full-timers in that department could be laid off is an improvement and as Mr. Kohmescher said would meet some of the City needs. Since there does not seem to be imminent layoffs on the horizon per the city manager testimony, much of this discussion is about principles and not an immediate crisis. I urge the City to give the Union amendment great consideration.

6. **City Item 13 - Article XVI, Section 2 Retiree Health Coverage**

Currently, Article XVI is entitled Wage and Pay Policies. Section 2 spells out the payment mechanism for retiree health benefits. Up to age 60, the City pays a portion of the cost. At age 60, the City pays the full cost for the coverage for life. At age 65, Medicare becomes primary and the City pays for supplemental coverage. Section 2 does not specifically discuss the benefits available to retirees for which the City is making the Section 2 payments. While unstated in Section 2, the City has historically believed that the benefits are equal to those of active employees and any modifications affecting active employees, good or bad, affect retirees as well. Mr. Kohmescher testified to this practice and in his view the City's application of this policy. Additionally, the City position

is set forth in its Brief at p. 23 and the Union cites the same text in its Brief as the City position for the proposed change to Section 2.

In 2006, the City negotiated with active employees in the Union for some changes in co-pays for offices visits and prescription drugs. Some retirees have objected to any change in their benefits that increase their out-of-pocket costs and have filed a lawsuit in state circuit court seeking injunctive and monetary relief. The matter is scheduled for trial in November, 2009.

The City proposes to add a third paragraph to Section 2 as follows:

> **The health care benefits provided to retirees are not guaranteed at a particular level. Such benefits shall at all times be the same as the health care benefits provided to active employees, and therefore are subject to any future changes made to health care benefits for active bargaining unit employees. Changes to the health care benefits for active bargaining unit employees shall be applied to retirees on the same effective dates.**

The Union argues that the City wants this language so it can be used in the pending litigation that the Union concedes is being funded by the Union asserting that this might give the City an unwarranted advantage in the litigation. They do not want the fact finder to wade into the legal morass and suggest that no language be added until the retiree litigation has ended.

RECOMMENDATION

I recommend that the language be adopted with additional verbiage as outlined below.

This is perhaps one of the more contentious items in these proceedings. Mr. Kohmescher was very adamant and demonstrative in his testimony. The City rightly argues that it has a fiduciary duty to citizens and taxpayers to take steps to position the City in the event of potential future litigation. This position is greatly supported by the internal comparables. The same or similar language is contained in four other contracts

and is being proposed for the firefighters also. (See, E-Vol I, Exhibit 3, p. 29, the Command contract effective July 1, 2008). This is compelling evidence that other units have agreed to this language and as I have relied on internal comparables in other recommendations, I rely heavily upon that record information on this issue. It seems persuasive evidence that indeed the language should also be in this contract as well.

As an attorney, I understand the Union position and argument to hold this in abeyance pending the outcome of current litigation to avoid possible legal advantage to the City. However, the record has only facts about the litigation but no pleadings and no discussion of the legal theories for or against the claims. Thus, I could not possibly discuss the merits of the litigation and what if any legal efficacy this language might have on the outcome of the litigation .

What I can and must do as a Fact Finder is digest the facts on this record and try to recommend an action that might assist the parties in a global settlement. In that vein, I offer the following additional text to the City proposed language.

> **This amendatory language to Section 2 is intended to clarify the intent of the parties regarding health care benefits for retirees after July 1, 2008 and shall have prospective application only and no retroactive application whatsoever. It is the understanding and intent of the parties that this amendment to Section 2 may not used by either party for evidentiary purposes in any pending litigation involving retiree health benefits claims arising out of contracts that expired on or before June 30, 2008.**

Assuming the City only wants this language for potential future litigation as seems apparent to me on this record, then the suggested language should not have any significant impact on its legal position on the merits in the pending litigation. At the same time, this language seems to address the stated concern of the Union not to give the City a potential legal advantage in the litigation as it would be applied prospectively only. I urge both parties to adopt this suggestion.

7. Union Item 15 - Article XVI, Section 2 - Retiree pre-Age 60 Health Costs

Currently, employees who retire before age 60 receive a City payment toward health care costs, $10 per month times years of service for retirees prior to February 5, 2006; those retiring after that date, $15. The Union proposes an increase to $20 per month times years of service for those retiring after July 1, 2009.

The Union argues that three other internal units with contracts have $20 and this would bring their members in line with those other city employees. (See, E-Vol I, Exhibit 13)

The City says this would increase their costs and is unwilling to agree to this increase unless it is part of a package deal with agreement by the Union on issues that the City proposes.

RECOMMENDATION

I recommend that the Union proposal be adopted.

As in other discussions, internal comparables play a significant role. The City concedes that three other units have $20 payments but those were bargained and the City got something in return and this unit so far has not given on some City issues such as the 10% contribution for health care among others. While this is a legitimate strategy at the bargaining table, for purposes of this fact finding, each issue is considered on its merits as factually presented. Winners and losers on each issue may well be outside a total package plan. The parties will see as this Report unfolds that there will be gives and takes and thus compromises of positions must be forthcoming to reach the total package deal. On this issue, there is no empirical evidence why this should not be adopted. The internal comparables are compelling. The City does not suggest an inability to pay this component and indeed the total costs, while not identified in the record, would not seem

to be a back-breaker.

8. Union Item 19 Article XVI, Section 3 Longevity Pay

Currently, longevity payments are made on a sliding scale every five years after year five. The Union proposes to increase the last four steps as follows:

15 or more years	$625	to	$750
20 or more years	$675	to	$850
25 or more years	$725	to	$900
30 or more years	$775	to	$1000

The City takes the same position on this item as in the last discussion - no increases unless part of a total package including concessions on City issues.

The Union position is supported by the internal comparables and the City concedes the other units do have higher longevity schedules. See, E-Vol I, Exhibit 21. It is noted that the Union proposal is slightly less than payments for Police Officers, Command Officers, Dispatchers and Firefighters.

As to the external comparables, they too support this proposal. See, E Vol 1, Exhibit 22. In fact, many of these have payment schedules greater than proposed here.

RECOMMENDATION

I recommend that the Union proposal be adopted.

The same rationale applies here as in # 7 above.

9. City Item 17 Article XVI, Section 7 - Wage Steps

The City proposes to increase the current 6 step wage schedule to 11steps by creating a step half way between each current step. Mr. Kohmescher explained that although 6 steps are in the contract, in reality there are 9 steps since some new ernployees may start in a classification 3 steps beneath the A step and progress from there on the normal 6 step progression. The new program would start July 1, 2008 for new employees or to existing employees who accept a new classification after July 1, 2009

Mr. Kohmescher explained this is a cost savings proposal as it will take a longer

period of time for employees to reach the top of the pay scale. The Union opposes the 11 step approach and has offered 9 step alternative with the caveat that current employees who accept a new classification after July 1, 2009 would have the option to stay at the 6 step or choose to accept the 9 step option.

Union Exhibit 2 was prepared by Ms. Halm from information supplied by Mr. Kohmescher during bargaining and illustrates the possible savings from each plan. Assuming the Exhibit is accurate, the 9 step plan would save $12,864 per employee and the 11 step plan would save $23,109 per employee. This would be over the full extent of employment.

The Union Brief at 37 relies in part upon three external comparables that I have not accepted, Lansing, Kent County Road Commission and Muskegon Heights. I cannot use that information. Other external comparables in E Vol I Exhibit 23 indicate fewer step than the City proposes.

Internally, E Vol 1, Exhibit 23 shows 9 steps for this unit, 9 for Police Officers and Firefighters and 6 for dispatchers. Mr. Kohmescher did testify that Command move up from police officer at higher steps and thus their 6 steps start much higher. The City points out that the Union approach seems to indicate they agree that there is merit in changing the steps, just how much. But, the City also says that the opt out for existing hires would negate any gains as few employees would accept the newer steps in a changed classification if the pay was less.

RECOMMENDATION

I recommend that the City proposal be adopted.

This item is a very close call. Both parties see merit in step changes. The City for pure economic reasons and the Union apparently as evidence of their willingness to try

to meet the City part way. The external comparables are of little assistance as we don't know how they were bargained and how they really operate. The internals are also of little help as there is no history how the Act 312 units arrived at their steps, by negotiation or otherwise. Mr. Kohmeshcer's comments regarding the Command officers is valid, they start higher.

On balance, the ease of administration of 11 steps without any opt outs as the Union suggested as part of its 9 steps tips the scale in favor of the City. Whether the current plan is a 6 or 9 step plan also muddies the waters. Going to an 11 step plan may well make the system more manageable.

10 and 11 City Items 12 and 18. Retroactivity.

The Union urges retroactivity of the wage increase for 2009 as a stand alone and not tie-barred to any other provision especially health premium contributions. They of course proposed no health contribution in 2008 but that was not accepted by this fact finder. The City says no changes to the collective bargaining agreement should be retroactive, wages or health contributions. They point out that all other settled contracts have health contributions and those were obtained essentially as a trade-off for wage retroactivity.

It is noted that the expired contract does have a statement that wages in that contract would be retroactive. I'm sure the City would say that is so because of concessions received in a total package settlement. The Union also points out that the 2008 raises have been included in the budget for all employees. This was confirrned by Mr. Kohmescher during his testimony.

RECOMMENDATION

I recommend that all changes in the contract be retroactive. If recapturing of

the cost of health care contributions recommended for 2008 is not administratively feasible using pre-tax dollars then neither heath care contributions nor wages are retroactive. It is all or nothing.

The City does not want retroactivity on wages or any other change and the Union wants retroactivity on wages only.

The City Brief argues it would not be fair to subsidize the long delay in entering a new collective bargaining agreement by the Union not accepting the City's proposal. As to foot-dragging, it always takes two to tango and to blame one and not repose any blame on the other is unrealistic.

Wage increases go hand in hand with other gives and takes especially health care contributions; I agree there should be no good retroactivity while avoiding bad retroactivity. The City has already budgeted the raises in 2008; thus the money is available. The history of the other bargaining units making health care sharing in 2008 along with retroactive wages lends credence to the same result here. Frankly, the Union can't have it both ways, it is retroactivity on all items or none for 2008.

The only caveat is implementation of the health care contribution using pre-tax dollars. If this is not feasible, or some other mechanism is utilized that has the same effect, then no provisions for 2008 should be retroactive, including wages.

CONCLUSION

I wish to acknowledge the effort of the parties as they produced a great amount of material in the exhibit books. The Briefs were very helpful to assist in understanding the issues. Needless to say fact finding is an imperfect science. The recommendations may not make a party happy on a particular issue; but that is the very nature of the process.

However, it is hoped the comments and recommendations will be of benefit to the parties and that they will be able to reach an accommodation and quickly develop a new agreement. At least it may give the parties food for thought and the ability to alter their positions and reach an accord.

Respectfully submitted

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Kenneth P. Frankland
Fact Finder

June 26, 2009