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**Department of Labor and Economic Growth
Michigan Employment Relations Commission
Fact Finding**

City of Detroit

—and—

MERC Case No. D09 A-0062

AFSCME Council 25

FACT FINDING REPORT

Appearances:

Fact Finder:

William E. Long, Attorney

For City of Detroit:

Valerie Colbert-Osamauede, Attorney
Joseph Martinico, Labor Relations Director

**For AFSCME Council 25
Association:**

Richard Mack, Attorney
Catherine Phillips, AFSCME Council 25

Date of Report:

June 25, 2010

PROCEDURAL BACKGROUND

The current collective bargaining agreement (CBA) between these parties covered the period July 1, 2005 to June 30, 2008. (J-14) Reference to the CBA in this document will be to the "current CBA." The City of Detroit will be referred to in this Report as "the City" and AFSCME Local 25 will be referred to as "the Union." Reference in this Fact Finding Report to exhibits will be referred to by number and identified as joint exhibit (J-#), city exhibit (C-#) or union exhibit (U-#) and to transcript references as (Tr # – page #).

Materials in the case file reveal the parties held negotiation sessions or at least exchanged proposals between September, 2008 and November, 2009.

Additionally mediation sessions were held during the course of this fact finding proceeding. The Union filed a petition for fact finding dated August 10, 2009. The Michigan Employment Relations Commission appointed this Fact Finder October 21, 2009.

A pre-hearing phone conference was held October 27, 2009. Initially, hearing dates were scheduled to begin November 16, 2009, but at the request of the City those dates were later revised and scheduled to begin December 8, 2009. Prior to December 8, 2009, the Union requested, and the Fact Finder ordered the parties to return to further bargaining with a mediator between the period December 8 and December 17, 2009. The parties were not able to reach agreement as a result of this additional bargaining and hearings began on December 21, 2009. A total of 22 hearings were conducted between December 21, 2009 and April 24, 2010. Two of these hearings were held at the Michigan Employment Relations Commission Office in Detroit and the remainder were held at the Union offices in Detroit. Nineteen were full day hearings and three were half day hearings. A transcript was made of each hearing, totaling 22 volumes and 3,353 pages.

At the hearing the parties provided testimony and exchanged and presented exhibits to the Fact Finder. At total of 196 exhibits were received into the record. The numerical number is 189 exhibits, but some were entered as #A and #B, etc. The Union entered 95 exhibits, The City entered 90 exhibits, and 11 Joint exhibits were received into the record.

The following individuals testified on behalf of the City:

Pamela Scales– City Budget Director
Barbara Wise-Johnson – Former City Human Resources Director
Nicole Mithcell – MERCER Human Resources Consulting Firm Employee
Kevin Kent – Blue Cross Blue Shield of MI Employee
James Bobak – Blue Cross Blue Shield of MI Employee
Eunice Bickel-Smith – Former Account Manager, Blue Cross Blue Shield of MI
Francine Pegues – Former Director of Sales for key accounts, BCBS of MI
Lavrne Bronner-Wilson – City Labor Relations Specialist
Brenda Braceful – City Human Resources Manager of Hearings & Policy Development Unit
Robert Walter – Senior Assistant Corporation Counsel, contracts section, City Law Department

The following individuals testified on behalf of the Union:

Christopher Fox – AFSCME International, Fiscal Policy Analyst

Jackita Muhammad – City Employee, Senior Teller for property and income taxes

Danielle Grazes – City Employee, Identification Technician, Police Department

Mel Brabson – Local 542 President

Dale Belman – Professor, School of Labor and Industrial Relations, Michigan State University

John Riehl – Local 207 President

Yvonne Ross – Legal Secretary and Local 2799 President

Phyllis McMillon - City Employee, park maintenance helper/worker and Executive Vice-President, Local 542

Dwayne Lucas – City Employee, General Auto Body Mechanic within the fire department, member of Local 542

Roger Rice – President, Local 229

Catherine Phillips – Staff Representative, Council 25

At the conclusion of the last day of hearing it was agreed the parties would exchange post-hearing briefs through the Fact Finder on or before May 26, 2010. It was also agreed the record would remain open to receive additional exhibits. Additional exhibits were received into the record during a conference call between the Fact Finder and Attorneys for the parties on May 13, 2010. Those exhibits: U 186, U-187, U-188, U-189 are identified in a May 17, 2010 letter from the Fact Finder to the parties. That letter is in the file. Prior to the May 26, 2010 due date for post hearing briefs, counsel for each party, at different times, requested, and the Fact Finder agreed to a slight extension for submission of post hearing briefs. Post hearing briefs were submitted on or before June 9, 2010.

As a result of negotiations prior to, during and following the fact finding hearing the parties reached agreements on a number of articles and memorandums of understanding in the collective bargaining agreement (CBA). Agreements reached between the parties are identified in exhibit (J-100). In addition to those identified in (J-100) the parties have reached agreement on the following:

- Article 24 – Sick Leave
- Article 30 – Vacations
- New Memo – Human Resources/Payroll Systems

Therefore, the Fact Finder acknowledges these agreements and recommends the language that appeared in the 2005-2008 CBA, as agreed to be unchanged by the parties

and as modified in agreements by the parties identified in the articles and memos listed below be continued in the successor Agreement:

Article No.	Title
	Agreement
	Purpose and Intent
1	Recognition of Union
2	Management Rights and Responsibilities
3	Union Rights
4	Agency Shop
5	Dues Check-Off
6	Service Fee Check-Off
7	Stewards, Chief Steward, Committeeperson and . . .
8A	Grievance Procedure
8B	Grievance Procedure
9	Stipulations to the Grievance Procedure
10	Time Limit on Monetary Claims
12	Special Conference
13	Health & Safety
14	Seniority
15	Seniority of Union Representatives
16	Reduction in Force, Lay Off, Demotion and Recall
17	Unemployment Compensation SUB
18	Transfers and Promotions
19	Contractual Work
20	Veterans-Reserves-Education
21	Maintenance of Conditions
22	Leave of Absence
23	Funeral Leave
31	Rates for New Positions
32	Temporary Assignments
35	Workers Compensation
36	Death Benefits and Life Insurance
37	Union Bulletin Board
38	Supplemental Agreements
39	Strikes and Lockouts
40	Savings Clause
42	Clothing and Uniform Allowances
43	Successor Clause
44	Employee Assistance Program
45	Career Development and Training
46	Social Security
47	EEO and Affirmative Action
50	Protection Clause
51	Confidential Employees
Memo	Adoption of Cafeteria Plan
Memo	Registered Nurses Organization
Memo	Contractual Work – Pilot Program
Memo	Defense and Indemnification of Employees . . .
Memo	Downtown Parking Availability. .
Memo	Former Community Nutrition Wkrs

Memo	Joint Labor/Mgmt-Contracting Out
Memo	Joint Study/ . . . On Classification
Memo	Labor/Management Committees
Memo	Local Union Presidents
Memo	Miscellaneous
Memo	National Health Care
Memo	Preced of ADA, and MI Handicap
Memo	Private Care Mileage Reimbursement
Memo	Proc for Eliminate Backlog of Grev . . .
Memo	Required Licenses and Renewals
Memo	Staff Representatives
Memo	Supplemental Agreements with DOT Locals 214 & 312
Memo	Supplemental Negotiations
Memo	20 Negotiations
Memo/Letter	Wastewater . . . Agreement-Minergy
Memo	Welfare to Work Program
Letter	Bldg Trades Classifications – DOT
Letter	Jurisdictional Disputes
Letter	Miscellaneous Time Off Provisions
Letter	Union’s Pay Equity Study
Ex. 3	LTD Benefits – Income Protection Plan
Ex. 4	Holiday Schedule
Ex. 5	Deduction/Revocation Authority Form
Ex. 6	Arbitration Panel Procedures

(J-100)

Remaining issues presented by the parties to be addressed by the Fact Finder in this report and the order in which they will be addressed are:

1. **Article 11 – Disciplinary Procedures** – (Employer proposal – C-52, U-171) (Union proposal – U-170) and **Memorandum of Understanding re: Universal Work Rules** (Employer proposal C -40)
2. **Article 25 – Longevity Pay** (Employer proposal – C-26) (Union proposal – U-172 as is)
3. **Article 26 – Work Week, Work day, Shift Premium** (Union proposal – U-173 as is) (Employer proposal – C-29)
4. **Article 27 - Overtime** (Employer proposal – C-32) (Union proposal – U 174)
5. **Article 28—Holidays, Excused time off, Swing Holidays** (Union proposal – U – 175) (Employer proposal – C-35)
6. **Article 29—Unused Sick Leave on Retirement** (Employer proposal – IC-55A C-55B) (Union proposal – U -176)
7. **Article 33 – Jury Duty** (Employer proposal – C- 57A, C-57B) (Union proposal – as is)

8. **Article 34 – Health Care, Hospitalization, Medical, Dental** (Union proposal – C-15A, C-18) (Union proposal – U-178)
9. **Article 41 - Wages** (Employer proposal – C-58) (Union proposal – U- 179)
10. **Article 48—Retirement** (Employer proposal – C-79, C- 78A, C-78B) Union proposal – U-177)
11. **Article 49—Tuition Refund** (Employer proposal – C – 80) (Union proposal – as is)
12. **Article 52—Modification and Termination** (Employer proposal -) (Union proposal – U – see U- 179 re: wages)
13. **Memo – Skilled Trades** (Employer proposal – C- 81A, C-81B) (Union proposal – U-180)
14. **New Memo – Defined Contribution Plan** (Employer proposal – C-79)

GENERAL BACKGROUND

The purpose of Section 25 of the Labor Relations and Mediation Act (PA 176 of 1939) is stated in part as “when it becomes apparent – that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.”

The Fact Finding process and this report and recommendations is, therefore, a step in the process and a resource upon which the parties hopefully can gain a better understanding and appreciation of their respective positions and, thereby, reach agreement. Michigan Employment Relations Commission (MERC) rules require the report include “a statement of findings of fact and conclusions upon all material issues presented at the hearing; recommendations with respect to the issues in dispute, and reasons and basis for the findings, conclusions and recommendations.” (Rule 423.137)

But initiation of Fact Finding does not occur in a vacuum. There is typically a variety of reasons parties may view Fact Finding as a tool to use in the process of reaching a final resolution and implementation of a CBA. I find that to be the case between the two parties in this case.

There is no question that the economic situation facing public entities in recent years as a result of the national, state and local economic situation is having a tremendous impact on public employer-employee relations. The City of Detroit's financial situation will be addressed in more detail in the financial section of this report. But it is clear that the City is not the only public entity in Michigan or nationally that is facing declining revenues at a time when its costs for health care, supplies, such as fuel and other necessities, are increasing. At the same time, its employees, residents and those outside its jurisdiction who use its services are also faced with declining budgets due to layoffs, cutbacks in hours worked, declining property values and a mirade of other economic pressures.

But in addition to all of these economic pressures, the testimony and evidence presented in this case reveals that there were other events occurring that made it difficult for the parties to reach agreement at or before the conclusion of their current contract, which was for the period July 1, 2005 – June 30, 2008. (C-14) The testimony of City witness Barbara Wise-Johnson, former City Labor Relations Director, was helpful in gaining perspective on some of those events. (Tr 10, pg 1354 – 1487)

Ms. Wise-Johnson testified that during negotiations for the 2005-2008 CBA the City had two major objectives. Those were to achieve a 10% wage reduction in the form of days off without pay and to achieve some concessions on health care. She stated that the health plan negotiated with this Union was referred to as the Alternative Health Care Plan Design as opposed to a second, more limited benefit plan, called the Mercer Health Care Plan. The parties were unable to reach agreement for the 2005-2008 contract period and went to Fact Finding. The Fact Finding report was issued June 30, 2006. (U-95) The Fact Finding Report basically adopted the City's recommendations with respect to the wages, days without pay and health care. The Fact Finder recommended that wages be reduced consistent with the City's agreements with other unions, which was the implementation of the days without pay (DOWOP) concessions proposed by the City on April 28, 2006 with the inclusion of a 4% wage increase on June 30, 2008 at 11:59 p.m. The Fact Finder also recommended adoption of the health care proposal that the City had agreed to with other unions. But the Fact Finder recommended that both of these proposals would have to be agreed to prior to July 2006 to permit the City to obtain its projected savings and that if the City was not able to implement them by that date the Fact Finder recommended no wage improvements and that the City also

implement the more restrictive Mercer Health plan as opposed to the Alternative Health Care Plan.

Ms. Wise-Johnson testified that after the Fact Finding report was received the Union indicated it would wave the period for continued bargaining prior to the City implementation of its proposals because it was unlikely that continued bargaining would result in a different result and, therefore, permit the City to meet its July 1, 2006 deadline for implementation of its health care proposal. So the end result of the CBA for the 2006-2008 period was basically an imposed agreement in July 2006 that included reductions in wages in the form of reduced work hours or DOWOP for the fiscal year 2006-2007, but with a 4% wage increase at the end of the contract period and the implementation of the Alternative Health Care Plan. The Fact Finder's report indicates the City anticipated the Alternative Health Care Plan would result in an overall savings of approximately \$31,000,000.00 of which \$5,093,501.00 would be realized from AFSCME for fiscal years 2006-2007 and 2007-2008. (U-95)

So with that experience between the parties resulting in the 2005-2008 CBA the parties approached the negotiations for the CBA, which was to begin July 1, 2009 with the City facing continuing fiscal problems and shortfalls in projected revenues and the Union feeling their members had given quite a bit to help address the fiscal situation in the 2005 – 2008 CBA. There were also other events occurring in the City as the parties approached the time when they would normally begin negotiations for the CBA that is the subject of this Fact Finding proceeding.

Ms. Wise-Johnson testified to the environment within the City as the City prepared for negotiations. She noted that normally there is a team of people that come together with the Mayor such as the Budget Director, Chief of Staff, Chief Financial Officer, Deputy Mayor and Labor Relations Director to assess and determine the budget situation and implications for labor contracts. She said normally those discussions would occur about 6 months in advance of expiration of the CBA and in this case that was in late 2007. She said Mayor Kilpatrick was Mayor at that time and Christine Beatty was the Chief of Staff. As Labor Relations Director she reported to the Chief of Staff as it related to labor relations issues. She said there were only about two meetings near the end of December 2007 and assessing the budget situation there was the general conclusion the City would have to ask for more concessions from its employees.

Then in early 2008 the text message incident between the Mayor and Chief of Staff became public. Ms. Beatty resigned and the Mayor and much of the administration was focused on other matters, including the budget. Ms. Wise Johnson stated the City was facing over a \$100 million budget deficit at the time. The Mayor was indicted in the Spring of 2008. The result was that efforts to prepare for negotiations were put on hold. Directions from others in the administration necessary to develop the City's position on matters pertaining to negotiations were not forthcoming.

Ms. Wise Johnson said that during that spring of 2008, because of the budget situation, her office was directed to send a letter to all unions advising that major layoffs were anticipated and that the City was again going to be seeking concessions during negotiations. She said that a special conference with the union was held in June or July 2008 to discuss the budget situation, particularly involving additional financial shortfalls, which were a result of the failure of the projected sale of the Windsor Tunnel. She testified that the first bargaining session did not occur until August 28, 2008. She noted that "this was the first time in my history, in knowing Labor Relations and bargaining, that I ever recall us starting this late in the process." "Our contract says that both parties can start to bargain in February of the year in which the contract is going to expire, and as far as I know we have pretty much been on target. Both parties have come to the table much earlier – and certainly not after the contract has expired – than what happened in this particular case. This is the first time that I recall that happening." (Tr 10, pg 1362)

In September of 2008 Mayor Kilpatrick resigned. Ken Cockrel, who was President of the City Council was appointed interim Mayor pending a special election. Ms Wise Johnson said bargaining between the parties occurred on a once or twice a week basis into October 2008 but without much progress because of the changes occurring in the City leadership. A new Chief Financial Officer was appointed and everything was sort of put on hold until a more accurate budget assessment could be made.

In January of 2009 Interim Mayor Cockrel, Jr. submitted a Budget Deficit Reduction Plan to the Council which estimated the accumulated deficit to be as much as \$300 million. (U-46) Due to the assessment of the financial deficit the City was facing, Ms. Wise-Johnson said she was given instructions from the Chief Financial Officer to propose a 10% salary/wage cut for all employees, civilian and police and fire. In order

to address and begin to eliminate the deficit the City estimated this action was needed to save approximately \$50 million to help reduce the deficit. So Ms. Wise-Johnson was directed to negotiate that type of proposal with the unions. The position the City found itself in was particularly difficult because the 2005-2008 labor agreements, which included the concessions on health care and DOWOP's, also included a 4% wage increase which took effect June 30, 2008 plus the DOWOP's provision was no longer in effect. Now the City was, in effect, asking for that 4% pay raise back plus an additional 6% reduction. Ms. Wise Johnson said the City held an all union meeting in January 2009 in which they were told of the situation, and that in discussions with AFSCME and the City, indicated a need for some concessions on wages and benefits and that the City was going to ask for some changes in health care but that the City did not put any specific proposals on the table at that time. (Tr 10, pg 1368)

Ms. Wise-Johnson testified that as negotiations continued between January and April some progress was made on some non-economic issues. The Union wanted agreement on specific non-economic "cornerstone" issues before addressing economic issues and ultimately the City agreed to several of those which were agreed to in April 2009. (J-100) Ms. Wise-Johnson said it became apparent that it would be difficult to reach agreement on the 10% salary cut and she suggested the alternative of budget required furlough days to others in the administration. It took some time before the administration accepted her suggestion, but eventually the City proposed 26 budget required furlough days instead of the 10% salary cut.

In May 2009 there was a special election for Mayor and Mayor Bing was elected. There continued to be uncertainty as to what the actual budget situation was and what the current fiscal year budget deficit was and the new administration wanted to review it. This resulted in a lapse in bargaining during May and June 2009. On July 7, 2009 the administration held a meeting with all union leaders in which it asked that labor negotiations be given top priority so as to resolve them as quickly as possible. Ms. Wise-Johnson said the goal was to resolve contracts within 30 days. She said she was able to reach a tentative agreement with one union, the Building Trades, by July 31, 2009 which included most of the economic provisions the City was proposing, including the 26 budget required furlough days and health care revisions. Ms. Wise-Johnson noted that that tentative agreement was not ratified by the Building Trades membership and the issue then went to Fact Finding. The Fact Finding proceeding resulted in a Fact Finding

report, which was issued September 11, 2009. (C-47) That report recommended, in essence, the adoption of the provisions of the tentative agreement.

On August 10, 2009 another meeting was held with City officials and all union leaders. Ms. Wise-Johnson said the purpose of that meeting was to share with and impress upon the union leaders the urgency of the situation and that if the City was unable to resolve issues internally there was a possibility that a financial manager would be appointed or that the City may not be able to make payroll. The Union filed a petition for Fact Finding on August 10, 2009. This Fact Finder was appointed August 21, 2009.

Ms. Wise-Johnson testified that following the tentative agreement with the Building Trades she was given another 30 days to attempt to reach agreement with other unions. Getting agreements as soon as possible was important to the City. In an attempt to provide an incentive for the other unions to reach agreement within a certain time period she was authorized to offer an incentive. The City, therefore, changed its proposal on longevity so that employees who qualified, based on the number of years of service, who did not have a 10 day or greater suspension on their record during the longevity qualifying period, would continue to get their longevity pay. The City also proposed a change in the overtime proposal. The change was that if a person worked on a holiday or if they were approved vacation time, those hours would be considered hours worked for the purpose of calculating overtime. Ms. Wise Johnson stated that with these changes, the City and the Teamsters were able to reach a tentative agreement. She indicated that bargaining continued with other unions also and between August 2009 and February 5, 2010, her last day in the position of Labor Relations Director, a number of agreements were either ratified by unions or had been imposed. She produced and entered into the record (C-48), which is a listing of 49 separate union/associations. From that list it is shown that as of February 21, 2010, twenty-two were ratified by a union or association and five were imposed by the City.

Ms. Wise-Johnson also testified to how the City addressed the City's non-union employees. She indicated an Executive Order was prepared in August 2009 with an effective date of September 2009 that required non-union employees to begin serving their 26 budget-required furlough days in a 12 month period. (Tr 10, pg 1402) She testified that these employees began taking budget-required furlough days September 18, 2009. (C-90) She also stated that prior to February 5, 2010 the City had submitted

resolutions to City Council for changes made for Fringe Benefits for the non-union employees and those groups that had ratified their agreements or whose agreements were imposed. She stated the City Council had approved those resolutions for all of those groups and the non-union employees. (Tr 10, pg 1403) (C-83, C-84, C-85, C-86, C-87, C-88, C-89, C-90)

The parties continued to negotiate in late August and early September. On September 3, 2009 the City submitted a "proposal package" to the Union for consideration as a total package, meaning the proposal had to be accepted in total or not at all. (U-39, U-44) The total package was not accepted by the Union at that time.

As noted in the Procedural Background of this report, the Union petitioned for Fact Finding August 10, 2009 and this Fact Finder was appointed October 21, 2009. A pre-hearing conference was held October 29, 2009 and initially 12 hearing dates were scheduled to begin November 16, 2009 and continue through December 21, 2009. On November 12, 2009 the City advised the Fact Finder that due to other commitments it was not prepared to proceed until December 8, 2009. On November 23, 2009 the Union requested that the Arbitrator remand the parties to further bargaining with a Mediator and, after consultation with the parties, the parties were ordered to return to bargaining between the period December 8 to December 17, 2009. The City again presented a package for consideration by the Union, which was modified slightly from the package presented September 3, 2009 with the provision that if this modified package was not accepted in total the City would revert back to original proposals on certain items. The parties were unable to reach agreement during the December bargaining sessions with the Mediator and Fact Finding proceedings began December 21, 2009. The parties again voluntarily returned to bargaining during a break in the Fact Finding proceedings between March 9, 2010 and March 31, 2010 and were able to reach agreement on some items but not on all items.

As the parties prepared for Fact Finding there were numerous requests from the Union that information be provided by the City. The Union argued that it needed this information in order to properly prepare for the hearing. One of the functions of the Fact Finding process is to determine what information is necessary to allow the issuance of recommendations concerning the dispute and the Fact Finder is empowered to dispose of procedural requests, motions and regulate the course of the hearing. Prior to and in the early stages of the hearings significant time and attention was devoted to the

process of identifying what information had been or was being provided to the Union by the City, what was and was not possible to provide, what was and was not necessary information to the proceeding, and when the necessary information needed to be provided. Many of these matters were addressed by the parties and the Fact Finder outside the record of the proceeding and some within the record. (U-3, C-4, J-5, J-6, J-7, J-8, J-10, U-12)

Describing this background hopefully reveals to the reader that a number of factors outside of the control of the employees and their union leaders and outside the control of the labor relations staff of the City made it difficult for the parties to reach agreement. The clear impression this Fact Finder gained from the hours spent with the parties during Fact Finding was that neither party liked the position they were being placed in. They were being forced to deal with a situation that was primarily not of their making and yet they were the ones being asked to find solutions. Even though tensions were evident during the early stages of Fact Finding, what did become clearer during the course of Fact Finding was that through the exchange of information, both exhibits and testimony, each party gained a better awareness of, and I believe an appreciation for, the position and concerns of the other party.

Also, prior to and during the course of Fact Finding, there were media reports of frustration on the part of both parties involving the situation and the inability of the parties to reach voluntary agreement. It is this Fact Finders opinion that additional information was needed by the parties, particularly the Union to assist in sharing with its members, the facts of the situation to potentially aid in reaching agreement. I believe the Fact Finding process provided that information. And there is no question that there is a recognition by the parties that regardless of the eventual outcome of negotiations, they will need to continue to work together to provide essential services to the City's residents. Hopefully this Fact Finding report can assist the parties in reaching agreement, but even if they are unable to reach agreement, to enable them to continue a constructive relationship to the benefit of the City, its employees and most importantly to the citizens they both are committed to serve.

GUIDE FOR ASSESSING THE ISSUES IN FACT FINDING

The law and rules pertaining to Fact Finding sets out no criteria that must be used in determining findings and recommendations. Article 25 of the Labor Relations and Mediation Act (MCL 423.25) merely states “When in the course of mediation – it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement.” However Fact Finders frequently use as a guide, the criteria established in Article 9 of Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire Departments. These criteria are required to be followed by Arbitrators involving public employers and police and fire unions. While not required to be addressed in Fact Finding proceedings, this Fact Finder finds this criteria to be a useful guide when assessing the issues presented by the parties. The applicable factors to be considered as set forth in Article 9 are as follows:

- (a) *The lawful authority of the employer.*
- (b) *Stipulations of the parties.*
- (c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*
- (e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

The above criteria will not be referenced specifically when addressing each issue but in general has been considered as a whole when reaching findings, conclusions and making recommendations. Perhaps foremost in addressing the issues is the balancing of interests between the needs of the Employer in managing resources, and in this case limited resources, wisely; the needs of the employees to maintain a reasonable living as

a result of their employment; and the needs of the citizens of the City who expect and should be provided necessary public services to assure their health and safety. Among the factors considered most valuable by this Fact Finder for guidance is: “(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs,” and “(h) Such other factors – which are normally or traditionally taken into consideration – through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.” Recommendations are made in the context of balancing these interests and considering the practical and the possible in light of the facts.

FINANCIAL SITUATION

Finding of Facts and Conclusions

Facts

The General Background section of this report touched briefly on the most recent financial circumstances faced by the City and its employees. Article 9(c) of Act 312 provides guidance in considering the financial situation of the Employer when it states one of the factors to be considered is “the interests and welfare of the public and the financial ability of the unit of government to meet those costs.” The City presented substantial evidence and testimony on this issue and in its post hearing brief urges the Fact Finder to heavily consider this factor in reaching his recommendations. The Union, in its post hearing brief, while recognizing the reality of the financial situation, offered suggestions for managing the limited resources in a way that could distribute the reductions in expenditures more broadly and slightly extend the time period in which the City would achieve a balanced budget and, thereby, reduce somewhat the burden on the employees’ wage and benefits reductions. Both parties’ positions will be discussed below.

City Position on the financial situation

Perhaps the language found on the inside front page of the City’s Comprehensive Annual Financial Report for the fiscal year ended June 30, 2008 best describes the current situation. It states, “Founded in 1701, Incorporated 1806, Area: 137.9 square miles, Population: 951,270, “We hope for better things,” “It shall rise again from the ashes.” (C-1)

The City's financial situation was presented primarily through the testimony of its budget director, Pamela Scales and the introduction of various exhibits. In particular, City exhibit (C-1) which contained documentation showing (A) the economic history of Detroit; (B) budget history of Detroit; (C) 2009 deficit reduction plan; (D) fiscal year 2009-2010 budget; (E) bond ratings; and the City's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2008.

Also, exhibit (C-47), which is the Fact Finder's Report and Recommendations involving the City and the Detroit Building and Construction Trades Council issued September 11, 2009, was very useful in assessing the facts involving the City's financial situation as it existed for FY 2009-2010. In (C-47, pgs 3-15) Fact Finder George Roumell, Jr. reviewed and summarized some of the same financial data that was presented in this proceeding and contained in (C-1). This Fact Finder is aware that Fact Finder Roumell has had extensive experience involving labor relations issues between the City and its employees and I respect his work in determining and reporting the facts. I have reviewed and compared the data presented in (C-1) with the narrative in Fact Finder Roumell's discussion of the City's finances in (C-47) and rather than plagiarize the language from Fact Finder Roumell's discussion, I will provide excerpts from that discussion below where I find it is consistent with the information provided in (C-1) and the testimony of City Witness Scales. In some instances I have updated the data from (C-47) to conform with updated information in (C-1). Following are those excerpts from (C-47) in which I have inserted updated comparable information from data contained in (C-1).

"By any measurement, the City is faced with a severe financial crisis. Economists have agreed that the nation as a whole is in a recession. The City of Detroit may even be approaching a depression. Whereas the nation's unemployment rate is hovering near 10%, the current unemployment rate within the City of Detroit is approximately 28.5%. In addition, the State of Michigan is facing financial problems and a budget shortfall that affects State aid to municipalities, including Detroit.

Detroit's two largest employers, Chrysler Corporation and General Motors, have just emerged from bankruptcy. The ripple effect of the automobile industry's economic role has affected suppliers who were based in Detroit. The major Chrysler plants that were located in Detroit were closed for upwards of two months at the beginning of 2009. Chrysler Corporation has eliminated automobile dealerships, including a major dealership within the city limits of Detroit affecting the layoff of a number of employees, i.e., Lockmoor Chrysler. A major hotel, the Pontchartrain,

has closed. A major building, the Penobscot Building, is said to be in default.

Thus, there are economic forces that have had a hurricane strength effect on the City of Detroit's financial health that the City had no control over.

The Demographics

In 1950, the population of Detroit hit its highest point, namely, 1,849,568 individuals. At that time, Detroit was 29% of the population of the State of Michigan. By 1960, there began a downward trend in the population growth of Detroit so that by 2008 Detroit had fallen to a population of 912,062 individuals, or 9.1% of the population of the State of Michigan. While the State from 1940 showed an average annual population increase of 8.8% per year, the City of Detroit was showing an average population decline of 6.2% decline. (C-1, Tab A-1)

The significance of this decline in population is twofold. While Detroit's population was dropping, its geographical area remained the same. Yet, there were less persons available to pay city income tax or otherwise be taxed. In addition, going from 29% of the State's population to 9.1% of the State's population meant that, in terms of influence on State government, Detroit's influence has waned. There is another factor. The reduction in population has affected the City's ability to obtain grants from both state and federal government that are based upon population.

The City of Detroit's demography has seen an impact in the City's economic activities. In 1972, as to retail trade, service industries, manufacturing and wholesale trade, the City had 23,465 establishments. By 2002, the number of establishments has been reduced to 8,691. Significantly, manufacturing has gone from 2,398 to 647 in 2002. As between 1997 and 2002, there has been an increase in service industries from 4,479 to 5,254. But service industries frequently are lower paid positions as compared to manufacturing positions, thereby affecting City income tax revenue. The point is that the loss of economic activities from 1972 to 2002 has been a loss of 14,774 business establishments for a 63% loss ratio. The evidence establishes that this loss trend has continued to the present time. (C-1, Tab A-2)

In 1980, there were 421,975 persons employed in the City of Detroit. By 2009, this number had fallen to 303,186 for a loss of 118,789 jobs or a 28.2% loss. Wayne County also experienced a net loss over the same period, whereas Livingston County, Macomb County, Oakland County and Washtenaw County experienced gains. What the change in economic activities has meant as well as the loss of employed persons is that there are less real estate taxes and income tax collected within the City of Detroit because of these negative changes. (C-47, pg 4, 5 updated with figures from (C-1, Tab A-3)

Underscoring the above demographic information is that the United States Department of Labor has reported that, of the 50 largest cities in the United States, Detroit has the highest unemployment rate. The report as of November 2009 from the Department of Labor suggested that the unemployment rate in Detroit was 25.4%. (C-47, pg 5, updated with figures from C-1, Tab A-4)

In addition, the City, beginning with the 1994-1995 fiscal year and up to the current fiscal year, is experiencing a spread between State equalized value and taxable real estate value because of declining property values which impacts on the City's revenue flow from property taxes. (C-1, Tab A-5)

In 1950, the property tax was 61% of Detroit's general fund budget. By fiscal year 2009, unaudited, the percentage of the general fund budget funded by property tax revenue was 14%. Whereas Detroit's percentage of the general fund from property tax revenue hovers around 13-14%, the largest cities in the southeast metropolitan area such as Ann Arbor and Dearborn, for example, receive 67% and 74%, respectively, of their general fund from property taxes. This comparison highlights another structural difficulty in the City's ability to raise revenue. The property values are just not here. (numbers updated from C-1, Tab A-6, A-7)

The City does have a resident and non-resident income tax. In 1970, the highest point, the City processed 747,719 income tax returns from residents, nonresidents, corporations and partnerships. In that year, there were 488,095 resident returns, 243,682 non-resident returns, 11,684 corporation returns and 4,258 partnership returns. In 2008, the total number of income tax returns had dropped to 262,043. Of these, 127,521 were resident returns, 125,167 were non-resident returns, 7,183 were corporation returns and 2,172 were partnerships returns. The total returns represent a drastic reduction from a high in 1970. It is also noted that not only is there a dramatic drop of resident returns, but likewise in non-resident returns, indicating that non-residents are no longer working in Detroit. This drop in income tax returns further highlights a structural difficulty that the City has in its ability to raise revenue. (numbers updated from C-1, Tab A-8)

History of the City's General Fund Surplus/Deficits

City exhibit (C-1, tab B1) presented a history of its annual budget surpluses or deficits for the period 1964-65 to 2008-2009 fiscal years. It reveals that the City had periods where it had successive fiscal year deficits. For instance there was a six fiscal year period from FY 1966-1967 through FY 1971-1972 that the City had deficits but they never reached more than 5.15% of total expenditures in any one year. Again, for the five year period from FY 1989-90 through FY 1993-94 the City experienced deficits each fiscal year. During this period the highest deficit as a percentage of total expenditures was for FY 1991-92 at 9.21%.

In the fiscal year 1993-1994, the City had an accumulated deficit of \$53,388,747. The history from that point of surpluses and deficits is as follows: (C-1, Tab B-1)

Fiscal Year	Total Expenditures	Surplus	Deficit	Surplus/ (Deficit) as a % of total expenditures
1994-95	1,140,795,935	19,976,648		1.75%
1995-96	1,448,326,141	18,430,053		1.27%
1996-97	1,322,693,636	12,418,161		0.94%
1997-98	1,406,349,518	13,380,061		0.95%
1998-99	1,438,235,097	1,655,874		0.12%
1999-00	1,511,077,783	2,301,976		0.15%
2000-01	1,488,793,205		26,395,130	-1.77%
2001-02	1,576,041,291	1,555,594		0.10%
2002-03	1,601,368,138		69,063,211	-4.31%
2003-04	1,577,561,963		95,032,523	-6.02%
2004-05	1,587,505,777		155,404,035	-9.79%
2005-06	1,410,081,217		173,678,707	-12.32%
2006-07	1,278,109,169		155,575,800	-12.17%
2007-08	1,181,358,285		219,158,137	-18.55%
2008-09 (unaudited)	1,428,288,629		326,000,000	-22.82%
2009-10 (budget)	1,602,254,042		n/a	n/a

It is noteworthy that this most recent period of cumulative deficits is now extending into the eighth fiscal year and has grown each year since FY 2002-2003. The FY 2008-09 unaudited budget projects the \$326,000,000 cumulative deficit to be the highest percentage of total expenditures ever, at 22.82%. (C-1, tab B-1)

The City's Deficit Elimination Plan

In November 2009 the City filed a deficit elimination plan with the State Department of Treasury. In accordance with Public Act 140 of 1971, a local unit of government ending its fiscal year in a deficit condition is required to formulate and file a deficit elimination plan with the State. The City's deficit elimination plan is contained in (C-1, tab C). Excerpts from that plan include the following:

“– The City of Detroit has a critical shortage of cash. This deficiency is a result of accumulated deficits passed forward from previous administrations totaling three hundred twenty-five million (\$325 million) dollars; and an increasing shortfall in the current fiscal year as projected revenues decline. The estimated deficit includes a realized FY 2008 unreserved amount of \$219 million combined with an approximate 2009 fiscal year-ending operational deficit of \$106 million. In addition, in the current fiscal year (FY 2009-10) the City faces a revenue shortfall of approximately \$60 to \$70 million. If these losses

- are left unresolved the City could be at risk of growing its accumulated deficit to \$400 million by June 30, 2010. FY 2007-2008. (C-1, tab C pg 1)
- On June 30, 2008, the General Fund had a total fund deficit of \$141.7 million, an increase of \$50.3 million from the prior year. The Unreserved Fund Balance had a \$219.2 million cumulative deficit at June 30, 2008 compared with the \$155.6 million deficit at the end of FY 2007, an increase of \$63.6 million from the prior year. This was the result of three major factors: 1. The General Fund wrote off \$24.4 million in net inter-fund receivables due from the Transportation Fund due to the inability to timely collect them. 2. The State of Michigan withheld \$23.0 million of revenue sharing for the year-ended June 30, 2008 until October 2008 because the City had not issued the 2007 Comprehensive Annual Financial Report (CAFR) timely. 3. Lastly, the City recorded \$57.6 million in liabilities due to Wayne County and reduced property tax revenues by the same amount for estimated charge-backs/recoveries of un-collectable delinquent taxes. The --- increase in the liability and decrease in property tax revenue was due to a more conservative estimate based on the down-turn in the economy and current trends of the County charge-backs. (C-1, tab C, pgs 1-2)
 - In facing these difficulties, the City has already taken steps to proactively reduce expenses thus addressing the erosion of tax revenues that resulted from the situation in the automotive industry to include revenue and organizational changes. From 2003 to 2007, the City initiated a reduction of approximately twenty-three percent (23%) of its employees due to the inability of revenues to balance with expenditures. In 2009, the City again initiated four hundred and twenty three (423) lay-offs and eliminated five hundred (500) vacant positions from its fiscal 2009/10 adopted budget.
 - In addition to the layoffs mentioned above, the City has identified and implemented several other strategies that will mitigate current revenue shortfall. Those strategies include staffing reduction, days off without pay for certain employees (i.e. furlough days), a reduction in level of City provided services, reduced subsidies and enhanced procedures for the collection of revenues." (C-1, tab C, pg 4)

The Deficit Elimination Plan provides an outline that describes the City's analysis of how it proposes to eliminate the deficit over the FY 2010-11 and FY 2011 -12 fiscal years. Included in the Plan is reference to savings from workforce reductions and budget required furlough days. Those statements are:

<u>" Workforce Reduction</u>	<u>\$16. 8 million savings</u>
Since July 2009, the City has initiated three phases of layoffs with projected savings of \$20,400,000 annually; however only \$16,800,000 will apply to the current year. (meaning the 2009-10 fiscal year) (C-1, tab C pg 7)	

<u>Budget Required Furlough Days</u>	<u>\$ 15 million savings</u>
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The furlough days are scheduled (10% wage concession) to assure twenty-six budget required days off. The budget required days have been strategically set so that the days are connected or adjacent to holidays and at a time when the public may be more tolerant of the City offices being closed. Budget furlough days will be extended through FY 2011-12." (C-1, tab C pg 8)

The City of Detroit FY 2010-2011 Executive Budget Summary also addresses the deficit situation.

"The FY 2010-2011 budget includes \$85 million for prior deficit.

Prior Year Deficit

The FY 2010-2011 budget includes \$85 million for prior deficit. It is anticipated that the FY 2008-09 audit will show an accumulated deficit of \$330 million. In March, 2010 the City sold \$250 million of fiscal stabilization bonds resulting in a net \$249 million, minus expenses. These items result in the \$85 million accumulated deficit estimate for FY 2010-2011.

In November, 2009, the City had projected a \$47 million shortfall. The variance is a result of lower revenue collections, delays in union contract agreements and other initiatives. The City plans to eliminate the shortfall by FY 2012. Many process improvements and restructuring that has begun in the current year will be completed by the FY 2012 at the latest. The City is still evaluating a number of opportunities to determine which is the most cost effective and in the best interest of the citizens. The FY 2011 Recommendation has many initiatives outlined above that begins this process. The Recommendation includes \$85 million for restructuring and consolidation to capture the financial impact of these initiatives.

The Recommendation does not include any other fund shortfalls.

What all of this information reveals is that the City has been spending more than it has been receiving in revenues for the past eight fiscal years. It received authority from the State to issue bonds to enable it to get cash to operate and pay off its accumulated deficit over the next several years. It is required by law to demonstrate how it plans to achieve a balanced budget going forward and discontinue spending more than it receives in revenue each year.

The Budget Stabilization Plan it presented to the State November 2009 described a plan that would eliminate the deficit by the end of FY 2011-2012. The plan presented in (C-1, tab C pg 6) anticipated an accumulated deficit of \$47 million at the start of the FY 2010-2011 and described how it would eliminate that deficit by the end of FY 2011-2012. But according to the Executive Budget Summary for FY 2010-2011, (C-150) Executive Budget Summary pg (1), the accumulated deficit is anticipated to be \$85

million at the start of FY 2010-2011. If it is in fact \$85 million it will be more difficult for the City to eliminate its deficit by the end of FY 2011 -2012. In either case, included in that plan are anticipated Budget Required Furlough Days and other City proposals for reductions in labor costs that have been presented by the City in this proceeding.

The City's FY 2009 -2010 budget and FY 2010-2011 Proposed Budget

Outlined below is selected information from exhibits within the record to provide a comparison of the FY 2009-2010 budget as presented in (C-1, tab D) and the proposed FY 2010 -2011 budget which is to begin July 1, 2010 as presented in (C – 150). Information is also provided from a historical perspective. This information is helpful in considering the context in which the parties addressed this particular contract.

City of Detroit Comparative Budget Summary

APPROPRIATIONS	2009-10 Budget	2010-11 Recommended	Increase (Decrease)
General City Agencies	\$1,399,018,578	\$1,319,603,649	(\$79,414,929)
Non-Departmental	590,809,049	361,250,397	(229,558,652)
Debt Service	76,833,066	74,398,313	(2,434,753)
Enterprise Agencies	1,603,654,103	1,154,393,905	(449,260,198)
TOTAL	\$3,670,314,796	\$2,909,646,264	(\$760,668,532)

REVENUES	2009-10 Budget	2010-11 Recommended	Increase (Decrease)
General City Agencies	\$637,411,438	\$600,867,605	(\$36,543,833)
Non-Departmental	1,347,493,489	1,075,697,169	(271,796,320)
Debt Service	76,833,066	74,398,313	(2,434,753)
Enterprise Agencies	1,608,576,803	1,158,683,177	(449,893,626)
TOTAL	\$3,670,314,796	\$2,909,646,264	(\$760,668,532)

BUDGETED POSITIONS	2009-10 Budget	2010-11 Recommended	Increase (Decrease)
City Funded	9,386	8,604	(782)
Grant Funded	894	883	(11)
Enterprise Funded	4,259	3,900	(359)
TOTAL	14,539	13,387	(1,152)

Revenue Sources for total budget by type

The revenue sources of the City for a total budget including general fund are:

REVENUE SOURCE	AMOUNT 2009-2010	%	AMOUNT 2010-11	%
Property Tax-General & Debt Service	\$245,445,856	6.7%	\$214,531,268	7.37%
Municipal Income Tax	245,000,000	6.7%	215,000,000	7.39%
Other Taxes, Assessments, Interest	115,550,454	3.1%	120,767,636	4.15%
Utility User's Excise Tax	55,000,000	1.5%	50,000,000	1.72%
Wagering Tax	176,600,000	4.8%	173,360,000	5.96%
State Revenue Sharing	276,881,400	7.5%	234,808,645	8.07%
Fines, Forfeits & Penalties	38,580,083	1.1%	36,006,146	1.24%
Revenues from Use of Assets	335,257,223	9.1%	125,669,688	4.32%
Licenses, Permits, Inspection Charges	38,467,808	1.0%	34,253,089	1.18%
Other Grants, Shared Taxes & Revenue	261,131,603	7.1%	280,531,849	9.64%
Sale of Bonds (Revenue Bonds)	450,000,000	12.3%		
Federal & State Transportation Funds	63,937,130	1.7%	71,958,088	2.47%
Sales & Charges for Service/Sale of Assets	1,073,007,871	29.2%	1,088,569,682	37.41%
Contributions, Transfers & Miscellaneous	295,455,368	8.0%	264,190,173	9.08%

Major Revenue Sources

REVENUE SOURCE	Amount 2009-2010	%	Amount 2010-2011	%
Taxes, Assessments & Interest	\$837,596,310	22.82%	\$773,658,904	26.59%
Licenses, Permits & Inspection Charges	38,467,808	1.05%	34,253,089	1.18%
Fines, Forfeits & Penalties	38,580,083	1.05%	36,006,146	1.24%
Revenues from Use of Assets	335,257,223	9.14%	125,669,688	4.32%
Grants, Shared Taxes & Revenues	538,013,003	14.68%	515,340,494	17.71%
Sales & Charges for Services	1,124,720,720	30.64%	1,156,553,807	39.75%
Sales of Assets & Compensation for Losses	12,224,281	0.33%	3,973,963	0.14%
Contribution & Transfers	221,582,444	6.04%	196,296,653	6.75%
Miscellaneous	523,872,924	14.27%	67,893,520	2.33%
TOTAL REVENUES	\$3,670,314,796		\$2,909,646,264	

Comparative Budget Summary Income

City of Detroit
Comparative Budget Summary – Income
2009-10 Budget to 2010-11 Mayor’s Recommended Budget
(in millions of dollars)

	FY 2009-10 Budget	FY 2010-11 Mayor’s Recommendation	Increase (Decrease)
LOCAL SOURCES			
Gross Property Tax (excludes Library)	257.0	257.4	0.4
Less: Estimated Delinquencies	13.4	30.9	17.5
Less: Adjustments	7.1	6.90	(0.2)
Net Property Tax	236.5	219.6	(16.9)
Less: Uncollectible Accounts Reserve	(4.1)	(5.00)	(0.9)
Delinquent Taxes (includes Interest & Penalty)	11.9	10.3	(1.6)
Administrative Fees	7.8	6.8	(1.0)
Downtown Development Authority	1.3	0.5	(0.8)
Earnings on Investments	5.2	3.6	(1.6)
Inspection Charges and License Fees	13.4	11.8	(1.6)
Internal Reserve Fund (Vehicles)	2.5	2.5	0.0
Municipal Income Tax	245.0	215.0	(30.0)
Ordinance Fines	16.0	15.0	(1.0)
Parking Fines	13.4	11.9	(1.5)
POC Transaction	89.3	96.1	6.8
Restructuring Consolidation	-	85.5	85.5
Risk Management Fund (Workers’ Compensation Pass Through)	14.0	12.3	(1.7)
Sales of Assets	10.5	2.7	(7.8)
Sale of Electricity and Steam	48.2	49.0	0.8
Sales & Charges for Services	106.5	95.9	(10.6)
Securitization Transactions	275.0	-	(275.0)
Solid Waste Fees	58.5	50.0	(8.5)
Supplemental Fee (GDRRA)	-	1.0	1.0
Utility Users’ Excise Tax	55.0	50.0	(5.0)
Municipal Service Fee (Casinos)	16.9	16.8	(0.1)
Wagering Tax (Casinos)	154.0	149.5	(4.5)
Casino Percentage Payment	22.6	23.8	1.2
Other Revenues	62.5	55.0	(7.5)
ENTERPRISE AGENCIES			
Library Revenues (excluding Federal & State Sources)	48.2	51.0	2.8
Revenue from Operations	931.0	949.0	18.0
Revenue Bonds	450.0	-	(450.0)
Subsidy from General Fund	80.8	58.3	(22.5)
SUBTOTAL-MAJOR LOCAL REVENUES	2,971.8	2,237.9	(733.9)
FEDERAL SOURCES			
Community Development Block Grant	42.9	39.8	(3.1)
Community Service Block Grant	8.2	8.0	(0.2)

Crime Bill-Police	1.8	3.0	1.2
Department of Energy Weatherization Grant	8.8	13.3	4.5
Head Start Grant	48.3	49.3	1.0
Health Grant	45.0	48.8	3.8
Home Investment Grant	11.5	12.5	1.0
Work Force Investment Act Grant	31.4	29.9	(1.5)
Mass Transportation Funds	12.0	20.0	8.0
Medicare Reimbursement – EMS	6.3	6.1	(0.2)
Michigan Occupational Skills Training Grant	28.7	32.6	3.9
Other Revenues	4.8	11.4	6.6
SUB-TOTAL MAJOR FEDERAL REVENUE	249.7	274.7	25.0
STATE OF MICHIGAN SOURCES			
Gas and Weight Taxes	61.2	57.2	(4.0)
Library Community Programs	-	-	-
Mass Transportation Funds	51.9	52.0	0.1
Medicaid Reimbursements	4.5	4.8	0.3
Public Health Programs	15.5	14.9	(0.6)
State Revenue Sharing – General Fund	275.3	233.4	(41.9)
State Revenue Sharing – Library	1.6	1.4	(0.2)
Other Revenues	38.8	33.3	(5.5)
SUB-TOTAL MAJOR STATE REVENUES	448.8	397.0	(51.8)
TOTAL REVENUES – ALL SOURCES	3,670.3	2,909.6	(760.7)

Major Revenue Sources – General Fund

Revenue Source	Amount 2009-2010	%	Amount 2010-2011	%
Taxes, Assessments & Interest	\$661,845,891	41.32%	\$602,822,326	46.16%
Licenses, Permits and Inspection Charges	10,287,808	0.64%	10,237,395	0.78%
Fines, Forfeits and Penalties	29,310,909	1.83%	26,308,309	2.01%
Revenues from Use of Assets	285,884,142	17.84%	91,982,256	7.06%
Grants, Shared Taxes and Revenues	276,734,086	17.27%	234,828,436	17.98%
Sales and Charges for Services	205,614,134	12.84%	206,507,171	15.81%
Sales of Assets and Compensation for Losses			3,673,963	0.28%
Contributions and Transfers	109,756,220	0.68%	112,749,803	8.63%
Miscellaneous	11,847,738	0.74%	16,830,597	1.29%
Total Revenues	1,602,254,042		\$1,305,940,256	

Appropriations by Fund

Fund	Amount FY 2009-2010	%	Amount FY 2010-2011	%
General Fund	\$1,602,254,042	43.66%	\$1,305,940,256	44.88%
General Grants	202,377,417	5.51%	212,248,684	7.29%
Enterprise Funds	1,540,796,043	41.98%	1,062,237,703	36.51%
Capital Projects Fund (Renewal and Replacement)	595,000	.02%		
Debt Service	76,833,066	2.09%	74,398,313	2.56%
Solid Waste Management	62,732,032	1.71%	52,512,569	1.80%
Miscellaneous	184,727,196	5.03%	202,308,739	6.95%
Major & Local Streets	72,409,000		63,203,707	
Library	49,733,663		52,389,491	
Internal Service Fund	2,485,750		41,459,794	
Community Development Block Grant	42,920,043		2,485,750	
Urban Renewal & Drug Enforcement Funds	17,178,740		25,463,194	
TOTAL	\$3,670,314,796		17,306,803	

Appropriations by Major Object

Major Object	Amount FY 2009-2010	%	Amount FY 2010-2011	%
Salaries and Wages	\$697,413,945	19.01%	\$646,364,130	22.21%
Employee Benefits	529,657,019	14.43%	512,921,303	17.63%
Professional and Contractual Services	252,338,740	6.88%	256,700,854	8.82%
Operating Supplies	153,654,173	4.19%	149,213,383	5.13%
Operating Services	322,017,531	8.77%	301,889,963	10.38%
Capital Equipment	57,072,246	1.55%	53,249,968	1.83%
Fixed Charges	555,474,640	15.33%	556,548,706	19.13%
Other Expenses	1,102,686,502	30.04%	432,757,957	14.87%
TOTAL	\$3,670,314,796		\$2,909,646,264	

Appropriations by Major Object – General Fund

Major Object	Amount FY 2009-2010	%	Amount FY 2010-2011	%
Salaries and Wages	\$441,299,597	27.54%	\$413,156,954	31.64%
Employee Benefits	361,658,993	22.57%	346,577,284	26.54%
Professional and Contractual Services	55,487,507	3.46%	48,396,121	3.71%
Operating Supplies	67,170,423	4.19%	64,207,381	4.92%
Operating Services	125,173,058	7.83%	106,167,647	8.13%
Capital Equipment	4,714,360	0.29%	3,635,726	0.28%
Fixed Charges	102,403,035	6.39%	96,426,588	7.38%
Other Expenses	444,347,069	27.73%	227,372,555	17.41%
TOTAL	\$1,602,254,042		\$1,305,940,256	

Historical Perspective – Major Revenue Sources

Fiscal Year	Property Tax	Income Tax	Utility Users Tax	State Revenue Sharing	Casino Wagering Tax	Total	% Change
1993-94	122,717,732	296,888,378	53,593,661	266,369,531		739,596,302	4.2%
1994-95	128,628,234	312,710,316	49,632,997	291,159,098		782,130,645	5.8%
1995-96	128,617,493	335,755,333	53,906,871	316,055,989		834,335,686	6.7%
1996-97	140,446,673	332,899,906	54,641,394	328,507,496		856,495,469	2.7%
1997-98	144,067,977	361,602,189	50,144,609	330,115,576		885,930,351	3.4%
1998-99	145,459,046	370,417,475	50,924,267	332,003,165		898,803,953	1.5%
1999-00	155,665,928	378,256,650	54,504,747	332,662,624	53,429,861	974,519,810	8.4%
2000-01	152,810,738	341,003,997	54,270,230	333,318,615	85,793,174	967,196,754	-0.8%
2001-02	169,675,894	323,515,510	52,105,772	332,000,000	109,461,713	986,758,889	2.0%
2002-03	166,287,590	310,935,044	55,329,177	319,742,078	111,341,292	963,635,181	-2.3%
2003-04	184,765,334	290,614,837	50,473,815	286,479,535	116,145,598	928,479,119	-3.6%
2004-05	178,957,461	282,501,876	52,939,839	282,914,217	137,970,347	935,283,740	0.7%
2005-06	185,318,391	284,111,220	60,019,626	279,467,063	156,588,917	965,505,217	3.2%
2006-07	183,780,826	278,309,191	53,768,977	271,104,356	179,763,570	966,726,920	0.1%
2007-08	177,823,722	277,090,792	51,668,778	272,745,613	179,948,699	959,277,604	-0.8%
2008-09 (unaudited)	163,683,000	240,824,000	49,901,000	266,032,000	173,039,000	893,479,000	-6.9%
2009-10 (estimate)	160,920,000	217,500,000	50,000,000	233,341,445	171,600,000	833,361,445	-6.7%
2010-11 (budget)	147,319,641	215,000,000	50,000,000	233,390,654	173,360,000	819,070,295	-1.7%

Historical Perspective – Number of Funded Employee Positions

Positions

	City Funded	Grant Funded	Total
2004-05	18,074	669	18,743
2005-06	15,107	644	15,751
2006-07	14,195	899	15,094
2007-08	14,374	902	15,276
2008-09	14,407	919	15,326
2009-10	13,645	894	14,539
2010-11	12,504	883	13,387

The City's post hearing brief addresses the City's financial situation and summarizes much of the above information. It notes in particular that the City's bond rating directly impacts its ability to borrow funds as well as the amount of interest to be paid. It notes Moody's August 2009 Bond Rating Report to emphasize this point. That report is informative in obtaining a general picture of the City's current financial

situation as it addresses at least one Bond Rating firm's rating rationale, outlook, and what could change the rating-up (C-1, E pgs 1-2):

Rating Rationale

The rating downgrades reflect the city's continued severe fiscal stress, as indicated by negative General Fund balances that are expected to be larger than previously reported and projections that the city will not meet its objective of eliminating the accumulated deficits in the near term; limited financial information evidencing further delays in the financial reporting; and regional economic deterioration which will likely present continued revenue pressures for the city in both the near and long-term. The city's weak financial position necessitates an increased reliance on short-term borrowing for cash flow purposes which is likely to be increasingly difficult to obtain in the current credit environment.

Outlook

The assignment of the negative outlook reflects Moody's expectations that the city will continue to experience revenue and expenditure pressures, exacerbated by the economic recession and shrinking city population and tax base, resulting in a further weakening of the city's financial flexibility. Future credit reviews will focus on the city's ability to achieve its management initiatives and record structural balance in the near to mid-term.

What Could Change the Rating-UP

- Material operating surpluses, achieved through structurally balanced financial solutions that carry forward to future budgets
- Sustained economic improvement coupled with revenue enhancements
- A material improvement in the city's unrestricted cash and investment position such that the city is significantly less dependent on cash flow borrowing

The City's post hearing brief criticizes the Union's actions leading up to and during negotiations and Fact Finding. It says the Union has continually tried to delay the bargaining process. It notes the Union failed to bargain without the presence of a mediator and then objected to the mediator selected and demanded the mediator be replaced. It says the Union twice tried to stop the fact finding by filing motions with MERC and Wayne County Circuit Court. The City says the Union's claim that the City did not provide it sufficient information that the Union requested is not legitimate and says the City provided numerous reports, budget books, computer printouts and discs sufficient enough for the Union to evaluate the City's proposals. The brief says this delay is costing the City money and quotes Mayor Bing's recent budget address,

referring to the failure to reach agreement with the Union: "Failing to come to the table with leave us with little choice but to look at further layoffs and service reductions."

Union Position on Financial Situation

The Union's position on the City's financial situation was presented primarily through testimony of the following witnesses. 1) Christopher Fox, a fiscal policy analyst with AFSCME International who prepared a report at the request of the Union. His report analyzed the City's proposals on cost-saving measures and presented options for those cost savings and addressing the City's fiscal deficit. (U- 60, U-60A) 2) Dale Belman, a Professor in the School of Labor and Industrial Relations at Michigan State University who prepared a report at the request of the Union to address the question of the effect a 10% reduction of hours worked and in pay to Union members would have on bargaining unit members, City operations and on the community. (Tr 18, pg 2571) (U -123) 3) Catherine Phillips, staff representative for AFSCME Council 25. Testimony and exhibits presented through these witnesses was also supplemented by testimony of other Union witnesses on several of the financial issues. Testimony of those witnesses may also be referred to occasionally in this report and recommendation.

In general, the Union's position is that it recognizes the City is in a tough financial situation and is willing to have its members share some burden in assisting the City in addressing its current financial deficit and regaining a sound and more stable economic condition going forward. But it believes that: a) the burden of achieving that more stable economic condition should be shared more equally among the City operations and employees and those the City does business with, b) that the City should consider options in addressing its current financial situation, specifically the approach it uses for reducing its current deficit and the extent to which it contracts for services, and, c) views the proposed wage and benefit reductions as impacting its members more significantly than most other City employees because many of its members are already earning less than many other City employees. These positions were presented through the testimony of various Union witnesses and in the Union's post hearing brief. A summary of Union witness testimony will be summarized first, followed by a summary of these arguments in support of these positions made in the Union's post hearing brief.

Union witness testimony on financial situation

Union witness Christopher Fox used information from various exhibits provided by the City to assess projected cost savings from past, current and projected layoffs, furlough days, health benefit changes and other proposals by the City in this proceeding to provide an analysis of the estimated total cost savings and the extent to which members of this bargaining unit would contribute to that cost savings. His estimate of total savings from layoffs and furloughs from AFSCME employees for FY 2009-10 was \$5.88 million. (U-60, pg 2) His estimate of total annual savings from AFSCME employees as a result of City proposed reductions in health related benefits, holiday pay, elimination of the 35 hour work week, overtime and longevity was \$7.97 million. (U-60, pg 3) He also summarized the estimated total salary and benefit savings from General Fund and non General Fund sources and attributed \$18.45 million savings from AFSCME employees for FY 2010-11. (U-60, pg 4)

In all of these calculations, for purposes of this fact finding hearing, the parties used data from the City to attribute approximately 22.7% of the total City payroll Personal Services costs to employees represented by AFSCME Council 25 members and to estimate that AFSCME Council 25 members make up about 24% of the City's total workforce and 34% of the workforce excluding the uniformed police and fire personnel. (C-1, tab D FY 2009-10 budgeted positions) There was also testimony and evidence presented in this proceeding to indicate that Police and Fire uniformed personnel comprise approximately 30% of the City workforce (C-1, tab D FY 2009-10 budgeted positions) and approximately 41% of the appropriations for Personal Services are attributed to Police and Fire uniformed personnel. (C-1, tab D FY 2009-10 Appropriations for Personal Services)

It was also recognized that a significant number of AFSCME represented employees are employed in jobs that are paid primarily from non-general fund sources. Those involve revenue sources that are generated from fees such as water, parking, sewer and library. One of Mr. Fox's charts in (U-60, pg 6) presented a summary of revenues, expenses, surpluses and cash on hand as of June 30, 2008 for the sewage disposal, water, parking and library funds. These are commonly referred to as "restricted" funds. Mr. Fox's report suggested the possibility of the City's use, through

short term borrowing, of some of the balances from its restricted funds to supplement the general fund.

During the course of the proceeding there was testimony that these funds are truly "restricted" by law, City Charter or Ordinance from being used for purposes other than operating and supporting the costs of the specific service being provided. The significance of noting this is that if these funds are "restricted" it means that even though it may appear that these various funds are more stable revenue sources and have surpluses at a given point in time, and one might question why these funds can't be used for relief to the general fund, it is because revenues from these "restricted funds" cannot be used to pay wages and benefits for employees who are not performing work associated with the specific services being provided. And another feature of this "restricted" fund "general fund" distinction is that sometimes, employees who are paid from "restricted" funds question why they are being asked to sacrifice pay and benefit reductions through furlough days or other benefit reductions when the "restricted" funds seem to be sufficient to support maintaining their pay and benefits. The simple answer is that the Union contract covers all employees equally regarding pay and benefits and does not distinguish based on the source of revenue.

Mr. Fox's report also addressed the City's proposed deficit reduction plan. It presented a series of charts that proposed an alternative deficit elimination plan to the one presented by the City in (C-1, tab C). The City's deficit elimination plan projected an elimination of the deficit over a three year period from FY 2008-2009 through FY 2011-2012 so that the City would end FY 2011-12 with a surplus of \$1.7 million. (C-1, tab C, pg 9) In order to achieve this, the City's plan would require implementation of all of the wage and benefit proposals it put forth in this proceeding including the 26 budget reduction furlough days.

Mr. Fox's report presented several scenarios, among which was a proposed alternative that would result in extending the period for achieving the elimination of the deficit over a four year period, from FY 2008-09 through FY 2012-13. The City would end FY 2011-12 with a \$7.4 million deficit but would end FY 2012-13 with a \$16.6 million surplus. This alternative plan would achieve this by reducing the number of budget reduction furlough days from 26 to 13, not implementing the City's proposed revisions involving overtime concessions, changes in holiday pay, changes in the 35 hour work week or elimination of longevity and not implement all of the modifications

in health care. (Tr 13, pg 1805) The alternative is also based on a projection of a 5% reduction of wage or other benefits to the uniformed police and fire employees beginning FY 2011-12. (U-60A, pg 12) In essence, this proposal supports the Union's position that the City has alternatives to imposing the level of reductions in wages and benefits it proposes on its members and by sharing that burden more equitably among all city employees and those the City does business with and by lengthening, by one year, the period it establishes to achieve the elimination of its current deficit.

Mr. Fox also presented and spoke to (U-59), which is a document showing the consumer spending patterns in the Detroit Metropolitan Area for the period 2006-07. Through a series of tables and charts this document shows that when the Detroit metropolitan area is compared with Chicago, Cleveland and Minneapolis areas, and the United States as a whole, for this time period, the average household income in the Detroit area is below that of the other areas and in the U.S. average. The average annual household unit income before taxes for the U.S. for the 2006-07 period was \$61,820 compared to that of the Detroit area of \$58,414. Also, the average expenditures in the Detroit area for food and transportation is higher than the other areas and the U.S. average. However, Detroit area consumer household's annual expenditures for housing and health care are below that of the other areas and the U.S. average. (U-59, pg 8) The point of this, according to Mr. Fox, was to demonstrate that Detroit area families, including members of this bargaining unit, are spending more on the necessities to maintain themselves and, therefore, have less disposable income. Mr. Fox stated that has implications for the economy as well as the individual: "You give them an extra buck, they will spend an extra buck. If you take 10% out of their pockets, it's almost certain 10% is going to come out of the economy around them, because there is not a lot of cushion built in." (Tr 12, pg 1644) "It should suggest that all parties here, all parties, Union, City, would be interested in finding as least a burdensome way out of their very real budget challenges at the moment without doing something that exacerbates the economic situation which is causing the fiscal climate." (Tr 12, pg 1645)

Union witness Jackita Muhammad's testimony put a face on this data. She testified that she is currently employed as a senior teller in the City Treasurer office and has worked there for nine and one half years. Her gross annual wage is approximately \$33,800 and annual take home is about \$21,424. She has two sons and a daughter between the ages of 19 – 25 who all live with her and are either going to school or

seeking work. She related her financial obligations which demonstrated that all of her income currently is spent to meet these obligations. (Tr 12, pgs 1779 -1792)

Union witness Melvin Brabson, President of Local 542, also testified that he had prepared documents using City data showing the minimum and maximum wage scales for AFSCME Council 25 classified positions for FY 2009-2010. Examples of those positions ranging from a lower annual wage level to a higher annual wage level are: (U-71) (Tr 13, pgs 1867 -1870 & Tr 14, pgs 1879-1880)

<u>Lower Range</u>	Minimum	Maximum
Building Attendant A	\$18,065	\$28,800
Comfort Station Attendant	\$ 17,237	\$27,900
Community Health Assistant	\$ 17,640	\$ 28,800
Transportation Passenger Data Collector	\$ 15,808	\$ 18,553
 <u>Higher Range</u>		
Boiler Inspector	\$ 59,300	\$ 59,300
Elevator Inspector	\$ 59,300	\$ 59,300
Licenses Examines Mechanical	\$ 61,600	\$ 61,600
 <u>Average</u>	 \$30,126	 \$ 34,653

Exhibit (U-71), along with other exhibits entered into the record, while not precise in every respect, demonstrates, in general, the average range of wages paid to AFSCME Council 25 represented employees. For example, (U-124) is a report prepared by the Union that depicts the actual median range of salaries for AFSCME members as \$22-27,000 and (U-65) is a document prepared by the City reporting citywide AFSCME salaries and fringes for FY 2009-10. The average salary rate is \$33,827 and the average fringe rate is 68.6%.

Another exhibit that addresses this same general subject is (U-123), which is a report developed by Union witness Professor Dale Belman. Professor Belman's report addressed three questions: 1) Why don't employers cut worker pay? 2) What would be the effect of a pay cut on worker quality of life? 3) What would be the effect of a pay cut on worker productivity? Professor Belman was provided information from the Union identifying current employee classifications and wage scales – The AFSCME Actual Title Report – and from that report summarized the following:

The AFSCME Actual Title Report, General Fund Only (9/10/09) indicates almost 1,800 AFSME members are paid from the general fund. The minimum wages for these positions ranges from \$15,475 to \$60,383,

employment weighted average annual earnings are \$27,054 (see Table 1). The maximum annual earnings wage for these positions ranges from \$15,475 to \$65,900; the employment weighted average is \$31,868. Considering only the maximum annualized wage, 845 of the AFSCME general fund work force earns between \$10,000 and \$19,999 annually; 38.3% earn between \$20,000 and \$29,999 annually; 31.3% earn between \$30,000 and \$39,999; 18.4% earn between \$40,000 and 49,999; 3.7% earn between \$50,000 and \$59,999 and 0.1% earn more than \$60,000. Sixty two percent of the AFSCME work force earns less than \$32,000 annually; 68.0% earn \$35,000 or less. (U-123, pg 5)

In an attempt to address the impact a 10% reduction in pay would have on AFSCME employees, Professor Belman took information from the Economic Policy Institute (EPI) which produces estimates of family budgets used to assess the earnings needed to provide a basic standard of living for a number of urban areas. Using targeted data for six different family types, the EPI has calculated the basic monthly expenses for families living in the Detroit Metro Area. The table below summarizes the estimated minimum annual income required for families in the Detroit Metro area to achieve a basic standard of living in 2007:

Table 2: Minimum Annual Income Required to Achieve a Basic Standard of Living: 2007

	Two parents, Three children	Two parents, Two children	Two Parents, One Child	One Parent, Three Children	One Parent, Two Children	One Parent, One Child
Required Annual Income	\$53,382	\$43,993	\$38,863	\$47,766	\$38,456	\$33,589

(U-123, pg 9)

Professor Belman’s report also points out the relationship of these annual income figures, both earned by AFSCME members and required to achieve a basic standard of living, to the federal measure of “the poverty level.” The report notes that:

In 2009, the poverty level for a family of four was \$22,050. The Michigan Home Heating Allowance Credits available for a family of four earning \$24,272 or less. The Department of Agriculture has set the maximum income to qualify for the food stamp (SNAP) program at 130% of the poverty level. In order to qualify for food stamps, a family of four has to earn \$28,668 or less annually. For a family of four, the eligibility for Women, Infant and Children assistance (WIC) is \$40,793 annually. (U-123, page 9)

Professor Belman states in his report that these figures demonstrate that some AFSCME employees are already living in relative poverty and have difficulty meeting their basic needs and that a 10% pay cut will only worsen their condition. Union

exhibits (U-125, U-126, U-127) provide additional information on the U.S. poverty level, WIC and SNAP income eligibility.

In his report, and in his testimony, Witness Belman also addressed the effect of a pay cut through the proposed required 26 furlough days would have on worker productivity and services to the City residents. He noted that reductions in the availability of such positions as lifeguards in the Recreation Department, Building Attendants in public buildings to maintain heating and cooling systems and operating and maintenance staff in the Water and Sewerage Departments would likely impact service and possibly safety. His report also presented the position, with some supporting information, that pay cuts, whether directly or through furlough days, often leads to lower productivity and low morale.

Several other Union witnesses addressed the issue of the City's use of outside contractors. Their general position is that the City could save money and create more tax revenue for the City by retaining this work for AFSCME members to perform.

Union witness John Reihl, President of AFSCME local 207 which represents employees in the Water Department testified. He referred to (U-143) which was a Union developed document that summarized various contracts the City has or had with outside contractors for services that Witness Reihl said, from his analysis, could have been provided by AFSCME employees at less cost to the City. Mr. Reihl also testified that as a result of staff reductions in recent years staff were having to work more overtime which was putting a strain on staff and increasing potential health and safety. (Tr 20, pgs 2875 – 2877) Referring to (U-144), Mr. Reihl noted that in 2007 there were 962 employees in Local 207 and in January 2010 there were 880. (Tr 20, pg 2875)

Union witness Yvonne Ross, President of AFSCME local 2799 testified. She said she had worked in the Law Department as a legal secretary in the Revenue Collections Division from April 2000 to May 2008. (Tr 20, pg 2902) Witness Ross's testimony related to her experience while performing work in the Revenue Collections Division. She testified that from the period roughly between 2006 and 2008 there was a significant downsizing of staff with some retiring and some laid off. In part this was due to the City outsourcing some of the collection work to Wayne County and some to a private company in California. She stated she believed the California Company had a contract from 2003 to 2006, but when it ended the work that it did returned to the Division. The problem is that the Division has limited staff now to do the work. She testified that the

City is planning on outsourcing revenue collection to another outside - outstate contractor. (Tr 20, pgs 2902-2929)

Union witness Phyliss McMillon testified. She is a park maintenance helper/worker in the General Services Department and Executive Vice-President of Local 542. She stated that the number of employees assigned to park maintenance has been substantially reduced. Where there used to be five crews (two drivers and 4 workers) assigned to an area now there is one crew, (two drivers and 3 workers) assigned to multiple areas. For example, she said the west and north districts are now combined so there is one crew responsible for picking up all the debris west of Woodward and another single crew responsible for picking up all the debris east of Woodward. She said the maintenance on the trucks is poor and the equipment frequently doesn't work properly, for example the arms on the packer don't work so employees have to lift them up manually. She also said that the City contracts with private companies to do work in city park locations and often they do not clean up their debris even though their contract calls for them to do so. This results in the GSD crew having to clean up after them. She said a reduction in work days resulting from 26 unpaid furlough days will only make the job more difficult because many parks are open parks and the debris and trash and grass will still be there. (Tr 20, pgs 2930-2935)

Union witness Dwayne Lucas testified. Mr. Lucas is employed in the General Services Department, as a General Auto Body Mechanic assigned to Fire Apparatus. He takes care of the metal fabrication and welding for all vehicles within the Fire Department. He is a member of and Chief Steward in Local 542. Mr. Lucas testified that there are non AFSCME employees within the Fire Department who do similar work as AFSCME auto mechanics. These employees are called Emergency Repairmen and are members of the fire fighter's union, Local 344. Mr. Lucas stated that while the Emergency Repairmen work 24 hour shifts, they frequently do minor repairs on a vehicle and then send it to the shop staffed by AFSCME mechanics to do follow up work. Witness Lucas introduced into evidence and testified to (U-145), which is a report prepared by staff within Local 542 identifying suggested savings. The report compares the wages, working hours and responsibilities of the various positions in the Apparatus Division of the Fire Department and contrasts the employees represented by the Fire Fighters local with those within the AFSCME local. It points out the differences in wages which are higher for those members of the Fire Fighters local and several of the

Fire Fighter positions are also assigned a car. Mr. Lucas testified that in his opinion these positions were doing essentially the same work and in fact the AFSCME employees were relied on to do more work than those in the Fire Fighters local. He stated that this disparity in wage and work expectations causes AFSCME represented members in the Fire Apparatus Division to be upset because they believe they are doing the work while the employees represented by the Fire Fighters local get higher wages, all the overtime, and therefore more income. Mr. Lucas acknowledged during cross examination that even though he felt the mechanic positions occupied by Fire Fighter local employees were doing the same work as AFSCME represented mechanics, he was not aware of any unit clarification petition having been filed by AFSCME to bring those positions within AFSCME. (Tr 20, pgs 2935-2970)

Union witness Melvin Brabson testified that he had reviewed the cost to the City of contracts the City had with private contractors involving work that AFSCME local 542 employees within the City General Services Department could do with less cost to the City. Union exhibits (U- 146, U-147 and U-148) were addressed by Mr. Brabson. These documents were maintenance work or repair orders for engine and mechanical repairs on City vehicles performed by various private contractors. Mr. Brabson testified that he believed all of the work described in these exhibits which were performed by private contractors could have been performed by City employee members of AFSCME local 542 with the result being less cost to the City. (Tr 20, pgs 2970 -3005)

During a post-hearing conference call between Counsel for the parties and the Fact Finder, Union Exhibit (U-189) was entered into the record. (U-189) is a document prepared by Colonial Life insurance company describing the federal flexible spending account program and "cafeteria plan" benefits as it relates to the federal tax code and potential financial benefits for both the Employer and Employee. Counsel for the Union indicated this was being submitted for the record for the purpose of demonstrating that there may be ways the City could reduce its costs and increase non-taxable income for its employees, which can assist the City in addressing its financial situation. Union Counsel did acknowledge that this issue is under consideration by the City and the City is exploring how and when it may have the capability of administering such a program.

As noted previously, a review of the testimony and exhibits presented by the Union on the issue of the financial condition of the City, reveals that the Union understands the fiscal situation the City faces is critical. But it believes it has pointed

out, through its testimony and exhibits, that the City can take a course other than what it has put forth in its proposals in this proceeding and in its Deficit Reduction Plan that can accomplish its objectives of returning to fiscal solvency and stability that would be less onerous on AFSCME and other City employees. It also believes it has pointed out ways the City could save money by reducing the extent the City contracts for services which could be preformed by AFSCME represented City employees.

The Union's post hearing brief on the financial situation and process

The Union's post hearing brief reiterates this view. For example on the issue of the impact on this membership compared to other city employees, the Union brief points out that Professor Belman's report indicated 66% of AFSCME members make less than \$30,000 per year. It notes that a family of four qualifies for WIC coupons by making less than \$40,793 per year and for food stamps if making less than \$28,668 per year. It refers to (U-186) and (U-187) as evidence that AFSCME members are underpaid when compared to comparable private sector positions. It notes that (U-155) demonstrates that AFSCME members have been losing buying power when the inflation rate is taken into consideration. Using a comparison of average wages for AFSCME employee classifications in 1993 compared to current wages, when considering the affect of inflation, this document indicates employees should be earning approximately \$11,000 more annually to make up for inflation.

The post hearing brief also states its members have taken a larger share of layoffs since 1999 than other City employees. It also points out that about 63% of the City's general fund payroll budget is for public safety employees and says these employees have not shared equally in the concessions sought by the City. It points to evidence in this record that indicates from 2001 through 2009 the AFSCME members have had a net 2% decrease in pay while at the same time police and fire fighters have had a net 15 - 16% increase in pay. (U-95 – U-99) The Union says civilian employees have been paying for a portion of their health premium since 1984 and this was not the case for public safety employees until 2007. (C-129, 130, 151, 152)

The Union's post hearing brief emphasizes the points made by Union witness Lucas as he described the disparity in pay between mechanics from AFSCME and the Fire Fighters union and says it makes no sense for the City to seek to balance its entire payroll budget on the backs of 37% of its workforce. The Union says the City can and

should be more aggressive in pursuing wage concessions from its public safety employees. It notes that Union witness Fox testified that if public safety employees were required to take a 5% wage reduction beginning July 2011, for one year, the City would be able to reach a balanced budget within the time frame it has called for in its current Deficit Elimination Plan.

The Union also argues that not all of the City's non-union appointees and management staff are experiencing staff reductions and being asked to accept wage and benefit concessions equal to that asked of AFSCME members, and provided examples of some staff receiving slight wage increases. The Union says (U-62) illustrates that the City's failure to implement savings reductions expeditiously for non-union employees cost the City over \$ 1 million in productivity hours.

The Union also argues that the City is wasting money as a result of outsourcing much of the work that could be performed by AFSCME members. It notes that the City has failed to produce sufficient evidence of its demands for or results from seeking concessions from those it has contracts with for services and supplies. AFSCME requested a list of all private contracts and those which were asked for a 4% reduction and that agreed with a 4% reduction but the City provided only a few documents showing requests that had been made and responded to showing 7 contractors had agreed to a 4% reduction (U- 163). The Union says (C-1) shows the City budgeted \$252 million in FY 2009-2010 for contracting out and if the City were to achieve a 10% reduction in contractor costs it would achieve a \$25 million savings. The Union says (U-115, 116) demonstrate the City has the ability to do this.

The Union's post hearing brief also indicates it would be good policy for the City to seek savings from and reduce its reliance on outside contracts because it says the City is paying much more than it should for the services provided in these contracts. It refers to testimony from Union witness Riehl and (U-143) and Union witness Brabson and (U-146-148) as evidence that the City could save money by having its own employees do work rather than have the work performed by outside contractors. The post hearing brief also notes the testimony of Union witness Ross as evidence the City could collect more money owed it by retaining work for its own employees than by contracting out services. And it refers to (U-189), a publication from an insurance agency describing tax benefits using a flexible spending account, and data from (C-22) to argue that the City could save over \$2.7 million annually in costs for health care

premiums if it implemented a system to allow this flexible benefit. It acknowledges the City does not reject the idea but says its current payroll system is unable to accommodate its implementation. The Union says the potential savings should incentivize the City to make the changes needed to implement the program. And the Union says the City should more aggressively seek ways to enable its restricted fund revenues and balances to lend money to the general fund and thereby reduce the immediate cash flow problems in the general fund.

Lastly, the Union's post hearing brief criticizes the City's approach in negotiations and during this fact finding proceeding. The Union says the Union sought information for months to demonstrate how much each of the City's proposals would save the City but the City failed to produce that information. It also is critical of the City's demand at one point in the negotiations that the Union accept the City's combined proposals as a package. It says the City never demanded that from other unions nor was AFSCME given a deadline by which to agree or lose "incentive proposals" made by the City in a counter offer. The Union points to (U-107, 108, 109 – 111) as examples of the City allowing another union to agree separately to the incentive proposals involving the calculation of holidays and vacation time related to the overtime proposal without agreeing to other proposals.

The Union says it is difficult for the Union to negotiate when the City has been unable to justify their concessionary proposals. And it says they have not done so in this proceeding. It says some of the City proposals were not clear, such as wages and health care, until after the Fact Finding petition was filed. The Union says, it is hopeful this report will assist the parties in further negotiations.

Conclusions

The facts presented from an analysis of the financial data, both historically and currently, should lead any reasonable person to conclude that the City's financial situation is dire. Both the City and the Union leadership recognize this. They both also realize that one of the major general fund expenditures is for employee wages and benefits. The City's FY 2009–2010 budget appropriated \$441,299,597 (27.54%) of general funds for employee salaries and wages and \$361,658,993 (22.57%) of general funds for employee benefits. (C-1, Sec. D – Appropriations by Major Object – General Fund) And these percentages are projected to increase in the FY 2010 – 2011 budget to 31.64% of

general funds for salaries and wages and 26.54% for benefits for a total of 58.18 % of general funds being spent for salaries, wages and benefits combined. (C-150, pg C7)

There is an acceptance by the Union that its members will need to join in sharing the burden of getting the City through this dire financial situation and restored to a more financially sound position. I conclude the parties don't substantially disagree on the City's fiscal situation; they just disagree on the steps to take to resolve it. Those points of difference have been presented in the above facts summary of the parties' positions on this issue.

The major differences between the parties is the length of time the City should attempt to eliminate its deficit and function with a balanced budget, and how much it should ask of its employees in the process. I have carefully considered the positions of both parties' proposed approaches. Section 9c of Act 312 gives guidance to consider "the interests and welfare of the public and the financial ability of the unit of government to meet those needs."

I conclude the City may find it difficult to achieve a balanced budget in the time frame it has put forth in its current deficit plan, which includes some of the proposals for wage and benefit reductions put forth in this proceeding. For instance, I am not convinced the \$85 million accumulated deficit it estimates at the end of FY 2010-2011 won't be greater than that. Also, based on past history, I am not convinced the projected \$85 million in savings from yet to be indentified process improvements and restructuring will achieve the level of savings projected.

At the same time, a historical review of the number of employees over the past several years (from 18,743 in FY 2004 - 2005 to 13,387 in FY 2010 - 2011) reveals that the City is likely close to reaching its limit on how many more positions can be eliminated and still maintain essential services. And these numbers do not include any reductions in public safety positions to date. I recognize that the City's population has declined during this period but there comes a point when essential services, including those basic services in addition to public safety, must be maintained in order for the City to function properly. Some of the testimony provided in this case leads me to conclude that the City is close to the point where further staff reductions could jeopardize the City's ability to function and may not be cost effective.

I have taken these factors into consideration as I have reached conclusions and recommendations in this proceeding, particularly as it applies to the parties' proposals

on wages. The Union's proposal to extend the period for achieving the deficit elimination is attractive in that it would lessen the impact on employees and improve the ability of the City to maintain services more days throughout the year. On the other hand, I'm not convinced the City's financial situation, based on the evidence presented in this proceeding, will permit it to eliminate its deficit within the time frame it has projected even with its proposed 26 annual BRF days. It may need to extend the time period beyond the three year projected period just to achieve an elimination of its current projected deficit. I am concerned that if the Union's proposed 13 BRF days were to be incorporated into the agreement the City would have to seriously consider additional layoffs. I think that would add to an already precarious situation of an inability to provide adequate services.

Also, the Union's proposed timeframe and corresponding proposed 13 annual BRF days is dependent upon factors that are not totally within the City's control. The ability to borrow from restricted funds is uncertain at best and likely could not be done without litigation and delay. While I sympathize with the Union's view that it seems unreasonable to be cutting wages of employees paid fully out of restricted fund revenues, the Union's own witnesses testified to the impact on moral of disparity in treatment of workers wages. And the Union makes a valid point that the City's public safety employees, paid primarily with general funds, should share more in the burden of getting the City back to a more financially sound position. But here again, that is not totally within the control of the City and the timing of potential changes in any wages and benefits for those employees that would assist in addressing these issues is uncertain. The Union's suggestions for cost savings probably merit further review. And a comparison of actual costs of work contracted out with work performed by Union members conducted jointly by the parties would seem to have merit. But no specific proposals were made and, therefore, I am reluctant to make a specific recommendation.

It is with these conclusions in mind that I have made the recommendations I've made on the issues presented in this proceeding.

COMPARABLES

Facts

As noted above, Article 9 of Act 312 of 1969 is helpful to serve as a guide to assessing the issues presented by the parties. Subsection (d) of Article 9 lists as one of the factors to be considered:

- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*

Frequently in Act 312 proceedings the parties will put forth specific comparable communities each proposes to have considered when comparing wages, hours and conditions of employment. These are commonly referred to as “external” comparables. This was not specifically done in this case but some documents were entered into the record relating to other public and private employee compensation and agreements separate from those with the City. They will be referred to where appropriate. It is also customary to consider “internal” comparables, meaning considering the manner in which the employer provides wages, hours and conditions of employment involving its other employees compared to members of the bargaining group involved in the fact finding proceeding. This comparison was addressed by both parties in their respective presentation of exhibits and witness testimony. The information provided by the City and the Union on comparables is summarized below.

City Position on Comparables

The City relies heavily on the “internal” comparables to support its position on the issues. Among the City exhibits presented related to comparables were:

- (C-47) – The Fact Finder’s Report and Recommendations involving the Detroit Building and Construction Trades Council contract for the period July 1, 2008 – June 30, 2012. City Witness Barbara Wise-Johnson testified that the provisions of this Fact Finder’s recommendations were implemented by the City and, with a few exceptions, are the same as those being proposed by the City in this proceeding. (Tr 10, pgs 1379 – 1393)

- (C-48) – Listing of imposed and Ratified agreements as of February 21, 2010 for contracts between union represented groups for the period ending June 30, 2012. This listing identifies 48 union/associations. From the 48 unions listed it identifies 27 which the City has ratified or imposed agreements with as of February 21, 2010. This exhibit is also related to and supported by (C-83, C-84, C-85, C-86) which are January 2010 memos to City Council advising of implementation of certain fringe benefit changes consistent with these agreements. (C-88 is a similar memo dated February 22, 2010 pertaining to the Utility Workers of America Local 488 agreement. All of these agreements embody the same or very nearly the same provisions relative to the health care, wage and work hour proposals and furlough days proposed by the City in this proceeding. (C- 87) is a similar January 27, 2010 memo pertaining to Non-Union Executive and Legislative Branch Employees. (C-90) is a September 8, 2009 memo from the City Labor Relations Manager to the Human Resources Department advising that effective September 18, 2009, Non-Union Executive and Legislative Branch bargaining units will be required to observe unpaid budget Required Furlough Days and (C-89) is a calendar for calendar years 2009 through 2013 listing of the required furlough days which total 26 for a twelve month period.
- (C-149) – Consists of a series of notebooks containing the actual agreements between the various unions/ associations identified in (C-48).
- (J-118) is a August 19, 2009 Executive Order from Mayor Bing’s office establishing a temporary reduction in hours for non-union Executive Branch appointees and employees requiring a pay reduction of a maximum of 10%, or twenty-six work days, in a 12 month period in compliance with the Budget Required Furlough Schedule for all non-union Executive Branch appointees and employees on or not on the Administrative or Administrator Rosters. (C-119) is a September 14, 2009 memo pertaining to the implementation of Budget Required Furlough Days and (C-120) provides implementation guidelines. (C-128) is a City Ordinance which took effect September 14, 2009 essentially implementing the provisions of the 10 % reduction in pay through use of furlough days as established in the Executive Order. These exhibits

were referred to in testimony throughout the proceeding and in particular City Witness Barbara Wise-Johnson's testimony. (Tr. 18, pgs 2521 – 2547)

The City points to these documents as strong evidence that the internal comparables support its position on the issues. In short, there is no question that the City needs to reduce expenditures. It also has implemented substantially the same wage and benefit proposals it is proposing in this proceeding with both union and non-union represented City employees. The City did not present evidence pertaining to external comparables other than through its witness' testimony on its various health care proposed revisions.

Union Position on Comparables

Much of the Unions' exhibits and testimony related to comparables attempt to support its position that the City could adopt and implement alternative measures that are less onerous on its employees to address the current and projected fiscal situation. Among the Union exhibits presented relating to comparables were:

- (U-63, U-64, C-103) – The first two of these exhibits are excerpts from the City of Flint Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 2008. Exhibit (C-103) is the complete CAFR for the year ended June 30, 2008. Union Witness Fox, during his testimony, referred to the City of Flint CAFR in support of the option for the City to borrow from its Enterprise Funds for short term working capital. He noted that the City of Flint CAFR indicated that the general fund borrowed \$14.7 million from the Sewer fund for working capital. (U-63) (Tr 12, pg 1714) In response to a question, he did acknowledge that it is not a common practice. (Tr 12, pg 1716) It is noted that the City, in response to this testimony and exhibit, submitted (C-67) into the record which is Article 7, Section 1503 of the Detroit Code. That Code section states: "All moneys paid into the city treasury from fees collected for water, drainage or sewerage services shall be used exclusively for the payment of expenses incurred in the provision of these services, including the interest of principal of any obligations issued to finance the water supply and sewerage disposal facilities of the city, and shall be kept in separate funds." It is also noted that (U- 63) states "The City of Flint will file a deficit elimination plan with the State to eliminate the deficit in the General and the Building

Department funds in the next five years starting with the fiscal year 2010.” This supports the Union’s position that the City could modify its deficit elimination plan to extend the time for achieving its total deficit elimination and thereby lessen its budget reduction impact on its employees.

- (U-66) – This is the deficit elimination plan of Wayne County for FY 2007-08 dated May 13, 2009. Union witness Fox noted that this plan extends the period for deficit elimination over a 5 year period, eliminating a current \$10.6 million deficit at a rate of approximately \$2.1 million each year for five years. (Tr 12, pg 1764) This document was presented to support the Union’s position that the City could extend its deficit elimination plan over a longer period.
- (U-94, U-95) – These documents are Fact Finders Opinions and Recommendations in which the Fact Finders issued their reports in a relatively short period of time and generally favored the City position on the issues presented in Fact Finding. (U-94) involved Fact Finding for the Detroit Building Trades Council for the contract period July 1, 2005 – June 30, 2008. (U-95) involved the Fact Finding for AFSCME Local 25 for the contract period July 1, 2005 – June 30, 2008. The Union presented these documents to emphasize the Fact Finder in this proceeding should consider the rather short period of review in these proceedings when considering what weight to give them as comparables.
- (U-96, U-97, U-98, U-99) – These documents are Act 312 Opinion and Awards issued between 2003 and 2008 involving the Detroit Police Officers Association and the Detroit Police Lieutenants and Sergeants Association. The Union presented these documents to point out the difference in the City’s position on proposed wages for uniformed police and its position on wages for AFSCME members during similar time periods. The Union acknowledged that the end result of wage levels in these cases depended upon the Arbitrator’s decision but noted that in some cases the City had offered wage increases to these City employees at the same time they were seeking wage reductions, through Days Without Pay, for AFSCME member employees. Union Counsel noted that “Police Unions received between 2001 to 2008 a 15% or 16% pay increase while the same period of time AFSCME received a net 2% decrease due to the DOWOP days.” (Tr 15, pg 2212) It is noted that the

- City pointed out that these documents only addressed the wages portion of the Act 312 awards. They did not address other benefits that may have resulted in more cost to the employees. City exhibits (C-151) and (C-152) were later entered into the record showing the health care benefits changes which were a part of these Act 312 proceedings which substantially increased the contribution the employees had to make toward health care premiums.
- (U-117) – This document consisted of several Status Change Approval forms relating to actions taken by the City in the May – June 2009 period approving several wage increases or renewal of appointments for non-union employee personnel. The Union’s purpose of presenting these documents was to compare these actions with the City’s position seeking wage reductions from AFSCME employees. It was noted, that in a number of instances these changes were related to a change of position responsibility so it was not clear whether or not these wage changes merely reflected and recognized those changes in responsibility.
 - (U-153) – This document consists of excerpts from nine separate contracts or agreements between AFSCME locals and units of government other than the City of Detroit but within the Detroit metropolitan area ranging over a period from July, 2001 through November 2010. Union Counsel indicated the purpose of placing these documents into the record was for use in the brief for comparables. (Tr 21, pg 3019) In its post hearing brief the Union references provisions in several of these contracts that address how these public employer-employee agreements calculate a work hour week and overtime provisions. It notes, for example, that four of the nine agreements provide for a 37.5 hour work week and eight provide for daily overtime and six provide 6th day overtime.
 - (U-154, U-155) – These documents are not actually related to comparables but rather demonstrate an estimate of the relationship to wages earned by AFSCME represented employees in 1983 – 1986 compared to wages earned in 2009 – 2010 when adjusted for inflation over that period. (U-155) was prepared by AFSCME Council 25 using data from the Bureau of Labor Statistics.

- (U-165) – This is a memo from the City Human Resources Department dated March 2, 2010 summarizing the economic changes impacting members of the Detroit Police Command Officers Association as a result of an Act 312 award in Case No. D07 K-1456. Among the issues identified in the memo is an item noting these employees received a 3% wage increase 1/1/08 and a 3% increase 7/1/08.
- (U-181) – This document is a document provided from the International Union. It compares the vacation, sick leave, holiday, personal days and longevity pay for AFSCME represented city workers in several Midwest cities as of October 2009. The cities in the comparisons are Chicago, Cleveland, Detroit, Indianapolis, Milwaukee and Minneapolis. The Union’s post hearing brief points out that information in this document reflects the range of allowed yearly time off (depending on the employee’s level of seniority) for each of these City’s is greater than that provided in the City of Detroit and Detroit’s range will decrease even further if swing holidays and reserve sick leave days are eliminated for new hires.
- (U-182, U-183, U-184) – (U-182) is a April 22, 2010 Detroit News article reporting on a report given to City Council from the Council’s fiscal analyst. (U-183) is a document that accompanied that report. The News article and the document address the question of whether the Mayor’s proposed budget for FY 2010 -11, which indicates a reduction in his staff appointee positions is an actual reduction or a shift of these positions to departments. (U-184) is a August 17, 2009 Detroit Free Press article reporting that, according to records obtained by the Free Press, some of Mayor Bing’s recent appointees were making slightly more than their predecessors but the article also points out “he shrank some other salaries.”
- (U- 185) – This document is a April 20, 2010 memo to City Council from its staff containing a summary and review of several contracts and purchase orders submitted by the City purchasing division for the week of April 19, 2010. A total of 33 contracts are included totaling \$15.65 million of which \$1.89 million is from the General Fund. AFSCME Counsel indicated this document was presented to demonstrate that some of the contracts involve work that could be performed by AFSCME members and that there was no

reference in these documents to indicate the City was seeking a 4% reduction in cost.

- (U-186) – This is an April 29, 2010 Detroit Free Press article that refers to a study commissioned by the Center for State and Local Government Excellence. The article reports that the study found that in 2008 Michigan state government employees were paid about 6% less and local government employees about 12% less than their private-sector counterparts. When benefits, such as health care and pensions, are factored in, state government employees earn 6.8% less and local government employees earn 7.4% less than their private-sector counterparts. The study counted public teachers as local employees. (This document was entered into the record during a post hearing conference between Counsel for the parties and the Fact Finder.)
- (U-187, U-188) – These documents consist of a report from the Bureau of Labor Statistics of the May 2008 metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates for the Detroit-Livonia-Dearborn Metropolitan Division (U-187) and a report prepared by AFSCME Local 25 using data from (U-187) to reflect the median wage for various AFSCME Local 25 job classifications compared with the CPI median wage for the periods 1999 and May 2008. It also compares the percentage increase in the CPI wage and AFSCME wages from 1999 to May 2008 and reflects what the CPI and AFSCME wages would have been in 2008 if they had reflected the rate of inflation. (These documents were entered into the record during a post hearing conference between Counsel for the parties and the Fact Finder).

The general theme presented in the documents and testimony presented by the Union on comparables is perhaps best reflected in the testimony of Union witness, Catherine Phillips. Ms Phillips is the staff representative for AFSCME Council 25. On the last day of hearing, near the conclusion of all testimony in this proceeding, she was asked by Union Counsel if there was anything else about the AFSCME position that she had not already indicated. She said: "I think what I want to emphasize is that it is important – and I know that your scope is here, but it's important that everyone across-the-board in the City of Detroit shares in this pain that we all have to go through." There was a meeting in which Charlie Beckham participated in – and it was a bargaining session. "We asked the City was there any savings in cutting those members

in the Detroit Water and Sewerage Department, cutting their pay, I mean, in the Detroit Water and Sewerage Department or any grant-funded departments or other enterprise funded departments. Mr. Beckham said no, there was no cost savings, but everyone has to feel the pain. So what we are saying is that everyone has to feel the pain. It's not--- it's just not fair to keep coming to the lowest people on the totem pole, if you will, and keep saying Give back, Give back."

Conclusions

Section 9(d) of Act 312 speaks to the consideration of comparables when reviewing issues. Comparables refers to " a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in i) public employment in comparable communities and ii) private employment in comparable communities. Subsection 9(e) calls for a consideration of the average consumer prices for goods and services, commonly known as the cost of living. And subsection 9(f) says to consider the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

Many of the issues presented in this case require a consideration of the above factors. The parties, while not directly addressing the comparables as a separate issue, did present evidence and testimony relating to the above factors.

The City emphasized the internal comparables. It repeatedly pointed out other City employees that had agreed to or had agreements imposed upon them that required the same or nearly the same provisions the City is seeking in this agreement. The City's witnesses, on the issue of health care, referred to other public and private employers' agreements in the public and private sector with similar provisions in their health care plans in support of the City's positions on health care. The City also spoke to the issue of overall compensation, (Sec. 9 (f), in the context of its financial ability as it presented evidence and testimony on various proposals.

The Union addressed comparables by presenting information on both internal and external comparables. It compared the wages and benefits paid to the City's public

safety employees and management and appointed employees with those of its members. Using external comparables it compared certain benefits of other public employees in the metropolitan area with its members' benefits. The Union also used information from the City of Flint and Wayne County to support its position that the City had other options when considering its Deficit Elimination Plan and sources of revenue for its general fund. The Union also presented information addressing Section 9(e), the consumer price index or cost of living and compared the average wage of some of its members to the eligibility for public assistance benefits.

All of this information has been helpful in analyzing the issues. I conclude that in some cases, such as in health care benefits, the employees have benefits equal to or better than some comparables. The evidence also indicates that the City's public safety employees have received wage increases greater than non-public safety employees and have not taken the DOWOP as have non-public safety employees. On the other hand it is also true that the public safety employees, for the most part, are engaged in a different kind of work than the non-public safety employees and usually are compared with other public safety employees when considering wages and benefits.

The evidence also demonstrates that in recent years, the wages of the Union members has not kept pace with inflation. But the record evidence did not provide an opportunity to compare this trend with other metropolitan area public employees and the evidence provided on certain benefits received by public employees and wages received by private employees performing similar responsibilities did not permit a comprehensive comparison of overall wages and benefits. Nevertheless, all of this information was helpful in considering and balancing these "comparable" factors while also considering the interests and welfare of the public and the financial ability of the City to meet its responsibilities. These factors, in some cases, will be spoken to more directly when addressing the specific issues.

ISSUES

1. Article 11 – Disciplinary Procedures – New Memorandum of Understanding (Universal Rules)

Finding of facts and conclusions

Facts

Both the City and the Union propose revisions to Article 11.

The City proposes amending Article 11 by adding the following language at the end of the current language in Article 11:

“Following the effective date of the 2008-2012 Agreement only, representatives of Council 25 shall be provided with copies of the standard work rules within one hundred twenty (120) days pursuant to time requirements contained within Memorandum of Understanding Re: Universal Rules.” (C-52)

This proposal is directly related to the City’s proposal that the parties agree to a new memorandum of understanding that would state:

RE: Universal Rules

The parties agree that a committee composed of no more than seven (7) members appointed by Council 25, and no more than seven (7) members appointed by the City shall review the proposed penalties established under the Universal Rules. The attendance of additional Union and City representatives must be mutually agreed upon by the parties.

If within one hundred twenty (120) days of the approval of this Agreement by City Council the parties fail to reach agreement on the appropriate level of discipline for any existing rule, the matter shall be referred to a mutually agreed upon arbitrator for expedited arbitration. The arbitrator’s decision shall be final and binding upon all parties. Within ten (10) days of receipt of the arbitrator’s decision, the complete set of universal rules and disciplinary guidelines shall be published and disseminated on a city-wide basis. The effective date for implementation shall be thirty (30) days after publication.

The parties agree that the Committee will first review the proposed penalties established under the Universal Rules for substance abuse and driving standards.

The universal rules and penalties shall supersede department rules on the same offense.

Note: This agreement by the parties to meet, confer and reach agreement on the appropriate level of penalty for existing rules is not intended to conflict with the City's inherent rights, abilities and responsibilities set forth in Article 2, Management Rights. (C-40)

City Witnesses Barbara Wise-Johnson and Brenda Braceful testified in support of this proposal. They stated that the City had been working for some time to develop more uniformity in the work rules across the various departments of the City. The purpose for this was described in an exchange between the Fact Finder and City witness Barbara Wise-Johnson:

Fact Finder: "So if I am understanding you correctly, the process isn't changing that much relative to the relationship of the contract language to acceptance of some types of work rules and the application of those work rules, including the penalties. The only thing that is changing is that the City is proposing a universal document that describes the work rules and, of course, it is also proposing that a process be set up to come to, hopefully, some agreement or arbitration decision on the penalties for those work rules."

Ms. Wise-Johnson: "Correct. Currently, these work rules are in effect in each of the departments. There is a disciplinary guideline for every department or, if they don't have one, they follow the Human Resource Department guidelines. So there are different rules, and the penalties may be different based on those departments. So what we are doing now is we are trying to make those penalties and those rules the same so that it will be the same application on a City-wide basis. But those rules are in effect right now. They may just have a different penalty, and that is what we were negotiating is the change in the penalty." (Tr 8, pgs 1091-1092)

Ms. Wise Johnson testified that the other bargaining groups the City had reached agreement with were advised the Universal Work Rules would be in effect once they reached agreement, however the penalties may be changed as a result of bargaining with another group. In this case that group would be AFSCME. She indicated there was one group that indicated they may want to review the penalties but the intent of the City is that there would only be one arbitrator to determine the penalties in the event of an inability to reach agreement on the penalties as described in (U-40). (Tr 8, pg 1183)

City Witness Braceful testified that the proposed universal work rules (C- 41) were developed by her with input from the various Department Human Resource managers. They engaged in a review and consolidation of existing departmental rules

in an attempt to bring some uniformity and eliminate disparities in rules and procedures within the departments. (Tr. 8, pgs 1093-1095)

Union witness Phillips testified on behalf of the Union on this issue. She presented (U-170) as the Union's position and recommendations for changes in Article 11: Disciplinary Procedures. The Union proposes to amend Article 11, as follows:

By revising the last two sentences of Paragraph A to read:

~~"The issuance of disciplinary action shall take place in a timely manner within five (5) working days. Any dispute regarding the timeliness of discipline shall be resolved by the Umpire."~~

By revising Paragraph C to strike reference to "third step" and insert "second step"

By revising Paragraph I to read:

" Use of Past Record: In imposing any discipline on a current charge or in evaluating an employee for promotion or transfer, management will not take into account any prior infractions or disciplinary action taken which occurred more than ~~fourteen (14)~~ twelve (12) months previously." (U-170)

By revising the note at the end of Article 11 to read:

"Note: Within ~~twenty (20)~~ ninety (90) calendar days following the effective date of this Agreement, representatives of Council 25 shall be provided with copies of the standard work rules including universal city-wide work rules/disciplinary guidelines. Within ninety (90) calendar days after receipt of such copies, Council 25 shall have the opportunity to review and discuss with management these standards and rules currently in effect in the various City departments." (U- 171)

Ms. Phillips testified that the Union was proposing the change in paragraph A so that a member who could potentially be facing discipline wouldn't have the question of whether they were going to be disciplined or not hanging over their head for an unreasonable amount of time. She said the proposed change in paragraph C was because it has been the Union's experience that the second step of the grievance procedure is held with division managers or their representatives and whoever is issuing the discipline at the first step is also hearing the discipline at the second step. The Union believes this change will eliminate an unnecessary step and move the process along quicker. And she said the proposed change in Paragraph I was an attempt to return the language to what had been in a previous contract, which would

give an employee the opportunity to clean up their record sooner. (Tr 21, pgs 3096 – 3098)

The Union's post hearing brief notes one of AFSCME's concerns is that the work rules themselves are being changed in the process of declaring them universal. The Union believes if changes are required in the work rules, then both the universal rules and the penalties should be negotiated comprehensively by the committee that would be established pursuant to the MOU (C-40). AFSCME's position is that the universal work rules should not be unilaterally created by the City, because it involves changes in terms and conditions of employment. Instead, the universal work rules should be placed into the committee, along with the penalties for the work rules, and the rules and the penalties should be negotiated.

Conclusions

I conclude, from the testimony and evidence presented, that the City's effort to develop more standard Universal Work Rules is justified. Development and implementation of these rules should result in more efficiency, uniformity, and fairness in the application of these rules. I also conclude the City, based in part on the testimony of City Witness Braceful, has made a reasonable and good faith effort to develop the proposed rules to this point. I also believe the proposed Memorandum of Understanding (MOU), establishing a joint committee is a reasonable way to work out the details.

However, a review of the proposed consolidated or Universal rules as presented in (C-41) leads me to conclude that there is a strong relationship between the rules and the penalties that will be associated with the rules. Exhibit (C-41) at page 6 sets forth the purpose of the rules. Included in that purpose is: 1) to clarify the point at which discipline is appropriate and 4) to aid in the uniform and consistent implementation of corrective discipline for persistent poor attendance and tardiness. These purposes and other elements of the proposed rules, in my view, are so inter-related to the potential penalties that I conclude it would be a more efficient process to have the joint committee established by the MOU to consider both the Universal rules and the penalties together to ensure clarity.

I am concerned that if the joint committee were limited to review of the penalties only, the Union may argue and take the position, as they have in this proceeding, that

the rules do impact conditions of employment and attempt to block their implementation. The MOU sets forth a process that hopefully can result in agreement between the parties on this issue but if they cannot agree an arbitrator's decision will be final. I believe that process would require a review of the penalties in the context of the rules and therefore it would be hard to separate the two. This has led me to conclude that Article 11 and the MOU should be modified as suggested in the recommendation below and incorporated into the agreement.

With regard to the Union's proposed changes in paragraphs A and C, I conclude there is insufficient evidence in the record to support these changes. Setting a firm time period for issuance of disciplinary action may not be practical and there was no evidence demonstrating revision of paragraph C would expedite the process. I am also reluctant to recommend a change in paragraph I to return the language that was in a previous contract, not knowing whether that was negotiated language or the basis for selection of a 12 month or 14 month period for non-consideration of prior infractions or disciplinary action.

Recommendation

Article 11: Following the effective date of the 2008-2012 Agreement only, representatives of Council 25 shall be provided with copies of the ~~standard work~~ **Universal rules and proposed penalties established under the Universal rules** ~~within one hundred twenty (120) days~~ pursuant to time requirements contained within Memorandum of Understanding Re: Universal Rules. (C-52)

RE: Universal Rules

The parties agree that a committee composed of no more than seven (7) members appointed by Council 25, and no more than seven (7) members appointed by the City shall review the **Universal rules and proposed penalties established under the Universal Rules**. The attendance of additional Union and City representatives must be mutually agreed upon by the parties.

If within one hundred twenty (120) days ~~of the approval of this Agreement by City Council following the date~~ **representatives of Council 25 have been provided copies of the Universal rules and proposed penalties established under the Universal rules** the parties fail to reach agreement on the **Universal rules and the** appropriate level of discipline for any ~~existing~~ rule, the matter shall be referred to a mutually agreed upon arbitrator for expedited arbitration. The arbitrator's decision shall be final and binding upon all parties. Within ten (10) days of receipt of the arbitrator's decision, the complete set of universal rules and

disciplinary guidelines shall be published and disseminated on a city-wide basis. The effective date for implementation shall be thirty (30) days after publication.

The parties agree that the Committee will first review the proposed penalties established under the Universal Rules for substance abuse and driving standards.

The universal rules and penalties shall supersede department rules on the same offense.

Note: This agreement by the parties to meet, confer and reach agreement on the appropriate level of penalty for existing rules is not intended to conflict with the City's inherent rights, abilities and responsibilities set forth in Article 2, Management Rights. (C-40)

Rational

As stated in my conclusions, I believe adoption of the revisions to Article 11 and the MOU, with the amendments I have proposed, will move the City and the Union forward in clarifying the rules and penalties and thereby provide a more efficient personnel management process. The proposed amendatory language is intended to make clear what that process will be and makes the language in Article 11 and the MOU more compatible for implementation.

2. Article 25 – Longevity Pay

Finding of facts and conclusions

Facts

The City proposes revisions to Article 25 by eliminating all of the current language in Article 25. (C-26) This would result in the elimination of longevity pay for all employees covered by this agreement. Currently employees are provided an annual longevity payment based on years of service ranging from \$150 for 5 to 10 years of service; \$300 for 11 to 15 years; \$450 for 16 to 20 years; \$600 for 21 to 25 years and \$750 for 26 or more years. (C-28)

City witness Laverne Bronner-Wilson provided testimony on this issue. She presented (C-27) and (C-28) which provide information on the number of AFSCME employees currently eligible for longevity pay. Using these documents, a rough estimate of the annual savings to the City and corresponding loss of benefits to the

AFSCME employees resulting from the adoption of this revision would be \$928,000 with \$506,000 of that being a savings from the general fund.

On cross examination, Ms Bronner-Wilson acknowledged that the proposal in (C-26) was the original position during bargaining but that in an effort to resolve the contractual issues, an incentive was put in the longevity proposal as part of the settlement package. Since that settlement package was not accepted in its totality, the City reverted to its original position of the total elimination of longevity. (Tr 7 – pgs 1035-1036)

The modified proposal was bargained for with the Teamsters. The modified proposal is, that effective with the December 2009 qualifying period, employees who receive suspensions ten (10) days or greater within the qualifying period will not be eligible for longevity pay. If the suspension is overturned or reduced to less than 10 work days through disciplinary process, the employee will qualify for longevity pay. The modified position eliminated longevity for new hires.

Ms. Bronner-Wilson's testimony is also supported in the City's post hearing brief which states that the City's modified position was an incentive offered to groups who signed their labor agreements by December 18, 2009. If agreements were not agreed to by that date the City reverted to its original position. The City says AFSCME rejected the City's final settlement package offer in November 2009 and therefore the City reverted to its original position of elimination of longevity pay.

Union witness Catherine Phillips testified on this issue and indicated the Union opposes any change in Article 25. She stated that during negotiations the City had indicated that the estimated savings to the City from the entire workforce would be \$8.5 million and \$1.8 million of that from the civilian workforce. She said employees have come to rely on this bonus and it is significant to a lot of members, particularly to those who don't make a lot of money. (Tr 21, pg 3105)

The Union's post hearing brief notes that during negotiations with other unions, the City was willing to modify its position on longevity but the City claims AFSCME was not willing to agree to the entire settlement package so therefore AFSCME should not be allowed to retain longevity pay. The Union says, however, that other unions were not forced to agree to their entire contract at once. The Union notes that, using the City's estimate that AFSCME is about 22.7% of the costs to the City in civilian work force, this proposal would save the City \$408,600 annually from AFSCME members but

the City has not asked for this from police and fire employees which would save the City \$6.7 million.

The City's post hearing brief notes that consistent with its position in bargaining, there are groups who have the "ten day" proposal and some groups wherein longevity has been eliminated because they did not settle on the contract by December 18, 2009. As a result of AFSCME's bargaining position, the City proposes the elimination of longevity.

Conclusions

The City takes the position on this issue, as it does with several others, that the agreement should reflect the City's position, not only because it reduces costs to the general fund and helps the City address its financial situation, but also because the Union did not accept the City's offer, during bargaining, of the package proposal which included a modification of this proposal, and therefore the City reverted to its original proposal which is to eliminate longevity pay completely. The Union argues the City is not being consistent in its position on applying this "all or nothing" approach to bargaining and says the City has entered into agreements with some unions which include some modified proposals presented in the "all or nothing" stage of bargaining even when those unions did not agree to the "all or nothing" condition.

The testimony and evidence presented throughout this proceeding certainly provides a perspective on the pressure the City was under to try to get as many of its agreements concluded as soon as possible. And I can appreciate the give and take of negotiations and the need for "final offers." But I also view the fact finding process, as stated previously in this Report, as another step in the process. And the Recommendations are made from a perspective of what I believe the parties, now knowing more of the facts, would likely agree to, or at least what I believe they should agree to, in a give and take process during negotiations. So even though I understand the City's perspective on the issue of making an offer, modifying it, and then withdrawing the offer, as I make my recommendation, that is not the overriding consideration. Instead, I have looked more at each issue and its impact on the City, its employees and its citizens when determining whether one of the parties' proposed changes should be included in the CBA and what the content of the proposed language should be.

So it is with this proposal. There is no question adoption of this proposal as presented by the City will have a significant impact on the members of this union, particularly those with longer seniority. The record reveals the average annual wage/salary of Union members in FY 2009-10 is \$33,827. (U-65) The loss of the longevity pay could range from ½% to 2.2% of that annual wage, depending upon the longevity of an employee.

On the other hand, this proposal will also have a significant and immediate impact on the City's financial situation. As noted in the facts, it is estimated to reduce the annual cost to the City, just for AFSCME members alone, by over \$900,000 and reduce the general fund expenditure by \$500,000.

As I have looked at this and other proposals, I have considered what the alternative is. Given the facts presented in this hearing, I can't help but conclude that if savings like this are not achieved in this manner, the most likely way the City would have to achieve them is by laying off employees or not hiring to refill positions when someone leaves. If the City were to resort to that action it would only further add to the stress of those left to try to meet the job demands and further erode the ability of the City to fulfill its responsibilities to its citizens. This record indicates that the average annual salary plus fringe benefits for an AFSCME employee in FY 2009-2010 is about \$57,000. (U-65) That estimated savings of \$500,000 could possibly save or fill 8 plus positions.

I recognize taking this reduction is not easy for many of the Union members. But this proposal won't impact all of them and it will impact them differently depending upon their length of employment with the City. Given that it will likely have a greater impact on those with 20 plus years of employment with the City, it may even result in some of those employees deciding to retire and thereby allow the City to employ a new person to maintain services but who will not cost the City as much.

The alternative proposal that was agreed to by the City and Teamsters and a few other unions is attractive in that it preserves the longevity at least for those current members. And adoption of the City's proposal to discontinue longevity all together for members of this Union, along with others, while the Teamsters and some other unions continue to receive longevity pay, seems inequitable. And it may present difficulties for the City to administer two "systems." But I must emphasize again, that I have reached the conclusion that the City's proposal should be adopted in the new CBA, not based on

the processes used during negotiations, but rather on the reality that savings must be found for the City to survive and this proposal is among those that can best achieve that objective.

Recommendation

I recommend the City's proposal, as described in (C-26), to eliminate all of the language in Article 25, become effective upon approval of City Council.

Rational

As explained in the discussion on conclusions, I find this proposal to be justified in the context of the City's current financial condition. Its adoption for this contract period does not preclude the parties from reevaluating the value of reinstating a longevity provision in future agreements when the financial situation is more favorable.

3. Article 26 – Work Week, Work Day, Shift Premium

Finding of facts and conclusions

Facts

The City proposes revisions to Article 26 by amending Section B, items 1, 5 and 6 which would eliminate the language that authorizes employees of departments or subdivisions to work 35 hours per week but get paid for 40 hours, exclusive of the meal period. The proposed language would eliminate 40 hours of compensation for a 35 hour work week for these employees and they would be expected to work 40 hours for 40 hours of compensation with no pay for the meal period. (C-29)

City witness Laverne Bronner-Wilson testified and presented exhibits in support of this proposal. City exhibits (C-30) and (C-31) presented information prepared by Ms. Bronner-Wilson to provide an estimate of how many AFSCME represented employees are currently working a 35 hour work week and being paid for 40 hours of work. The estimated number of employees this would affect is 1,159. (C-31) It is recognized that this change would not actually result in a pay reduction for the employees or a cash cost savings to the City. But the City would benefit by an increase in productivity – 5 more hours worked each week by each employee – and each employee will, in effect, experience a per hour pay rate reduction because each employee will have to work an additional 5 hours per week with no increase in compensation. Exhibit (C-31) depicted

an average annual salary for an AFSCME employee of \$33,827 or \$16.26 per hour to arrive at a “productivity in hours” annual dollar value of \$4,899,788 gained by the City with this proposal.

Union witness Phillips testified for the Union on this proposal. The Union’s position is that there should be no change to Article 26. (U- 173) She noted that some employees, specifically clerical, may be assigned an 8 hour day but taking an hour lunch hour. This proposal would require them to work 8 hours, not including their lunch hour. She said the Union’s view is that this proposal would not save the City any money and while the Union recognizes the City’s financial situation, this kind of proposal makes it appear to the Union that the administration just wants to break the Union and take back all the benefits it has fought for. (Tr 21, pgs 3109-3110)

Conclusions

I conclude that this proposal, much like the City’s proposed changes to Article 25 in the previous proposal, will have an impact on the ability of the City to maintain services without significantly impacting the majority of the Union members. It is true that the members who currently work a 35-hour work week and get paid for 40 hours will be impacted by having to work 40 hours for the same amount of pay. But this will affect about one third of the Union membership. While there was testimony that it will require some adjustment to these employees’ work schedules, the implementation of this proposal should cost little, if any money and should be able to be handled by each department to accommodate individual schedules.

It is also true, as the Union points out, that this does not directly benefit or relieve the City from its immediate cash needs. But it should result in additional productivity and therefore enable the City to better meet the needs of its citizens and at the same time reduce the need for layoffs and the stress of the current understaffing in some work settings as employees attempt to meet citizens’ needs with fewer staff. Unfortunately, it is also probably true that this current policy, allowing 40 hours pay for 35 hours work, is viewed by many citizens and taxpayers as something that should not be occurring at a time when the City is close to insolvency and many of those taxpayers have been reduced in work hours or pay or are unemployed. Not making the change as proposed by the City could be used as an example of the apparent inability of the City

and Union leadership to recognize and realize the reality of the current economic environment impacting so many citizens in Detroit and Michigan.

Recommendation

I recommend the City's proposal to modify the language in Article 26 resulting in eliminating the 35 hour work week, as described in (C-29), be adopted by the parties and become effective upon approval of City Council.

Rational

As stated previously, while I recognize this policy change will not directly or immediately improve the City's cash situation, it will improve the City's ability to provide services without costing the City more money. It may be a small impact but as employees throughout the City struggle to respond to its citizens - its customers - with fewer resources and fewer employees at their sides, adoption of this proposal will likely not be looked upon as a major sacrifice by those not directly affected. And more importantly, it should at least positively impact the quantity of services provided and perhaps avoid the necessity of layoffs.

4. Article 27 – Overtime

Finding of facts and conclusions

Facts

The City proposes several changes to Article 27. The proposed changes are to Sections B, D and F of Article 27 as follows:

B. TIME AND ONE-HALF OVERTIME:

1. Hourly Rated Employees – Time and one-half (one-hundred and fifty percent (150%) of the basic or hourly rate) will be paid to hourly-rated employees as follows:

a. ~~All hours worked over eight (8) in one (1) service date except if such time is worked on a seventh day or a holiday.~~

b. All hours worked over forty (40) in one (1) service week except if such time is worked on a seventh day or a holiday. Overtime hours worked (not to be credited at premium time) in excess of four (4) hours and not exceeding sixteen (16) hours in one (1) service week may be substituted in lieu of an equal amount of an employee's regularly assigned forty (40) hours.

c. ~~All hours worked on shifts within eight (8) hours of the quitting time of an employee's previous shift, except for those hours worked on a seventh day or holiday.~~

2. Salary Rated Employees – Time and one-half shall be credited or paid to salary employees as follows:

a. ~~All hours worked over eight (8) in one service day except if such time is worked on a seventh day or holiday.~~

b. All hours worked over forty (40) in one service week ~~except as indicated in Article 27, B 2, C and~~ except if such time is worked on a seventh day or a holiday.

c. ~~Employees who are assigned to a work week of less than forty (40) hours~~ shall be entitled to time and one-half for all work on the sixth day if they shall have worked the assigned **forty (40)** hours in the work week.

D. When a schedule indicates a lunch period but conditions make it impractical to enjoy same, the employee or employees involved will be paid the prevailing ~~overtime~~ **hourly** rate in lieu of his/her lunch period. The provisions of this section shall not apply to employees whose work day is designated on a measured task basis. In no instance shall payments be made for lunch periods not worked.

F. All ~~time~~ **overtime** paid under this contract ~~and existing rules and ordinances for sick leave, holidays, vacation and jury duty and time lost due to a job connected injury~~ shall be **computed solely on the basis of time actually worked by the employee.** ~~counted as time worked for the purpose of computing overtime. (C-32)~~

City witness Bronner-Wilson testified in support of this proposal. She said the current practice is that employees earn overtime after completion of 40 hours of work and for purposes of calculating overtime, time worked includes time earned and used for vacation, sick time, holidays, jury duty, funeral leave and time lost resulting from a job connected injury. If the proposal were adopted in the new contract the employees would earn overtime only after actually working 40 hours in a scheduled week, and not be able to count vacation, sick time, holidays, jury duty, funeral leave and time lost due to a job connected injury as hours worked for purposes of calculating the 40 hours worked for overtime. (Tr 6, pgs 874-875) Ms. Wise-Johnson testified that the current contract provides that all hours worked over eight hours in one service day are paid at time and one half, except if that time is worked on the seventh day. She said this proposal would also eliminate that provision.

Ms. Bronner-Wilson presented (C-33) and (C-34) to address the estimated cost savings to the City resulting from this proposal. (C-33) is a calculation showing all AFSCME represented employees – totaling 2454 -, except those working in the Human Resources Department, who were paid overtime and the payment for that overtime

during calendar year 2009. The document showed the average overtime paid per employee taking overtime that year was \$8,467 for a total overtime cost of \$20,778,189. This represents savings from both general fund and non-general fund sources. (Tr 7, pgs 913- 917) City exhibit (C-34) is a document prepared by Ms. Bronner-Wilson presenting a series of four hypothetical examples of use of overtime by an employee and calculating an estimate of how much the City would save as a result of implementing this proposal in the course of a fiscal year. She stated she used FY 2008-09 fiscal year data to develop these hypothetical's and went through data systems from Payroll – the Work Brain and Oracle systems – to review actual time worked for some employees to develop the scenarios within the hypothetical's. (Tr 7. pg 900) The estimated savings to the General Fund only, from this proposal, using this data and these hypothetical's, ranged from a 6.12% overall annual general fund savings equaling \$890,725, with \$202,234 of that attributed to AFSCME represented employees, to a 25.71% overall annual general fund savings equaling \$3,740,425 with \$849,243 of that attributed to AFSCME represented employees. (C-34) (Tr. 7, pgs 900 – 917) On cross examination it was acknowledged that these estimates were in fact estimates and it would be difficult to get a precise figure of savings in overtime without taking into consideration the impact of implementation of other proposals the City was advancing. (Tr.7 – pgs 999-1034)

Through testimony and exhibits presented by Ms. Bronner-Wilson later in the proceeding she supplemented information provided in (C- 34) with exhibits (C-135) through (C-142). Exhibit (C-135 is a report for the month ending November 29, 2009 showing work time and time off of employees by cost center and department showing the employees' use of sick time, vacation time, overtime worked, and other absences for that 30 day period. Exhibits (C-136 through C-142) are actual weekly time and attendance reports for several weekly periods in May and June and November 2009 in an attempt to provide some actual examples of what the City was attempting to demonstrate in its hypothetical's in (C-34). During direct and cross examination it was acknowledged that these exhibits, while providing actual data, still represented a random sample and could still not be relied upon to give a precise figure of savings if this proposal were implemented. (Tr 19, pgs 2760-2836)

The City's post hearing brief notes that in the City's settlement package presented to the Union November 25, 2009, it proposed to include holiday and vacation

time for purposes of calculating overtime. However this settlement proposal was not accepted by the Union so the City is reverting to its original proposal of August 6, 2009. (C-32) (U-44)

Union witness Phillips testified on behalf of the Union on this proposal. She stated the Union position was to retain the current contract language. (Tr. 21, pg 3130) She spoke to the discussions during negotiations on this issue and noted that the City, at different times, had different positions relative to whether holiday and jury duty time will be counted as hours worked for purposes of computing overtime. She noted that on July 21, 2009 the City had proposed that holidays and jury duty time continue to be counted as time worked for purposes of computing overtime (U-174) and then on August 6, 2009 the City proposed they not be included (C-32). She also noted that in the City's September 3, 2009 proposed "counter offer" settlement package, holiday and vacation time was proposed to be counted as hours worked for computing overtime. (U-44). Ms. Phillips said that during negotiations the City was asked how much in cost savings this proposal was going to save the City and that the City response was "We didn't take time to figure that out." (Tr 21, pg 3128)

The Union, in its post hearing brief, notes that the City is permitting other unions with whom the City has reached agreement to have overtime calculated for the week by using holiday and vacation time as part of that calculation. The City's proposal for AFSCME excludes holiday and vacation time as part of that calculation. The Union's brief also says that the City had not provided accurate or reliable calculations of savings that would result from this proposal because it used hypothetical work hours to provide estimates.

Conclusions

I conclude the City's proposal to, in general, eliminate some of the non worked time, such as vacation and sick time, as time worked for purposes of calculating overtime is a reasonable proposal in the context of the City's efforts to return the City to a point of being able to operate within a budget that does not require continued borrowing and deficit spending. The Union has pointed out that the City has used methods to estimate the potential cost savings resulting from this proposal, which are, at best, inadequate and perhaps totally inappropriate to provide a sound estimate. I agree that the City's method and methodology to provide the estimated cost savings is

weak. But its approach does provide, through use of hypothetical's and by producing actual examples of use of overtime calculations for a limited number of employees for a limited period, enough information to support the general premise that there will likely be significant savings from making this change. Even a minimum estimate of general fund annual savings of \$202,234 attributed to AFSCME employees alone, and \$890,725 when considering all employees, is significant. And common sense tells you if you eliminate these days from calculations for purposes of calculating overtime the amount of overtime paid will decline.

The question remains whether to exclude all of the specific type of days proposed by the City for purposes of calculating overtime or modify its proposal. There was much discussion and some evidence produced to indicate that the City made several different proposals on this issue at different times. The Union pointed out that the City made one proposal on July 21, 2009 that included the use of holidays and jury duty for purposes of calculating overtime (U-174) and then on August 3, 2009 made a proposal which excluded them for purposes of calculating overtime. (C-32) Then on September 3, the City made a "package offer" which included holiday and vacation time for purposes of calculating overtime. (U-44) We know that this "package offer" was later withdrawn by the City because the Union did not agree to the "package offer."

In the normal give and take in a negotiated settlement there would likely be some willingness on the part of the City to accept some revisions to this proposal. That is in fact demonstrated to a degree by the City's various proposals it presented. In this case, I conclude the parties would agree to a slight modification to the City's proposal, in the context of the entire package as proposed by the recommendations made in this report. That modification is reflected in my recommendation.

Recommendation

I recommend the parties modify Article 27 by incorporating into the agreement the modifications as presented in Union exhibit (U-174) which was the City's proposal made on July 21, 2009 during negotiations. The modification would include holidays and jury duty for purposes of calculating overtime. All additional modifications of Article 27 as presented in (U-174) would become effective upon approval of City Council.

Rational

I believe including holidays and jury duty to be counted as time worked for the purpose of computing overtime is reasonable in the context of the give and take necessary to reach agreement. Including these days should not significantly reduce the benefit to the City in cost savings. The holidays are a set number for all employees as opposed to vacation and sick days, which may vary widely among employees. The testimony of Union Witness Phillips was valid when she pointed out that responding to jury duty is not something the employee has control over and she/he should not be penalized for fulfilling a civic responsibility.

5. Article 28 – Holidays and Excused Time Off

Finding of facts and conclusions

Facts

Both the City and the Union propose revisions to Article 28. The City proposed the following revisions to Sections A, C, G, J 4, K and a Note: at the end of the Article:

28. Holidays and Excused Time Off

A. Employees shall be entitled to the following seven (7) holidays: New Year's Day, Martine Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Employees **hired prior to effective date of approval by City Council** shall be entitled to three (3) swing holidays in each fiscal year. **Employees hire on and after effective date of approval by City Council shall not be entitled to swing holidays.** ~~New employees shall be entitled to the first swing holiday after ninety (90) calendar days and the second swing holiday after one hundred eighty (180) calendar days and the third swing holiday after two hundred seventy (270) calendar days.~~

C. An employee shall be eligible for holiday pay or excused time day pay provided he/she shall have received at least eight (8) hours of pay exclusive of overtime **and sick leave pay the day before and the day after the holiday or excused time day** ~~in the calendar week prior to, during or after the holiday or excused time day;~~ provided the employee continues on the payroll through the holiday or excused time day in question and would otherwise be qualified for the holiday or excused time day.

For the purpose of this section, an employee shall be considered off the payroll if he/she is fired, quits, or is on a formal leave of absence granted by the Human Resources Department (generally over 30 days), is on worker's compensation, or is laid off. An employee's payroll status no

covered by the above shall be subject to a Special Conference. Criteria to be used to determine payroll status will be if the absence of the employee shall be for more than thirty (30) days.

G. Employees shall be granted eight (8) hours of "Excused Time" on Good Friday or eight (8) hours on the last scheduled paid day prior to Good Friday, and eight (8) hours of "Excused Time" on the last scheduled paid day before Christmas Day and before New Year's Day and for Veteran's Day, and the day after Thanksgiving, and Election Day as designated by the City Council. **For employees hired prior to effective date of approval by City Council, an additional Swing Holiday shall be granted** in the event there is no designated Election Day, provided they are on the payroll through the excused time day in question. Employees required to work a portion of the "Excused Time" on these days will receive either equal time off for hours worked or additional pay at the straight time for such hours as the option of the Department Head. No holiday premium will be paid for work on these days. When an employee is absent without good cause for the non-excused portion of the day, he/she shall forfeit his excused time for the day.

J. If an employee engaged in six or seven day operations works either the actual calendar holiday or the substitute holiday, he/she shall receive the holiday premium, but he/she will not be allowed to pyramid holiday premium for working both days.

4. If an employee is off sick on the calendar holiday, or the substitute holiday, or both, he/she shall receive ~~holiday pay in lieu of sick pay on one of the two days~~. If he/she works either of the two days he/she shall receive holiday premium.

K. The City shall have the option to close all or part of its facilities for the Christmas and New Year's holiday season consistent with operating needs and the public service. Employees shall have the option of using vacation, swing holidays, compensatory time or no-pay for any days off during the period. If an employee has none of the above listed accrued time, departmental leave may be used if available. If an employee has no paid time accrued, and wishes to work, the City will make every attempt to place an employee in his/her department on a job assignment consistent with their job classification and ability to perform the work.

In the event a department requires additional personnel during the period, the Human Resources Department will be so advised. Employees who are without accrued time and are desirous of working during the period will contact their department Human Resources Officer for available placement in another department.

The optional holiday season closing dates during the period of this Agreement shall be:

~~December 27, 28, 29, 2005~~
~~December 26, 27, 28, 2006~~
~~December 26, 27, 28, 2007~~

December 26, 29, 30, 2008
December 21, 22, 23, 28, 29, 30, 2009
December 20, 21, 22, 23, 28, 29, 30, 2010
December 19, 20, 21, 22, 27, 28, 29, 2011

The City shall notify the Union by November 1st of each year of whether it intends to implement a holiday closedown.

Any scheduled time off or uses of departmental leave days during these periods shall not be counted against the employees' attendance records nor (except for bonus vacation) adversely affect their benefits.

The City reserves the right to use mandatory budget required furlough days for any of the dates during the optional holiday closing season.

Note: The two-tier system for the new hires as well as other new changes referenced in this Article will be implemented when the City's Payroll System has the capability. (See Memorandum of Understanding – RE: HR/Payroll Systems.) (C-35)

The Union proposed no changes in the current language with the exception of language in Section K. The Union proposed the following revisions to Section K:

K. The City shall have the option to close all or part of its facilities for the Christmas and New Year's holiday season consistent with operating needs and the public service. Employees shall have the option of **working**, using vacation, swing holiday, compensatory time, **departmental leave** or no-pay for any days off during this period. ~~If an employee has none of the above listed accrued time, departmental leave may be used if available.~~ If an employee has no paid time accrued, and wishes to work, the City will make every attempt to place an employee in his/her department on a job assignment consistent with their job classification and ability to perform the work.

In the event a department requires additional personnel during the period, the Human Resources Department will be so advised. Employees who are without accrued time and are desirous of working during the period will contact their department Human Resources Officer for available placement in another department.

The optional holiday season closing dates during the period of this Agreement shall be:

~~December 27, 28, 29, 2005~~ 26, 29, 30, 2008
~~December 26, 27, 28, 2006~~ 28, 29, 30, 2009

December ~~26, 27, 28, 2007~~ 28, 29, 30, 2010

The City shall notify the Union by November 1st of each year of whether it intends to implement a holiday closedown.

Any scheduled time off or uses of departmental leave days during these periods shall not be counted against the employees' attendance records nor (except for bonus vacation) adversely affect their benefits.

The Holiday Schedule during the term of this Agreement is set forth in Exhibit IV. (U-175)

City Witness Bronner-Wilson testified in support of the City's proposal. She stated that the proposal addresses several changes. First, the effect of the proposed language in Sections A and G is that employees hired after the effective date of approval by City Council would not be entitled to swing holidays. Currently, newly hired employees are entitled to swing holidays phased in over a 9 month period of time. Next, the proposed changes in Section C will require an employee to work the day before or the day after the holiday in order to qualify to be compensated for the holiday whereas currently if an employee is paid one day in a three-week period, the week before, during or after the holiday, the employee receives holiday pay. (Tr 7, pgs 919-920) Section J 4 changes would apply only to employees engaged in six or seven day operations and would limit an employee who is off sick on the calendar holiday or substitute holiday or both to sick pay where as presently the employee could receive holiday pay in lieu of sick pay on one of the two days. Section K is revised to specify the proposed optional holiday season closing dates consistent with the City proposed budget reduction furlough days. And the note at the end of the Article indicates when the revisions for new hires and other new changes adopted in this Article will be implemented.

Ms. Bronner-Wilson also spoke to City exhibit (C-36). Exhibit (C-36) is a compilation of data prepared by Ms. Bronner-Wilson which depicts the use of sick days the day prior to and the day immediately following a holiday for calendar year 2009. This data uses information from a "work-brain" program that contains about 80% of AFSCME represented employees. While there are 13 holidays within a year, Ms. Bronner-Wilson said she picked 7 of those 13 holidays to obtain information for this exhibit. She stated that based on the information she collected shown in this exhibit there was an approximate 35% increase in the use of a sick day prior to or immediately

following a holiday compared to the use of a sick day prior to or immediately following that same day which was not a day before or after a holiday during the preceding week. (Tr 7, pg 934)

Ms. Bronner-Wilson also presented and testified to (C-37). This exhibit is a calculation of the estimated annual savings the City would achieve if this proposal were to be incorporated into the new contract. She testified that she used the information in (C-36) pertaining to the 7 holidays she chose to collect information on, used those same estimates of sick day usage and applied them to the remaining holidays and applied them to the additional estimated 20% of AFSCME represented employees not in the "work-brain" data system, to arrive at and estimated number of 339 AFSCME employees off around the holidays. Using this methodology, the City estimates its annual "savings" from this proposal to be in a range from \$308,679 to \$573,262. (C-37) (Tr 7 – pgs 941-951)

Union witness Phillips testified in support of its proposed revision to Article 28. Ms. Phillips said the Union's proposed language in Section K is intended to apply to those situations when the City closes an operation or part of its facilities during the Christmas and New Year holiday season. Currently an employee, if they want to get paid for the day or days that the City closes the operation, can use a vacation, swing holiday or compensatory time or a departmental leave day, if available, if they have no other time accrued. The Union proposes to add the use of a departmental leave day or the option for the employee to work somewhere else, to those options the employee could choose in this situation so they wouldn't have to use their vacation, swing holiday or compensatory time. Use of a departmental leave day would come out of the employee's current sick bank hours. She said both the employee and the employer would benefit from this proposal because the employer would have some additional productivity during holiday close down periods.

Witness Phillips said the Union opposed the City's proposed changes. She testified that during mediation the Union suggested alternatives with respect to the City's proposal in Section C to eliminate pay for a holiday if the employee uses a sick day before or after a holiday and the proposal in Section J 4 to eliminate holiday pay if the employee is sick on a holiday. She noted that a lot of employees have worked 25 or 30 years and have used very few sick days but may be legitimately sick on a holiday or a day before or after a holiday. She said the Union thought the City's proposal was too

harsh and that perhaps a doctor's letter could be required from employees to verify a sickness. This proposal was not accepted by the City. (Tr 21, pgs 3131 – 3138)

The Union's post hearing brief argues that the City has not explained the presence of a problem involving employees' excessive use of sick leave before and after a holiday. It also says the data the City provided was not sufficient to demonstrate the problem or the extent of the problem and therefore an accurate estimate of what the City would save by implementation of this proposal. It also notes that the proposal for elimination of swing holidays, sick days, reserve sick days, or vacation days or bonus vacation days is applicable only to new hires and the City will unlikely have many new hires, and therefore, this feature of the proposal will likely not save the City much money in the current fiscal year. And the Union notes this projected savings in not mentioned in the Deficit Elimination Plan.

Conclusions

I conclude the City's proposal to modify the language in Article 28 as presented in (C-35) is a reasonable proposal in the context of the City's efforts to return the City to a point of being able to operate within a budget that does not require continued borrowing and deficit spending. I will address the main provisions separately.

One main provision is that employees hired after the effective date of approval by City Council not be entitled to swing holidays. I recognize, as the Union points out, that this provision may not save the City much money initially. But I also recognize that this provision, like several others applicable only to new hires, can have a long term structural positive affect on the City's ability to achieve financial stability. As pointed out in the financial portion of this Report, the City's ability to improve its bond rating and thereby reduce its costs when seeking bond revenues, will be dependent upon its ability to institute "structurally balanced financial solutions that carry forward to future budgets." (Moody's August 2009 Bond Rating Report cited previously in this Report). I conclude this provision will help the City improve its cash flow situation and assist the City to balance future budgets and likely not affect its ability to recruit and employ persons willing to work for the City knowing this is one of the conditions of employment.

Another major provision is the proposed change to require an employee to work the day before and the day after the holiday in order to be compensated for the holiday.

The Union challenged the City on this feature of the proposal, questioning whether there truly was a problem with employees taking more sick time before or after a holiday. The City's methodology in estimating the pattern of use of sick time around the holidays was challenged as not being representative of what may actually be occurring. And the Union argued that if there were abuses the City could deal with those on an individual basis and didn't have to impose this policy on all members, including those who did not use sick days excessively before or after the holiday.

The Union makes some valid points. But in response to the Union's questioning of the City's assessment of the current pattern of use of sick days before and after a holiday, the City's post hearing brief points out that since this is a proposal, the City has developed its estimate based on the best information available to the City. One of the challenges in this proceeding has been to balance the need for information with the practical cost and feasibility of obtaining that information. In this case, as in several others where the Union was seeking more accurate data and analysis of projected cost savings, I believe the City attempted to take representative samples and develop reasonable estimates of cost savings within the limitations that staff time and costs would permit. I conclude the City's evidence demonstrates that this proposal will result in significant cost savings to the City.

The Union also questioned why the City couldn't just address the issue of abuse of use of sick leave days on an individual basis. I note, in review of the proposed Universal Work Rules (C-41) that there is a Medical Verification Requirement provision that addresses this situation. But I can also recognize the potential for disparate treatment in this approach, which is dependent upon supervisors to apply fairly. I also can appreciate the City's position that a more cost effective approach to address the issue is the approach it is recommending. This provision is similar to practices in schools that many of us and our children have experienced when a teacher will hold the entire class from going to recess because two or three kids were misbehaving. When confronted by our kids with this practice many of us have had to say, "life is not always fair." I conclude that this provision is reasonable as proposed by the City, and while neither party presented specific comparables on the use of this provision, I believe it is not unprecedented in public employee agreements.

I will not address specifically the other provisions in the City's proposal other than to say, on balance, I conclude they are reasonable.

The Union also proposed revisions to section K. I conclude the proposed revisions would not be practical to implement. Giving the employee the option of working on a day when the City has closed most if not all of its facilities is not practical. Adding departmental leave to the list of options the employee may use for any day off during this period appears unnecessary given all of the other options.

Recommendation

I recommend the parties modify Article 28 by incorporating into the agreement the modifications as presented in City exhibit (C-35). I recommend Article 28, as modified, become effective upon approval of City Council.

Rational

The basis for my recommendation is addressed in my conclusions on this issue. The main point is that the City needs to incorporate these changes into its operations to permit it to achieve a more sound and permanent fiscal foundation.

6. Article 29 – Unused Sick Leave on Retirement

Finding of facts and conclusions

Facts

The Union proposed a modification to Article 29, Section A. That modification is as follows:

“A. Employees shall be entitled to payment for unused sick leave on retirement as follows:
Upon retirement, or death with twenty (20) years of service, an employee shall be entitled to payment of ~~sixty percent (60%)~~ **one hundred percent (100%)** of their unused sick leave.” (U-176)

The City proposed the Article remain as is. (C-55A, C-55B) (Tr. 11, pgs 1604 – 1612)

Union witness Phillips testified in support of the Union’s proposal. She stated this proposal is related to the Union’s proposed change in Article 48 “Retirement”. The proposed change in this Article would increase the payment for an employee with twenty years of service, upon the employees’ retirement or death from the current 60% of the employees unused sick leave to 100% of her/his unused sick leave. (U- 176) It relates to the Union proposal for a change in Article 48 (U- 177) because the proposed

change in Section I of Article 48 would change the current provision allowing an employee to choose up to 25% of their unused sick leave to be included in the average final compensation computation in lieu of payment for it to allow the employee to choose to receive between 25% and 70% of the unused accrued sick leave to be included in the final average compensation. Ms. Phillips said the Union's proposals for both Article 29 and Article 48 were an attempt to provide some compensation benefit to its members in the context of this agreement, and these proposals, for the most part, would not immediately impact the general fund. She also said she believed one of the Police associations members recently were authorized 100% of payout of unused sick leave which prompted the Union to propose it in negotiations. (Tr. 21, pgs 3146 – 3156) Ms. Philips stated:

“What we were trying to do was to get something out of this contract negotiation to take back to our members that they would be happy with, because we knew it was going to be a concessionary agreement, so we were trying to get something out of the contract.” (Tr. 21, pg 3156)

City Witness Barbara Wise-Johnson spoke to the City's position. She testified generally as it related to not only the City's position of “as is” on Articles 29 and 48 but also to the City's position on its proposed changes in Articles 25, 26, 27 and 28 that the City's proposals were an attempt to reduce costs to the City. Among her statements were:

Relating to Article 25 – “The City is in a financial crisis, was at that time, still remains today in a financial crisis, and we were looking for ways in which we could reduce our benefit costs for employees, and this was one of the proposals we made.” (Tr. 11, pg 1591)

Relating to Article 26 - “this one really is a productivity issue where we would get increased productivity from employees by having them actually work the hours that we are paying for them as opposed to just giving them the money for non-working hours. That is something we said we could no longer do.” (Tr. 11, pg 1593)

Relating to Article 28 - “We are again, trying to change employees' behavior to the extent that it is a cost item for us. We are trying to change our benefit structure. Again, the City of Detroit can no longer do business the way it was doing business in the past. We are trying to establish a benefit structure that would be more conducive to our financial situation, and we are making these proposed changes.” (Tr. 11, pgs 1598-1599)

The City's post hearing brief notes the Union makes this proposal without doing any financial analysis of the impact on the City' financial and budget situation.

Conclusions

This proposal, as testified to by Union Witness Phillips, would not immediately impact the City's financial situation. But it would eventually affect the amount of general fund money that would have to be dedicated to pay for the City's pension obligations. The cost of this proposal was not calculated. To calculate the estimated cost to the City or benefit to the employee would have been nearly impossible for the Union because they have no way of knowing how many employees may choose this option if they were provided an opportunity to do so. I can appreciate the Union's position, as stated by Ms. Phillips, that this proposal is being advanced in part "to try to get something out of this contract negotiation to take back to our members." But given the City's current fiscal situation and the necessity that it achieve structurally balanced financial solutions that carry forward to future budgets, I conclude that incorporating this proposal into the agreement at this time would be counter to achieving those goals.

Recommendation

I recommend the parties not incorporate the change proposed by the Union to Article 29 as presented in Union Exhibit (U- 176) and maintain Article 29 as is.

Rational

The rational for my recommendation is as explained in the discussion on conclusions.

7. Article 33 – Jury Duty

Finding of facts and conclusions

Facts

The City proposes revisions to Article 33. Sections E, F and G as follows:

33. Jury Duty

E. Employees shall have the option when called to jury duty to use vacation or compensatory time for such service. ~~In that event, the employee will not be required to turn in his/her jury pay.~~ However, the employee must notify the department of his/her desire to exercise this option prior to the first date of jury service.

F. ~~Jury duty shall be considered as time worked.~~

G. An employee on jury duty will be continued on the payroll and be paid at his/her straight time hourly rate for his/her normally scheduled hours of work. Upon return from jury duty, ~~the employee shall be present evidence of the amount received from such jury duty and return that amount to the City,~~ **the City will deduct the amount received or due from such jury duty,** less any mileage allowance paid for the jury service, from the employee's pay.

~~If an employee fails to turn in his/her jury duty payment, the City will hold subsequent payments due to the employee until the City is reimburses for all time lost due to the alleged jury duty service. (C-57A, B)~~

City Witness Barbara Wise-Johnson testified in support of this proposal. She noted that the changes in Sections E and G are merely administrative. It is a procedural payroll change and will have no impact on the employee's reimbursement for jury duty. The change in Section F will impact the employee benefits. It strikes the language that says jury duty will be considered as time worked. Ms. Wise-Johnson said this is related to the City's proposal on Article 27 related to overtime (C-32), which indicates that you have to actually work in order to be paid overtime. With this proposed change, jury duty will not be counted as hours worked for purposes of overtime. (Tr. 11, pgs 1621-1622)

Union witness Phillips testified on this issue for the Union. The Union's position is that there be no change in Article 33. In her testimony related to the City's proposal on Article 27 she spoke to the jury duty issue when she noted that the Union has a lot of hourly employees who work overtime which would be affected by the proposed changes in Article 27. She stated:

"I really have a problem with the jury duty issue, because of the -where our members are financially. They could get - anyone can get a jury summons, and it's against the law to not serve, and someone is going to have to make a determination as to whether I should work overtime and get paid time and a half that sixth day, or should I follow the law and go and comply with this jury summons." (Tr. 21, pg 3125)

Ms. Phillips said the Union had no objection to the City's proposed changes in paragraphs E and G but it did object to the change in paragraph F. She said disallowing jury duty as consideration for time worked would affect overtime and the Union opposed this change for that reason. (Tr. 21, pg 3165)

The Union's post hearing brief says the City has provided no estimate of how much this proposal will save the City and speculates it will save the City very little, given the infrequency of employees' need to respond to jury duty assignments.

Conclusions

While the Union position is to make no change in Article 33, Union Witness Phillips testified that the Union had no objection to the City's proposed changes in paragraphs E and G. The proposed change in paragraph F is related to the City's proposal on Article 27 related to calculations for considering payment for overtime.

Consistent with my conclusions and recommendation on Article 27, I conclude time used for jury duty should be considered as time worked for purposes of calculating overtime.

Recommendation

I recommend that the parties' agreement incorporate the modifications in Article 33 proposed by the City as presented in City exhibit (C-57 A-B) with one revision. That revision would be to not strike the language in paragraph F. I recommend the modifications, including the revision to the modifications for Article 33, become effective upon approval of City Council.

Rational

The rational for this recommendation is the same as the rational stated for Article 27, Overtime.

8. Article 34 – Health Care, Hospitalization, medical, Dental

Finding of facts and conclusions

Facts

The City proposes several changes to Article 34 addressing health care benefits for employees represented by the Union. (C-15, C-15A, C-18) The proposed modifications as identified in (C-18) are also summarized in (U-44) which is the City's settlement proposal package (corrected copy) dated September 3, 2009. The City's proposed health care changes are summarized on (C-18) and pages 3 and 4 of (U-44) are as follows:

34	Hospitalization, Medical, Dental	9/1/09	<p>Modify: Mandatory Use of Generic Drugs - Generic drugs required unless determined that brand name drug is medically required or a generic equivalent is not available. If brand drug requested but not medically required or generic is available, employee, retiree or covered dependent must pay the applicable brand name co-pay amount plus the difference between the cost of the generic drug and brand name drug, even if dispense as written (DAW) is written on the prescription. Appeal procedure for any dispute is available under applicable healthcare plan.</p>
			<p>Modify: Limitation on Prescription Drugs: City will not pay for smoking cessation, weight loss, fertility, or impotence prescription drugs under the City's prescription drug programs. This provision does not apply to prescription birth control pills. City's Amended Offer 10/5/09: This provision also will no longer apply to smoking cessation and weight loss prescription drugs.</p>
			<p>Modify: Medicare Advantage: Enrollment options for retirees and covered dependents who are Medicare-eligible shall be limited to the Medicare Advantage plans offered by the City. In the event such Medicare Advantage plans are no longer offered or not cost effective, enrollment in alternative plans will be permitted as determined by the City.</p>
			<p>Modify: Employees who retire on or after the effective date of Agreement and who qualify for City hospitalization-medical insurance as a retiree shall at any time the retiree is receiving said coverage be entitled to same coverage opportunities then available to the active employee and utilizing the same co-premium calculation formula to determine amounts payable by retirees for retiree and his/her eligible spouse. (Also see provision RE: Medicare Advantage.)</p>
			<p>Modify: New-Hire- Eligibility qualifier for hospitalization-medical coverage is the first of the month after new hire completes 91st day of employment.</p>
			<p>Modify: New Hire - For the first 5 years of employment, hospitalization-medical insurance enrollment opportunity limited to Community Blue PPO and HMO plan options under the City Medical Plan Design Option II (formerly known as the Mercer Design Plan.)</p>
			<p>Modify: New Hire - Optical Coverage eligibility qualifier changed from 60 days to 6 months.</p>
			<p>Modify: New Hire - Hospitalization-medical, prescription drug benefits shall cease for retirees and their covered dependents after the retiree or medical contract holder becomes Medicare-eligible by age. Current Medicare eligible age is 65.</p>
			<p>Modify: Sponsored Dependent coverage eliminated in its entirety.</p>
			<p>Modify: Family Continuation Dependents: Effective with the coverage year that begins on July 1, 2010, family continuation dependent's qualifying age changed from 19 through the end of the calendar year in which he/she attains 25 years of age to 19 through the end of the calendar year in which he/she attains 22 years of age.</p>
			<p>Modify: If a retiree marries or remarries after retirement, new spouse and his/her dependents not eligible for coverage under City's healthcare plans.</p>
			<p>Clarify: Consistent with current practice, all retirees and covered dependents are required to enroll into Medicare Parts A & B.</p>
			<p>Modify: Failure to enroll or maintain Medicare Parts A & B, City hospitalization-medical coverage will be terminated.</p>

Modify: Non-Duty Disability Retiree not eligible for hospitalization-medical, prescription, dental or optical insurance coverage.

Clarify: Consistent with current practice persons who retire with 25 years credited service, but less than 30 and received an Actuarially Reduced Pension may participate in the City group retiree hospitalization-medical, dental, optical coverage at full premium cost (or illustrative rate) for the coverage. The City makes no contribution to this coverage until such time as the retiree would have reached his/her 30th anniversary. Contribution calculation and rules based on rules in effect for regular retirement at time this retiree would have reached his/her 30th year.

Modify: Effective July 1, 2010, if an employee/retiree spouse has hospitalization-medical coverage available to him/her under a plan offered by his/her employer other than City of Detroit, said spouse must enroll in their hospitalization-medical plan in order for the spouse to be eligible for coverage through the City of Detroit. In such cases, if the spouse of the employee/retiree is also enrolled in the City hospitalization-medical plan, the City will be the secondary insurer/payer.

Modify: No duplicate hospitalization-medical coverage. If City employs more than one member of a family, or the family unit includes a retiree of the City, the City shall not be obligated to provide more than one hospitalization-medical policy or plan.

Modify: Cost Saving Initiatives Continued Negotiations: Examples include, but not limited to auto insurer primary for auto accidents and post retirement employment, new employer to be primary.

(U-44)

The City had several witnesses who provided testimony related to this proposal. Those were: Barbara Wise- Johnson, Eunice Bickel-Smith – former Blue Cross Blue Shield (BCBS) key accounts manager, Nicole Mitchell – MERCER Human Resources Management Firm employee, James Boback – BCBS key accounts manager, and Francine Pegues – former BCBS Director of Sales & current consultant to BCBS.

Barbara Wise-Johnson provided an overview of what the City was trying to achieve with the proposed changes relating to health care. She said significant changes were made in the health care benefit design in the most recent contract impacting employees involving prescription drugs, deductibles and co-insurance. Because of these changes the City decided to seek changes in this agreement in the area of managing the health care plan. She said the objective was to retain a quality program but also try to reduce the City's health care cost to the extent possible. She said most of the proposals were designed to manage the costs and make a determination of what the City could afford and not afford to pay. (Tr. 10, pgs 1412- 1414) Ms. Wise-Johnson's testimony was supplemented by other witnesses on certain provisions of the proposal. Each of the 18 issues within the proposal, as identified in (C- 18) and (U- 44) will be addressed separately.

1) Mandatory use of Generic Drugs: Ms. Wise Johnson said the City's goal with this proposal was to try to reduce costs for prescription drugs by making sure employees were using generic drugs to the maximum extent possible. The proposal requires the use of a generic drug if a generic drug is available unless it was medically determined that a non-generic drug would be required for the patient. The doctor would have to justify the use of a brand name drug. If the employee wanted to use a brand name drug that was not prescribed by a doctor the employee would have to pay the difference in cost. (Tr. 10, pg 1415) Ms. Wise Johnson said with respect to the appeals procedure, that process would be handled by the health care provider and the physicians and the employee. That process would not be administered by the City. (Tr. 16, pg 2,318)

City Witness Kent testified that based on BCBS actuaries, BCBS estimated a 2% cost savings from total drug costs for an estimated annual savings of \$1.3 million resulting from implementing this element of the proposal. (Tr. 4, pg 500) (C-20) City Witness Bickel-Smith testified that she discussed this proposal with the City and that this feature within a health care plan is a standard rider at BCBS. (Tr. 5, pg 749) City Witness Pegues testified that she had been director of sales for key accounts for the State of Michigan, City of Detroit, Oakland, Macomb, Washtenaw and Wayne Counties, the Detroit and Livonia Public Schools, the Public School Employees Retirement System and MSEA. She said in her experience she had seen similar provisions requiring mandatory generic drugs in other plans. (Tr. Pg 801)

2) Health Habits and Reproductive Prescription Drugs: Ms. Wise- Johnson presented (C- 49) in support of this element of the health care proposal. She said she had spoken with representatives of both BCBS and Mercer and this was recommended as a cost savings. She said (C-49) describes actual usage of some of these health habits and reproductive drugs for the period June 2007 to May 2008 and June 2008 through May 2009. (Tr. 10, pg 1416) The data on (C-49) shows a cost to the City for the fertility and impotence drugs for the 07-08 period to be about \$280,000 used by approximately 590 individuals and for the 08-09 period about \$370,000 used by approximately 615 individuals. Witness Pegues testified that the elimination of lifestyle drugs was implemented by Oakland County some years ago. (Tr. 5, pg 805)

3) Medicare Advantage: Ms. Wise-Johnson testified that this proposal would result in a cost savings to the City and a slight cost savings for the retiree and covered

dependents because it would allow the City to negotiate a better rate with all retirees who are Medicare eligible enrolled in Medicare advantage. She said the benefits are the same to the retiree under this proposal except the retirees' cost for an emergency room use is lower and they would not be eligible for birth control medications. The City would save approximately \$158 per enrollee. (Tr. 10, pgs 1427- 1436) Ms. Peguies testified that she was aware of this approach being implemented by Oakland County and the State of Michigan Public School Employees Retirement System. (Tr. 6, pg 805)

4) Employees who retire after the effective date of this agreement shall be required to be covered by the same insurance benefits as active employees: The City proposes that for employees who retire on or after the date this agreement is approved by City Council, any changes in health care benefits agreed to in subsequent agreements would be applicable to those retirees. Ms. Wise-Johnson testified that the rationale for this proposal is that the City can no longer make commitments on health care plans that remain the same for the remainder of the employee or retiree's life. She said the continual increases in the cost for health care are costly to the City and this provision would let everyone know when changes occurred in the future it would apply to those persons that retired. (Tr. 10, pg 1438) City witness Pegues testified that at least 7 State or local government employers and 3 private employers she was familiar with had similar provisions in their agreements. (Tr. 6. pg. 806) There were no immediate cost savings to this proposal.

5) New Hire Eligibility to qualify for health care benefits: The City proposes that after this agreement is approved by City Council new hires be eligible for health care coverage on the first day of the month following three (3) months of service. Currently employees' health care coverage begins on the first day after the first full pay period. City Witness Barbara Wise-Johnson referred to (C-22) for an estimate of the cost savings to the City. The cost savings for each new employee hired under this provision would range from approximately \$1000 to \$2500 dollars. She said she also estimated that there may be between 200 and 400 new employees hired per year but this was just a speculative estimate since currently there are hiring freezes in place. (Tr. 10, pgs 1439 – 1453) City Witness Bickel testified that it is very uncommon that employers cover an employee for health care as early as the City now does and most employers are requiring three months employment before providing health care benefits. (Tr. 5, pg 751) City Witness Pegues testified that the State of Michigan, Oakland County, Wayne

County and the Detroit Public Schools have a qualifier for a new hire to receive hospitalization after their 91st day of employment. (Tr. 6, pg 806)

6. New Hire eligibility for type of health care coverage: City Witness Wise-Johnson testified that this proposed change would require that employees hired/reinstated on or after the date which the City Council approves the agreement would be required to be enrolled in the Mercer health care plan for the first 5 years of employment. She referred to (C-15, C-16) which identified the cost savings to the City if this proposal is adopted. That cost savings is estimated to reduce the City's cost for health care for each employee hired under this proposal by 12.8%. (Tr. 10, pgs 1439 – 1453). City Witness Pegeus stated most governmental employees have a different design plan for new hires than current employees. (Tr. 6. pgs 806 -807) The City, in its post hearing brief, acknowledges this would not likely provide a significant immediate savings to the City but it is aimed at providing the long term structural change that the City must implement for future financial solvency.

7. New Hire Optical Coverage: The City proposes that after this agreement is approved by City Council new employees' hired/reinstated be eligible for optical care coverage on the first day of the month following six (6) months of service. Currently, employees' health care coverage begins on the first day of the month following the employee completing 60 days of service. The City's estimated savings if this proposal is adopted is approximately \$24.44 per new hire. (C-18) City witness Pegeus indicated she had not seen this provision in other agreements. (Tr. 6, pg 807) Again, the City argues in its post hearing brief that this is a structural change needed to contain future costs.

8. New Hire Medical Coverage Cease at age 65: The City proposes that any new hire, and their covered dependents, no longer receive health care coverage after the contract holder becomes Medicare eligible by age. Since this would apply to only those employees who are hired on or after the date this agreement is approved by City Council and only after that person becomes eligible for Medicare, this would have no immediate fiscal savings for the City. But the estimated annual savings when it would apply, based on current rates for one person with Medicare and a covered dependent without Medicare, is \$12,444. (C-18) City Witness Bickle-Smith testified that many employers were discontinuing health care coverage when the employee retires and not

continuing them until they are Medicare eligible. (Tr. 5, pg. 752) City Witness Pegeus stated she had not seen this provision in other agreements. (Tr. 6, pg. 807)

9. Eliminate Sponsored Dependent Coverage: This proposal would provide that upon approval of City Council, the City will no longer provide employees the option to insure sponsored dependents. A sponsored dependent is an individual who is over age 25, related by blood to the employee, lives in the employee's household, and is claimed as a dependent on the employee's income tax. City Witness Kent testified that the estimated annual savings resulting from this proposal would be about \$250,000. (Tr. 4, pgs 528-530) (C-19). City exhibit C-18) showed the City's cost for coverage of sponsored dependents to be approximately \$204,000 for 2007 and \$253,000 for 2008. City Witness Bickle-Smith testified that very few employers offer sponsored dependent coverage and that while it may not be used by many employees it has high utilization of health care by the sponsored dependent. (Tr. 5, pg 752-753) City Witness Pegues testified that she has either seen this coverage eliminated by employers or it has never been offered by employers. (Tr. 6, pg 807-808)

10. Family Continuation Dependents: This proposal would require that effective upon approval of City Council, the age requirement for family continuation dependents be changed from age 19 through 25 to age 19 through 22. Ms. Barbara Wise-Johnson testified that this proposal does not impact a mentally or physically disabled dependent in this age range provided the child has become totally disabled prior to age 19 and is claimed as a dependent on the employee's taxes. (Tr. 10, pgs 1458-1459) City Witness Bickle-Smith testified that this proposal was suggested as a way to reduce costs without changing the level of benefits and was not uncommon in the industry. (Tr. 5, pg 754) City Witness Pegues stated she did not know who does this. (Tr. 6, pg 808) City Witness Kent testified that based on his calculations, if the City eliminated this coverage for this age group totally it would reduce annual costs by approximately \$122,000 but since this was only proposing to reduce the age of coverage from age 25 to age 22 he did not have an estimated projected cost savings. (Tr. 4, pg 532)

11. No coverage for the spouse of a retiree if the retiree marries that person after retirement: The City proposes that if a retiree marries or remarries after retirement, the new spouse is not entitled to healthcare coverage. And the child of a divorced spouse or a new spouse for whom the retiree is not the biological or adoptive parent or guardian, is not entitled to healthcare coverage. Ms. Barbara Wise-Johnson testified that

when the employee retires the City has an estimate of the cost based on the coverage the employee has at that time. The City doesn't want to be responsible for the cost of that coverage if that coverage changes as a result of the retiree remarrying and adding new dependents. (Tr. 10, pg 1464) City Witness Kent testified that the annual estimated savings per enrollee if that enrollee/retiree remarried under this provision would be \$5,662. He acknowledged that there was no way to determine how many retirees would actually experience this situation. (Tr. 4, pg 534 – 538) (C-19) City witness Bickle-Smith testified that she was "kind of shocked" the City was currently covering spouses upon a retiree's remarriage. (Tr. 5, pg 755). City Witness Pegues testified that she was aware that the State of Michigan and Blue Cross did not provide this coverage. (Tr. 6, pg 808)

12. Require Medicare Eligible employee's/retiree's to enroll in Medicare Parts A and B: Ms. Wise-Johnson testified that the City's current practice is that retirees must enroll in Medicare part A and B when they are eligible but some, when they get notice from the government that they are eligible for Medicare, don't respond because they already have City covered insurance. She said the City was seeking language in the agreement so retirees would be clear that they must enroll in Medicare and that this proposal and the next item, number 13, would ensure that retirees do in fact enroll in Medicare. She said in the past this policy has not been strictly enforced and it has been an unnecessary cost to the City. (Tr. 10, pgs 1466 – 1467) City Witness Bickle-Smith testified that in her discussions with the City she suggested this change because the City was bearing more cost than it needed to. She said the City was continuing to be the primary payer on all services that the retiree over age 65 was incurring when the vast majority of those services could be paid by Medicare. Under this proposal the retiree would have to pay for Part B. She said she believed the proposed policy was consistent with the current practice of most employers. (Tr. 5, pgs 756 – 758) City Witness Pegues testified that every employer group she could think of has this proposed requirement. (Tr. 6, pg 808). This could result in an annual estimated savings of \$6,404 per enrollee for those who should have but did not enroll in Medicare Parts A and B. (C-18)

13. Failure to enroll in Medicare and Medicare Parts A and B will result in termination of City health care coverage: This proposal is linked with the above proposal. The City proposes this language be included in the agreement as a means of enforcement and a way to keep costs of health care down. (Tr. 10, pg 1469) If an

employee retiree failed to comply with this policy and health coverage was terminated, re-enrollment could occur during the next enrollment period, assuming the employee/retiree had enrolled in Medicare and Medicare Parts A and B.

14. Non-Duty Disability Retiree not eligible for health care or prescription drug coverage: Ms. Wise Johnson testified that currently, a person who has worked for the City for 10 years and is on non-duty disability can retire and receive full health care coverage. She said it has never been the City's intent to provide health care coverage for persons who only have ten years of service. Under this proposal the non-duty related retiree would not be covered by the City's health insurance at all.

Ms. Wise Johnson said this person would have to apply for Medicare or Medicaid. (Tr. 10, pg 1471) She indicated this provision would not apply to current retirees who are retired with non duty disability but only to future retirees who retire with a non-duty disability. Therefore it would have minimal cost savings initially. She estimated there may be 200 current non-duty disability retirees. (Tr. 16, pg 2367) City Witness Kent testified that an average monthly premium paid by the City for a single retiree is estimated to be \$537 for an annual average cost of \$6444. It is not certain how many retirees this would apply to. (Tr. 5, pg 656)

15. Clarify health care coverage for persons who retire with 25 years of service: Ms. Wise-Johnson testified that this proposal was merely to incorporate in the language of the agreement what the current policy was. Currently an employee who retires after 30 years of service receives full health care coverage. An employee who retires with 25-29 years of service can remain on the City's health care coverage but must pay the full premium until he/she reaches what would have been 30 years of employment at which time the City will again partially pay for the premium. She said this is current practice but the City wanted it in the contract because people ask questions about it and having it in the contract makes it clear to employee/retirees. (Tr. 10, pg 1475)

16. Spousal health care enrollment required with current employer: This proposal would require married employees and retirees whose spouse is employed by an employer who offers group health insurance to require that spouse to enroll in that employer's health plan in order for the spouse to be eligible for health care provided by the City's plan. In other words, the City's plan would be the secondary insurer/payer. Ms. Wise Johnson testified this is being proposed by the City as another means to

reduce costs. (Tr. 10, pg 1479) City Witness Bobak testified that if both spouses had the same provision in their contracts each spouse would carry insurance with their respective employers. (Tr. 5, pg 704) City Witness Kent testified that an average monthly premium paid by the City for a single retiree is estimated to be \$471 for an annual average cost of \$5662. It is not certain how many retirees this would apply to. (Tr. 5, pg 663) City Witness Pegues testified that she had seen a similar provision in agreements for the State of Michigan and AAA. (Tr. 6, pg 809)

17. No duplicate hospitalization coverage: This proposal would require, in those instances when more than one member of a family, or the family unit includes a retiree of the City, all of whom could be eligible for coverage under one hospital-medical insurance policy, to be covered by one person. It is the responsibility of the family to select a single hospitalization carrier. Ms. Wise Johnson testified that this proposal would save approximately \$50 per member per month in administrative fees for each duplicate policy that could be reduced by this proposal and this change would not affect health care coverage in any way. (Tr. 16, pg 2381) City Witness Pegues testified that every employer group she dealt with in the last seven to ten years do not allow duplicate coverage. (Tr. 6, pg 809) There was no estimate of the number of duplicate policies that might be reduced by this proposal.

18. Agreement to work collaboratively to establish cost saving measures: The City proposes language in the agreement that would commit the parties to work together toward establishing cost saving measures for healthcare benefits and to resolve issues that may arise with implementation of the new Payroll and Benefit system. The proposed language also states;

“If the parties agree to further changes during the course of this agreement, such changes shall be implemented upon ratification of the bargaining unit and approval by City Council, and thereafter, incorporated into this Master agreement.” (C-15A)

The language then gives examples of continued cost savings measures. Ms. Wise-Johnson testified that the City’s purpose in proposing this language was so the parties “could continue to work together, the City and this labor organization, in trying to negotiate changes so that we can continue to keep our health care costs down and keep the quality health care program that we currently offer for our employees.” “We are just

saying let's continue to bargain. Let's not just close the door and come back to this three years from now or four years from now." (Tr. 10, pg 1480)

Union witness Phillips testified on behalf of the Union on this issue. She presented (U-178) as the Union's proposal for Article 34, which contained a date of April 21, 2010. She stated this was the same proposal the Union submitted to the City on October 13, 2009 with the exception that (U-178) contained a footnote on the bottom of page 1 that was erroneously omitted from the document provided to the City on October 13, 2009. She did not elaborate on the changes proposed by the Union in (U-178). The Union's post hearing brief noted that the Union's proposal adopted some of the language in the City's proposal but it also would keep this Article "as is" with respect to many of the proposals the City has put forth. The Union post hearing brief points out the Union proposal would remove the word "reinstated" from paragraph A and H because that word was not defined by the City and that a sentence be included in paragraph H that would require the City to provide prescription safety glasses, if needed, to members that are required to wear safety glasses. The Union says this addition is consistent with the requirement that the City provide a uniform to employees and that prescription safety glasses are a part of the employee's uniform.

Union witness Phillips testified for the Union in response to the City's proposal. (Tr. 22 pgs 3174 – 3215) She spoke to the specific changes the City is proposing. She said the Union was not supportive of the City's proposal in paragraph O that employees be required to use generic drugs unless determined that a brand name drug is medically required or a generic equivalent is not available. She noted that there were questions unanswered such as how the appeal process would be handled, who would be making the decision as to whether or not a brand name drug was medically necessary. She noted that currently when prescriptions are written the carriers automatically approve generic drugs, even though you are written a brand name drug. (Tr. 22, pg 3175) As for the appeal process, she noted that the proposed language states "Final resolution to any appeal will be handled by the medical insurance carrier or administrator", which, in the Union's view is unbalanced. She stated the Union did not put forth any proposed language that would be satisfactory to the Union to make the process more equitable because the Union was not in favor of the mandatory generic drug provision. (Tr. 22, pg 3177) The Union also addressed this issue in its post hearing brief. It argues that the City's estimates of potential savings resulting from

implementation of this provision are unreliable because they use national data to derive estimated savings with little information on actual City employee use of generic vs. brand name drugs.

Ms. Phillips referred to the City's proposal on Health Habits and Reproductive Prescription Drugs in paragraph U. That proposal states: " Effective upon approval of City Council, all health habits, reproductive (fertility), and lifestyle prescription drugs except for smoking cessation and weight loss, will no longer be covered under the City's prescription drug program." Ms. Phillips said the Union was not prepared to agree with this proposal because it is unclear what health habit and reproductive prescription drugs are. She acknowledged that during the course of this fact finding proceeding some drugs have been identified but it was not clear if this was an all inclusive list. The Union's post hearing brief says that the City's cost savings numbers on this issue are unreliable. It notes these numbers come from actuarial studies instead of actual costs of what the City incurred for these drugs. The Union's post hearing brief does acknowledge that (C-49) provides a more accurate cost estimate for fertility and impotence drugs which shows the City spent about \$282,000 in the June 2007 – May 2008 time period and about \$370,000 in the following year on these drugs.

Ms. Phillips spoke to the City's proposal in paragraph P which proposes to limit enrollment for medical coverage for Medicare eligible retirees to the Medicare Advantage option plans offered by the City. She said during negotiations the City said this provision was implemented under the current imposed contract but the Union thought that was not accurate. She also said the Union was concerned with the language that stated "In the event such Medicare Advantage plans are no longer offered or cost effective, enrollment in alternate plans will be permitted as determined by the City". She said this was giving the City too much to be in control of. For these reasons the Union cannot agree to this language. (Tr. 22, pg 3179) The Union's post hearing brief again notes, as it does with most of the City's health care proposals, that the City has failed to provide accurate savings derived from this proposal or how many Medicare eligible retirees do not sign up for Medicare Advantage. The Union says the proposal lacks justification.

Paragraph T of the City's proposed changes was addressed by Ms. Phillips and in the Union's post hearing brief. This proposal would provide that employees who retire after the effective date of this agreement who qualify to receive the City's

hospitalization- medical insurance as a retiree will be entitled to the same coverage then available to the active employees and use the same premium calculation formula as active employees. The Union opposes inclusion of this language because, as Ms. Phillips stated: "We don't bargain for retirees. We did not want to agree in our contract that whatever we do at the bargaining table in subsequent years would affect retirees." "We may be inclined to bargain something different at the bargaining table for active employees, and we did not want it to affect retirees." (Tr. 22, pg 3180) The Union's post hearing brief points out that this proposal would have no cost savings to the City during this contract period and, as it points out for all of the health care proposals, there is no indication that this or any other health care changes are factored into the City's Deficit Elimination Plan.

The Union indicated its opposition to the City's proposal in paragraph A that would require that employees hired after this contract becomes effective be covered by health insurance following three (3) months of service and for the first five (5) years of employment be limited to Community Blue PPO and HMO plan options available under the City Medical Design Pan II (formerly known as the "Mercer Design Plan"). The Union says since this proposal applies to new hires, there is likely to be little savings realized by the City during the period of this contract because it is unlikely there will be many new hires in the near future. It noted in its post hearing brief that the City was unable to provide a definitive cost savings. Ms. Phillips said that at one point during negotiations there was some discussion from the Union on shortening the time the Mercer Plan would be required for new employees but nothing was agreed upon. (Tr. 22, pg 3185)

The Union also objects to the City's proposed changes to paragraph H which would specify that after this contract becomes effective employees hired prior to the effective date of the new contract would have to complete 60 days of service before becoming eligible for optical coverage and those hired on or after the effective date of the new contract would have to complete six (6) months of service before being eligible for optical coverage. The Union says this will offer little savings to the City in the short term. Ms. Phillips testified that during negotiations, as it pertained to the City's proposals applicable to new hires, the Union suggested the City was coming after too much at one time. The Union suggested the City might want to hold off on some of

these proposals until the next contract negotiations when they may be hiring more people and then they could calculate what their savings could be. (Tr. 22, pg 3187)

The City proposal reflected in paragraph S would apply to employees hired on or after the effective date of this agreement and would provide that hospital/medical and prescription coverage cease for retirees and their covered dependents after the retiree becomes Medicare eligible by age. Ms. Phillips said the Union objected to this because there was no immediate savings to the City and because the Union didn't want to include provisions in this contract that would impact retirees in the future. (Tr. 22, pg 3188)

Paragraph C of the City proposal would specify that the City will no longer provide employees the option to insure sponsored dependents. Ms. Phillips stated that the Union sees this as really punitive because the City has never been able to tell the Union how many of its members take advantage of the current sponsored dependent provision and because the Union does not believe there will be significant cost savings. It was acknowledged that the City estimated the annual savings to be \$250,000 for all City employees and therefore would be substantially less savings just for the members of this Union. The Union post hearing brief estimated the AFSCME member percentage of savings to be \$56,969. She felt this proposal would unfairly impact a small but financially fragile number of AFSCME members who were in need of health insurance for a sponsored dependent. (Tr. 22, pg 3188 – 3191)

Ms. Phillips testified that the Union had the same concerns with the City proposed language in paragraph V involving family continuation dependent coverage as it did for paragraph C involving sponsored dependent coverage. Paragraph V states that effective upon approval of the agreement by City Council, the age requirement for family continuation dependents shall be changed from age 19 through 25 to age 19 through 22. Ms. Phillips said the Union doesn't know how many AFSCME members would be affected by this and didn't know what the City's estimated savings would be. The Union's post hearing brief noted that the City witness testifying on this issue indicated there was no way of knowing what the estimated savings would be. The savings are estimated to be quite small based on the data provided. (Tr. 5, pgs 632 - 640)

The Union opposed the City's proposal contained in language in paragraph M that would prohibit healthcare coverage for a spouse of a retiree who becomes divorced from the retiree, or for a spouse of a retiree if the retiree marries or remarries after

retirement and for a child of that spouse that the retiree is not the biological or adopted parent or legal guardian of. Ms. Phillips testified that this was a proposal that seemed punitive and that the City provided no data on estimated cost savings. She also noted that it appeared to apply to current retirees who may have been retired for sometime. (Tr. 22, pgs 3195-3196)

The City proposed language in paragraph Q to require any person eligible for Medicare to furnish the City proof of enrollment in Medicare and Medicare parts A and B and failure to do so would result in termination of the City's health care coverage. The Union indicated it opposed this change because it was unclear how it would be administered and the potential impact on its members if they inadvertently failed to timely enroll in Medicare and because there had been no indication from the City during negotiations as to what the savings would be. (Tr. 22, pgs 3196-3197)

The Union opposed language proposed by the City in paragraph A that states: "Non-duty disability retirees are not eligible for hospitalization-medical or prescription drug insurance coverage." The Union opposes this provision because it says the City has not shown how or if a person who may have retired from the City with a non-duty disability would be able to be covered by any insurance, Medicaid or otherwise. The Union views this proposal as harsh and is unclear on what the savings to the City would be. (Tr. 22, pg 3198)

The Union noted that the City had indicated that its proposed changes to paragraph R was merely to reflect what is already being done as current policy and practice. Union witness Phillips testified that she was not sure whether it was already being done or not and if it is already being done why does it have to be submitted as a proposed contract change to be bargained over? (Tr. 22, pgs 3198-3199)

The City's proposed language in paragraph X would incorporate into the agreement the requirement that all employees, retirees, and their dependents must disclose to the City any other source of healthcare benefits and coordinate them with the City's. It also would require effective July 1, 2010, that if an employee/retiree's spouse has health care coverage from another employer the spouse must enroll in that plan in order for the employee/spouse to be eligible for City health care coverage. Union witness Phillips said the Union believes this is punitive and no cost savings was provided by the City during negotiations. (Tr. 22, pg 3199) The Union's post hearing

brief also notes the Union's concern that the language could be construed to include current retirees.

The Union also objects to the City's proposed language in paragraph W. That language states that there shall be no duplicate health care coverage provided to employees or future retirees if the City employs more than one member of the family or if the family unit includes a retiree of the City who is eligible for coverage. The language concludes with the statement: "Under no circumstances shall the City be obligated to provide more than one hospitalization-medical policy or plan." Union witness Phillips testified that the City was unable to tell the Union how many duplicate coverage plans applied to AFSCME members or the savings that would be realized if this provision is adopted. She said she was particularly concerned about the inclusion of the last sentence since there was no way of knowing what all circumstances could be. (Tr. 22, pg 3200)

Paragraph AA is City proposed language that the Union says it is opposed to because it would result in endless bargaining. Paragraph AA says in part: "In addition to the above noted provisions, the parties agree to continue to bargain and to work collaboratively toward establishing cost saving measures for Healthcare benefits as well as resolve issues that may arise with implementation of the new HR/Payroll and Benefit System." It goes on to list examples of cost savings measures. Ms. Phillips stated the Union did not want to agree, in this contract, to continue to negotiate after the contract was closed, but would certainly discuss with the City any health care cost reductions. She pointed out that paragraph K in Article 34 of the 2001-2005 agreement (J-13) was sufficient language to allow the parties to continue discussions on health care cost containment and that the Union's position on this issue was to just retain the language in paragraph K from the 2001-2005 contract in this contract. (Tr. 22, pgs 3201 - 3203)

In summary, the Union's post hearing brief makes the general statement which reflects the Union's overall position. It says the City failed to demonstrate how much the proposals will save the City but that they would have a drastic impact on the low-wage-earning employees. The Union says few of these proposals have been adopted by other employers and the savings from these proposals have not been calculated into the savings needed within the Deficit Elimination Plan. Ms. Phillips testimony is noteworthy regarding the discussions during negotiations. (Tr. 22, pg 3181)

A. "We asked the City how much each item would save them. As we discussed Article 34 numerous times, we asked for savings."

Q. "Was there any clarity given as to savings?"

A. "No. We haven't gotten clarity until we have gotten to this process on most of the things"

Q " And -well, so whatever information we got on cost savings is in this Fact Finding record?"

A. "Correct".

Conclusions

The City proposed 18 specific changes to Article 34. Those are discussed in detail in the above facts. The Union's position is that this Article, and the current health care provisions, with a few exceptions, remain essentially as is. Each of the City's proposed changes will be addressed individually, followed by a brief comment on the Union's proposed changes.

1) Mandatory use of Generic Drugs

Conclusion

I conclude this proposal is a reasonable change to the City's health care plan. The City, through its exhibits and witness testimony has demonstrated that there will be significant savings resulting from implementation of this proposal. Witnesses also testified that this type of requirement was not unusual in other public and private health care plans.

I recognize the Union's concern, as expressed by Ms. Phillips, over the process by which a decision would be made to authorize or not authorize a non-generic drug for an individual. She is correct that the proposal merely states that final resolution to any appeal will be handled by the medical insurance carrier or administrator. But there was no other alternative proposal offered or evidence to indicate that this was not the standard way of handling appeals. The Union also questioned the City's projected savings but I conclude, based on the evidence presented, that while the projected savings may not be precise, there will be savings and this proposal is a structural change that will enable the City to better align its employees' benefits with its financial resources over time.

Recommendation

1) Mandatory use of Generic Drugs: I recommend paragraph O in Article 34 be revised as presented by the City in (C-15A) and be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

2) Health Habits and Reproductive Prescription Drugs

Conclusion

I conclude this proposal is a reasonable change to the City's health care plan. The City, through its exhibits and witness testimony has demonstrated that there will be savings resulting from implementation of this proposal. There was also testimony provided that this type of requirement was not unusual in other public and private health care plans. The City modified this proposal so that it would not apply to smoking cessation and weight loss provisions.

The Union raised the concern that it was not clear what was or was not considered to be a health habit or prescriptive drug. But I conclude the value of this change to the City outweighs any lack of clarity and the change should proceed. I expect if the question of whether a specific drug is or is not a health habit, reproductive or lifestyle drug arises at all during the course of administration of this provision, the insurance carrier or administrator will have a means of addressing it and if the decision appears inconsistent with common practice the Union may have a basis to challenge it. The Union questioned the savings, but I conclude the City provided a sufficient estimate of savings to support this proposal.

Recommendation

I recommend paragraph U in Article 34 be revised as presented by the City in (C-15A) with a modification clarifying that smoking cessation and weight loss drugs are not included in the category of health habits and reproductive prescription drugs, and that this provision be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

3) Medicare Advantage

Conclusion

I conclude this proposal is a reasonable change to the City's health care plan. The City, through its exhibits and witness testimony has demonstrated that there will be savings resulting from implementation of this proposal. The City presented testimony that this proposal would also result in a slight cost savings for the retiree and it would continue the same level of coverage for the retiree with the exception of not being eligible for birth control pills.

The Union expressed concern with the language that permitted the City to require enrollment in alternate plans in the event Medicare Advantage plans are no longer offered or cost effective. And the Union's post hearing brief questioned the cost savings. I conclude the savings are sufficiently justified to merit approval of this proposal. I also believe the potential cost savings to the City outweighs the Union's concern about the City's ability to require enrollment in other plans. I believe the City, if it required an alternative plan, would still be required to select a plan that provided substantially the same coverage and benefits as the Medicare Advantage plans.

During Ms. Wise-Johnson's testimony on this issue the following exchange occurred:

Fact Finder Long: "Would it not be clearer if in fact the language said enrollment for medical coverage for retirees who retire after the effective date of this agreement?" The Witness (Ms. Wise-Johnson) "It probably would be." (Tr. 16, pg 2634)

Recommendation

I recommend paragraph P in Article 34 be revised as presented by the City in (C-15A) with the additional revision noted in the following language and be made part of this agreement and take effect upon approval of City Council.

"Enrollment for medical coverage for retirees WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, who are Medicare-eligible, shall be limited to Medicare Advantage option plans offered by the City. In the event, such Medicare Advantage plans are no longer offered or cost effective, enrollment in alternate plans will be permitted as determined by the City."

Rational

The rational for this recommendation is explained in the conclusions.

4) Employees who retire after the effective date of this agreement shall be required to be covered by the same insurance benefits as active employees

Conclusion

I conclude this proposal is a reasonable change to the City's health care plan. I recognize that this proposal will not result in an immediate cost reduction for the City. But this proposal will potentially result in savings and is the type of structural change that will enable the City to better align its employees' benefits with its financial resources over time.

I also can understand the Union's objection to this proposal that it does not want to bargain for retirees in future contract negotiations. I expect Union Witness Phillips is right when she observes that retirees and active employees may have different views on what is important in health care benefits. But the City's witnesses indicated there were numerous examples of other public and private employer agreements which included a similar provision. I have confidence the Union will find a way to consider how it can receive input from retirees and active employees in the future when addressing health care issues during bargaining.

Recommendation

I recommend paragraph T in Article 34 be revised as presented by the City in (C-15A) and be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

5) New Hire Eligibility to qualify for health benefits

6) New Hire Eligibility for type of health care coverage

7) New Hire Optical Coverage

8) New Hire Medical Coverage Cease at age 65

Conclusion

I conclude each of these proposals is a reasonable change to the City's health care plan. As with the previous proposal, I recognize that these proposals will not result in an immediate cost reduction for the City. But the City, through its exhibits and witness testimony has demonstrated each of these proposals will potentially result in savings and is the type of structural change that will enable the City to better align its employees' benefits with its financial resources over time. City witnesses also provided

testimony that similar provisions were included, with the exception of that for optical coverage, in other public employer-employee agreements.

The Union's objection to each of these proposals is similar to objections to the others. There would be no immediate cost savings; the City was unable to provide definitive cost savings; there is no indication the City calculated these savings as part of its deficit elimination plan; and the Union didn't want language included in the agreement that would impact retirees in the future. I have spoken to each of these objections previously. I conclude that while I recognize the Union's position, I do not believe it overrides the importance of these changes to the City's long term financial needs and that these proposals are not that different from similar provisions commonly being included in other employee-employer agreements.

Recommendation

I recommend paragraphs A, H and S in Article 34 be revised as presented by the City in (C-15A) and be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

9) Eliminate Sponsored Dependent Coverage

Conclusion

I conclude this proposal is a reasonable change to the City's health care plan. The City, through its exhibits and witness testimony has demonstrated that there will be savings resulting from implementation of this proposal. Witnesses also testified that this type of requirement was not unusual in other public and private health care plans.

The Union, through Witness Phillips, expressed strong opposition to this proposal pointing out that the alleged savings would be minimal and that this proposal would unfairly impact a small but financially fragile number of employee families who were in need of health insurance for a sponsored dependent. I can sympathize with Ms. Phillips' concern, but the evidence and testimony in this proceeding on this issue is quite clear that this provision is not customarily provided by employers in other health care plans. It was not clear in this record, but there is likelihood that some of the sponsored dependents affected by this proposal would be eligible for other forms of publicly sponsored health insurance.

Recommendation

I recommend paragraph C in Article 34 be revised as presented by the City in (C-15A) and be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

10) Family Continuation Dependents

Conclusion

The City was not able to give a solid estimate of cost savings that might result from this proposal. It was estimated to be relatively minimal. So one might ask "why do it?" That is how I analyzed this proposal. And I concluded this proposal is a reasonable change to the City's health care plan.

Union witness Phillips' testimony pointed out that this benefit assists families who have children continuing their education beyond high school by enabling that child to have health care coverage at a reasonable cost. This benefit, she argues, is a factor in determining whether that child will pursue and complete post high school education or not. She notes reducing the age from 25 to 22 years for eligibility for coverage could result in fewer children obtaining higher education degrees or skills. And since this is likely to produce such a small savings, the goal of supporting continuation of education outweighs the value of any savings.

The City points out in its post hearing brief that this benefit, even as modified by the proposed change, allows four years of coverage beyond high school and therefore coverage during most if not all of the years a dependent child would need to obtain a post high school degree. And City Witness Bickle-Smith testified that setting the age limit at 22 years was not uncommon in the industry.

Neither party could actually determine how many families this might affect and therefore the estimated savings. But it is logical to believe there would be some small savings to the City. And neither could determine the extent of impact this proposed change would have, if any, of influencing a dependent child's decision whether to continue post high school education.

After considering all of these facts, or lack of facts, I have concluded there is stronger support for the City's proposal. There is no evidence to demonstrate the extent to which this change may negatively impact families but there is, at least some evidence that some savings will occur. And there is evidence that limiting the age to 22 is not out

of the ordinary. And this proposal is a structural change that will enable the City to better align its employees' benefits with its financial resources over time.

Recommendation

I recommend paragraph V in Article 34 be revised as presented by the City in (C-15A) and be made part of this agreement and take effect upon approval of City Council.

Rational

The rational for this recommendation is explained in the conclusions.

11) No coverage for the spouse of a retiree if the retiree marries that person after retirement

Conclusion

This proposal seems straightforward and its inclusion in the agreement is supported by City witness testimony that non coverage of a spouse and the spouses' dependents upon remarriage is not uncommon in public and private employer-employee agreements. Like the previous proposal, it was unclear how many individuals this provision would likely apply to and the resultant savings, but one can reasonably conclude there would be some savings to the City as a result of this proposal. For these reasons, I conclude the proposal should be incorporated into the agreement.

What was not so clear was whether or not this proposal would apply to current retirees as well as those employees who retire after the effective date of this agreement. Discussion of this question occurred during the testimony of City Witness Barbara Wise-Johnson. (Tr. 16, pgs 2353-2364) Even after reviewing that discussion it is still a little unclear whether the City intended this provision to apply only to those employees who retire after the effective date of this agreement or to those employees and current retirees.

What I conclude, however, is that this provision should apply only to those employees who retire on or after the effective date of this agreement. I reach that conclusion based on my reading of the discussion on this issue in the testimony referred to above and because applying this provision to current retirees seems inconsistent with the intent of other provisions in this proposal. And either way it is applied would not likely have significant immediate cash benefit to the City.

Recommendation

I recommend paragraph M in Article 34 be revised as presented by the City in (C-15A) with the additional revision noted in the following language and be made part of this agreement and take effect upon approval of City Council.

“THE FOLLOWING PROVISIONS SHALL APPLY TO A RETIREE WHO RETIRES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT: 1) If a THE retiree marries or remarries after retirement, the new spouse is not entitled to healthcare coverage under this agreement under any circumstances. 2) The child of a divorced spouse or a new spouse of a THE Retiree who is neither the biological, legally adopted nor legally guardian child of the employee or retiree is ineligible for dependent healthcare coverage under this Agreement.”

Rational

The rational for this recommendation is explained in the conclusions.

12) Require Medicare Eligible employees/retirees to enroll in Medicare Parts A and B

13) Failure to enroll in Medicare and Medicare Parts A and B will result in termination of City health care coverage

Conclusion

These two proposals go together. City witness Wise-Johnson testified that it is current practice that Medicare Eligible employees/retirees enroll in Medicare part A and B when they are eligible but the City has realized that that is not occurring in all instances. This results in the City continuing as primary insurer for more coverage than necessary. The proposed language specifies that failure to enroll in Medicare, provide required Medicare documentation or maintain Medicare Parts A and B coverage will result in coverage termination.

I conclude this proposal is a reasonable change to the City’s health care plan. I believe the City provided sufficient testimony and evidence to support this proposal. City Witness Pegues testified that every employer group she could think of has this proposed requirement. And while it is not certain how many may have been eligible to apply for Medicare Parts A and B and did not, there was adequate evidence to support an estimated savings per enrollee for those who would be eligible but may not have applied.

The Union opposes this proposal in part because it is concerned with the sanction of discontinuing health care coverage completely if the Medicare eligible employee fails to verify that the eligible employee/retiree has applied for Medicare. While I can understand this concern, I conclude, failure to receive adequate documentation would likely result in dialogue between the City and the individual employee/retiree to address the lack of verification prior to any discontinuance of coverage. The likelihood of discontinuance of health coverage just based on failure of documentation, without that dialogue would be unlikely. To ensure that this process can occur, I recommend a modification of the proposed language.

Recommendation

I recommend paragraph Q in Article 34 be revised as presented by the City in (C-15A) with the additional revision noted in the following language and be made part of this agreement and take effect upon approval of City Council.

“Accordingly, any person who is eligible for hospitalization–medical coverage under this agreement and who is Medicare-eligible shall furnish the City’s Benefits Administration Office a copy of his/her Medicare card which confirms that he/she has obtained Medicare Parts A and B or documentation from the Social Security Administration that verifies ineligibility in order to continue to receive any hospital/ medical coverage under this Agreement. Failure to enroll in Medicare, provide required Medicare documentation or maintain Medicare parts A and B coverage, WHEN REQUESTED TO DO SO BY THE CITY, will result in coverage termination. “

Rational

The rational for this recommendation is explained in the conclusions.

14) Non-Duty Disability Retiree not eligible for health care or prescription drug coverage

15) Clarify health care coverage for persons who retire with 25 years of service

Conclusion

When City Witness Barbara Wise-Johnson, testified on proposal #14, she said it was related to the City’s proposal #15. (Tr. 10, pgs 1469 – 1478) She said that the #15 proposal, which would amend paragraph R of Article 34, is intended to clarify the existing practice that when an employee retires between the 25th and 29th year of service the employee will be allowed to maintain coverage under the City’s health care

plan but will be required to pay the full monthly premium until the employee would have reached 30 years of service at which time the City would again pay a share of the monthly premium. The Union merely questioned that if this was being done already, why was it needed in the agreement? Ms. Wise Johnson said the City wanted it in the agreement because people ask questions about it and having it in the agreement would make it clear to the employee/retiree.

There was no evidence presented that this is not current policy and I believe that having it included in the agreement may benefit the City and Union leadership in communicating the policy to employees. I conclude City proposal #15 is a reasonable change to the City's health care plan.

Ms. Wise Johnson testified that proposal #14, which proposes to amend paragraph A of Article 34, is intended to make clear that those employees who may retire after reaching a certain eligible age with 10 years of service, and who retire with a non-duty disability, not be eligible for participating in the City's health care plan until they reach and comply with the requirements specified in paragraph R. But the proposed language in the City's proposal #14 to amend paragraph A simply states: "Non-duty disability retirees are not eligible for hospitalization- medical or prescription drug insurance coverage." I do not believe the City's proposed language in proposal #14 accurately reflects what it says it was trying to accomplish. It does not say that the non-duty disability retiree may qualify for coverage under the City plan once the individual meets the requirements of paragraph R. If this, in fact was the City's intent, I believe it is a reasonable proposal and could become a part of the agreement. But I do not believe the current proposed language fulfills that intent. I also believe, if language is developed by the parties to clarify this, that it needs to include language making it applicable only to those retirees who retire after the effective date of this contract, which was what City Witness Wise-Johnson testified, was the intent of this language.

Recommendation

I recommend paragraph R in Article 34 be revised as presented by the City in (C-15A) (issue #15) and be made part of this agreement and take effect upon approval of City Council.

I recommend the proposed revision to paragraph A in Article 34 as presented by the City in (C-15A) (issue #14) that states "Non-duty disability retirees are not eligible for hospitalization-medical or prescription drug insurance coverage" not be made a part

of this agreement unless the parties can agree upon revised language that reflects the City's intent as expressed in (Tr. 10, pgs 1469 – 1478).

Rational

The rational for this recommendation is explained in the conclusions.

16) Spousal health care enrollment required with current employer

17) No duplicate hospitalization coverage

Conclusion

The City's proposal #16 is intended to make the City's health care coverage plan be the secondary insurer in the event a spouse has health care coverage from his/her employer. The City was unable to provide an estimate of how many employees or retirees this might apply to but City Witness Kent estimated an annual savings of over \$5,000 for each one it would apply to.

The City's proposal #17 would require, in those cases when an employee or future retiree and his/her spouse are both covered by the City's health care plan, to select only one of their plans to be covered by. Ms. Wise Johnson testified that she wasn't sure how many situations this might apply to but that a savings of about \$50 per member per month could be achieved through reduction in administrative fees for each one it did apply to.

The Union objected to the inclusion of both of these proposals on the basis that little if any cost savings will be achieved. The Union expressed concern that the inclusion of the last sentence in proposal #17 was vague and may be giving the City too much unilateral authority because there is no way to know what all circumstances could be.

I conclude both proposal #16 and proposal #17 are reasonable changes to the City's health care plan. I believe the City provided sufficient testimony and evidence to support each proposal. City Witness Pegues testified that she had seen provisions in other public and private employer agreements similar to proposal #16 and every employer group she dealt with in the last seven to ten years had a provision similar to proposal #17. And while I recognize these proposals may not save the City much money to begin with, they will help address the structural change the City needs to undertake to enable it to better align its employees' benefits with its financial resources over time. With respect to the Union's objection to the language in the last sentence of proposal #17, there was no evidence to suggest this language would lead to anything

other than what was stated in the full paragraph. On the other hand, it seems to be just reiterating what already has been stated and therefore seems unnecessary. I therefore, recommend its omission.

Each of these proposals could perhaps benefit from some clarifying language consistent with my conclusions. That clarifying language is found within the recommendation below.

Recommendation

I recommend paragraph X in Article 34 be revised as presented by the City in (C-15A) with the additional revision noted in the following language and be made part of this agreement and take effect upon approval of City Council.

“Consistent with current practice, all employees, ~~retirees~~ AND RETIREES WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, and their dependents, who receive healthcare coverage under this agreement, must disclose to the city the existence of any other source of healthcare benefits. In all such cases, full coordination of benefits will apply at all times.

~~Effective July~~ OCTOBER 1, 2010, if ~~an employee/retiree’s spouse~~ THE SPOUSE OF AN EMPLOYEE OR THE SPOUSE OF A RETIREE WHO RETIRES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT has hospitalization–medical coverage available to him/her under a plan offered by his/her employer (other than the City of Detroit), said spouse must enroll in that employer’s hospitalization/medical plan for employees or retirees in order for the spouse to be eligible for medical coverage through the City of Detroit. In such cases, if the spouse of the employee or retiree is also enrolled in the City’s hospitalization-medical plan, the City will be the secondary insurer/payer. This provision does not apply in those instances where the employee/retiree and spouse are both employed by the City of Detroit.” (See Paragraph W as referenced above)

I recommend paragraph W in Article 34 be revised as presented by the City in (C-15A) with the additional revision noted in the following language and be made part of this agreement and take effect upon approval of City Council.

“There shall be no duplicate hospitalization-medical insurance coverage or payments in lieu thereof provided employees or ~~future~~ retirees of the City WHO RETIRE FROM THE CITY AFTER THE EFFECTIVE DATE OF THIS AGREEMENT. If the City employs more than one member of a family, or the family unit includes a retiree of the City WHO RETIRES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, all of whom could be eligible for coverage under one hospital-medical insurance policy or plan as a spouse or eligible dependent, the spouses or eligible

dependents of that family shall be covered by only one spouse or the other. It is the responsibility of the family to select a single hospitalization carrier. ~~Under no circumstances shall the City be obligated to provide more than one hospitalization medical policy or plan."~~

Rational

The rational for this recommendation is explained in the conclusions.

18) Agreement to work collaboratively to establish cost savings measures

Conclusion

I conclude the City proposed language in paragraph AA of (C-15A) is not necessary to include in this agreement. I have reviewed the language in paragraph K in (J-13) which also is included in paragraph J of (C-14), - the 2005-2008 agreement. The Union suggests language in those agreements be maintained in this agreement. I agree with the Union on this issue and believe the language in the current agreement is sufficient to enable the parties to continue to discuss potential ways to achieve health care cost savings. The only additional language the City's proposal includes is language that says, in effect, that if the parties agree to further change, those changes shall be implemented upon ratification of both parties. I believe that could occur with or without the City's proposed language if the parties agreed to open this agreement for that limited purpose.

Recommendation

I recommend the parties not incorporate the change proposed by the City in paragraph AA of (C-15A) and maintain the language in paragraph J of (C-14) as is.

Rational

The rational for this recommendation is explained in the conclusions.

Union's proposed revisions to Article 34

Conclusion

The Union submitted (U-178) as its position on Article 34. As stated in the discussion of Facts pertaining to Article 34, Union Witness Phillips did not elaborate on the Union's proposed changes to Article 34. Generally the Union's position is to keep most of the provisions of Article 34 "as is." In this proceeding, the Union's focus on the health care benefits its members receive under Article 34 was primarily upon the City's proposals. The Union does recommend revision of paragraph H to require that the City

provide prescription Safety Glasses, if needed, to all members that are required to wear Safety Glasses. There was no estimate given of the cost of this proposal or if other agreements with unions within the City or in other employee – employer contracts contained such a provision. I conclude the Union’s proposal is not sufficiently supported by the evidence to merit its inclusion in the agreement.

Recommendation

I recommend the parties not incorporate the change proposed by the Union in Union exhibit (U-178).

Rational

The rational for this recommendation is explained in the conclusions.

9. Article 41 – Wages

Finding of facts and conclusions

Facts

City Witness Barbara Wise-Johnson presented the City’s proposal on wages. She submitted (C-58) for the record and described the proposal that was dated August 25, 2009. The proposal would amend Article 41 by doing the following:

- Have the wages apply to a contract period beginning July 1, 2008 through June 30, 2012.
- Have 0 % wage increases each of those fiscal years.
- Omit the language referring to a Memorandum of Understanding re: wage concessions
- Include language that requires bargaining unit members to take twenty-six (26) mandatory budget required furlough (BRF) days without pay for three (3) consecutive 12 month periods. Language also states: “the City has the right to determine the date that the BRF three (3) consecutive 12-month periods will commence. It is understood by the parties that the completion of the three (3) consecutive 12-month periods will exceed the contract period of the Master Agreement”.
- Include language that requires an employee who is required to work on a mandatory BRF day to take a substitute BRF day to ensure the employee takes the 26 BRF days within a 12 month period.
- Consistent with the City’s proposal on overtime, specifies that overtime will not be paid in a week that an employee takes a BRF day until the employee works 40 hours in that work week
- Specifies that reduced regular wages due to mandatory BRF days will not be recognized for pension computation purposes. In other words, as Ms. Wise-Johnson testified, their pension would not be affected as a result of BRF days.

- Specifies that employees who retire during this period will continue to have their vacation, swing holiday and compensatory time banks run-out in forty (40) hour per week increments.
- Specifies that accrual of vacation and sick leave time will be reduced proportionally to comport with the mandatory BRF day.
- Specifies that employees who are working a 10% reduced work period at the time they go off on workers compensation will have their formula for supplementation out of their sick leave banks calculated upon 100% of their take-home pay under the mandatory BRF schedule
- Adds a sentence in section B. 12 that states: "When it is administratively feasible, the pay check for all employees shall be transmitted via direct deposit."

Ms. Wise-Johnson said the provisions which specified no impact to retirement and allowing employees to run out vacation and sick leave banks and workers compensation as if working 40 hours were the same as that instituted during the 2005-2008 period involving DOWOP. (Tr. 11, pg 1628) City witness Johnson said the purpose of having the BRF days was because of the City's financial crisis. She said:

"This is to address the cash flow issue that I think our budget director spoke to. It was our intent to reduce our working hours so that the quid pro quo is the employee would get the time off, but we would also be able to save money. So it is part of our ability to deal with our Deficit Elimination Plan. We anticipate that it would take three to five years to resolve the deficit, and so we make this proposal to assist us in that regard." (Tr. 11, pg 1629-1630)

Ms. Wise-Johnson testified that the City's experience with the DOWOP led them to propose the BRF days. She said during the DOWOP the City had allowed each department to determine how and when the employees would take days off. She said, "it was all over the place in terms of time off that they would take." It became difficult to manage. She said that under this proposal, where everyone, with the exception of 24/7 operations, would take off the same days, the public would be aware that the City's offices were closed on those dates. The intent was that employees take 26 days in a 12 month period so that is why language is included in the City proposal to allow BRF days beyond the contract period based on the start date. She stated that some groups that the City has reached agreement with have begun to take BRF days, including the non-union employees. She noted that in some of those agreements there was language that permitted some exceptions from the mandatory 26 BRF days for employees who worked in departments or City operations that required 24/7 service. She also said that

some groups the City had reached agreement with had language in their agreements that would permit a modification of economic provisions if the City later agreed with another bargaining unit on a modification of those provisions that were more economically advantageous to the members of the bargaining unit with whom the City had reached agreement. (Tr. 14, pgs 1948 – 1972)

The City's post hearing brief notes that the BRF days are specified and strategically set so that many are adjacent to holidays. (C-89). The City wanted all bargaining units to begin BRF days in September 2009. The City's post hearing brief says the City has reached agreement with 27 bargaining units and some of those employees and the non-union employees began taking BRF days effective September 2009. But the City says many employees who have agreed to BRF days have not begun to take them off because their work is tied to AFSCME members work.

City Witness Scales testified that BRF days are calculated as a savings within the City's Deficit Elimination Plan as saving \$11 million. (Tr. 2, pg 147) City Exhibit (C-45 identifies the annual savings to be \$11.5 million. The AFSCME members are estimated to comprise 22.7% of the non-uniformed City employees so the annual savings from employees represented by AFSCME is estimated to be \$2,497,489. (C-45) The City points out that over 50% of the General Fund revenues supports employee salaries, wages and benefits and the proposal for BRF days is an important component of achieving financial recovery.

The City's post hearing brief responds further to the Union's wage proposal. It notes that the Union's proposal has three main components. 1) The Union proposes the City extend the Deficit Elimination Plan over four years instead of three. The City acknowledges that State law allows a Deficit Elimination Plan to extend over a five year period but points out that as City Witness Scales testified, the bond rating agencies and the State wanted a three year plan. 2) The Union proposes savings be obtained by including police and fire personnel in the 13 BRF days proposed by the Union. The City says the history of bargaining with police and fire unions which is subject to Act 312 procedures, does not provide the assurance that savings could be achieved this way. The City notes that the Union's plan assumes savings could occur with this component of its plan based on an Act 312 decision by 2011. The City says this is unrealistic based on past experience and past awards involving police and fire personnel. 3) The Union proposes the City consider borrowing funds from the restricted funds within the

Detroit Water and Sewer Department (DWSD) and then pay that loan off over a longer time period. The City's response is that this is not possible because the City Charter prohibits the DWSD from loaning money to the City's general fund. It refers to testimony from City Witness Robert Walter to support its position that a loan would be prohibited by the City Charter and perhaps by State Law. (Tr. 14, pgs 1896 – 1929) (C-67). The City says the Union's reliance on the City of Flint as an example of how this could be done is misplaced because the City of Flint's Charter may differ from the City of Detroit's Charter. In short, the City says the premises supporting the Union's wage proposal are unreliable.

The City also says the Union's proposal to have the City and the Union determine what the bar is for determining when the economy worsens or gets better and the determination of when and if layoffs are necessary lies within the City's powers to manage. And with respect to the Union's proposal that the City correct underpayments within two business days after the employee notifies the City and notify the Employee in writing prior to the paycheck being issued in the case of underpayment, the City says this proposal is unreasonable. The City says it is possible the City will not know of an error in amount until the day before a check is issued.

Union witness Catherine Phillips presented the Union position on wages. She submitted (U- 179) and testified to the Union's proposal dated March 23, 2010. The proposal would amend Article 41 by doing the following:

- The effective date of the contract would be from July 1, 2008 through June 30, 2013.
- Have 0 % wage increases each of those fiscal years.
- Omit the language referring to a Memorandum of Understanding re: wage concessions
- Include language which would require the members of the bargaining unit to take thirteen (13) mandatory budget required furlough (BRF) days without pay, effective July 1, 2010 until the expiration of the agreement. During the BRF period the City agrees not to layoff anyone from the AFSCME bargaining unit. However, if the economy worsens, the City shall have the right to revisit layoffs, with prior discussions with the Union. Should the economy improve during the life of this agreement, the BRF will no longer be in effect. The City agrees to create a BRF schedule for AFSCME members which will not be subject to change.
- Specifies that if an employee is scheduled to work less than 40 hours in a work week due to mandatory BRF time off, overtime for that work week shall be treated as if the employee had worked a 40 hour week. In other words, consistent with the Union's position on overtime, the employee would get

- credit for overtime even if she/he did not work 40 hours due to the mandatory BRF day.
- Specifies that reduced regular wages due to mandatory BRF days will not be recognized for pension computation purposes.
 - Specifies that employees who retire during this period will continue to have their vacation, swing holiday and compensatory time banks run-out in forty (40) hour per week increments.
 - Specifies that accrual of vacation and sick leave time will be reduced proportionally to comport with the mandatory BRF day
 - Specifies that employees who are working a 10% reduced work period at the time they go off on workers compensation will have their formula for supplementation out of their sick leave banks calculated upon 100% of their take-home pay under the mandatory BRF schedule
 - In Section C, Correction of Payroll Errors: in the first and second paragraphs would be modified to read:

"Where by payroll error an employee is underpaid or overpaid the City is expressly authorized to correct the underpayment or overpayment by payroll adjustment. The City shall notify an employee in writing fourteen (14) days prior to making any overpayment recovery and in the case of underpayment; the City shall notify an employee in writing by the Wednesday prior to the paycheck of the underpayment."

"The correction of the underpayment shall be made within ~~60~~ two (2) business days after the employee notifies the employer, notification to the department human resources office.

Ms. Phillips testified that the Union is proposing 13 mandatory BRF days based on its assessment of the City's financial situation and determined that if everyone took 13 mandatory BRF days without pay for the duration of the agreement it would bring the City into solvency within the time allotted by the State, which is five years if you have a deficit. She said the proposal to have the City agree to no layoffs during this period was similar to a provision in a prior agreement, she thought, under the Kilpatrick administration. She said the Union recognized the uncertainty in the economy of the State and Country but if the economy worsens the Union wanted the City to show the reason for any additional layoffs while the Union members were doing BRF days. And of course that would work the same way if the economy improves. She said language that was in the previous contract during the Kilpatrick administration in the form of a Memorandum of Understanding was the language the City has proposed to delete from this agreement. The exact language was identified as the language on page 119 of (C-14). She said the overtime proposal differed from the City's proposal because through no fault of the employee, they have to take a non paid BRF day, and

they should not be punished twice by not being able to count the BRF day as hours worked for calculations to determine if they can receive overtime. She noted the Union proposals on retirement, vacation, sick time and workers compensation was the same as the City proposal.

She addressed the Union proposal for changes in the Correction of Payroll Errors section. She said due to difficulties with the City's implementation of a new system some departments have experienced numerous payroll errors and some members have not gotten paychecks timely. She said this proposal was initiated to get the City's attention to the problem and initiate discussion.

Ms. Phillips said the Union did not agree with the City's proposed additional language in B. 12 requiring the paycheck for all employees be transmitted by direct deposit when it became administratively feasible. She said some people don't have and don't want bank accounts and this is forcing another life style change. She said people who don't want it shouldn't be forced into it. (Tr. 22, pgs 3217 – 3232)

The Union's post hearing brief notes that the wage concession proposals, of whatever size, will impact the employees since they will not only be earning less but there workload will increase and they will have less time to do their work. The post hearing brief refers to testimony provided by City witness Pam Scales as evidence that requiring 26 BRF days would require additional overtime. With an estimated reduction in savings of 25% due to the need for additional overtime the City estimated a total General Fund savings per year of \$11.5 million with 26 BRF days. (C-45) The Union says that if its proposal of 13 BRF days were implemented it would not result in as much need for overtime and therefore not have the cost of overtime reduce the savings in furlough days as much as would occur with 26 BRF days. The Union argues the City's estimated savings from 26 BRF days are suspect and that the City has failed to produce information to justify its estimated savings. The Union says its proposal is more manageable and the savings resulting from 13 BRF days is likely to produce savings for each of those days without the loss of savings due to offsetting use of overtime.

Conclusions

I conclude the City's proposal to modify the language in Article 41 as presented in (C-58) is a reasonable proposal in the context of the City's efforts to return the City to

a point of being able to operate within a budget that does not require continued borrowing and deficit spending. I must acknowledge that the Union's proposed modifications to extend the agreement another year, was given strong consideration. The positive part of it, in my view, would be that it would give some degree of certainty for another year. And I considered recommending the Union's proposed thirteen (13) mandatory budget required furlough (BRF) days for that last year of the agreement (FY 2012 – 2013) in the Union's proposal. But upon further consideration, I concluded that it would be better if the agreement expired on June 30, 2012, as the City proposes. By June 30, 2012 the parties will have had sufficient time to experience the City's actions, as proposed or modified by this Report, if accepted, and assess the impact of those actions and the economic situation the City and State will have experienced during the next two years. With that information, the parties can enter negotiations that may or may not require a continuation of some of the provisions of this agreement.

Having reached that general conclusion, I will address the specific proposals contained in each of the parties' proposals in more detail. I will address them together since each of the proposals touch on similar provisions of Article 41. I have already spoken to the proposed length of the proposed wage rates – and therefore the length of the overall agreement – and have determined the City's proposed termination date is the more reasonable. I note the Union's proposal on a wage freeze for a five year period, in my view, is evidence that the Union recognizes the City's difficult fiscal situation and demonstrates a willingness by the members to do their part in addressing it.

Both parties propose mandatory BRF days. The Union proposes thirteen (13) BRF days annually to begin July 1, 2010 and end June 30, 2013. The City proposes twenty-six (26) BRF days to begin after this agreement is approved by City Council at a date to be determined by the City and continue for three (3) consecutive 12 month periods. The City's proposal contains language that would permit the BRF days to extend beyond the contract expiration date in order to complete the required number of BFR days.

I have spoken at length about the fiscal situation the City faces. City witness Barbara Wise-Johnson was quoted in the Facts section dealing with this issue that this proposal "is part of our ability to deal with our Deficit Elimination Plan. We anticipate that it would take three to five years to resolve the deficit, and so we make this proposal to assist us in that regard." (Tr. 11, pgs 1629-1630) I believe, in the context of all the City

proposes in this proceeding, this proposal is a BIG part of the City's ability to deal with its deficit.

I have spoken previously of my questioning whether the City can reach a balanced budget by the end of FY 2011-2012 even under its current Deficit Reduction Plan. I believe it would be even more unlikely to be able to do so under the plan suggested by the Union. I believe the City's plan has some real uncertainties such as whether the savings projected from the Crisis Turnaround Team recommendations and office restructuring will actually be achieved. But the Union's proposal presents even more uncertainties for revenue savings and reduces the savings that would be achieved with BRF days. For example I think the projected savings in the Union's plan from the implementation of BRF days for public safety employees and the ability to borrow from the restricted funds are uncertain at best and certainly not likely to be achieved quickly, if at all. It is for this reason that I conclude the City's proposal of twenty-six (26) BRF days is the more reasonable.

I have also previously spoken to the issue of overtime and therefore support the City's proposal that overtime not be calculated by including the BRF day as if the employee had worked that day, as the Union has proposed.

I also do not support the inclusion of the language, as proposed by the Union, as found on page 119 of (C-14), that the City agree to a MOU to not layoff anyone from the AFSCME bargaining unit during the period of this agreement. I don't think the Union's proposed language that would have the parties assess the state of the economy and then determine if layoffs are necessary or to discontinue BRF days if the economy improves is practical or workable. As to layoffs however, I must emphasize that I agree with the statement of Fact Finder Roumell in his concluding remarks within his Fact Finding Report and Recommendations involving the Detroit Building and Construction Trades Council. Referring to his Findings and Recommendations he said: "The ultimate issue is to attempt to avoid layoffs, although they may not be avoidable, and to establish a foundation for future productive negotiations from both the viewpoint of the Union (sic) and its membership and the City. To accomplish these purposes, there must be in these difficult economic times a sense of realism. These recommendations do involve employee sacrifice. But hopefully, in doing so, the employees can avoid layoffs and be able to plan for the future." (C-47, pg 49) I too, in reaching the findings and recommendations in this proceeding, have done so with the goal of avoiding layoffs.

That said, as Fact Finder Roumell observed, I don't believe it is prudent to recommend that the City be unable to take that step if necessary.

I conclude the City's proposed language to, when administratively feasible, have the pay check for all employees be transmitted via direct deposit is reasonable. I appreciate Union Witness Phillips testimony on this issue but I suspect the vast majority of members would find this workable and for those who don't, perhaps some other acceptable arrangement could be made.

On the other hand, I do not believe the Union's proposed language addressing the correction of payroll errors is feasible. It would likely result in increased costs for little return and may be impossible to achieve in the time frame established in the proposal. I do not doubt Union Witness Phillip's testimony that this is a real problem for some and that it should be addressed by the City. But I do not believe the Union's proposal will provide a solution and may exacerbate the problem.

Recommendation

I recommend the City's proposal to modify the language in Article 41 as described in (C-41), be adopted by the parties and become effective upon approval of City Council.

Rational

The basis for my recommendation is addressed in my conclusions on this issue and in my conclusions on the financial issue. The main point is that the City needs to institute these measures during the time period covered by this agreement to permit it to achieve a more sound and permanent fiscal foundation.

10. Article 48 – Retirement

Finding of facts and conclusions

Facts

Both the City and the Union have proposed changes to Article 48. The City proposes to add the following language in section K:

“Effective upon approval of City Council, any employee covered by this agreement, who is seeking a duty disability retirement, shall have an examination conducted by an independent medical examiner (IME). If the IME concludes that the employee's physical or medical condition does not

relate to his/her employment with the City of Detroit, the employee shall not be eligible for the duty disability retirement." (C-78A, B)

The Union proposes to modify the language in Sections H and I. The proposed modifications are contained in the following excerpts from those two sections:

"H. Employees who retire on or after July 1, 1998, shall have their pensions computed according to the following formula. Using the highest paid 36 ~~consecutive~~ months out of ~~the last 120~~ the employees' career including longevity payments; as Average Final Compensation; "

"I. Effective for bargaining unit members who retire on or after July 1, 1999, they shall have the option to 1) select the Unused Sick Leave On Retirement payment benefit provided for in Article 29 of this labor agreement, or 2) choose to receive **between** twenty-five percent (25%) **and seventy percent (70%)** of the unused accrued sick leave bank provided in Article 29 and have that sum included in the average final compensation used to compute the membership service pension portion of their retirement allowance. " (U- 177)

City Witness Barbara Wise-Johnson testified in support of the City's position. She said this proposal was being presented because it was brought to the City's attention by the Finance Department that there were occasions where employees were sent to an Independent Medical Examiner and the Examiner reported that the physical or medical condition did not relate to his or her employment with the City but then it would go to the Pension Board, and the Pension Board would approve the duty disability retirement. This proposal would make it clear that the Independent Medical Examiner's determination would be the final determination. She said the purpose for this is trying to manage the City's business to be most cost effective by putting another cost saving benefit into place. (Tr. 14, pgs 1983-1984)

Union Witness Catherine Phillips testified on behalf of the Union's proposal. She said the proposed change in Section I is related to the Union's proposed change in Article 29 which would increase the entitlement for payment of unused sick leave upon retirement from 60% to 100%. Article 48 currently lets the retiree choose to have 25% of the 60% unused sick leave included in the Average Final Compensation instead of being paid for 60 % of the unused sick leave. Under the Union's proposal an employee, upon retirement, could apply between 25% and 70% of their total unused sick time to their annuity, which would increase their monthly pension payment. Ms. Phillips said the Union had not assessed the financial implications for the City of this proposal.

She said the proposed change in Section H is submitted because overtime work is diminishing for members and in order to have a higher Average Final Compensation, they would prefer to count their high overtime years, which would probably go beyond 120 months. This change also would increase the monthly pension for the employee.

Ms. Phillips said when these proposals were presented to the City during negotiations her recollection was that their response was "We don't have any money". (Tr. 21, pgs 3150 – 3157)

Ms. Phillips also spoke to the City's proposed change in this Article in Section K. She said the Union opposes this change because it is the Pension Board's responsibility to determine whether or not someone is eligible for duty disability retirement and if they need to see an Independent Medical Examiner the Pension Board would make that happen. She said during negotiations the Union asked the City for information showing the incidences when this happened and were not provided with that information or how much the City estimated it could save as a result of this proposal. (Tr. 21, pg 3157 – 3159)

In its post hearing brief, the Union argues the Union's proposed change in Section I to increase the amount of sick pay the employee could apply to average final compensation could save money for the City in the short term. The Union refers to testimony of Ms. Phillips that another Union, Senior Chemists and Technicians Association (SCATA) with 89 members (C-76), calculated that a similar proposal would save the City \$400,000. With respect to the proposed change in Section H, the Union argues that there have been significant pay cuts for many employees over the years, so calculating pension based on 36 months consecutive out of the last 120 months penalizes those employees.

The Union's post hearing brief also addresses the City's proposal to remove the pension board's ability to determine a duty disability and place that decision with the Independent Medical Examiner. The Union notes that there is a City Ordinance, Sec. 47-2-6 that defines how an employee becomes eligible for a duty disability. That ordinance vests that responsibility with the retirement board. The Union notes further, that the City Charter requires a change in the ordinance if this is to change and argues that the City cannot, through this proposal, delegate this responsibility away from the pension board.

The City's post hearing brief notes that the Union claims that because the City pays for the Independent Medical Examiner (IME) that the IME is not truly independent. The City says other unions, specifically the Public Attorney Association, made adjustments to this language that if an employee's physician disputed the IME results, then there would be a third opinion provided by a physician selected by the employee's physician and the City's IME and the cost would be equally shared by the employee and the City. The City says the Union could have proposed similar clarifying language but didn't and the City's proposal appropriately applies established rules. The City's post hearing brief also objects to the Union's proposed change in Sections H and I and says the Union failed to put forth any financial analysis or cost estimate of what that change would cost the City.

Conclusions

The Union's proposed change in Section I relates to its proposed change in Article 29. The conclusions I arrived at with respect to the Article 29 proposal apply to the Union's proposed change in Section I of Article 48. Therefore, I conclude there should be no change to Section I. But with respect to the Union's proposed change in Section H, I view that differently. I believe Union Witness Phillips had a valid point when she noted that actual work hours, due to DOWOP days, reduced overtime, and now BRF days, is diminishing in recent years. That is justification, I conclude for some change in this provision, but not as the Union proposes. I believe the employee still should be limited to choosing the highest 36 consecutive months for computing their pension benefits, but not be limited to those consecutive months being out of the last 120 months. It is possible, given the wage freezes and wage reductions occurring over the past few years, that some employees would have received higher wages in a 36 consecutive month period outside of the last 120 months. I conclude Section H, as proposed by the Union with the revision I have suggested, should be adopted in the new agreement.

With respect to the City's proposed change in Section K, I believe it also has some merit but should be revised. I believe the Union has some valid points in its opposition to this proposal. Primarily, I believe it has presented a strong case for whether the City's proposed revision could remove the ultimate responsibility for determination of a duty disability from the retirement board.

On the other hand, I believe the proposed change could be further modified to adopt language similar to that referred to by the City in its post hearing brief and read into the transcript during this proceeding referring to language contained in the agreement with the Public Attorney Association. (Tr. 19 page 2682-2683) It is noted that the language applicable to the Public Attorney Association specifies that the decision of the third party physician shall be binding and final and the modified language I am proposing does not. However I conclude that incorporating similar language in this proposal would have the benefit of having a third opinion provided by a physician which may resolve the issue. And if it didn't resolve the issue and was still presented to the retirement board for determination, it would give the retirement board more information, including information from a third party independent physician, upon which to make its determination.

Recommendation

I recommend Article 48, Sections H and K be amended as follows:

H. Employees who retire on or after July 1, 1998, shall have their pensions computed according to the following formula. Using the highest paid 36 consecutive months ~~out of the last 120~~ the employees' career including longevity payments; as Average Final Compensation;

K. Effective upon approval of City Council, any employee covered by this agreement, who is seeking a duty disability retirement, shall have an examination conducted by an independent medical examiner (IME) **to determine whether the disability resulted from the performance of duty.** If the IME concludes that the employee's physical or medical condition does not relate to his or her employment with the City of Detroit, the employee shall not be eligible for duty disability retirement. **If the employee presents medical documentation which disputes the IME's finding, the matter shall be referred to a third physician who shall be mutually selected by the City's IME and the employee's treating physician. The cost of this third physician shall be equally shared between the City and the employee. The decision of the mutually selected third physician shall be final unless either party chooses to refer the matter to the retirement board for determination.**

I recommend Article 48, Sections H and K, as modified, by this recommendation be included in Article 48 and become effective upon approval of City Council.

Rational

As noted above, my recommendation that the Union's proposed change in Section I, which relates to its proposed change in Article 29, should not be incorporated in Article 48 is based on the same conclusions I arrived at with respect to the Article 29 proposal. They apply equally to this proposal as they do to the Union's proposed change in Article 29. With respect to the proposed changes and adoption of the modifications to Sections H and K, the rational for my recommendations on those provisions is explained in the discussion on conclusions.

11. Article 49 – Tuition Refund

Finding of facts and conclusions

Facts

The City proposes revisions to Article 49, paragraph A and B as follows:

49. Tuition Refund

A. **Effective January 1, 2010, the City's Tuition Refund Program is suspended for the balance of the 2008-2012 contract period. No reimbursement/payment shall be made for course work or employment development program ending after December 31, 2009. Therefore, Effective July 1, 2012 Bbargaining unit members with a minimum of three (3) years of service may participate in the City's Tuition Refund Program in accordance with the policies as administered by the Human Resources Department. Employees requesting a tuition refund should submit the applications to the human resources officer consultant/manager in servicing their department. Eligibility to participate in the tuition refund program will begin after attaining three (3) years of service, prior to the start of the course or employment development program.**

B. The maximum amount of tuition refund shall be ~~increased~~ as indicated below: (C-80)

Barbara Wise-Johnson testified for the City in support of this proposal. She noted that the intent is to suspend the current tuition refund program for the contract period and then when it resumes, employees would have to have a minimum of three years of service prior to the start of the course of employment development program for which they were seeking reimbursement. She said this is being advanced by the City as another means to deal with the City's cash flow and budget issue. (Tr. 14. pgs 1985 –

1987) City Witness Pamela Scales presented (C51) which displayed the budgeted amount for FY 2008-2009 for tuition refunds and the actual amount spent for FY 2008-2009. The Budgeted amount was \$811,309 and the actual amount spent was \$547,712. (C-51) (Tr. 11, pgs 1511 – 1512)

Union Witness Phillips testified on behalf of the Union on this issue. She said the Union's position was to make no change to Article 49. She said the Union didn't get information from the City during negotiations describing how much it would save the City. She said this proposal would likely result in some members who were using the program to stop going to school because they would be unable to afford it. That could affect members ability to advance in position at work and in getting more education, which is what we should be encouraging them to do. (Tr. 21, pgs 3165 – 3166) The Union's post hearing brief points out that AFSCME's share in the annual cost savings resulting from this proposal would be 22.7% of the total which would be \$124,331. The Union argues this is a minimal cost savings when considering the value the City derives from improving the performance of its workforce.

The City's post hearing brief says this proposal recognizes the City's need to control expenditures for the duration of the Deficit Elimination Plan and limiting participation to employees with a minimum of three years employment with the City. It says the proposal still recognizes the value of encouraging its employees to seek educational and training opportunities.

Conclusions

I conclude the City's proposal to modify the language in Article 49 as presented in (C-80) is a reasonable proposal in the context of the City's efforts to return the City to a point of being able to operate within a budget that does not require continued borrowing and deficit spending. I recognize the Union's point about this being a relatively small amount of money saved from current general fund expenditures. But as noted in comments on other similar proposals the City has presented in this proceeding, this is a critical financial period for the City and every little bit helps. The provision that the program resume at the end of this contract period is recognition by the City of its value. And the change to make eligibility for the program dependent upon three years of service seems reasonable. There were no comparables offered by

either party on this issue but it is likely not all public employers customarily offer a tuition reimbursement program to their employees.

Recommendation

I recommend that the parties' agreement incorporate the modifications in Article 49 proposed by the City as presented in City exhibit (C-80) with one revision. That revision would be to revise the effective date from January 1, 2010 to October 1, 2010. I recommend the modifications, including the recommended revision to the modifications for Article 49, become effective upon approval of City Council.

Rational

The rational for this recommendation is similar to others. When considering this proposal in light of the City's fiscal situation, I conclude it is reasonable. The proposed modification in the effective date is merely to allow time for City Council approval. I recognize this will result in a small general fund savings. As the Union notes, it would mean perhaps an annual savings of \$124,331. But that money might be better directed to save two Union member positions from layoff or to employ two more positions to better meet the needs of those who depend upon City services.

12. Article 52 – Modification and Termination

Finding of facts and conclusions

Facts

The Union's position on the length of the agreement is reflected in its position on Article 41. That is that the effective date of the contract be from July 1, 2008 through June 30, 2013. A five year agreement. It's position on this issue is consistent with it's position that the City could modify it's Deficit Elimination Plan to accommodate a reduction in the number of proposed budget furlough days.

The City's position on the length of the agreement is also reflected in its position on Article 41. That is that the effective date of the contract be from July 1, 2008 through June 30, 2012. A four year agreement. The City's post hearing brief notes that initially the City proposed a three year agreement ending June 30, 2011. However, in response to the Union's demand for a definite ending period and in an effort to conclude contract negotiations expeditiously, the City revised it's proposal to a four year agreement

ending June 30, 2012. The City says the four year duration will allow the City additional time to evaluate its financial situation and that contract period corresponds to the length of the Deficit Elimination Plan and would allow the City to make additional financial structural changes as necessary after this period.

Conclusions

Consistent with the recommendations on Article 41, Wages, I conclude the City's position on this issue is the more reasonable given the circumstances. I conclude that a contract period beginning July 1, 2008 and ending June 30, 2012 provides both the City and the Union a better opportunity to assess the situation and determine what may be appropriate modifications in a successor agreement. Extending the contract another year, as proposed by the Union, may seem attractive in that it provides a greater degree of certainty, but it also would limit the parties ability to make desired adjustments in the event the City's financial position improves or declines significantly during the next two years.

Recommendation

I recommend Article 52 be modified to reflect that the parties continue the contract until 11:59 p.m., June 30, 2012. I recommend this modification to Article 52 become effective upon approval of City Council.

Rational

The rational for my recommendation is as explained in the discussion on conclusions.

13. Memo – Skilled Trades

Finding of facts and conclusions

Facts

The Union proposes a revision to a current memorandum of understanding regarding skilled trades. Union Witness Catherine Phillips testified in support of this proposal and submitted (U-180) into the record. Ms. Phillips testified that the proposed changes found in Section A would result in an increase of \$100 for the annual tool allowance for each trade listed. The proposed change in Section B would permit the apprentices to receive the same tool allowance that their journeymen counterparts

would receive. She stated that the Union was proposing these changes because the Union has not asked for any other increases in negotiations and feels that the skilled trades employees are working with equipment that is becoming more automated which requires more advanced tools that cost more money. She said she estimated the annual cost of this proposal to the City would be about \$30,000 since there were about 300 skilled trades' positions. She also said some of the skilled trades people use the tuition refund program to keep their skills up to date and if that is frozen, as the City proposes, this is another reason this proposal would be valuable to these employees. She said the apprentices have the same tool needs as the journeymen so that is why it is proposed they receive a similar allowance.

She spoke next to the proposed change in Section D. That proposed change would read as follows:

**"Skilled trades classifications shall receive an annual clothing allowance of \$170 and a *shoe allowance of \$200: Payment will be made by the last pay period in September.
(*Include all Classifications that are required to wear a special shoe, for safety purposes.)"**

She said the Union was proposing this change because all skilled trades people are required to wear special shoes and those shoes are very expensive. She said the \$170 per year will not pay for the shoes and clothing they have to purchase and wear through out the year. She said all 300 skilled trades positions would qualify for this allowance so that would cost the City an additional \$60,000 annually. She believed that the last adjustment in pay for the tool allowance was 15 to 20 years ago.

The proposal also proposes to add a new section H and re-letter the remaining sections. The new section H would read:

"All journey person classifications listed in this Memorandum as Skilled Trades shall receive a one dollar (\$1.00) an hour Special Wage Adjustment to both the minimum and maximum rates effective July 1, 2008. These Special Wage Adjustments are made with the expectation that employees in these classifications will gain additional skills and recognition in their technical fields. The employees will be encouraged to acquire certifications."

Ms. Phillips said this new language is proposed because these people are highly skilled and there is concern that they may be attracted to private industry and they should be compensated for the skill they bring to the job. (Tr. 22, pgs 3233 – 3246)

City Witness Barbara Wise-Johnson entered (C-81A, C-81B) into the record. These exhibits are the current Memorandum of Understanding Re: Skilled Trades merely updated to reflect updated dates for the period of this agreement. The City's position is that the language remain as it is in the current contract. (Tr. 14, pgs 1990 – 1995) The City's post hearing brief elaborates on the City's opposition to the Union's proposal. It says the Union presented no clear information on the projected cost to the City of this proposal. Additionally, the City says there would be a greater net affect of adoption of this proposal because each of the proposed changes would have to also be applied to skilled trades employees in other bargaining units outside of AFSCME members including those represented by the Building Trades Council and that changes would be applicable to supervisors in order to maintain the established wage differentials between classifications.

Conclusions

I conclude the Memorandum of Understanding (MOU) Re: Skilled Trades should not be revised as proposed by the Union. I reach this conclusion based on several factors. First, one of the reasons stated by Ms. Phillips for seeking the increase in the tool allowance was that equipment was becoming more automated which required more advanced tools. Yet there was no evidence presented that supported this statement and it was unclear, even if new tools were necessary to perform the work, which tools would be purchased by the employer and which tools the employees would have to purchase.

Second, the proposal to add a \$200 annual shoe allowance to the current \$170 annual clothing allowance appears to be, in effect, quite a substantial increase in the annual clothing allowance. Granted, Ms. Phillips testified that she thought the tool allowance had last been adjusted 15 to 20 years ago, but there was no clear evidence to indicate when the tool allowance or the clothing allowance had last been adjusted. There also was no evidence showing how comparable communities compensated their skilled trades' employees for a clothing allowance or tool allowance.

The proposal that all journey person classifications listed in the MOU receive a one dollar (\$1.00) an hour increase would result a in potential annual increase in cost to the City of \$624,000. Add to that the estimated \$90,000 additional cost for the clothing and tool allowance and the cost is \$714,000. And as the City pointed out in its post

hearing brief, these increases would likely be applied to at least some of the 270 employees represented by the Building Trades Council (C-76). This would be a significant additional cost to the City at a time when it needs to reduce costs.

Recommendation

I recommend the parties not incorporate the change proposed by the Union to the Memorandum of Understanding Re: Skilled Trades as presented in Union Exhibit (U-180) and maintain the Memorandum of Understanding as is.

Rational

The rational for this recommendation is generally as presented in the discussion on conclusions. In addition, much like I noted in my conclusions and rational when addressing the Union's objection to the City's proposal to suspend tuition reimbursement, I have considered this proposal in light of the City's fiscal situation. This proposal would reduce the City's general fund much more than if it were to not discontinue the tuition reimbursement for the period of this agreement. And this proposal would affect only some members of the Union. These are the reasons for my recommendation.

14. New Memo – Defined Contribution Plan

Finding of facts and conclusions

Facts

The City proposed a memorandum of understanding (MOU) be a part of the agreement, which would state the following:

RE: Defined Contribution Retirement Plan

During the 2008 negotiations, there was discussion between the parties concerning a requirement for all newly hired employees to be placed in a Defined Contribution Plan (DCP) in lieu of the current Defined Benefit Plan (DBP). The parties agree to have an actuarial study performed on the retirement plan, which the City will initiate. During the term of this agreement, the parties agree to continue collective bargaining negotiations on this issue. (C-79)

Ms. Barbara Wise-Johnson testified in support of this proposal. She said it was proposed by the City during negotiations and that the Union wanted a study done on the impact on the defined benefit plan before it would consider the issue. The City

therefore developed this MOU. She said the City is considering requiring all newly hired employees be placed in a Defined Contribution Plan because it would help the City's future budget structure. (Tr. 14, pgs 1974 – 1976)

Ms. Phillips testified on behalf of the Union on this proposal. She said the Union opposed inclusion of this MOU in the agreement because the City could have had an actuarial study done previously and have had bargaining occur during negotiations involving this agreement. She said the Union is opposed to committing to continuing negotiations on this issue during the term of this agreement. (Tr. 21, pg 3163) The Union's post hearing brief notes that there is language in the current bargaining agreement on this issue, Article 48, paragraph N, that the Union proposes be maintained.

Conclusions

I conclude the City's proposed Memorandum of Understanding RE: Defined Contribution Retirement Plan, as presented in City exhibit (C-79) should be a part of this agreement. I recognize that Union Witness Phillips said the Union was opposed to this proposal because they didn't want to commit to continuing negotiations during the term of this agreement. But Ms. Phillips also expressed frustration with the City's failure to initiate the actuarial study necessary to have informed negotiations. Adoption of this MOU as part of this agreement may motivate the City to proceed with the study, and once the study is completed, the MOU will require the City to share the results of that study with the Union if they want to have meaningful negotiations. And negotiations are just that. If they initiate negotiations and it quickly becomes obvious there can be no agreement, the parties are unlikely to devote much time to additional negotiations.

The Union's post hearing brief referred to language in Article 48, Paragraph N and said this issue was adequately addressed there. This MOU will not replace or impact language in Article 48 and my review of the language in Paragraph N of Article 48 leads me to conclude that there is not language in Article 48 addressing this issue as clearly as this proposed MOU does.

Recommendation

I recommend that the parties' agreement incorporate the Memorandum of Understanding RE: Defined Contribution Retirement Plan proposed by the City as

presented in City exhibit (C-79). I recommend this MOU become effective upon approval of City Council.

Rational

The rational for my recommendation is as explained in the discussion on conclusions.

Concluding Observation

Leading up to, and during the early stages of this Fact finding proceeding, the parties' negotiations were difficult and each party accused the other of lack of cooperation. During the course of this proceeding, based on the evidence and testimony presented, I believe each party had some legitimate reasons for their perspective and for taking the positions they did relative to the process. But it is also my impression that as this proceeding progressed, the parties not only developed a better understanding of the facts but also a better understanding of the respective position each party was placed in and the situation they were confronted with as representatives of their employer's or union members' interest. I also believe the representatives of both parties represented the interests of their respective parties well.

I am hopeful this Report and Recommendations will be a tool both parties can use to assist the parties to reach agreement.

This concludes the Fact Finder's report and recommendations.

Date: June 25, 2010

William E. Long
William E. Long, Fact Finder

**Department of Labor and Economic Growth
Michigan Employment Relations Commission
Fact Finding**

City of Detroit

—and—

MERC Case No. D09 A-0062

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