State of Michigan

Department of Labor & Economic Growth

Employment Relations Commission

FACT FINDING REPORT AND RECOMMENDATIONS

In the matter of fact finding between

Dearborn, City of (for the 19th District Court)

and

Police Officers Association of Michigan

Michigan Employment Relations Commission Case No. D09 F-0750

DATE OF FACT-FINDING PETITION:	July 22, 2009
DATE OF PRE-HEARING CONFERENCE:	October 21, 2009 (completed)
LOCATION OF PRE-HEARING CONFERENCE:	handled by e-mail exchanges
DATE OF HEARING:	December 7, 2009
LOCATION OF HEARING:	Dearborn, MI
DATE HEARING CLOSED:	December 7, 2009
FACT FINDER:	Gregory M. Saltzman

APPEARANCES:

For Dearborn, City of:
- Mr. John A. Entenman, Esq., Dykema Gossett PLLC, outside counsel
- Ms. Kim Craig, assistant city attorney and chief labor negotiator, City of Dearborn
- Mr. Gary Dodge, Court Administrator, 19th District Court
- Mr. Jim O'Connor, finance director, City of Dearborn

For Police Officers Association of Michigan:
- Mr. Thomas Griffin, business agent, Police Officers Association of Michigan
- Ms. Joni McDonald, bargaining unit member
- Ms. Sue Brooks, bargaining unit member
- Mr. John Hazime, bargaining unit member

I. General Background

The collective bargaining agreement between the City of Dearborn/19th District Court (hereinafter the Employer) and Police Officers Association of Michigan (POAM, hereinafter the Union) covered a bargaining unit of 17 full-time clerical employees and Court Officers. The collective bargaining contract (Joint Exhibit 1) expired on June 30, 2007. Negotiations for a new contract did not result in an agreement, despite the assistance of a MERC mediator.

The City of Dearborn is the funding unit for the 19th District Court. Court employees are not city employees, but the city pays the salaries and benefits for court employees. The city negotiates collective bargaining contracts with nine bargaining units, one of which is the 19th District Court unit of clerical employees and Court Officers. POAM represents the employees in five of these bargaining units. As of the date of the fact-finding hearing, the city had reached a settlement on a new contract with only one of the nine bargaining units, a nonsupervisory police unit represented by POAM. Labor contracts had expired for the other eight City of Dearborn units, and negotiations were under way.

The 19th District Court bargaining unit includes twelve Deputy Court Clerks, one Administrative Secretary, and four Court Officers. Clerks answer inquiries from the public, handle court scheduling, enter tickets and court decisions into a computer system, process expungement paperwork, and update lien records. Court Officers provide security for judges, conduct drug tests, transport prisoners, and sometimes help probation with security issues.

The Employer and the Union reached tentative agreements on several issues, one of

which was that the duration of the new contract would be from July 1, 2007, to June 30, 2010. The issues remaining in dispute as of the date of the fact-finding hearing were wages, step increases in wages being contingent on acceptable performance evaluation results, health and dental insurance, paid time off, a quartermaster system in lieu of the Court Officer Clothing and Maintenance Allowance, and pensions for Court Officers. These issues are outlined in Joint Exhibit 2 and are shown in shaded type in Joint Exhibit 3.

II. Proposals of the Parties

Wages: The wage scale consists of a series of steps based on years of service for each job classification (six steps for Deputy Clerks and the Administrative Secretary, four for Court Officers). The lowest step is the starting pay for each classification; the highest is the pay for 15 or more years of service for Deputy Clerks and the Administrative Secretary, and 4 or more years for Court Officers. The wage scale has not increased since July 1, 2006, when each step was raised by 1% pursuant to the expired contract. The parties agree to three increases in each step of the wage scale, effective on July 1 of 2007, 2008, and 2009, with retroactive pay only for employees active at the time the new contract takes effect. The Employer proposes that each of these three increases be 1%, while the Union proposes that each be 2%.

Performance evaluation: The Employer proposes that an employee's upward progression in step compensation depend not only on years of service, but also on that employee's receipt of an acceptable performance evaluation. The Union has made inconsistent

statements on this issue. According to Joint Exhibits 2 and 3, the Union opposes this Employer proposal. The Union's December 18, 2009, brief stated on page 2 that performance evaluation is an item in dispute, but it stated on page 10 that "Union's position [on performance evaluation] agrees with employer." There was no explicit statement in the Union brief that the Union had amended its position on this issue. Also, the Union brief erroneously stated on page 7 that there was a 1% pay raise in 2007 (when this raise actually occurred in 2006), suggesting the plausibility of another error in the statement in the Union brief about performance evaluation.

At the fact-finding hearing (before seeing the Union brief), I questioned Union business agent Tom Griffin about this matter. My very detailed contemporaneous notes record the following response from Mr. Griffin: "performance evaluation: union opposes performance evaluation as basis for step increases." But the Employer representative remembered this aspect of the hearing differently, stating in the Employer brief: "When questioned by the Fact Finder, the Union stated that it had no objection to this provision, but that it wanted to see the evaluation instrument."

Because of these inconsistencies, and because the Union did not address this issue at length either orally or in writing, I cannot be completely certain what the true Union position is on this issue. I find, by a preponderance of the evidence, that the Union has not fully accepted the employer proposal. If I am wrong and the Union agrees to the Employer proposal, then the Union can state this to the Employer in writing.

Health and Dental Insurance: The Employer acknowledged that police and fire fighters

covered by Act 312 may sometimes be treated differently because of interest arbitration awards; but the Employer wanted the same health and dental insurance plans for all non-312 bargaining units that negotiate with the City of Dearborn. The Employer proposed at the hearing a "me-too" clause providing that members of the 19th District Court bargaining unit receive the same health and dental insurance agreed to by the Municipal Workers of Dearborn (MWD) for a labor contract covering one of the City of Dearborn's larger bargaining units. Because the contract covering the MWD unit had not been settled as of the date of the fact-finding hearing, it was impossible to specify what substantive terms this "me-too" clause would effect for the 19th District Court unit. At the hearing, the fact finder suggested a meeting of the Employer with representatives of all nine bargaining units to negotiate a common health and dental insurance plan, but both the Employer and the Union doubted that an agreement would be possible in such a multi-party negotiation. Also at the hearing, the Union objected to an open-ended "me-too" clause, asking the Employer instead to specify the substantive terms of the health and dental plan in the Employer proposal for the 19th District Court bargaining unit.

In the Employer brief submitted to the fact finder December 17, 2009, the Employer amended its position on health and dental insurance, replacing the "me-too" clause with the substantive proposal presented by the employer to the MWD unit on June 19, 2009. This substantive proposal is shown in Employer Exhibit 31, which was presented at the hearing on December 7, 2009. This proposal would result in major changes in health insurance for the 19th District Court employees. These changes are outlined in Table 1 on the following page.

Table 1: Employer Amended Proposal for Changes in Health and Dental Insurance

Insurance feature	*Expired contract*	*Employer proposal for new contract*
Employer payments for health insurance premiums and health savings account	Employer pays 100% of premium for PPO or HMO. Employer payment rises automatically by amount of premium increase.	Fixed dollar amount for Employer monthly payments for premiums and health savings plan combined ($470 single, $980 two-person, $1,060 family), increased annually by the percentage increase in premiums for the most widely used health plan. Employees responsible for paying the excess if they choose a health plan with premiums higher than the specified employer contribution.
Retiree health insurance	100% of premium for PPO or HMO paid by the Employer	Employees contribute 3% of pay towards the future cost of retiree health care, unless they waive and irrevocably terminate eligibility for retiree group health plan coverage and accept instead a monthly Employer contribution of $125 towards retiree medical savings account
Health plan co-pays and deductibles		Add co-pays: $10 for office visits, $50 ER visits, $25 urgent care visits. New HMO option with high deductible (amount?)
Prescription co-pays for brand name drugs	$30 for all brand name drugs	$30 for some, $60 for those classified as "specialty" (not included in a formulary?)
Dental plan coverage for Class II benefits (fillings and extractions?)	Plan covers 50% of treatment costs	Plan covers 80% of treatment costs (*more* generous than current plan)
Sponsored dependent rider	Available	Those who now have it may continue it; otherwise, not available
Flexible benefits plan (including shift to a fixed monthly Employer contribution for premiums and health savings plan)	Optional for those hired before January 1, 2002.	Mandatory for all employees. Allows each employee to contribute up to $2,000/year for health care and up to $5,000/year for dependent care. Save income and payroll taxes on these amounts, but funds not used by annual deadline are forfeited.
Health and dental insurance cash-out	No cash payment for choosing cheaper health or dental plan or for waiving dental insurance.	If choosing health or dental insurance with premiums less than the fixed dollar amount Employer contributes for premiums, then the employee gets the difference in cash. If waiving dental insurance, employee gets $125 annually if single, $250 double, $400 family.

The Union brief, prepared without knowledge that the Employer brief would amend the Employer's health insurance proposal, made a procedural objection: "the 19th District court does not bargain for MWD and MWD should not negotiate for POAM."

The Employer brief states that the Employer decision to withdraw the "me-too" proposal and replace it with the substantive proposal in Employer Exhibit 31 "fully addresses the Union's objection." I disagree. It does fully address the Union's *procedural* objection, but the Union also has a *substantive* objection. At the hearing, Mr. Griffin stated that the Union's position on health insurance is to keep the old contract. The Union brief stated, "Health and dental: Union's position is to maintain status quo." I find that there continues to be a substantive disagreement between the Union and the Employer on health insurance, with the principal differences outlined in Table 1 of this fact-finding report.

Paid Time Off (PTO): The Employer adopted a Paid Time Off (PTO) plan that applies to all bargaining unit members hired after January 1, 2002. Bargaining unit members hired before that date have the option of remaining under the previous system (which provided separate "buckets" of personal days, sick days, and vacation days) or switching to the new PTO system. All eleven of the bargaining unit employees hired before January 1, 2002, chose to remain under the previous system. The Employer proposes requiring these 11 grandfathered bargaining unit members to switch to the PTO system, which would reduce the maximum number of days per year of paid leave for them.

The Employer also proposed a two-tier PTO system, with fewer days of PTO for those

hired after a certain date. The Employer proposal shown in Joint Exhibit 3, page 19, had the less generous PTO system applying to bargaining unit members hired after March 1, 2008. At the fact-finding hearing, the Employer amended its proposal so that the less generous PTO system applied to bargaining unit members hired after June 30, 2010.

In their brief, the Union opposed the Employer PTO proposal and called for maintaining the relevant language in the expired contract. Thus, the Union proposed that the 11 employees hired prior to 2002 remain grandfathered and that there not be a less generous PTO scale for employees hired after June 30, 2010.

Quartermaster System: The old contract provided the four Court Officers in the bargaining unit with a $600 annual Clothing and Maintenance Allowance, to be paid $150 per quarter as taxable income. The Employer proposes replacing this allowance with a quartermaster system, whereby Court Officers could exchange worn-out uniforms for new ones provided by the employer. At the hearing, Court Administrator Gary Dodge agreed under cross-examination that the quartermaster system would also cover shoes for Court Officers. According to my contemporaneous notes from the hearing, Dodge said that he hadn't decided whether it would cover ammunition needed by Court Officers for target practice to maintain their annual qualification to handle a gun. But the Employer brief stated on page 10 that the quartermaster system "will save the City money, and allow, as Mr. Dodge testified, the City to reimburse court officers for other costs, such as ammunition and gun maintenance, for which the court officers now must presently pay themselves." Items provided under the quartermaster system would not

be taxable income to the employees, nor would they be subject to sales tax when purchased by the City of Dearborn.

The Union opposes the Employer proposal and prefers to keep the language in the expired contract about the Clothing and Maintenance Allowance.

Pensions for Court Officers: Bargaining unit members hired after July 1, 2001, are covered by a defined contribution pension plan with both employee and employer contributions. The minimum employee contribution is 2% of earnings. Bargaining unit members hired prior to July 1, 2001, can choose between this defined contribution plan and a noncontributory (i.e., funded only by the Employer) defined benefit pension plan outlined under Chapter 22 of the Dearborn City Charter. Two of the four current Court Officers were hired prior to July 1, 2001, and have chosen to stay with the Chapter 22 defined benefit plan. The other two are covered by the defined contribution plan.

On December 10, 2008, POAM and the City of Dearborn agreed to a new contract covering 164 non-supervisory police officers (Union Exhibit 7). Before this contract took effect, recently hired police officers (45 of them according to testimony by Jim O'Connor, 22 according to the Union brief) were covered by a defined contribution pension plan. Article 45.14 of this contract (pages 48-50 of Union Exhibit 7) gave these officers the option of switching to a new defined benefit plan run by the Municipal Employees' Retirement System (MERS). All eligible police chose to switch from the defined contribution plan to the MERS defined benefit plan.

The Union proposes that the two Court Officers hired after June 30, 2001, and any new

Court Officers hired in the future, be covered by a MERS defined benefit pension plan whose terms are the same as those in Article 45.14 of Union Exhibit 7. The Employer opposes this proposal and wants to keep the pension language in the expired collective bargaining contract.

III. Rationales Presented by the Parties

The rationales presented by the parties for their proposals can be grouped into five categories: the union's role as bargaining representative, external comparability, internal comparability and equity, ability to pay, and efficiency.

Union's Role As Bargaining Representative:

As noted earlier, the Union objected to the Employer's "me-too" health and dental insurance proposal on the grounds that "the 19th District court does not bargain for MWD and MWD should not negotiate for POAM." In other words, the Employer could not guarantee that MWD would accept the Employer's health and dental insurance proposal of June 19, 2009. Furthermore, it would subvert POAM's role as bargaining agent for the 19th District Court employees to have POAM sign a "me-too" clause on an issue as important as health insurance.

The amendment to the Employer health and dental proposal in the Employer brief, however, addresses this Union concern fully, so that this issue is now moot.

External Comparability:

External comparability measures an employer's competitiveness in the external labor market. The Union addressed this explicitly; the Employer, implicitly.

The Union asserted in their opening statement at the fact-finding hearing that bargaining unit members in the 19th District Court had not received a wage increase since July 1, 2003. The Employer's opening statement noted that there was a 1% increase in each wage step on July 1, 2006. The Union accepted this correction. The Employer also noted that bargaining unit members received a 3% one-time bonus on July 1, 2006, based on staffing reductions in the nine City of Dearborn bargaining units, even though none of these occurred in the 19th District Court bargaining unit. The Union did not contest this Employer assertion about the bonus.

Later in the fact-finding hearing, the Union compared hourly wage rates in the 19th District Court to those in four other District Courts in Wayne County where the employees are also represented by POAM. These were the 18th (Westland), 20th (Dearborn Heights), 23rd (Taylor), and 24th (Allen Park). Union Exhibits 1 through 4 showed hourly wage rates at the top step for the 19th District Court and these four other District Courts for July 1, 2004, through July 1, 2010. The Union presented data for the Deputy Clerk I, Deputy Clerk II, and Court Officer job classifications. The Union did not have data from other courts for the Administrative Secretary classification but suggested that Deputy Clerk I wage rates provided an appropriate benchmark. Note that Taylor has a two-tier scale for Deputy Clerk I, with substantially lower wage rates for those hired on or after July 1, 2002. The Union stated at the hearing that all of the hourly wage rates listed in these Exhibits for the 19th District Court for July 1, 2006, should be corrected to reflect the 1% increase granted on July 1, 2006.

The Union said that hourly wage rates in the 19th District Court were lower than all of the

external comparables for Deputy Court Clerk I and II and lower than three of the four comparables for Court Officers. In Table 2 on the following page, I present a portion of the Union wage data, with 19th District Court data corrected by the 1% wage increase granted on July 1, 2006. Table 2 gives wage data for only two dates: July 1, 2006, and July 1, 2009. The 2009 data for the 19th and 20th District Courts reflect pay under expired collective bargaining contracts; these figures might be retroactively increased when new contracts take effect. I also present hypothetical figures for the 19th District Court using two sets of retroactive wage increases: the 2% proposed by the Union, and the 1% proposed by the Employer.

Based on the data in Table 2, it is clear that hourly wage rates for all unionized job classifications of District Court employees are lower in Dearborn than they are in Westland or Allen Park, even adjusting for the possibility of a retroactive wage increase in Dearborn. Court Officer hourly wage rates are lower in Dearborn than they are in Dearborn Heights but higher in Dearborn than they are in Taylor. Deputy Clerk I hourly wage rates in Dearborn have been lower than those in Dearborn Heights since July 1, 2008, but retroactive adjustments when the contracts for these two District Courts are settled potentially could make Dearborn wages rates slightly higher. Deputy Clerk I hourly rates in Dearborn are lower than those for Taylor employees hired before July 1, 2002, but higher than those for Taylor employees hired on or after that date.

Table 2: Wages at Top Step in Selected Wayne County District Courts, 2006 and 2009

	Hourly Wage Rates at the Top Step					
	Deputy Clerk 1.		Deputy Clerk II.		Court Officer .	
District Court	7-1-06	7-1-09	7-1-06	7-1-09	7-1-06	7-1-09
19th (Dearborn), actual*	17.51	17.51**	18.39	18.39**	17.66	17.66**
Hypothetical 19th District wage rates with retroactive wage increases on July 1 of 2007, 2008, and 2009:						
› *2%: Union proposal*		18.58		19.52		18.74
› *1%: Employer proposal*		18.04		18.95		18.20
18th (Westland)	18.79	20.64	19.96	21.81	24.98	27.34
20th (Dearborn Heights)	17.51	18.04**	NA	NA	20.44	21.05**
23rd (Taylor)					16.81	17.32
› hired after 7-1-02	14.95	15.41	NA	NA		
› hired before 7-1-02	18.26	18.81	NA	NA		
24th (Allen Park)	NA	NA	24.12	25.34	24.12	25.34

Data source: Union Exhibits 1-4

*19th District Court wage figures increased 1% from Union Exhibit figures to reflect correction.

**Wage rate paid under expired contract. May rise if retroactive pay increases are granted.

Union Exhibits 1-4 also showed percentage wage increases awarded in the 19th District Court and the four other District Courts in the Union's comparison group. Each step in the 19th District Court pay scale was held constant in 2004 and 2005 and raised by 1% on July 1, 2006. Although Allen Park employees received 0% in 2005 and 1% in 2006, they received 4% in 2004. The Union exhibits show each step in the pay scales of Westland, Dearborn Heights, and Taylor rising by between 2% and 3.6% per year in 2004, 2005, and 2006 (though the Union exhibits did not include the percentage increases for Westland or Dearborn Heights for 2004). The Union argued that 19th District Court employees should receive similar percentage increases in their pay scale as those provided in the other four District Courts.

The Employer presented no evidence on compensation at other District Courts, but the Employer questioned the Union's evidence on external comparability. First, the Employer noted that the Union erred in omitting the 1% wage increase that 19th District Court employees received on July 1, 2006, and argued that the Union could have unintentionally made other errors in describing wage rates at the District Courts in Westland, Dearborn Heights, Taylor, and Allen Park. The Employer brief noted that the Union did not enter the applicable labor contracts into evidence, making it impossible to verify the accuracy of the Union's wage figures. Second, the Employer argued that the Union's selection of other District Courts for its external comparison group was somewhat arbitrary: the Union included those that happened to be represented by POAM and excluded those that are otherwise similar to the 19th District Court but that are represented by unions other than POAM. Third, the Employer argued that Westland, Dearborn

Heights, Taylor, and Allen Park were not comparable because their District Courts had only two judges, vs. three in Dearborn. (The Employer never explained, however, why hourly wage rates ought to be lower in a three-judge District Court than in a two-judge District Court.) Finally, the Employer noted that the Union data considered only wages and ignored employee benefits, which are an important component of the overall compensation package.

The Employer presented three items of evidence related to external comparability. First, with relatively little recruiting effort, the 19th District Court attracted a large and strong applicant pool for an entry-level position as a Deputy Clerk I that became available in fall 2009. The Employer posted a notice of this opening in September 2009 on the web pages of the City of Dearborn and of the Supreme Court of Michigan, and the Employer also notified the Union of the opening; but the Employer did not otherwise advertise the job vacancy. The notices listed the salary of $23,728 but provided no information about employee benefits. About 30 candidates applied. In the judgment of Court Administrator Gary Dodge, the quality of the applicants was very good: two had law degrees, others were college graduates, and several had experience in the courts. The job opening was filled on November 4, 2009. The Employer presented this hiring experience as evidence that the 19th District Court is a very attractive employer in the context of current conditions in the external labor market.

Second, the Employer brief asserted that "not one [member of the 19th District Court bargaining unit] has ever left for a better job." The Union did not have an opportunity to challenge this assertion, which the Employer did not make at the hearing. Still, Employer

presented testimony at the hearing that the two most recent job openings in the bargaining unit were caused by a retirement in May 2007 and a resignation for family reasons in September 2009. The Union did not question this testimony. Regardless of whether any bargaining unit members might have left for better jobs in the 1960's or 1970's, before any of the persons at the fact-finding hearing were involved with the 19th District Court, it appears that 19th District Court bargaining unit members have not quit *in recent years* to take better jobs elsewhere. This is also evidence that the 19th District Court offers compensation that is at least comparable to that offered to new hires by competing employers.

Third, Employer cross-examination of bargaining unit member Joni McDonald showed that there had been no layoffs in the 19th District Court bargaining unit since she started working there 22 years ago. The absence of layoffs in the 19th District Court bargaining unit since at least 1987 makes the 19th District Court an attractive place to work, especially compared to many other employers in the local labor market who can offer very little job security.

The Employer also noted that some bargaining unit members receive step increases, even if the pay scale remains unchanged. The Employer brief cites three bargaining unit members (Genslak, Maironis, and Sinatra Sinow) as beneficiaries of step increases that raised their hourly rates beyond the 1% increase in the pay scale on July 1, 2006.

In summary, the Union argued that 19th District Court wages are lower than those paid by comparable District Court employers in Wayne County. The Employer pointed to the large number of highly qualified applicants for a 19th District Court job opening in the fall of 2009 and

the lack of recent resignations by 19th District Court employees getting better jobs elsewhere. According to the Employer, these indicate that compensation for 19th District Court employees is very competitive in today's external labor market.

Internal Comparability and Equity:

The Union argued that Court Officers carry guns and handle prisoners and therefore should have employee benefits comparable to those for Dearborn police. One internal equity comparison involved reimbursement for gun costs. The Union presented testimony by Court Officer John Hazime that he was required to carry a handgun as part of his job with the 19th District Court and that he had to purchase the gun with his own funds. Mr. Hazime testified that he goes to the range once a month for target practice, which is necessary to maintain his qualification to carry a gun, and that he must pay for his own ammunition for this target practice. The Union noted that the December 10, 2008, contract for Dearborn police (Union Exhibit 7) provides each police officer with an annual gun allowance of $300, yet Court Officers are not provided with any gun allowance. The Union views this inconsistency in the way Court Officers and police are treated as inequitable and wants the Employer to pay for ammunition needed for regular target practice.

Mr. Hazime said that initial purchase of his gun cost him $600, and he estimated that gun maintenance (e.g., dealing with worn magazine springs) cost him $50 per year. He did not provide an estimate of his annual expenditures on ammunition. The Union's brief stated that "Mr. Hazime further testified that between the purchase of uniforms and ammunition, he spends

all of the clothing allowance he receives." Perhaps I missed it, despite my effort to take very detailed notes, but I do not remember Mr. Hazime giving such testimony at the hearing.

The Employer presented testimony by Court Administrator Gary Dodge that there was no written requirement that Court Officers carry guns, nor is there any statutory requirement that they carry guns. Mr. Dodge acknowledged, however, that one of the three judges in the 19th District Court requires Court Officers to carry guns and that any of the four Court Officers could be assigned to work for that judge if one of the other Court Officers is out sick.

The Union also argued that Court Officers should have pensions equal to those for Dearborn police officers. Specifically, the Union proposed that the two current Court Officers hired after June 30, 2001, and any Court Officers hired in the future have the option of switching to a defined benefit pension plan administered by MERS. The Union noted that this option was provided to the Dearborn police by the labor agreement signed on December 10, 2008, and argued that Court Officers should be treated comparably in this respect.

The Employer argued that the training and job duties of Court Officers were not identical to those of police. The Employer also argued that employees covered by Act 312 (police and firefighters) were not comparable to other local government employees because compulsory interest arbitration could have a significant impact on contract outcomes for employees covered by Act 312. But the Employer acknowledged at the hearing that providing the MERS defined benefit option to Dearborn police was the result of a negotiated agreement, rather than an Act 312 interest arbitration award. The Employer brief noted that no City employees other than

newly hired police officers had the option of a MERS defined benefit pension plan. The Employer argued that it was equitable for recently hired Court Officers to have the same defined contribution pension plan that most recently hired City of Dearborn employees have.

The Union argued that the PTO proposal was inequitable because it took away existing employee rights with regard to paid leave. Joni McDonald, a Deputy Court Clerk II, testified that the Employer proposal to consolidate personal days, sick days, and vacation days into a single PTO system would have the net effect of reducing paid leave by 5 days per year. The Union's brief stated that the Employer's PTO proposal would reduce paid leave from 39 days per year (2 personal days, 12 sick days, and 25 vacation days) to 34. Ms. McDonald testified that the 11 bargaining unit members hired prior to January 1, 2002, had the option of switching to the PTO system, but none had elected to do so. The Employer proposal would switch these 11 employees to the PTO system against their will.

The Union brief argued that the less generous PTO system for employees hired after June 30, 2010 would have an adverse effect on morale.

The Employer presented testimony from Court Administrator Dodge and Assistant City Attorney Kim Craig about the PTO proposal. Mr. Dodge was asked whether there was a loss of 5 days of paid leave under the PTO proposal, and he replied that this depends on whether you were sick. He stated that sick leave was only available if you were sick, though he acknowledged that unused sick time has a monetary value to employees at the time of retirement, when unused sick days can be cashed in. Ms. Craig testified that, for those who did not use their

sick time, the PTO system would give them more days off. She noted that up to 94 unused PTO days could be cashed out on retirement, and she argued that a healthy employee gets more days of paid leave under PTO. She also argued that an advantage of the PTO system was that supervisors would not have to deal with employees lying that they are sick just to get a day off.

Ms. Craig testified that all 14 City of Dearborn department heads, including Court Administrator Dodge, were on the PTO system, as were all of the members of four of the City's bargaining units (STP, MWD, Teamsters, and police department dispatch supervisors). The PTO system is also mandatory for 19th District Court bargaining unit members hired since 2002. Ms. Craig argued that it was equitable to apply the same PTO system to the eleven bargaining unit members hired before 2002 by the 19th District Court.

Mr. Dodge said that the 19th District Court bargaining unit members would be treated comparably to the 13 nonunion administrative employees of the 19th District Court. "Are we asking anything of the rank-and-file bargaining unit employees that we will not ask of the administrative unit?" Mr. Dodge was asked at the hearing. "No," Mr. Dodge replied, "they will be treated the same as the bargaining unit once it is determined what the bargaining unit gets." Specifically, if the 11 bargaining unit members who are grandfathered under the old system of separate personal leave, sick leave, and vacation leave are required to switch to the PTO system, then Mr. Dodge will also switch the 6 grandfathered administrators to the PTO system. Furthermore, the administrative unit will receive the same percentage pay increases as the bargaining unit, and the one administrative employee required to wear a uniform will be covered

under the same quartermaster system.

Ms. Craig also emphasized in her testimony the desire to treat identically all public employees funded by the City of Dearborn. This desire for internal comparability applies not only to PTO, but also to wages and health insurance. Ms. Craig testified that the Employer offered a 1% increase in the wage scale not only to the 19th District Court bargaining unit, but also to the MWD and STP bargaining units and the City of Dearborn's non-union E&A group. She wanted to harmonize health and dental programs throughout the city. She viewed the 19th District Court bargaining unit employees as similar to the MWD employees and wanted them to have identical health and dental programs.

The Employer acknowledged that Court Administrator Dodge, unlike members of the bargaining unit, received a pay increase in June 2008. Mr. Dodge testified that a 19th District Court judge gave him the increase after learning that Mr. Dodge earned less than any other full-time department head paid by the City of Dearborn. Despite the June 2008 increase, the Employer argued, Mr. Dodge still earns somewhat less than any other full-time City of Dearborn department head. The implication of the Employer argument seems to be that the equity comparison of pay levels among department heads should take priority over the equity comparison of percentage pay increases between the Court Administrator and the bargaining unit members.

Court Administrator Dodge made an equity argument for the Employer proposal to make step increases contingent on the individual employee receiving an acceptable performance

evaluation. If you are not performing your job at an acceptable level, Mr. Dodge asked, then why should you get a pay increase? The Union did not present a reason for opposing this proposal, and, as previously noted, seemed to be inconsistent in statements about whether it opposed this proposal at all.

Jim O'Connor, Finance Director and Treasurer of the City of Dearborn, testified that the staffing cuts anticipated between Fiscal Year 2001 and FY 2011 have been smaller in the 19th District Court than in most departments of the City of Dearborn. Employer Exhibit 29 showed that full-time-equivalent employment in the 19th District Court was 47.83 in FY 2001 and is projected to fall to 46.28 in FY 2011. This amounts to a staffing reduction of 3.2%. Bargaining unit member Joni McDonald testified under cross-examination that the bargaining unit had fallen from 18 to 17 since 2003; presumably, the other 0.55 FTE's of the reduction from 47.83 to 46.28 came from either part-time employees (who are outside the bargaining unit) or administrative employees. The staffing reduction in the bargaining unit alone (from 18 to 17) is 5.6%. The grand total FTE employment for the City of Dearborn went from 1,220.15 in FY 2001 to a projected 1,107.9 in FY 2011. This amounts to a staffing reduction of 9.2%. The implication seems to be that, in terms of staffing cuts, the City of Dearborn has not treated the 19th District Court inequitably compared to City of Dearborn departments.

Ability to Pay:

The Employer presented extensive information at the fact-finding hearing about limits on their ability to pay. Finance Director O'Connor explained several Employer exhibits addressing

this issue. He said the almost two-thirds of employees in Dearborn work for Ford, so that the City of Dearborn is dependent on Ford's success. Recent problems for Ford, reflected in a jump in the local unemployment rate to 12.2% from 4.7% two years ago, have had an adverse effect on the City of Dearborn. Mr. O'Conner testified that City of Dearborn property tax revenues have declined, and revenue sharing from state government has declined substantially. He anticipates that state budget deficits will lead to continued cuts in state revenue sharing in the future. As recently as June 2009, state revenue sharing [for FY 2010?] was projected to be $9.1 million; but Mr. O'Connor now expects it to be only $8 million. Because the State of Michigan will not provide matching funds for federal road project funds, Michigan cities like Dearborn will also lose federal road dollars.

In addition to declining revenues, the City of Dearborn faces rising costs. Their unfunded liability for defined benefit pension plans increased due to the decline in the stock market in 2008 and early 2009. Mr. O'Connor noted that net assets in three City of Dearborn defined benefit pension funds declined by about $70 million between June 30, 2008, and June 30, 2009. Unless the stock market recovers, the City will need to make additional contributions to the defined benefit pension funds. Furthermore, the cost to the City of post-employment health care is increasing steadily.

The City of Dearborn has already made efforts to address its financial difficulties. In 2007, citizens voted to override the provisions of the Headlee Amendment, reinstating the authorized property tax rate. The City of Dearborn has also made significant staffing cuts.

Police and firefighter staffing, however, are mandated by a City Charter formula, so that the City of Dearborn cannot save money by eliminating police officer or firefighter positions.

Mr. O'Connor said that the City of Dearborn started dipping into their reserves in 2001, which has reduced the City's fund balance. In 2000, the City had a fund balance of $40 million, which in Mr. O'Connor's view was a strong financial position. As of June 30, 2009, the fund balance was $27 million. Mr. O'Connor predicted that, if nothing changed, the City of Dearborn's fund balance would be $10.7 million in June 2011. Mr. O'Connor characterized a $10.7 million fund balance as "below minimum" for a city of Dearborn's size.

Mr. O'Connor noted that the Dearborn Public Schools have had serious financial problems, eliminating 287 jobs this year and imposing a 6.3% pay cut as a result. Under cross examination by the Union, however, Mr. O'Connor acknowledged that City of Dearborn funding is entirely separate from Dearborn Public Schools funding. The Union position is that the funding problems of the Dearborn Public Schools are of limited relevance to this fact-finding proceeding.

Employer Exhibit 28 lists the general fund subsidy by department, which is defined as operating costs minus revenues generated. According to Employer Exhibit 28, the 19th District Court returns money to the general funds, while all other departments received general fund subsidies. Mr. O'Connor argued that the apparent "profits" generated by the 19th District Court were significantly overstated by Exhibit 28. First, the accounting system classifies fines paid to the 19th District Court as revenues generated solely by the 19th District Court, even though the

fines were initiated by the police or the building department staff. Mr. O'Connor noted that the police and building department get no credit for the revenue from these fines, even though they helped to generate this revenue. Second, figures for 2009 and earlier understate the costs of operating the 19th District Court. Beginning in 2010, the accounting system will charge to the 19th District Court the cost of the court building and other costs that should properly be allocated to the court.

Furthermore, even with an accounting system that overstates the 19th District Court's "profitability," the Court generated less in fines, relative to court costs, in 2009 than in 2003. According to Employer Exhibit 28, Court "profits" declined from $554,977 in 2003 to $110,954 in 2009.

The Union brief emphasized that the 19th District Court returned money to the general fund, but no other City of Dearborn department did. It did not address Mr. O'Connor's claims that the accounting system significantly overstated the 19th District Court's properly allocated share of revenues and understated its costs.

The Union made no effort to rebut the Employer assertion that the Employer's tax revenue and state revenue sharing had declined or that the City's fund balance was diminishing. The Union brief, however, noted that the City's fund balance was $29.9 million as of June 30, 2008, the date of the City's last audited financial report. In the Union's view, this $29.9 million fund balance and the ability of the 19th District Court to return money to the general fund indicate that the Employer has adequate ability to pay to agree to the Union's contract proposals.

Efficiency:

The Employer argued that a quartermaster system would be more efficient than the current $600 per year Clothing and Maintenance Allowance for Court Officers because of tax savings. Uniforms provided to Court Officers under the quartermaster system would not be taxable income to the Court Officers, but the $600 per year Clothing and Maintenance Allowance is subject to both income taxes and payroll taxes. Also, the Employer brief asserted that $600 per year is more than a Court Officer actually needs for uniforms.

The Union expressed concern that the administrative operation of the quartermaster system had not been explained. Would Court Officers need to get approval to replace a pair of pants? Perhaps implicit in this Union question was concern that a supervisor might unreasonably withhold such approval. The Union also expressed concern that the quartermaster system would not cover weapons or ammunition.

The Employer asserted that establishing a defined benefit pension plan under MERS would entail significant fees for actuarial services. The Employer further noted that the Union had not provided actuarial estimates of the cost of a MERS pension plan.

The Union replied that MERS might be willing to provide the initial actuarial estimates to the 19th District Court at no charge in order to induce them to establish a pension plan with MERS.

IV. Fact Finder's Analysis of the Issues

Wages:

I find convincing the Employer's arguments that the 19th District Court is an attractive place to work in the context of the current dismal labor market and that the City of Dearborn has limited ability to pay. I accept the Employer's assertion that accounting procedures used to prepare Employer Exhibit 28 (notably, allocating 100% of revenue from fines to the 19th District Court, rather than allocating a portion to the police and building departments; and not allocating to the 19th District Court the cost of maintaining the Court building) cause the calculated "profitability" of the 19th District Court to be overstated. I also accept the Employer's assertion, uncontested by the Union, that the nonunion employees of the 19th District Court will receive the same percentage pay increase provided to bargaining unit members by the new contract. The Employer appears to recognize that shared sacrifice makes wage restraint more acceptable to bargaining unit members. The very low inflation rate now also means that employees do not need a large wage increase to maintain the purchasing power of their wages. Annual increases of 1% in each step of the wage scale thus seem reasonable.

Step Increases Contingent on Acceptable Performance Evaluation:

The inconsistent information about the Union's position on performance evaluation makes this issue difficult for me to address. As noted earlier, I have concluded that the statement in the Union brief about this issue being settled was an error rather than a deliberate decision by the Union to amend their previous position and accept in its entirety management's proposal.

Many employees cheerfully accept incentive pay arrangements, most often in situations where important dimensions of job performance can be measured objectively. For example, auto glass repair workers sometimes are paid according to the number of car windshields replaced per week. But it may be difficult to find quantitative and readily observable measures that provide a good summary of job performance for 19th District Court employees. Time clocks can accurately record whether Court employees are tardy for work, but they do not measure whether a Deputy Court Clerk processes inquiries from the public efficiently or whether a Court Officer is skillful in handling an angry criminal defendant with a history of violence.

Generally, unions oppose giving management unfettered authority to adjust pay based on subjective criteria. Unions want a mechanism to challenge management decisions that union members consider arbitrary or unfair.

On the other hand, management has a legitimate right to expect employees to perform their jobs effectively and to refrain from misconduct on the job. In extreme cases, management can discharge an employee whose job performance is unsatisfactory. But there may be cases where discharge would be an excessive penalty. Allowing the withholding of a step increase would provide management with an intermediate disciplinary penalty in cases where the employee's job performance is unsatisfactory but not so unsatisfactory that discharge is warranted.

A perhaps imperfect way to reconcile union and management concerns would be to allow management to withhold step increases in cases of unsatisfactory job performance, but to make

any such withholding subject to the contractual requirement that management can only discipline employees for just cause. An employee could then grieve the decision if he or she believes that management acted arbitrarily or unfairly.

A minor point: I believe that the phrasing on the top of page 25 of Joint Exhibit 3 is not felicitous. The Employer clearly intends that step increases be contingent on the employee's job performance being acceptable. The wording proposed, however, could be construed as meaning that the employee receives a step increase if the employee's supervisor does a competent job of conducting the performance evaluation. In my recommendations, I propose wording that expresses unambiguously what I believe the Employer intends.

Health and Dental Insurance:

I found compelling the Union's procedural objection to the Employer's proposed "me-too" clause. The Employer, perhaps sensing my reaction at the fact-finding hearing, stated in the Employer brief that this proposal had been withdrawn. The matter now before me is the Employer's amended proposal, described in the Employer's June 19, 2009, proposal to MWD (Employer Exhibit 31).

As noted earlier in my analysis of wages, the Employer presented a persuasive argument that the City of Dearborn faces very serious economic pressures. The cutbacks in health insurance proposed by the Employer appear to be motivated by genuine financial problems facing the Employer, rather than by a lack of concern about the welfare of employees. Given the widespread tendency of employers throughout the U.S. to move away from first-dollar coverage

in health insurance plans, it was probably inevitable that the 19th District Court would eventually require employee contributions for health insurance premiums or impose higher out-of-pocket expenses (deductibles, co-insurance, and co-pays) when employees or their dependents use medical goods or services.

Still, this does not mean that the Employer proposal must be accepted in its entirety. One could reasonably make some changes in health insurance without making all of the changes proposed by the Employer. I will therefore consider individual elements of the Employer health insurance proposal, described previously in Table 1 of this fact-finding report.

It appears that, under the Employer proposal, the default option for employees will be a high-deductible health plan with a health savings account (HSA), though employees will have the option of choosing a health plan with lower out-of-pocket payments if they pay the difference in monthly premiums. The rationale behind a high-deductible plan is that people presumably seek the best medical care that money can buy when all of the bills are covered by insurance, but they will weigh the benefits of medical care against the costs if they are paying out of pocket. (This behavioral change induced by insurance is what economists call "moral hazard.") Conclusive evidence from the RAND health insurance experiment has established that out-of-pocket payments do reduce spending on health services, but the spending reductions are not necessarily concentrated on health services that have a low value relative to their cost. Also, deductibles have no effect on spending by extremely sick individuals, whose medical costs far exceed the deductibles even in high-deductible plans; and a substantial portion of total health

spending is on behalf of individuals who are extremely sick in that year.

Another Employer proposal is to contribute a fixed dollar amount per month for health care, with this dollar amount being adjusted annually by an inflation factor equal to the renewal rate percentage increase of the health care vendor with the largest number of contracts in the current fiscal year. The rationale behind offering a fixed dollar contribution per month, regardless of which plan the individual employee chooses, is that many employers wish to induce employees to switch to plans with higher out-of-pocket payments but lower monthly premiums. Again, the presumption is that shifting more people to plans with higher out-of-pocket payments can reduce the problem of moral hazard.

If the inducements to switch plans are strong enough, then what economists call an "adverse selection death spiral" can develop. Financial incentives to choose low-premium plans can cause plans with first-dollar coverage to attract a disproportionately high fraction of individuals with very high medical costs, forcing them to raise rates. As a result, healthy people stop buying the plans with first-dollar coverage, forcing these plans to raise rates again. Eventually, health plans with first-dollar coverage are driven out of the market.

Despite my doubts that high deductible health plans improve cost-effectiveness in the health care system, I find that the proposed Employer contributions for health care are sufficient for employees to get decent health coverage. That is, the proposed Employer premium contribution of $370 per month single, $780/month two-person, and $860 per month family, plus the Employer HSA contribution of $100 per month single, $200 per month two-person or family,

should be enough so that employees and their dependents can get adequate medical, drug, vision, and dental services through an organization such as Health Alliance Plan. This is not enough for a "Cadillac" health insurance plan, but the Employer no longer has the ability to pay for a Cadillac health plan.

Also important is the Employer proposal that the annual benefit bank amount be adjusted annually by the renewal percentage increase of the health vendor with the largest number of contracts. This inflation adjustment ensures that employees and their dependents will continue to be able to afford decent health coverage in future years.

The proposed co-pays in the standard benefit plan of $10 per office visit, $50 per ER visit, and $25 per urgent care visit are not excessive by contemporary standards, even though they may come as a jolt to those accustomed to first-dollar coverage. Similarly, the new third tier in the prescription drug plan, a $60 co-pay for "specialty" drugs (which I presume are brand-name drugs not included in a formulary), is reasonable **provided** that the formulary is not unduly restrictive. A good drug formulary (1) excludes high-cost drugs if a reasonable low-cost alternative is available but (2) includes high-cost drugs that provide important therapeutic benefits when no low-cost alternative is available. Less expensive drug plans typically have more restrictive formularies.

The Employer proposed making the dental plan more generous by raising Class II benefits (which I believe are for fillings and extractions) from 50% of treatment costs to 80%. I see no reason why the Union should object to this dental proposal.

The sponsored dependent rider allows an employee to buy health insurance for a relative who is 25 years old or older, lives in the employee's household, and is the employee's dependent. An example of a sponsored dependent might be a 26-year-old son who lost his job and moved back into his parents' home, or a 62-year-old partly disabled mother who is too young to qualify for Medicare. Presumably, the severe business cycle downturn from which we are, I hope, about to emerge has increased the number of Americans wanting to purchase sponsored dependent riders. Although 19th District Court employees now buying the sponsored dependent rider would be able to continue doing so, current employees and any future hires would not be able to begin buying the sponsored dependent rider if the Employer proposal were adopted. This could result in a person who would otherwise be a sponsored dependent having no health insurance at all.

According to Section 24.4 of the expired contract (Joint Exhibit 1), "Employees shall be required to pay for all family continuation and/or sponsored dependent riders." If employees are paying the actuarially fair premium for the sponsored dependent rider, then I do not see the justification for the Employer proposal of eliminating the option for employees to begin purchasing the sponsored dependent rider in the future.

The Employer's proposal that employees hired prior to January 1, 2002, participate in the flexible benefits plan has two elements. One is the shift of health insurance from a defined benefit (with the employer promising to cover 100% of the premium) to a defined contribution (with the employer promising a fixed monthly amount for premiums and HSA contributions, and

employees having a financial inducement to switch to a health plan with higher out-of-pocket payments). I have already addressed this element. The second element allows employees to contribute up to $2,000 per year to a health care flexible spending account and up to $5,000 per year to a dependent care flexible spending account. Each individual employee can decide, on an annual basis, whether and how much to contribute to a flexible spending account.

The "use-it-or-lose-it" feature of these flexible spending accounts, imposed by the Internal Revenue Service, can result in losses for employees who overestimate the amount they will need in these accounts. Moreover, Social Security benefits may be slightly reduced if an employee persistently sets aside a large amount in flexible spending accounts. Still, employees with children in daycare can forecast with good accuracy how much to set aside in a dependent care flexible spending account, and being a little conservative in estimating out-of-pocket medical expenses can avoid forfeitures of money in a health care flexible spending account. Employees save on federal and state income taxes and on payroll taxes by taking their compensation in the form of a flexible spending account rather than wages. Although it is quite understandable that the Union might oppose the switch from defined benefit to defined contribution in health care, I think that the flexible spending account element of the Employer's flexible benefits proposal should not be objectionable to bargaining unit members.

The Employer's proposed health and dental insurance cash-outs provide an incentive to employees to choose less generous insurance plans, or even to do without dental insurance altogether. Some employees may make unwise choices and end up losing teeth that could have

been saved, had they chosen dental insurance that would make needed dental care affordable. Still, no employee is compelled to take a cash-out. Importantly, the Employer proposal does not permit employees to waive health insurance unless they have health insurance coverage through an alternate source. This provision greatly reduces the likelihood that the cash-out option might lead to bankruptcy or an avoidable premature death.

One of the most significant parts of the Employer proposal is the ending of the Employer commitment to pay 100% of the premium for retiree health insurance. Instead, newly hired employees would receive an Employer contribution of $1,500 per year to a Retiree Medical Savings Account (RMSA), and the employees would be required to make a matching contribution of $600 per year. The Employer proposal gives employees hired prior to the ratification of the new contract the option of switching to the RMSA and irrevocably terminating their eligibility for retiree group health plan coverage. Grandfathered employees who decline the RMSA option would be required to contribute 3% of their pay towards retiree health care.

Under the Employer proposal, current retirees and employees hired prior to the ratification of the new contract would be required to contribute to the premiums for post-retirement health insurance at the same level as active employees. If, in future contracts, active employees were required to contribute a substantial percentage of the premium, then the retirees would also be affected.

The large, growing, and unpredictable cost of retiree health insurance is a major concern for many employers. On the other hand, retirees younger than 65 or whose spouses are younger

than 65 often find it extremely difficult to buy health insurance at affordable rates. The likely consequence of this Employer proposal to eliminate the commitment to 100% Employer-paid premiums for post-retirement health insurance is that some retirees or their spouses will not have health insurance until they become eligible for Medicare at age 65. These uninsured retirees will risk bankruptcy or avoidable premature death.

I therefore do not recommend adoption of this aspect of the Employer's health insurance proposal. Instead, I recommend that the Employer continue paying 100% of the premium for retiree health insurance ***but*** that the retirees be switched to a health plan with lower premiums. It is most important to have insurance against catastrophic expenses. The next priority is to have insurance coverage for highly cost-effective preventive care, such as treatment for hypertension, that the RAND health insurance experiment showed tended to be neglected when patients have to pay for it out of pocket. (This is not to say that all preventive care is cost-effective, just that insurance should cover that subset of preventive care that is highly cost-effective.) I therefore propose a retiree health plan that has a high deductible (such as $1,200 per person, $2,400 per family) but waives the deductible for certain preventive services. I also propose a retiree health plan that has prescription drug coverage but uses a formulary to reduce use of high-cost drugs. This proposal will mitigate the Employer's expenses for retiree health insurance, though admittedly not by as much as the Employer proposed, while ensuring that no retirees or spouses of retirees go without health insurance entirely.

Paid Time Off (PTO):

All eleven bargaining unit members hired before January 1, 2002, have the option of switching to the PTO system, but none has chosen to do so. This indicates that they prefer the existing "bucket" system, with separate personal leave, sick leave, and vacation time, to the PTO system that the Employer has proposed. The Union also opposed the less generous PTO system for employees hired after June 30, 2010.

Nevertheless, the significant decreases in the Employer's ability to pay necessitate some cutbacks. I do not know which Employer proposal the Union finds more obnoxious: the PTO proposal, or the proposal to eliminate the guarantee of post-retirement health insurance. In the absence of good information about Union preferences, I am guessing that the Union particularly abhors the elimination of the guarantee of post-retirement health insurance. Therefore, I suggest Union acceptance of the PTO proposal that the Union dislikes as the price of maintaining 100% Employer payment of premiums for post-retirement health insurance.

Clothing and Maintenance Allowance vs. Quartermaster System:

Is the $600 annual Clothing and Maintenance Allowance for Court Officers excessive, as the Employer alleges? At the hearing, Court Officer Hazime testified during direct examination by the Union that he bought two long-sleeve shirts, two short-sleeve shirts, three pairs of trousers, and one pair of shoes per year for work use. He said that a shirt with patches cost $48 and that a pair of pants cost $44. This testimony was consistent with Employer Exhibit 11, a November 24, 2009, price list from Cuda Uniform, Inc. that listed long-sleeve shirts at $42,

short-sleeve at $39, District Court emblems at $5 per set, and pants at $44. Combining Mr. Hazime's testimony about quantities with Employer Exhibit 11 information about prices implies expenditure, not counting shoes of $314 per year. Adding 6% sales tax, the total expenditure excluding shoes is $333 per year. In my judgment, a Court Officer could buy a very good pair of shoes suitable for work for $100 including tax. Thus, the total would be $433 per year.

A key issue in dispute here seems to be whether the Clothing and Maintenance Allowance can appropriately be used for gun costs for Court Officers. I found compelling the Union argument that Court Officers are required to have a gun for performance of their job duties. Therefore, I accept the Union argument that the Clothing and Maintenance allowance can appropriately be used for gun costs.

Mr. Hazime testified that he spent $50 per year on gun maintenance and that he went to the range once a month for target practice to maintain his qualification to carry a gun. Mr. Hazime did not testify about his annual expenditures on ammunition for target practice, but it is plausible to me that Mr. Hazime could reasonably spend $117 per year ($9.75 per session for 12 sessions) on this purpose. Thus, I cannot reject the Union assertion that Court Officers actually do spend the full $600 annually on uniforms, work shoes, gun maintenance, and ammunition needed to maintain their qualifications to handle guns.

The Employer is correct, however, that there would be some tax savings from a quartermaster system. The Employer would save on payroll taxes (7.65% for FICA, plus lesser amounts for unemployment insurance and workers' compensation). Court Officers would save

federal income tax (probably either 15% or 25%, depending on their exemptions and other household income), Michigan income tax of 4.35%, and 7.65% for FICA, for a total of either 27% or 37%, depending on federal income tax bracket. (The payroll tax savings, however, would be partly offset by a very slight reduction in eventual Social Security benefits.) Also, because the City of Dearborn is exempt from paying Michigan's 6% sales tax, there would be a 5.66% savings (6% divided by 106%) on each purchase. The annual tax savings per Court Officer from the quartermaster system would thus probably be between $200 and $300 per year.

These tax savings would have to be weighed against the administrative costs to the Employer of operating the quartermaster system and the possible employee concern that supervisors might inappropriately refuse to replace worn-out uniforms or shoes. I assume that the Employer considered administrative costs prior to making the quartermaster proposal.

If there is no legal barrier to the 19th District Court using a quartermaster system to pay directly rather than indirectly for maintenance of privately owned guns of Court Officers, then the entire $600 Clothing and Maintenance Allowance could be shifted over to a quartermaster system. But if there is such a legal barrier (and I am an economist and not a lawyer, so that I am not sure), then it might be better to shift only $550 over to a quartermaster system, and keep a $50 Maintenance Allowance to cover gun maintenance, with this $50 being taxable.

Defined Benefit Pension Plan for Court Officers:

Defined benefit and defined contribution pension plans each have their advantages for employees. Defined benefit plans shift the risk of poor investment performance to the employer,

who is often better able than an individual employee to bear this risk. Defined contribution plans are advantageous for mobile employees who change employers multiple times in a career. Unions generally prefer defined benefit plans. But the broad trend in the U.S. since ERISA was passed in 1974 has been for employers to switch to defined contribution plans. The pattern in the 19th District Court, with employees hired prior to a certain date covered by a defined benefit plan while those hired later are covered by a defined contribution plan, is not unique.

The Employer might argue that the Union, in a previous contract, surrendered the right to a defined benefit pension plan for employees hired on or after July 1, 2001, and the Union should accept that what was lost remains lost. The Union might reply that the Employer agreed to restore the right to a defined benefit pension plan in the police contract (Union Exhibit 7) signed on December 10, 2008. If defined benefit pensions are restored for police, why not for Court Officers, too?

As the Employer pointed out in the fact-finding hearing, defined benefit plans require actuarial services on an ongoing basis to determine if funding levels are adequate, and these actuarial services can be expensive. For a defined benefit plan covering thousands of participants, the cost per participant of actuarial services can be very small. But for a defined plan covering only two participants, the cost per participant of actuarial services may be excessive. It seems inefficient to establish a new defined benefit pension plan just to cover two Court Officers.

Retirement planners typically consider Social Security, employer-sponsored pensions,

and individual savings combined when determining whether an individual is likely to have enough retirement income to replace pre-retirement earnings. (Planners usually assume that a replacement rate less than 100%, such as 75%, is adequate for retirement income.) It appears from page 48 of the police contract (Union Exhibit 7) that Dearborn police are not covered by Social Security. If that is correct, then the police would need a more generous pension in order to compensate for the lack of Social Security benefits. If Court Officers are covered by Social Security, then the Employer is already contributing 6.2% of payroll for Old Age, Survivors, and Disability Insurance under Social Security. It does not seem inequitable for the Employer to make smaller pension contributions for a group covered by Social Security than for a group not covered by Social Security.

On the other hand, if Court Officers are **not** covered by Social Security, then the current minimum Employer contribution of 4% to the defined contribution pension plan seems inadequate to provide retirees with a reasonable retirement income. If that is the case, then I would recommend that the minimum Employer contribution to the defined contribution pension plan be significantly increased. Of course, doing so would create equity demands that the City similarly increase contributions to defined contribution plans for other employees of the Court or of the City of Dearborn.

V. Recommendations of the Fact Finder

I make the following recommendations regarding a new collective bargaining agreement:

Wages – A 1% increase in each step of the pay scale, effective July 1, 2007. A further 1% increase in each step of the pay scale, effective July 1, 2008. A further 1% increase in each step of the pay scale, effective July 1, 2009. The pay scales proposed by the Employer on the bottom half of page 25 and on page 26 of Joint Exhibit 3 should be adopted for the new contract.

Step Increases Contingent on Acceptable Performance Evaluations – Adopt the following contract language:

"Commencing June 30, 2010, an employee's upward progression in step compensation is dependent upon that employee's receipt of a performance evaluation rating of 'satisfactory' or better. A decision to deny upward progression in step compensation shall be considered a form of discipline, subject to the just cause requirement in Article 7."

Health and Dental Insurance – Adopt most but not the Employer's entire health and dental proposal in Employer Exhibit 31. The exceptions are the following:

- Do not adopt 31.2D on page 3 of Employer Exhibit 31 or 31.3F on page 4 that eliminate or restrict the sponsored dependent rider. But it would be appropriate to charge employees the actuarially fair premium for this rider, even if they have paid less than this amount in the past.
- Do not adopt 31.2E on page 3 of Employer Exhibit 31 or 31.5 on pages 6 to 8, dealing with post-retirement health benefits. Instead, the Employer will continue to pay 100% of

the premium for retiree health insurance. But, to contain costs, the Employer may switch retirees to a high-deductible health insurance plan, with an annual deductible of $1,200 per individual, $2,400 per family, provided that the deductible is waived for some preventive services. The retiree health plan should also continue to have prescription drug coverage, though it should use a formulary to limit the use of high-cost drugs.

Paid Time Off (PTO) – Adopt the Employer's proposal shown in Joint Exhibit 3.

Clothing and Maintenance Allowance/Quartermaster System – Adopt the following contract language:

"Effective June 30, 2010, each Court Officer shall be paid an annual gun maintenance allowance of $50. Effective June 30, 2010, each Court Officer shall be provided, under a quartermaster system, with ammunition needed for target practice to maintain gun qualifications, uniforms, and work shoes. Total expenditures for each Court Officer under the quartermaster system shall not exceed $550 per year. A Court Officer may be required to turn in a worn-out uniform item or worn-out work shoes at the time a replacement is provided. Provision of ammunition, uniforms, or work shoes requested by a Court Officer under the quartermaster system shall not be unreasonably denied."

Pensions – No adoption of a defined benefit pension plan for the two recently hired Court Officers; instead, keep them under the defined contribution plan. If bargaining unit members in the 19th District Court are currently **not** covered by Social Security, then raise the minimum Employer contribution to the defined contribution plan to 10% for all bargaining unit members

covered by the defined contribution plan, not only for recently hired Court Officers. If bargaining unit members in the 19th District Court currently are covered by Social Security, then make no changes in the defined contribution plan.

CONCLUSION

The above report represents the Findings of Fact and the Recommendations arrived at as a result of the hearing I conducted and my review of the parties' submissions.

Gregory M. Saltzman
Fact Finder

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at Ann Arbor, Michigan