

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
FACT FINDING

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMM.  
DETROIT OFFICE

*In the Matter of:*

CITY OF DETROIT

-and-

MERC Fact Finding  
Case No. D09 J-1028

SENIOR ACCOUNTANTS, ANALYSTS  
AND APPRAISERS ASSOCIATION

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**FACT FINDER'S FINDINGS OF FACT,  
REPORT AND RECOMMENDATIONS**

**APPEARANCES:**

FOR CITY OF DETROIT:

FOR SENIOR ACCOUNTANTS, ANALYSTS  
AND APPRAISERS ASSOCIATION:

Andrew Jarvis, Assistant Corporation  
Counsel

George B. Washington, Attorney

**The Parties and the Events Leading to Fact Finding**

The City of Detroit employs approximately 300 individuals in classifications ranging from accountants, analysts, appraisers, information technicians, statisticians, purchasing agents, drafting technicians, medical technologists, nutritionists and similar types of employees represented by the Senior Accountants, Analysts and Appraisers Association (SAAA). The parties had a Collective Bargaining Agreement that expired on June 30, 2005 which was followed by negotiations for a successor contract. The SAAA maintains that the City in July 2006 imposed a 2005-2008 contract on the SAAA. For purposes of this Report, the Fact Finder has no comments concerning this claim or the alleged pending unfair labor practice charge

concerning same, but only to report a historical claim.

In any event, beginning on July 20, 2009, the parties commenced negotiations for what this Fact Finder describes as a successor contract consisting of negotiations and with the assistance of a State appointed mediator were involved in six mediation sessions. The SAAA, pursuant to MCL 423.25 in a petition dated January 11, 2010, sought fact finding. The petition alleged that the contract expiration date was June 30, 2009 and that “there are unresolved issues on wages, benefits, hours and uneconomic terms of employment.” Setting forth the need to publicize the dispute, the petition alleged “the City is not bargaining in good faith.”

On July 22, 2010, the Michigan Employment Relations Commission appointed Professor Donald Burkholder of the University of Detroit as the Fact Finder. At about the same time, a group of City represented employees, namely, the local unions constituting Council 25 of the Michigan Federation of State, County and Municipal Employees, were engaging in fact finding pursuant to MERC Case No. D09 A-0062 with William Long as the Fact Finder. Because the AFSCME fact finding was in progress, the SAAA, apparently with the concurrence of the City, did not press for immediate hearings in the instant fact finding while awaiting the report of Fact Finder Long.

After Fact Finder Long issued his report, the SAAA and the City met on several occasions in an attempt to reach a contract. There was apparently agreement on a number of issues, but other issues remained in dispute. As a result, SAAA asked Professor Burkholder for hearing dates and a meeting was scheduled for October 5, 2010.

At the October 5, 2010 meeting, Professor Burkholder discussed the issues and set hearing dates for October 29 and November 9, 2010. After Professor Burkholder left the

meeting, the parties continued negotiating on October 5<sup>th</sup> and in the evening of October 5, 2010 the City and SAAA negotiators reached a Tentative Agreement to be presented to the SAAA membership.

On October 25, 2010, the SAAA membership rejected the Tentative Agreement. The SAAA so informed the City and Fact Finder and announced the Association was prepared to resume fact finding and negotiations.

On November 1, 2010, the Director of Labor Relations for the City sent the SAAA a correspondence declaring that on November 12, 2010 the City was implementing its collective bargaining proposal. By a November 4, 2010 letter, the SAAA advised the City that its implementation act was unlawful, the Association was ready to resume both negotiations and fact finding, and that the Association was filing an unfair labor practice charge over the proposed implementation. The SAAA on November 4, 2010 did file an unfair labor practice with MERC.

On December 2, 2010, SAAA and the City appeared before Administrative Law Judge Peltz in Case No. C10K-274 and announced that the parties, prior to the commencement of the hearing, had agreed to a settlement of the unfair labor practice. The settlement agreed to was explained to Judge Peltz on the record by the SAAA Counsel who stated:

MR. WASHINGTON: I'm going to try, yes. We have reached a settlement of this unfair labor practice and a number of other issues, but here are the terms of it:

The parties have agreed that they will proceed to expedited fact finding, and they will agree that George Roumell will be the Fact Finder, and that the fact finding will be conducted on the basis that only briefs will be submitted.

That briefs will be submitted by the 22<sup>nd</sup> of December, and we will request an award from Mr. Roumell by January 10.

That the cooling-off period after that, we will agree to waive the

60-day period with the agreement that there will be no unilateral changes or other action before February 1.

That in the interim period of time, the City will restore the status quo ante, if there have been any changes, and we're not sure that any have actually occurred.

In any event, the employment conditions which existed before the letter of November 1 will be restored, and that the City, if it decides to move to unilateral implementation on or after February 1, that it will be implementing the terms which were contained in a tentative agreement that the parties reached on October 5, 2010.

And, if I didn't say it, that we would be withdrawing this charge that is present for hearing today. I think that stated it.

MR. JARVIS: Yes, my client's indication is that is correct. That does accurately reflect what we have talked about today prior to the hearing.

Just for the record, we did talk to the Director of MERC, Ms. Okun. She did call Mr. Roumell. He did agree to do this. so he is on board.

This agreement was confirmed in the brief filed with this Fact Finder by the Association's Counsel when he wrote at page 4:

1. They would proceed to expedited fact finding before George Roumell, Jr.
2. Only briefs would be submitted.
3. The parties would request an award by January 10, 2011.
4. The Union would waive the 60-day cooling-off period with the proviso that there would be no unilateral changes before February 1, 2011.
5. The City, if it unilaterally implemented any changes on or after February 1, would implement the terms contained in the tentative agreement the parties reached on October 5, 2010.
6. The Union would withdraw its unfair labor practice charge.

Subsequent to the statement of the agreement, this Fact Finder on December 13, 2010 had

occasion to write Andrew Jarvis, Assistant Corporation Counsel representing the City of Detroit, and George B. Washington, Esq., representing the SAAA, the following letter:

Gentlemen:

Last week I received a call from Ruthanne Okun, Director of the Michigan Employment Relations Commission, advising me that you, representing your respective parties, have agreed that I should act as Fact Finder in connection with the negotiation of your labor contract. Director Okun advises me that time was of the essence and that it was the desire of the parties that the Report be issued prior to Christmas 2010.

I agreed to undertake the assignment. My understanding was that the parties were to forward to me the applicable exhibits and apparently file post-hearing briefs with no hearing. On Friday, December 10, 2010 I received a call from Director Okun advising me that she had not as yet received a formal request from either of you seeking the appointment of a Fact Finder. I responded to Director Okun that I would write this letter to you to make inquiry of the status and my participation in the process.

If it is still your desire to proceed, as was my understanding, and to meet the above deadline, may I suggest that you contact Ms. Okun and complete the appointment process and advise me as to whether the statements I have made above are your understanding of the procedure to be followed or suggest any modification.

I do have this concern. The City of Detroit has furlough days. My belief is that the City will close down for the week of December 20, 2010 and return to normal operations on January 5, 2011. This suggests that we will have to move with dispatch to firm up the understandings of the procedure to be followed by this week.

It may be that you may wish to modify the procedure. Perhaps you may wish to give me the exhibits, advise me orally what the issues are, and make a brief statement orally as to your positions. This could be done, if you wish, in lieu of briefs in a short hour or two.

I put it this way – I am flexible. Whatever you wish, I will accommodate.

Also, if you have agreed to another arrangement, I will understand. But what I have done by this letter is to carry through with the representation that I made to Director Okun that I would contact the parties to ascertain the status of the matter.

Please let me hear from you. A phone call to me or my secretary will be sufficient. I also think we should contact Director Okun to confirm one way or the other your desire.

Looking forward to working with you, I remain,

Subsequently, this Fact Finder, advising the parties that he would be away for the Christmas holidays, suggested that briefs be filed around January 6, 2011 and that he would expedite preparing the Fact Finding Report, it being recognized that the Report would be based upon the transcript of the hearing before Fact Finder Long as well as supplemental material. Briefs were filed by the Association on January 6, 2011 and shortly thereafter by the City.

This Fact Finder has expedited reviewing the record with care as well as the briefs by issuing this Report by February 1, 2011 rather than the usual 30 days permitted for the issuance of such Reports.

#### The Issues

At page 4 of his brief, the Association's Counsel lists the issues to be submitted to fact finding as:

Subsequent to the hearing before MERC, the City and the Union agreed that they would submit the following issues for a proposed resolution by the fact finder:

1. Budgeted furlough days, especially for grant and enterprise funded areas;
2. The 35 hour workweek;
3. Longevity pay;
4. Tuition reimbursement;
5. A 3-step grievance procedure;
6. A me-too clause.

The City agrees that these are the issues that are being submitted to fact finding, for its Counsel at page 1 of his brief describes the issues to be submitted as:

Article 7; 3 Step Grievance Procedure. The 2005-2008 CBA contains a 5 step process

Article 24; Wages/Budget Required Furlough Days "BRF"  
Article 34; Longevity Pay  
Article 47; Tuition Reimbursement  
The SAAA proposal for a "me too clause"  
Memorandum regarding the 35 Hour workweek

### The Criteria

The statute providing for fact finding does not set forth any explicit criteria for a fact finder to follow in preparing a Report and Recommendations. However, the Legislature, in providing for compulsory interest arbitration involving police and fire labor disputes in Act 312 of Public Acts of 1969, did set forth the following list of criteria that is to guide arbitration panels in resolving contract disputes submitted under that Act:

- (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.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as external comparables with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

It should be recognized that the particular circumstances may dictate that certain criteria be emphasized more than other criteria.

The Michigan Supreme Court, in ruling on the constitutionality of Act 312 and its application, in an opinion of Justice Williams in *Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980) at 484, Justice Williams wrote:

We disagree with the city's contention. The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the statutory factors that consideration required by law. The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in § 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word "shall" in §§ 8 and 9. In effect then, the § 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. Since the § 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered. Our comment in *Midland Twp v State Boundary Comm*, 401 Mich 641, 676; 259 NW2d 326 (1977), is here apposite.

"Merely because some criteria were factually inapplicable or were found by the commission to be of less importance than other criteria does not mean that the commission 'ignored' relevant criteria. The commission may regard a particular



criterion to be of decisive importance outweighing all other criteria."

In other words, though an Act 312 Panel must consider all applicable factors, as Justice Williams noted, the Panel can emphasize certain criteria over others in resolving contested issues.

The point this Fact Finder makes is that, even when applying under Act 312, though the Supreme Court has stated that all the factors are to be considered, some factors can be emphasized, depending on the circumstances, over others. This particularly would follow in fact finding where no specific statutory criteria applies to fact finding even though this Fact Finder, among others, intends to follow the Act 312 criteria as these criteria offer a guidance.

Based upon the above comments, there seems to be what are the prevailing criteria as applied to the dispute now involving the SAAA and the City of Detroit is the ability of Detroit to fund the proposals and the comparison of the SAAA with the other employees, both union and non-union employees, of the City of Detroit.

#### **The Ability to Pay**

This is not the first time that this Fact Finder has been invited to act as a fact finder between the City of Detroit and one of its unions in recent times. On June 16, 2006, this Fact Finder issued a Fact Finder's Findings of Fact, Report and Recommendations concerning the July 1, 2005 - June 30, 2009 collective bargaining agreement between the Detroit Building Trades Council and the City of Detroit wherein, based upon the City's fiscal picture, recommended a tentative agreement that had been rejected with certain modifications including wage concessions.

In doing so, relying on the testimony of Pamela C. Scales, Budget Director of the City of

Detroit since 1999, that had been presented in MERC Case No. E05 F-0687 as well as budget documents prepared by the City, this Fact Finder, after reviewing the revenue sources of the City of Detroit, the City's then unemployment rate which at the time was 14.2%, and the City's continued expenses exceeding revenue, noted that Ms. Scales correctly described the City's financial position as "very dire". At page 3 of the June 19, 2006 Fact Finding Report, this Fact Finder observed:

<u>Fiscal Year</u>	<u>Total Expenditures<sup>(1)</sup></u>	<u>Final Operating Results</u>		<u>Surplus/(Deficit) As a Percent of Total Expenditures</u>
		<u>Surplus</u>	<u>Deficit</u>	
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		144,948,805	-9.13%
2005-06 est	1,482,251,538		62,839,031	-4.24%

Note (1): Includes transfers and contributions

With the exception of the 1979-80 and 1980-81 fiscal years, the deficit in 2004-05 was the highest percentage of deficit as compared to total expenditures in the history of the City since 1964-65, as well as the highest dollar amount. These figures suggest that, rounded off, during the last six fiscal years beginning with the 2000-01 fiscal year, the City has experienced an approximately \$398 million deficit. Despite efforts, which will be discussed later in this Report, the City is still running a deficit based upon the estimates of 2005-2006 of almost \$63 million, or 4.24% of the total expenditures.

What this means is that the City is spending more each fiscal year than it is receiving in revenue. And this recent history of surpluses and deficits is a barometer of the City's financial health which, by any standard, is indeed most difficult. (June 19, 2006 Fact Finding Report).

The above statement is a starting point of recognizing that, since the June 19, 2006 fact finding report, the City's financial health, under any definition, had become more dire than at the time this Fact Finder was writing the June 19, 2006 Report.

As indicated, there were fact finding meetings conducted by Fact Finder Long involving Council 25 of the American Federation of State, County and Municipal Employees and the City

of Detroit. The City in that fact finding presented a Budget Department presentation. At page B1 the City presented a history of general fund surplus/deficit beginning with the 2000/2001 fiscal year, noted by this Fact Finder in the June 19, 2006 Report. The subsequent general fund surplus/deficit history reveals a continuing, rapidly deteriorating financial situation in Detroit as noted below:

<u>Fiscal Year</u>	<u>Total Expenditures<sup>(1)</sup></u>	<u>Final Operating Results</u>		<u>Surplus/(Deficit) As a Percent of Total Expenditures</u>
		<u>Surplus</u>	<u>Deficit</u>	
2000-01	1,488,793,205		26,395,130	-1.77%
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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

Note (1): Includes transfers and contributions

Though the figures presented before Fact Finder Long for 2000-2005 were slightly different than the figures presented to this Fact Finder, they essentially match. At the time this Fact Finder issued his Report with the Building Trades Council on June 19, 2006, the 2005-2006 deficit was predicted to be 4.24% total expenditures. The figures turned out to be double that amount, namely, from 69,000,000 to 155,000,000, or 9.79% of the total expenditures. This figure continued each year thereafter to increase so that by 2008-2009 the deficit, figure-wise, the highest in the history of Detroit since 1964-65 was 326,000,000, or 22.82% of the general fund. At no time since 1964-65 had the City ever had such a high percentage of deficit total expenditures, namely, that the City was spending more than it was receiving in revenue. This deficit, as the history reveals, is cascading at an alarming pace, almost beyond description.

In presenting this case before this Fact Finder, the City relied, as already noted, on the budget presentation to Fact Finder Long as well as the transcript of the hearing before Fact Finder Long and in particular the testimony of Budget Director Scales. When the budget presentation book is reviewed, along with the testimony of Budget Director Scales, it becomes obvious that the deteriorating financial health of the City is due to factors beyond the control of the administration, requiring major economic adjustments in the operation of the City.

The City's population has been in decline since 1950 when the City had a population of 1,849,000 persons representing 29% of the State of Michigan's population. Before the release of the 2010 census, the City's population was estimated to be 912,000, or 9.1% of the State population.

The dropped population inflates the significant impairment of the City's tax revenue stream which relies primarily on property tax, income tax and State aid as well as the wage tax. In 1972, the City had 23,000 employers. In 2002, the City had 8,691 businesses/employers, meaning a loss of 63% of businesses since 1972. Significantly, the largest loss came from manufacturing – 73% – and wholesale trades – 74% – whereas there is now an increase, but still an overall loss in service employers. Service employers contribute less to the City's tax base because of the property involved and service employees are usually paid lower wages. (Vol. 1 pp. 17-18).<sup>1</sup>

In 1980, in the entire Metro area there were 1.8 million people employed, 23% of which were employed within Detroit. In September 2009, the Metro area had 1.7 million people employed, but in Detroit that number had declined to 17%, meaning that a number of the

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<sup>1</sup> Vol.1 refers to the transcript of testimony before Fact Finder Long.

employed persons employed in the Metro area were outside of the City of Detroit. In November 2009, the City had the highest unemployment rate in the United States, namely, 25.4%. (Volume 1, p. 23). These figures impact the City's tax base, whether it be income tax, property tax or other tax fees.

Budget Director Scales explained that Proposal A, passed in 1992, put a cap on yearly property tax increases resulting in the inability to collect \$88 million in property tax. In 1950, 61% of the general fund expenditures were covered by property tax collections. In 2009, 14% of the City's general fund is covered by property tax collections. To understand the meaning of this figure, it is noted that suburban cities such as Ann Arbor receive 67% of its general fund revenue property tax, Dearborn 74% and Roseville 78%.

The City of Detroit since 1963 has had an income tax. City residents pay a 2.5% income tax rate and non-residents pay a 1.25% rate. At its highest point for the accounting period 1969, the City had 468,370 individual resident tax returns filed, 234,892 non-resident tax returns were filed, plus 11,605 corporation tax returns and 3,749 tax returns for a total of 710,998 tax returns. In 2008, the number of resident returns was 128,525. The number of non-resident returns was 125,167. Corporate returns were 7,183 and partnerships were 2,172 for a total of 262,043, which represents a dramatic loss in income tax returns.

The City does collect other fees and taxes, including a solid waste fee of \$300 to residents for garbage disposal, a library tax which cannot be used for any general fund expense, a utility tax which by law is to support police services and cannot be used to cover the general allocation fund and a wagering tax which the City receives pursuant to Act 69 of 1997 with the opening of permanent casinos. This is based on consumer gambling which in recent times because of

economic conditions has been reduced. It is also recognized in recent times General Motors and Chrysler underwent bankruptcy. Though both are no longer in bankruptcy, there was a period of time, particularly as to Chrysler, where the Chrysler plant in Detroit was employing less employees subject to income tax than prior to bankruptcy.

The City does receive revenue sharing, but this is being cut by the State due to the State's financial situation. For the fiscal year 2009-2010, the State has cut its revenue sharing by 11% to all municipalities, which equals a \$29 million reduction in State revenue sharing for the City of Detroit. (Volume II, p. 86).

There are certain enterprise activities which are not affected by the condition of the general fund, including the airport, building and safety, municipal parking and the Detroit Water and Sewerage Department, and are supposedly self-financing. However, the general fund has subsidized the DDOT and municipal parking.

\$441,299, 597 or 27.54% of the general fund is allocated for salary and wages. \$361,658,993 of the general fund is allocated for employee benefits, or 22.57%. This means that over 50% of the general fund is allocated for employee wages and benefits. The cost for hospitalization for 2009-2010 for active employees was \$105,256,332 and the cost for retirees is \$149,787,983.

It becomes clear that a major portion of the expenses from the general fund are employee costs.

The rating agents have reduced the City's bond rating because of its financial conditions. This has impact on the City's ability to borrow and has increased the cost of borrowing.

By any definition, as pointed out, the City is facing a difficult financial situation. The

City has adopted a debt elimination plan. This plan was promulgated under Mayor Cockrel and continues under Mayor Bing. Before Fact Finder Long, Ms. Scales testified as to some of the aspects of the deficit elimination, noting:

Q (By Ms. Colbert-Osamuede) Finally, I want you to look at Union Exhibit No. 46, which is identified in the record as the Ken Cockrel Deficit Elimination Plan.

If you recall, there were some questions asked as to the last I think it is three pages of this exhibit from Mr. Mack about certain things that had not been implemented from this deficit Elimination Plan. Do you recall that?

A I do.

Q I want you to take a look at this plan and tell us what has been implemented, if you know, from this plan?

FACT FINDER LONG: What page are you looking at there?

Q (By Ms. Colbert-Osamuede) It is the last three pages, which is the chart, beginning on the first page of that chart.

A In this plan, you go down to the Health Department, Improved Process for Reimbursement. That did occur in the 2009-2010 fiscal year.

The Crime Lab did occur. The Crime Lab was transferred to the State, so those payments did occur.

The Cobo Center Operation Reductions did occur. Cobo was transferred to an authority, so that savings has been achieved.

The ITS and I guess, really, from ITS down to Ombudsman, those changes did occur. Those positions were eliminated in the 2009-1020 budget, and the Operational Cost Savings did occur for the 1009-2010 fiscal year.

MR. MACK: That includes the Ombudsman?

THE WITNESS: Yes. ITS, Human Rights, Law, BZA, Auditor General and Ombudsman.

FACT FINDER LONG: Just for the record, BZA is Board of Zoning Appeals.

THE WITNESS: Part of the Transportation occurred as part of phase three layoff. It wasn't \$10 million, but there was the hundred and thirteen reduction in Transforation.

The GSD savings did occur, and there was a reduction in the amount of seasonals hired and the parks that were cut.

FACT FINDER LONG: What does GSD stand for?

THE WITNESS: I'm sorry, General Services Department.

MR. MACK: You said there was a what with respect to the parks that were cut?

THE WITNESS: There was a reduction in the number of parks that were cut.

MR. MACK: The number of parks.

THE WITNESS: The number, and seasonal employees were not hired was what their savings was discussing, and that did occur during the year.

FACT FINDER LONG: The note says reduction in grass cutting also. That occurred as well --

THE WITNESS: Yes.

FACT FINDER LONG: -- in addition to reducing the number of parks. Correct?

THE WITNESS: Right.

FACT FINDER LONG: For part of that?

THE WITNESS: Right.

MR. MACK: Wouldn't that be the same --

THE WITNESS: It is the same thing; it is reducing the number of parks that we actually cut. The Mayor's Office cut did occur. The downsizing was part of 2009-2010 budget.

The Police did occur. We did operational savings in police departments prior to 2009-2010, and the same thing with the 36<sup>th</sup> District court.



The next page, the DPW partially was implemented. There was a shift to seasonal inspectors. The savings wasn't \$1.2 million, it was probably half of that \$600,000. That did occur.

The GSD Vacant Lot Cuts were reduced. In the past, we had four cuts on vacant lots. Last year, we did two cuts on vacant lots.

The Planning and Development Operational Savings did occur. That was reduced in the 2009-2010 budget.

The Non-Departmental Subsidy Reduction did occur. We did a reduction to subsidies for Zoo, Historical Museum of African-American History last year.

Then the balance of the General Services Department, City Clerk, Elections, Board of Ethics and Cable, those operational cuts did occur, and that is really cuts in operating supplies, general dollars that they spent.

That is it on this list.

FACT FINDER LONG: Obviously, looking at those pages of that exhibit, those cuts are shown as obviously continuing then in the fiscal year 2010-2011 budget. Correct?

THE WITNESS: Correct. These were part of the 2009-2010 budget, so the 2009-2010 budget was reduced, and that savings continues every year going forward.

FACT FINDER LONG: Yes. Were those savings reflected in the 2010-2011 – well, you are not into the – you are just presenting a 2010-2011.

THE WITNESS: Right. These savings were part of the fiscal year 2009-2010 budget, and they will continue in the 2010-2011 budget.

(Vol. 11, pp. 1491-1495).

Mayor Bing in his budget address for the fiscal year 2010-2011 set forth a plan for sound fiscal policy. In this respect, Mayor Bing noted:

\* \* \*

We took immediate steps; completing the Cobo and Greektown Casino deals, saving more than \$7 million and \$8 million respectively, collecting nearly \$6 million in delinquent receivables, and saving more

than \$11 million between layoffs and budget required furlough days. We also completed the long-overdue 08-09 CAFR, which released \$23 million we were owed from state revenue sharing.

The successful sale of our fiscal stabilization bonds was one of the first signs that we are beginning to repair our image and I would like to thank this Council for its support. The response by investors was overwhelming. They placed \$500 million in orders for \$250 million in bonds, helping us lower the interest rate to save the city \$1.1 million on its annual debt service. In a city as cash strapped as we are, that vote of confidence from Wall Street is significant.

\* \* \*

This budget ends the practice of using past budgets instead of actual cash needed to determine funding for our operations. For example, our Planning and Development Department was budgeted for \$6.3 million in operating costs last year. They spent \$800,000 less than that so we took that money and cut it out of this year's budget. That's something that hasn't been done in years and it will save us more than \$10 million next year.

\* \* \*

This administration also promised to put an end to politics as usual and tell the truth, even when it wasn't popular. We've cut out all the unfunded vacant positions from this budget. The 2009-10 budget included more than 500 positions without a dollar to actually fill them. This is something past administrations used for political reasons, most notably in the police department to create the perception that there were more officers on the street than the City actually had on the force.

Our citizens deserve to know the real numbers, without the phantom positions or the fuzzy math. As a businessman, I expect a real budget with real numbers and a plan that delivers real results.

\* \* \*

The phrase doing more with less is probably all too familiar to our taxpayers. They have become accustomed to receiving less. The problem is city government never tried to more. It's been operating exactly the same way for generations. We will not continue down that road. That's why nearly every department will see staff and spending reductions in this budget. My staff alone is shrinking by 20% and my office budget will go down almost \$1 million. I encourage this honorable body to follow suit.

\* \* \*

This initiative is part of our risk management savings project that we believe will save \$3.75 million dollars this year. We are also targeting a

5% reduction in hospital spending by negotiating lower administrative fees for our plan and reviewing dependent coverage and claims. Those who have taken advantage of lax oversight by the City in years past will not continue to get a free ride. We estimate savings of at least \$12 million through this audit.

\* \* \*

The City has also done a poor job of going after money it is owed. One of my new Department Directors recently informed me that in reviewing the books, she found a 2- year old \$486,000 default judgment that the city had never attempted to collect. In a City facing financial crisis, that kind of oversight is appalling.

My administration has already set a more aggressive tone, collecting nearly double what was budgeted for in delinquent collections and we anticipate another \$6 million in this budget. We also plan to work with the state to improve income tax collections, specifically focusing on those who take city tax deductions without filing city tax returns. Whether intentional or not, we will aggressively go after every dollar. And beginning this year, we will make electronic filing available for personal property tax payments. Together, these initiatives are expected to bring in an additional \$15.5 million.

From my first day in this office, I've talked about the need for restructuring city government to secure our long -term financial future. I pleased to announce today that two more measures proposed by my Crisis Turnaround Team will be completed and result in savings in this budget. We are expected to turn over management of City Airport by June, saving half a million dollars. And Mistersky Power Plant will be mothballed very shortly, saving the City another \$5 million.

Additional consolidations and eliminations are occurring and planned in a number of other areas. Consolidation of office space city wide is underway. The Department of Administrative Hearings is moving into available space in the Coleman Young building saving a minimum of \$150,000. Cable is doing the same, saving another \$500,000. We are also consolidating administrative functions for the workmen's compensation for the Police and Fire Departments saving \$870,000.

We have reduced the number of city bank accounts from 320 to 150 and cut contract services in the finance department by \$1 million, with the goal to complete more work in-house. Budget required furlough days for personal service contracts will save at least \$9 million. And with the appointment of a Chief Procurement Officer, we have set a goal to negotiate 5 citywide contracts with the potential to save the city another \$5 million.

\* \* \*

The bottom line is that in addition to the deficit elimination plan and the points made by Mayor Bing, the City has proposed to reach what amounts to a wage reduction by a budget required furlough days, an increase in the work week from 35 hours to 40 hours a week, changes in longevity and suspension of the tuition refund program. These proposals, so the City argues, are part of the City's attempt to stabilize its financial situation.

### **The Response of the SAAA**

Noting that the City in July 2006 proposed a three year contract on the SAAA, the Association argues from July 1, 2008 forward wages have been frozen; that with the freezes and the cost of living limited 4% wage increase during the period plus health and care concessions, SAAA members have lost 15% in real wages in the last four years. After making these observations, the SAAA Counsel argues at pages 7-8 of his brief:

The City's core proposal is for a *further* 10 percent cut in weekly wages, accomplished by means of 26 forced days off (budgeted furlough days) for each of the next three years. *Plus* the City demands more cuts in health care. *Plus* it demands lengthening the standard work week from 35, where it has been for a half century, to 40 hours per week. Even assuming that prices are stable over the next three years--which may actually occur--over two contracts, the City demands that employees work 14 percent more every day for real wages that have dropped over 20 percent and real total compensation that has dropped by close to 30 percent.

These enormous cuts have not solved the budget crisis. Indeed, by lowering living standards for City employees, by cutting services, and by ensuring that Detroit's youth will have no jobs in the City, these cuts have contributed to a downward spiral in which the decline in the residents' incomes leads to less tax revenues, more flight (and thus even less revenues), and then to demands for further cuts.

In addressing the argument made by the City as to the general fund, SAAA's Counsel made the following observation at pages 10-11 of his brief:

On a specific basis, the SAAA has a large number of employees

who work in the Water Department, Neighborhood Services and other areas that are 100 percent federally funded or 100 percent funded by enterprise operations. In those areas, the concessions will force the employees to suffer a huge decrease in real living standards-with no benefit at all to the City general fund deficit.

In some areas, the cuts in compensation for grant funded employees violate the relevant federal statutes or contracts. In the Head Start program, for example, the City receives two million dollars in federal funds for wages and another \$1.6 million for fringe benefits (Ex 8). By statute, these funds must be used for personnel purposes and will be returned to the federal government if not so used. Indeed, in the case of Head Start, there is a specific federal mandate that the funds be used for improving (or maintaining) the wages and benefits of the employees receiving them *even if there are not funds for increasing other employees' salaries:*

Any agency that receives financial assistance under this subchapter to improve the compensation of staff who provide services under this subchapter shall use the financial assistance to improve the compensation of such staff, regardless of whether the agency has the ability to improve the compensation of staff employed by the agency who do not provide Head Start services.

42 USC 98350).

The City receives substantial funds from the federal Department of Housing and Urban Development (HUD) for community service block grants, weatherization and other programs. The City has not yet provided the grants and contracts for these funds. But the funds are 100 percent federal-and in those areas, as well as in enterprise-funded areas, it makes no sense to impose a reduction in the workweek where it will not aid the City deficit at all.

Traditionally, the City (and sometimes the unions) has asserted that it did not want to pay different wages based on the source of the funds. But as applied to the budgeted furloughs, that assertion is irrelevant. Base wage rates are not affected--only hours are affected. And as the City has already reserved the right to exempt certain employees from the budgeted furlough days for operational needs, it makes no sense to say that it cannot exempt employees from the furloughs where there would be no savings to the City and the only result would be a return of funds to the federal government or to enterprise operations.

This is an interesting point, but the answer to this argument is that there are still a number of

SAAA members working in areas funded by the general fund. At least two enterprise funded activities – the Department of Transportation and Municipal Parking – have on occasion been subsidized by the general fund. It is also noted that Fact Finder Long made no exception to the AFSCME employees who worked for the Water Department. It seems in the overall scheme of the City's financial picture in dealing with labor costs that all members should be treated equally. As to the Headstart, one never knows exactly what the funding will be, giving the current mood in Congress. Therefore, to premise a recommendation on the basis of federal funding is not based on the need for a sound fiscal approach.

There was the argument advanced that the imposition of a 40 hour work week would be contrary to a 50 year practice. This is true. It is also true that the City of Detroit 50 years ago financially is not the City of Detroit today. Dire financial circumstances require, at least on a temporary basis, substantial changes. And the City is proposing such a change as to hours of work in order to address the need for financial stability.

The tuition program has benefits to the members and to the City. But, again, suspending the program and making modifications for the future is all part of the effort to stabilize the City's finances. Thus, as to the three major concessionary issues, though the SAAA makes potent arguments, these arguments, for the reasons just discussed briefly, fail due to the City's dire financial circumstances.

### **The Other Unions**

Though not specific as to all the proposals, it was represented, for instance, as to the BRF 27 other City unions have agreed to the provisions and BRF have been implemented as to non-union employees. Some groups have commenced BRF days as early as September 2009. As to

what will be the recommended longevity proposal that will be recommended by this Fact Finder has been adopted by the Teamsters, the Amalgamated Transit Union and the Principal Clerks. The point the Fact Finder is making is that the major cost concessions being advanced by the City and recommended by this Fact Finder are being adopted by other City units, which satisfies one of the major criteria used on Act 312 and can serve as guidance to this Fact Finder in this matter.

### Preliminary Conclusion

As already intimated, the preliminary conclusion of this Fact Finder is that the concessions in most cases proposed by the City are necessary for a three year contract to accomplish the purpose and recommendations and to assist the City in stabilizing its financial situation. The employee wages and benefits are a substantial portion of the general fund. The City's financial health cannot be restored without addressing employee costs. Hopefully, this will be a temporary measure because there will come a time when employees' needs will take center stage. Unfortunately, this is not the time and place. The time now is to set the stage to save jobs and to develop a financially healthy city so that in the future the City will be able to address employees' concerns. It is with this in mind that the Fact Finder will make the following recommendations:

#### Wages (BRF)

The City proposed that the AFSCME members take 26 mandatory budget required furlough (BRF) days for a three consecutive 12 month period. If an employee works on a BRF day, the employee must take a substitute BRF day, without pay within the 12 month period. a BRF day will not be used to calculate overtime. An employee must work 40 hours in a week to

receive overtime pay.

BRF days will not impact the calculation of an employee's average final compensation for pension purposes. When an employee retires and is "running out" vacation bank time will be run on the basis of forty hours.

On this latter point, Budget Director Scales testified:

Q And the wage concession memorandum. Correct?

A Correct.

Q And the retroactive amounts. correct?

A That is correct.

Q Go on.

A so the next set of A, B, C, D reflects an effective period of July 1, 2008 to June 30, 2012. What we are saying in this particular proposal is that members of the bargaining unit – this is where we talked about our budget-required furlough days.

We were proposing that employees take 26 mandatory budget-required furlough days for a three consecutive 12-month period and that the City would determine the date that the budget-required furlough days would start.

That is also understood that, because we are requesting three consecutive 12-month periods, that 12-month period may extend beyond the expiration date of the contract depending on when they would start.

We also are indicating that if, for any reason, the employee is required to work on that budget-required furlough day, that they would take a substitute budget-required furlough day within that 12-month period.

We also then further explained how the budget-required furlough days are going to be impacted by various economic provisions, and we are basically saying, as regards to overtime, that if the employee is scheduled to work less than 40 hours a week due to a budget-required furlough day, overtime for that



week would not be payable until the employee actually works 40 hours during the week.

As regards to retirement, we indicate that the period of reduced regular wages as a result of the budget-required furlough days would not be recognized for pension computation purposes, that the employee's pension would be calculated as if they had not taken that reduced time off as a result of the budget-required furlough days.

Q So their pension would not, in any way, be affected?

A That is correct. When an employee retires, they run out what we call their vacation time. You are on vacation for a certain period until you expend it all.

We are just letting them know that we would let them run that vacation time out in the same manner that they would before based on 40 hours a week as opposed to having a budget-required furlough day, taking a vacation day out every other week or something of that sort. They would get paid based on a 40-hour work week.

FACT FINDER LONG: Does that mean then, for retirement purposes, would, employees be able to, in essence, get credit for whatever vacation time they had at the date – you are not saying they are required to take their vacation days before they –

THE WITNESS: Right. It is just procedurally the way we happen – just like with me, when I retired, on my last day of work, I am running out vacation time now. So I'm on vacation from now until the point at which I liquidate all of my vacation.

The City doesn't give you a cash payment immediately. You say on the payroll for purposes of running out your vacation time.

FACT FINDER LONG: Okay.

THE WITNESS: So we are just saying that we are going to let you use – you are going to get 40 hours of vacation every week. We are not going to take a budget-required furlough day out of your vacation run-out period.

FACT FINDER LONG: Very good, Of course, that is part of wages, and that all goes into your retirement calculation also?

THE WITNESS: That's correct. Then for vacation –

Q (By Ms. Colbert-Osamuede) Let me just ask this question just to reflect back to 2005-2008. This was the same rule that was in place in terms of no impact to retirement and still allowing you to run out your banks at 40 hours as it was in the 2005-2008 when we took DOWOPs. Isn't that correct?

A That's correct. When we took the days off without pay, or the DOWOOPs, these provisions were exactly the same. (Vol. 11, pp. 1625-1628).

The proposal would be that the employees' reduction in hours would have the days off and that the BRF days as proposed, when they begin, are strategically set so that many of the days are adjacent to holidays, which provide extended time off for the employees. (Volume 14, pp. 2039-2040). The BRF days are estimated to save the City \$11 million.

#### Paychecks

The City also proposes that paychecks be transmitted by direct deposit to streamline administrative costs. In both respects, the Fact Finder recommends the proposal.

#### Memorandum, Work Week Work Day

The City proposes the working day of eight hours of work in a service day exclusive of the lunch break. This proposal reads: "The regular working day shall consist of eight (8) hours of work in the service day exclusive of the lunch break. It shall begin at 12:01 a.m. and extend to 12:00 p.m. Employees must work an eight hour day exclusive of the lunch hour to receive eight hours pay."

This change is for the purposes of increasing productivity and estimated to save the City, in terms of productivity hours gained, \$4,899,000. The Fact Finder agrees this is a reasonable approach to the City's financial crisis and will so recommend.

### Tuition

The City proposes to suspend the City's Tuition Refund Program effective January 1, 2010. The suspension will remain for the balance of the 2008-2012 contract period.

Additionally, the City will not reimburse payment for any course work or employment development program ending December 31, 2009. Effective July 1, 2012, bargaining unit members must have a minimum of three years service to participate in the Tuition Refund Program. Eligibility to participate in the Tuition Refund Program will begin after attaining three (3) years of service with the City prior to the start of the course or employment development program. This proposal still recognizes the City's commitment to encourage its employees to seek educational and training opportunities. The proposal also recognizes the City's need to control expenditures by suspending the program throughout the duration of the DEP and limiting participation to employees with a minimum of three years employment with the City.

The budgeted funds for this program is \$811,309.63. The actual expenditure for the Tuition Refund Program is \$547,712.34.

This proposal, again, saves and is necessary in this financial crisis.

### Longevity

The City proposes to eliminate longevity pay. The City has acknowledged that it modified this proposal in negotiations with the Teamsters and apparently other unions. The modified proposal provides that employees who receive a suspension of 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 the disciplinary process, the employee will qualify for longevity pay. The modified provision eliminated longevity for new hires.

The Fact Finder agrees with the Association. The City cannot have it both ways. The City cannot maintain that the SAAA should be treated as are the other unions who have adopted the concessions and then treat it differently as to longevity. For this reason, the Fact Finder will recommend the longevity provision that has been adopted by the Teamsters.

### Grievance Procedure

At pages 13-14, the SAAA's counsel writes:

The imposed contract has three-steps in the grievance procedure prior to arbitration in every department except Finance, Health, and Water and Sewerage (Ex 1, at 5-8). In those departments, the imposed contract has an intermediate Step 2 with an official lower than the department director or his designee.

The SAAA formerly did not have this step in its contract. It was included at City request in order to make the SAAA procedure the same as the AFSCME procedure. But it has been a complete waste of time, resulting in grievances piling up before officials who never do anything to resolve those cases.

The overwhelming majority of the grievances filed by the SAAA involve claims of discipline without just cause. The Step 2 meetings are almost always with the officials who approved the discipline in the first place-and those officials never change their minds. The meetings are a waste of time-and simply delay the time when the grievances can be addressed by the department head or by labor relations, who sometimes do grant relief.

Given that the division head or his representative decide on or approve the discipline, the SAAA asks that the procedure be the same in all departments-three steps before arbitration, with the first step being with the department head or his designee on discipline case. The proposed procedure is faster, more efficient, and can provide at least some help in ending the backlog that is of no assistance to either party or to the affected employees.

The City has offered no reason for rejecting this proposal. If cooperation is not to be a one-way street, it should be adopted.

Though this Fact Finder recognizes that the procedures used in the AFSCME Master Agreement have merit and have been helpful to the AFSCME Locals, the SAAA, because of its size and

nature of its workforce, believes that a shorter process is more efficient in its representation of its employees. This point was made by the above quotation from its Counsel's brief. Based upon this argument, the Fact Finder will recommend the grievance procedure proposed by the SAAA.

#### "Me too" Clause

At pages 14-15 of the SAAA Counsel's brief, he writes as to the "me too" clause:

The Union has, in the past, had a clause in its contract providing that if any other union obtained a more favorable settlement, the SAAA would receive the benefits of that settlement. That clause has been an incentive for unions to settle even when there was uncertainty as to what other unions would receive.

The City proposed it to the SAAA, but when the SAAA refused to accept it at the time, the City withdrew the proposal. Apart from an attempt at retroactively vindicating its negotiating position, the City has offered no reason for not following the traditional pattern bargaining on this. The SAAA would accordingly request that a "me-too" clause be included in the final agreement recommended by the fact finder.

This is a traditional provision. It is reasonable. For this reason, the Fact Finder will recommend the "me too" clause as proposed during in the Tentative Agreement be adopted.

#### Final Conclusions

These are unfortunate financial times. Hopefully, there will be a new renaissance for Detroit. Hopefully, the stage to be set over time a more fruitful negotiations for the unions involved. Unfortunately, this Fact Finder has no choice but to issue recommendations that follow. The name of the game was to issue a Report that attempts to save jobs to set the stage for a brighter future in terms of collective bargaining. This can only be done by restoring the City to financial health. This unfortunately requires sacrifice by all and must be done. This Fact Finder has no other choice but to reluctantly make the Recommendations that follow.

## RECOMMENDATIONS

1. **Wages:** The Fact Finder recommends 26 mandatory budget required furlough (BRF) days for a three consecutive 12 month period on the conditions and as discussed at pages 23-26 of this Report.

2. The Fact Finder recommends that the contract should be a three year contract to accommodate the BRF as recommended as well as the other recommendations herein.

3. The Fact Finder recommends direct deposit of pay checks.

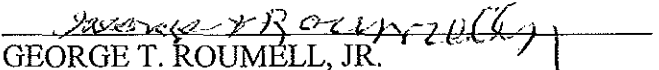
4. **Work Week Work Day:** The Fact Finder recommends the work day be changed to an eight hour day, exclusive of lunch, and a 40 hour week, exclusive of lunch, and therefore recommends that Exhibit A, attached hereto, should be adopted by the parties.

5. The Fact Finder recommends that the City tuition refund program will be suspended effective January 1, 2010. The suspension will remain for the balance of the 2008-2012 contract period. Additionally, the City will not reimburse payment for any course work or employment development program ending December 31, 2009. Effective July 1, 2012, bargaining unit members must have a minimum of three years service to participate in the Tuition Refund Program. Eligibility to participate in the Tuition Refund Program will begin after attaining three (3) years of service with the City prior to the start of the course or employment development program.

6. **Longevity:** The Fact Finder recommends that the longevity provisions continue except as modified in accordance with the provisions in the negotiated Teamsters contract.

7. **Grievance Procedure:** The Fact Finder recommends the grievance procedure proposed by the SAAA.

8. "Me too" Clause: The Fact Finder will recommend the "me too" clause as proposed in the rejected Tentative Agreement.

  
GEORGE T. ROUMELL, JR.  
Fact Finder

February 1, 2011