

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

ASSOCIATION OF MUNICIPAL ENGINEERS (AME)

UNION

-&-

CITY OF DETROIT, MICHIGAN

EMPLOYER

Case No. D09 J-1098 & D07 D-0526
Fact Finder: Donald R. Burkholder

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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This matter came up for the first of five days of hearing on July 29, 2010, before Donald R. Burkholder, appointed as fact-finder pursuant to Michigan Public Act 176 of 1939. The hearing was conducted between the City of Detroit (City) or employer and the Association of Municipal Engineers (AME) or union, a substantial portion of whose current 38 members are employed in the Detroit Water and Sewer Department (DWSD), with others serving in other departments across the City. There are two contract periods for which the parties have not reached agreement, 2005 – 2008, and 2008 – 2012. They are unusual in that they are concerned primarily with retrospective matters. Four mediation sessions totaling approximately ten hours, for both contract periods, proved unproductive. Subsequent hearing dates were August 12, August 13, August 27, and September 9, 2010, preceded by unsuccessful mediation.

DWSD is a large enterprise organization that operates around the clock, seven days a week. It services the City of Detroit and 86 suburban wholesale customers, or local governments, totaling approximately 4 million residents. The bulk of AME's complaints dealt with DWSD's financial viability as compared with the City's general financial distress, and the alleged resulting 'unfairness' to AME's members employed in DWSD.

Analysis

Permeating the five days of hearing was the fact of the City's dire financial circumstance. Detailed testimony and documentation regarding City finances during the June 2010 AFSCME fact-finding by William E. Long, as well as his analysis of City finances, was accepted at the outset by in order to reduce repetition of testimony and redundancy of documentation concerning the obvious: the City of Detroit is and for a number of years has been seriously troubled financially. In sum, Mr. Long concluded that "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." The question then becomes whether and if so, to what extent, members of the AME bargaining unit are exempt from that finding.

Budgetary stress was at least partially responsible for AME's downsizing from approximately 60-plus members to approximately 38. AME members, all professional,

senior associate engineers, serve across the city, with a concentration in the DWSD. They also work in Building and Safety, the Department of Public Works, and the Public Lighting Department. Two contracts are involved, the first for 2005-2008, the second for 2008-2011, making this fact-finding endeavor somewhat unique in the first of several ways. All AME bargaining unit members are professional engineers, and most are employed in DWSD, a profitable enterprise agency of City government. AME leadership seeks favorable treatment for its members employed in DWSD, a troublesome proposal to put it mildly. The City is no longer collecting AME dues. Union membership has declined from the 55 indicated on the Petition for Fact Finding. The AME representatives at the fact finding hearing presented the case with no guidance from a professional advocate or labor relations specialist, which slowed the proceedings considerably and was detrimental to the fact finder's desire for some degree of equity and balance in representation.

Background and Context

Barbara Wise-Johnson, the City's labor relations director, informed AME in late June 2006 that if it did not enter into a collective bargaining agreement (CBA) for the 2005-2008 period, the City would withdraw its alternative health care plan (AHCP) proposal as well as any other economic or non-economic incentive offers made contingent upon the parties reaching an expedited agreement. She also stated that the MERCER medical plan would be implemented and that the wage proposals of 0% for fiscal year 2005/2006; 10% reduction in work hours for fiscal year 2006-2007; and 0% for

fiscal 2007/2008 would be implemented. The MERCER plan would provide the most significant cost reduction to the City, with a higher deductible of 20% versus a 10% deductible for ACHIP; these changes were being proposed citywide. The incentive that would be removed from consideration would be the 4% wage increase at the end of the contract period for agreeing to sign a contract by July 1, 2006. Further, the Employer stressed that it was consistently applying pattern bargaining across the various general employee units. It was emphasized that groups that ended up in the higher-deductible MERCER plan for refusing to accept a 2005-2008 CBA would have the opportunity to negotiate for other health care benefits in the future. The four percent pay increase at the end of the contract had been proposed as an incentive for early signing, with no pay increases during the life of the contract.

On January 4, 2010, eighteen months after the expiration date for the 2005-2008 contract period, AME filed its petition for fact-finding. The petition stated that the City was not negotiating in good faith because it was using wrong budget figures, i.e., that DWSD's financial/budgetary position should have been utilized rather than the City's. Two days later, on January 6, 2010, the City labor relations director sent the AME a detailed letter stating that because the parties had been negotiating for years and were not able to come to a resolution for either of the contract periods, she considered the parties to be at impasse; the City was going to impose (1) the reduction in work hours, (2) MERCER health plan, and (3) the other pending proposals, including elimination of longevity pay and calculation of overtime on the basis of actual time worked. On the same date that the City imposed conditions as noted, i.e., on January 6, 2010, AME filed its second petition for fact-finding, for the 2008-2012 contract.

An understanding of the context in which this matter developed is crucial. An effective dispute resolution procedure, especially fact-finding, must attempt to

recognize underlying grievances or circumstances, not simply the all-important bottom-line financial/economic factors. Particularly where a substantial portion of the grievant/petitioners have major responsibility for a massive metropolitan water and sewer system which serves hundreds of thousands of residents, their grievances must not be treated lightly. The strong emotions of the AME leadership were based on the assertion that DWSD's financial strength and enterprise fund status had been illegally tapped to strengthen the City's balance sheet; funds had been co-mingled in defiance of a federal court order; allegations of corruption on a massive scale had been given credence by several criminal investigations, charges, and convictions; and the City was withholding requested data. Five federal grand jury indictments were issued subsequent to the close of the formal record of this fact-finding, i.e., receipt of the briefs. The indictments included Kwame Kilpatrick, the former mayor; Bobby Ferguson, a Kilpatrick friend and frequent recipient of City contracts; and Victor Mercado, the Kilpatrick-appointed former DWSD director. Both Kilpatrick and Ferguson were already in prison serving time for prior convictions. A proposal in the Michigan legislature at the time would authorize a three-county commission to control the Detroit Water and Sewer Department. This fact finder's admission of AME-submitted documents regarding these matters, readily available in the public domain, both prior to and after the close of the formal record, drew the strenuous objections of the City's advocate. Nevertheless, the intent is to examine the combination of factors that formed

the basis of AME's assertions that although DWSD, an enterprise organization, operates in the black, its engineer-employees were being scape-goated because of corruption on a massive scale, and related appointments to DWSD management positions for questionable reasons of individuals not qualified to supervise or direct the work of certified engineers. The 'Baby Creek'/recreation department/Combined Sewer Overflow (CSO) land purchase and the acquisition of a new radio system primarily for the use of the Detroit Police and Fire Departments, both allegedly using DWSD funds, were emphasized as examples of mis-use of DWSD funds. In the radio system case, a suit brought by the suburbs resulted in a federal court order to the City to reimburse DWSD \$24 m.

The AME in its brief and in testimony asserted fraud on the part of the City "...because it produced false documentation for a claim that it had to cut the pay and benefits of AME members because of money shortage in the general budget."

...Detroit Water and Sewerage Department established during the fact finding that DWSD has a separate budget that is funded by water rates. The salaries of employees are already built into the rate structure. The City general budget is funded by the City taxes (income tax, property tax, federal and state grants, etc.) There is no shortage of funds at DWSD.

The City of Detroit general budget is in the red for the last few years and it is going into a bigger debt. As per the City charter DWSD budget and City of Detroit general budget cannot be mixed. [cites letter from Federal Judge John Feikens to former Mayor Kilpatrick, dated April 19, 2005.]

AME repeatedly sought information from the Employer regarding the number and classifications of Employees not only in the AME unit but in the DWSD as a whole, emphasizing that the numbers had been cut significantly because the City is in the red,

rather than any problem with a shortfall in DWSD income. AME noted the regular annual rate increases to DWSD users in the range of 8 to 10 percent as further indication of the enterprise organization's healthy financial position.

A problematic and complicating factor was the assertion by the AME president, who served as the Union advocate, that members of the unit who work in DWSD should be treated more favorably than unit members who work in other city departments. That is, AME members employed as engineers in DWSD should receive pay increases, even if other unit members do not, and should be immune to concessions such as BRF days levied on AME members and other city employees. It is well understood in the practice of labor relations that implementation of such proposals would not only be a violation of law, but at least as importantly, the very antithesis of the concept of collective bargaining and its foundation, unit cohesion.

The City provided perspective on the working atmosphere during the period of rapidly changing administrations, investigations and early allegations and charges as follows:

Subsequent to the 2005-2008 collective bargaining period the City was literally in chaos. In less than a two-year period the City went through three changes in Administration. Changes in Administration were from Kwame Kilpatrick at the beginning of the 08/12 contract period. Then Ken Cockrel was the interim Mayor from October 2008 through April/May of 2009 and then Dave Bing become Mayor. On July 29, 2009, Labor Relations sent notice to AME that it had been instructed to complete negotiations for the 2008-2011 contract periods as soon as possible due to financial constraints. (A letter from the Labor Relations representative to AME stated) "The City is presently in a financial crisis. We can no longer continue business as usual while the budget spirals out of control."

The City and the AME met nine times between June 2009 and November 2009 with no resulting agreement. The City on February 23, 2010 sent notice to AME and four other unions that they all would be starting BRF days on March 15, 2010. All non-union City employees, including those in the DWSD, had already been taking BRF days for more than six months. As of February 1, 2010, there were twenty-two (22) unions that had the BRF days imposed on them, including AME. One union, Building Trades, had been to fact-finding and had been imposed upon after that report was issued. AFSCME, the largest union in the City, went to fact-finding, and the report was issued on June 25, 2010, with a recommendation for implementation not only of BRF days but the elimination of longevity pay. The remaining non-312 unions, ADE, SAAA, SCATA, and Senior Water Chemists were pending fact-finding in late 2010.

Woodrow McCarty, former DWSD assistant director of financial operations, testified concerning the inner workings of the finances of the water department. The budget process starts in August of each year; the financial operations staff is responsible for editing the budget perform other tweaks. As the budget is put together they also decide whether a rate increase will be necessary. Although Mr. McCarty could make recommendations for a rate increase, City Council could reject that suggestion, which would then require further budget cuts. Regarding BRF days, equivalent to a ten percent pay cut, McCarty testified that the fact that several unions including AFSCME and AME delayed in taking the BRF days caused DWSD to suffer additional

unanticipated expenses. Days Off Without Pay (DOWOP) estimates presented by the City indicate that BRFs would provide savings of \$15 million-plus for 26 days off. For those working in 24/7 operations, at times dealing with service emergencies such as many employees in DWSD, the savings range would range from \$1.5 million to \$2.6 million.

It has been emphasized that the City of Detroit is in dire straits financially. Thus the reality is that there are severe limitations on the ultimate recommendations of this fact-finding. Nevertheless, there may be some areas where progress toward the best interests of the AME and the Employer may be enhanced. The facts of the 2005-2008 contract are primarily retrospective; the 2008-2012 contract proposals remain prospective within the limitations of the Employer's clear budgetary stress. The 2005-2008 proposals were examined in order to understand the continuity between them and the 2008 - 2012 proposals. However, it would be an exercise in futility to repeat them here. The employer imposed many of the present working conditions when AME and the City failed to settle. Thus the proposals of both parties for 2008 - 2012 are presented below in encapsulated form, with the recommended language attached to this report, as "Master Agreement between the City of Detroit and the Association of Mechanical Engineers, 2008 - 2012."

2008-2012 – AME PROPOSALS AND CITY RESPONSE

Lay off/reduction in force

Union – In the event of layoff, engineers/architects with state professional licenses should be the last considered for layoffs in engineering/architecture series. Sub-classifications, e.g., design, water system, industrial waste, operations will not be considered for layoff-reduction in force purposes. Layoff/reduction in force will be on total city-wide seniority basis and only main classifications, e.g., civil, mechanical, chemical, industrial, architect, etc. will be considered. In the event of layoff/reduction in force, non-members of AME in engineering/architect series will be considered first before the union members.

City – The city does not merge titles citywide then lay off based on seniority, layoffs are done by department based on seniority. Further, it is unclear what is meant by laying off members of AME first. The City does not determine who is in a bargaining unit.

Compensation

Union – General wage increases of five percent effective July 1, 2005 through and including July 1, 2011. Basic scale for senior associate engineer/architect positions as of July 1, 2005 will be \$62,500 – \$89,000, to be adjusted according to general

wage increases and rounded off to the nearest hundredth dollar. Annual increment will be 10% until the maximum is reached.

City – Every other union in the City has had, or will have 0% increases for every year since 2005. AME has proposed that its members receive a 35% increase. Particularly for the 2008-2012 contract period, all employees, union and non-union, have taken, or will take, a 10% pay cut, i.e., 10% Days Off Without Pay (DOWOPS) in 2005-2008, and BRF days in 2008-2012. The City's proposed BRF days for the AME members would save the City and DWSD a combined \$711,519.

Seniority of Association Representatives

Union – Special seniority shall apply regardless of their place on the seniority list for all AME association representatives who are involved in the grievance procedure, i.e., the association president, vice-president, treasurer, secretary, directors and local representatives and permanent members of the grievance committee of record, the special seniority applying only as long as they hold their respective offices. Upon written notice from the AME president the City shall have 30 days to investigate and make any required displacement.

City – In rejecting this proposal, the City's position in 2005-2008 has not changed. The Union is expanding its request from 2005-2008. Groups that did not

have that provision will not have it going forward; it is being phased out. Where super seniority exists it is found in groups with hundreds of members. No other unions similar in size to AME have such a provision. Potentially half the members could have super seniority in a group with less than 40 members.

Reduction in Force, Layoff, Demotion, and Recall

Union: Union should receive at least 60 days advance notice of any reduction in force affecting members of the bargaining unit to allow the AME to meet with the City to discuss the circumstances and possible ways to avoid or minimize adverse effects on both parties.

City – Thirty days is the standard period for notice of layoff.

Flex Time

Union – Association employees shall be permitted to arrive at their assigned work stations any time between 1 ½ hour before and 1 ½ hour after their current starting time. The quitting time would be after completing 8 hours for the day. Provision for a department head to deny flex time on a specific day, with special modifications for a 24 hour operation. Provision for consultation over problems that may arise.

City – It is extremely difficult for the employer to plan its schedule of work when there is a three-hour window when an employee may show up for work.

Notification to Union re Vacancies, etc.

Union – The City will notify the Union in advance concerning job vacancies, promotion opportunities announcements, change in job specification, administrator classification, etc., as well as any decisions to fill vacancies in the engineering series (associate engineer and above), superintendent, manager, supervisor. A professional engineer licensed by the State of Michigan will supervise members of this unit.

City – Rejects because AME is requesting that it be notified for all engineering positions. AME is a singular titled bargaining group with only senior associate engineers. Some of the titles referenced in the AME proposal are non-union positions and subject to Civil Service rules. No union receives special notifications when positions are posted. Many of the job specifications and positions such as superintendent, manager, and supervisor are not necessarily engineering positions.

Reimbursement for Required P.E. License

Union - City will 1) reimburse for any other license like Operator urgency, etc. which are related to that field; 2) annual membership for up to three professional associations; 3) 100% of the State fee to renew the P.E. license. A copy of the renewed P. E. license will be required for 100% reimbursement.

City – Fifty percent reimbursement of licenses is standard across the City.

Union Business- Time for - Union officials will be allowed two days a week for union business. Any two days a week will be permitted unless their presence is required at their work location on a specific day at a specific time by management. The union officers will report these times directly to payroll on a weekly basis.

City - The taxpayer should not pay Employees for conducting two days each week when they can be doing actual work on behalf of the City. Although AFSCME and police admittedly have such arrangements, their unions have thousands of members, while AME has less than 40.

Hours of Work and Overtime

Union - 1) Members of the bargaining unit shall be scheduled to work a forty (40) hour work week, inclusive of the lunch period at all of the city's work locations. 2) Employee shall have the flexibility to take off up to two hours in a given day, the quitting time for the employee to extend accordingly. 3) Management shall have the right to establish reasonable procedures.

City - 1) A 40 - hour work week is in compliance with the Fair Labor Standards Act. 2) Employees having two hours of flex time leads to scheduling problems. 3) The Management Rights clause permits management to "establish reasonable procedures" so it is not necessary to include this language. 4) Given that the City is going to a 40 hour workweek for all its employees, AME is not being treated differently than other employees. 5) The flex time proposal is not reasonable, and does not give management a fair window of time to expect an employee to be at work. 6) There is no rationale for language giving management the right to establish reasonable procedures inasmuch as the CBA already contains a management rights clause.

Promotion

Union – Promotion from senior associate engineer to higher levels in the engineering series outside the bargaining unit, such as engineer, head engineer, manager, supervisor, etc. will be based on the number of years of service with the City as professional engineer with the State of Michigan, such promotions to be strictly from the members of the AME.

City – The City cannot limit its application pool for any position to only AME members, although AME members can apply for the referenced positions. The requirements for each position are set by the Human Resources Department, and cannot be set by one union's CBA. Manager and Supervisor positions do not require P.E. licenses.

Monetary Claims

Union – All monetary claims due to change in status out of class, adjustment due to contract settlement, award by court or arbitrator, overtime error by any department such as payroll, human resources, finance, etc. will be paid within 28-42 days. An interest rate of 1.0% is to be paid on late payments.

City – AME is requesting that the City place limits on itself for all of the different types of claims and/or lawsuits it might be subjected to. AME also requests that if there is a large award with multiple grievants, or if MERC gave an award that included many employees, a penalty might be justified depending upon the time of payment processing. This contract proposal would interfere with the various proceedings where awards are made, i.e., the grievance procedure, arbitration, MERC, and litigation. In case of a dispute, the proper authority to make a decision on interest would be the deciding officer, arbitrator, ALJ, or other judge.

2008-2012 City Proposals

Subcontracting - Article 3, Paragraph A. The right of contracting and subcontracting and assuring non-discrimination, lay off, or demotion due to such action is unchanged. B, assuring advance discussion with AME, is deleted. (A carryover from the 2005 – 2008 proposal).

Grievance Procedure – Article 6, Step 2. –The Division Head would be allowed to have a designated representative. The process or due process afforded the employee is unchanged.

Stipulations to the Grievance Procedure – Article 7, p. 13. There was testimony (Tr. p. 549) that the City proposed that the Labor Relations Director be allowed to settle grievances without going to the Department. Often there is a delay if labor relations has to go to the department or department head for every grievance; there would be no harm to AME.

Leave of Absence – Article 10. Changes commensurate with the Family Leave Act (FMLA), changes which have been proposed citywide and will not adversely effect any union members. A full Explanation of FMLA leaves will be included in the employee orientation process.

Seniority – Article 11. The City does not propose any changes, AME has requested super seniority, which the City is attempting to phase out.

Reduction in Force – Article 15. Citywide bumping rights would benefit AME members because it expands the scope of bumping rights for all employees.

Show up Time – Article 19. The words “the overtime” should be replaced with “compensation at the appropriate rate of pay.” An employee called in on an unscheduled work shift is not necessarily entitled to overtime pay.

Holidays and Excused Time Off – Article 24. Changed language reflects a two-tier system for new hires and each union in which the new employees will not receive all of the benefits that current employees receive, modeling changes that were made in the auto industry. Revised eligibility requirements for Holiday Pay or Excused Time Off, sick pay in relation to a holiday or substitute holiday, and holiday season closing dates.

(Added at the end of Section K, p. 42: “The City reserves the right to use mandatory budget required furlough days for any of the dates during the optional holiday season.” Added at the end of Article 24: “Note: The two-tier system for 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.]

Jury Duty – Article 23. Jury fee would be deducted from the employee’s payroll no longer requiring that the jury check be turned over to the Employer.

Longevity Pay – Article 25. Longevity pay is removed from the contract for those unions including AME that failed to agree to a contract by December 18, 2009.

Vacations – Article 26. Changes here are an explanation of how the benefits will apply in a two-tier system. Note Holidays and Excused Time Off, above.

Sick Leave – Article 27. An explanation of how benefits including sick leave are going to a two-tier system.

Hospitalization, Medical, Dental and Optical – Article 28. City proposals with are included at the end of this fact finding report. The employer recommended primary changes are in brief as follows: Elimination of health care for non-duty disability retirements; new hires will not be eligible for Alternative Health Care Plan (AHP) until after five years; spouses that work for the City must choose one plan; and City has

adopted coordination of benefits; elimination of the sponsored dependents option; coverage for new employees after three months of employment; revised employer contribution for the several plans; dental coverage to begin the first day of the month following the employee completing six months of service, and ending on the last day of the month that employment ends; optical coverage for employees hired or reinstated prior to the effective date of approval by City Council begins on the first day of the month following the employee completing 60 days of service, and ends the last day of the month that employment ends; optical coverage for employees hired/reinstated on or after the effective date of approval by City Council shall begin on the first day of the month following the employee completing six months of service, and ends the last day of the month that employment ends; an opt-out cash payment of \$950, payable quarterly at the end of each three-month period, for employees covered by a health care plan other than the City; City reserves right to implement Health Care Containment Programs which shall not diminish benefits but may require special procedures prescribed by the carrier; a spouse who is or becomes divorced from an employee or a retiree is not entitled to healthcare coverage; all bargaining unit members shall be entitled to participate in the pre-tax 125K mechanism when the City's payroll system has the capability; use of generic drugs will be mandatory, unless determined that a brand name drug is medically required or a generic equivalent is not available; medical coverage for retirees who are Medicare-eligible shall be limited to the Medicare Advantage Plans offered by the City; all active employees and their dependents who are eligible for Medicare, due to certain medical conditions defined by Medicare that permits the employer to be a secondary payer for insurance, must enroll in Medicare Parts A and B, which shall not result in any reduction in benefits or additional cost to the employee; any person who is Medicare-eligible shall furnish the City benefits administration office a copy of his/her Medicare card; provision for retiree health coverage at full cost for the coverage for employees who have taken the Actuarially

Reduced 25 Year Option; hospital/medical and prescription benefits will cease for retirees and their spouse's covered dependents after the retiree (or medical contract holder) becomes Medicare eligible by age; equitable arrangement for employees who retire after the effective date of this agreement; health habit, reproductive (fertility), and lifestyle prescription drugs will no longer be covered; requirement of proof that family continuation dependent(s) (19 - 25 year old dependent child) is enrolled in an accredited school as a full-time student carrying 12 credit hours each Fall and Winter Term; there shall be no duplicate hospitalization-medical insurance coverage or payments in lieu thereof provided employees or future retirees; all employees, retirees, and their dependents, must disclose the existence of any other source of healthcare benefits; if an employee/retiree's spouse has hospitalization-medical coverage available to him/her under a plan offered by their employer, other than the City, said spouse must enroll in that employer's plan in order for the spouse to be eligible for medical coverage through the City; parties agree to bargain and work collaboratively toward establishing saving measures for healthcare benefits as well as to resolve potential issues with the new FIR/Payroll and Benefit System; regarding post-retirement employment, City is not responsible for retiree healthcare if employee is eligible for healthcare through his/her post-retirement employer, that is substantially the same as the City's plan; regarding auto-related accidents the primary insurer is the automobile insurance plan, with the City medical plan as the secondary insurer.

(Note: The MERCER plan has been implemented, for those unions like AME, that refused to settle their contracts. AFSCME, the largest union in the City, usually sets the pattern for negotiations and contract proposals. AFSCME has been forced to accept changes to the healthcare plan.)

Funeral Leave – Article 29. City requests documentation when an employee returns from a funeral leave.

Retirement – Article 30. 1) If an employee applies for a duty disability and the City's independent medical exam (IME) is inconsistent with the employee's physician's IME, the employee is then sent for a third IME, with the City paying any costs associated with that visit. 2) All employees hired on or after the effective date of approval by City Council shall be enrolled in the General City Retirement System Defined Contribution Plan (DCP).

*Note: 1. The DCP enrollment will not take place until an actuarial study has been completed.
2. The two-tier system for new hires referenced in this article will be implemented when the City's Payroll System has the capability.*

Compensation – Article 34 – All City employees except Act 312 and 24/7 operations, including AME employees, will take a 10% pay cut, which will be accomplished by the employees taking 26 unpaid (BRF) days during the year, for three consecutive 12-month periods. Estimated cost savings citywide is \$15,380,781.

Effective July 1, 2008	0%
Effective July 1, 2009	0%
Effective July 1, 2010	0%
Effective July 1, 2011	0%

Tentative Agreements

The parties reached tentative agreement on the following sections of the contract, and those agreements are incorporated into my recommendation, as follows: Agreement; Purpose and Intent; 5, Association Representation; 9, Special Conferences; 17, Safety; 23, Jury Duty; 39, State Licensing Examinations; 40, Veterans-Reserve-Education; MOU regarding Employee Loan Program.

Memoranda of Understanding (MOU)

MOUs Recommended:

The City included in its proposed Master Agreement for 2008-2012 several MOUs which had been discussed but not initialed by the parties. They are 1) a modified proposal on Temporary Placement, placing restrictions on the frequency of temporary assignments, limiting the time period of 45 days, and forbidding work out of class, with several other stipulations; 2) Death of Immediate Family Member or Relative Out of Country; 3) Reimbursement for Required Professional License (provisions unchanged); 4) Hours of Work and Lunch Period; 5) an actuarial study regarding the feasibility of a Defined Contribution Plan; 6) creation of a Labor/Management Committee; 7) Hours of Work and Overtime –Lunch Period; 8) Precedence of ADA and MPWDCRA Obligations to Disabled Persons; and 9) Administrative Roster.

A Labor – Management Committee should be beneficial in improving the parties' strained relationships. The MOU regarding the employer's option to create an Administrative Roster for the AME membership is reluctantly recommended. Although there may be benefits for AME members to be on the Administrative Roster, it would alter working conditions in a significant fashion. Even so, in its present form, AME is a weakened and to some extent dysfunctional bargaining unit, with dues not being collected by the City and membership having declined precipitously from the 55 indicated on the MERC Petition for Fact Finding to the present 38. AME is exemplary of the problematic nature of collective bargaining for groups of professionals. The proposed MOU includes a provision that for employees placed on the Administrative Roster, the provisions of the Overtime and Show Up Time Articles will not apply. Other

questions remain to be answered regarding how the Fair Labor Standards Act would apply. An employer commitment "...to notify the Association and meet in special conference to discuss concerns and attempt to work out any problems associated with its operation" is a crucial component of the MOU. I urge the parties to discuss matters realistically if and when the City exercises its option to implement the roster. Ideally, the parties will arrive at an amicable conclusion, with mutual respect. The result hopefully would be productive, for all concerned, including, and especially, the rate-paying public. A functional relationship between AME's professional engineers and the City administration would be likely to spark improved morale, pride in professionalism and, ideally, service to the public not only in DWSD but also in the other departments employing current AME members.

MOUs Not Recommended

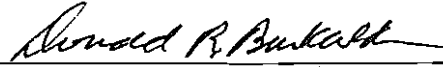
Two proffered but unsigned MOUs are specifically not recommended. The first, a Service Improvement Process (SIP) would not be suitable when applied to professional engineers, and would likely serve only to engender hard feelings. The second is, in effect, an apparent summary of the City's proposed Master Agreement, but includes serious take-aways which I consider unreasonable, unnecessary, and counter-productive.

Conclusion

Despite the fact that AME members employed in DWSD are working in an enterprise, profit-making organization, they are nevertheless City employees, with all of its advantages and disadvantages. Corruption in government is not unique to Detroit. Employee frustration over its perceived negative consequences for their bargaining possibilities does not justify special treatment. DWSD is a City organization, and was created by the City. Therefore I recommend that its AME members, similar to the

experience of other non-312 City workers, will need to "bite the bullet," i.e., take BRF days, experience reductions in benefits, as well as less generous working conditions, with 0% wage increases, as noted herein.

February 7, 2011



Donald R. Burkholder, Fact Finder