

**MICHIGAN DEPARTMENT OF LICENSING
AND REGULATORY AFFAIRS**

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

BENTON HARBOR, CITY OF

Respondent, Public Employer,

-and-

MICHIGAN AFSCME COUNCIL 25,
LOCAL 1433

Petitioner, Labor Organization,

MERC CASE NO.: 22-G-1532-CB

FACT FINDER'S REPORT

Pursuant to the Michigan Labor Mediation Act (PA 176 of 1939, as amended)
[MCL 423.1, *et seq*] and

Public Employment Relations Act (PA 336 of 1947, as amended)
[MCL 423.201, *et seq*]

Fact Finder
Kenneth W. Zatkoff

Advocates
: Steven Schwartz, attorney for Employer
Hillary Lauver, attorney for Union

PETITION FILED: September 20, 2022
FACT FINDER APPOINTED: October 19, 2022
SCHEDULING CONFERENCE HELD: November 2, 2022
HEARING DATE(S): March 1, 2023
POST HEARING BRIEFS RECEIVED: April 14, 2023
REPORT ISSUED: May 2, 2023

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STATE OF MICHIGAN
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WITNESS LIST

John Keenan – AFSCME International Corporate Governance Analyst
Patrick Patterson – President, Local Union
Steven Schwartz – Attorney, Employer

ALSO IN ATTENDANCE

Mark Williams – AFSCME Council 25 Staff Representative
Lisa Golliday – Human Resource Coordinator
Rhonda Hildebrand – Plante Moran

I. INTRODUCTION AND BACKGROUND

Michigan AFSCME Council 25 and its affiliated Local 1443 represents all general employees of the City of Benton Harbor excluding public safety officers, public safety command officers, temporary employees, seasonal employees, co-op student employees, confidential employees, including assistant to the City Manager, income tax specialists [assistant to the human resource coordinator] and assistant to the public safety director, and supervisors. Currently there are nineteen (19) members in the bargaining unit. Five (5) employees have seniority dates ranging from 1992 to 2003. The remaining fourteen (14) employees have seniority dates ranging from 2015 through 2022. The majority of those were hired between 2020 and 2022. **(See Union Exhibit 2, p.9)**. The bargaining unit is currently operating under a collective bargaining agreement covering the period October 19, 2020 through June 30, 2023. **(See Exhibit 1)**. Benton Harbor public safety officers and public safety supervisors are covered under collective bargaining agreements covering the same time period. **(See Exhibits 2 and 3)**. There are no other unionized groups within the City.

Pursuant to Article 14 of the collective bargaining agreement, the parties agreed to wage reopeners effective July 1, 2021 and July 1, 2022. Both public safety bargaining units agreed to similar wage reopeners. All three (3) bargaining units agreed to a five (5%) percent wage increase effective July 1, 2021. The public safety bargaining units agreed to a similar five (5%) percent wage increase effective July 1, 2022. The City met with AFSCME employees on or about July 12, 2022 and proposed a same five (5%) percent increase that had been agreed to with the public safety units. The Union rejected the City's offer and requested an across the board wage increase of six (\$6.00) dollars per hour. A request for mediation was filed on or about July 13, 2022. The

parties met for one mediation session on September 20, 2022 which resulted in no change in their respective proposals. Thereafter, the Union filed a petition for fact finding.

Kenneth W. Zatkoff was appointed as Fact Finder by the Michigan Employment Relations Commission pursuant to Public Act 176 of 1939, as amended [MCL 423.1, *et seq*] on October 19, 2022. A scheduling conference was conducted by phone on November 2, 2022 wherein all outstanding issues were identified and a hearing was scheduled for March 1, 2023. At the hearing, the Union submitted sixteen (16) exhibits and the Employer submitted twenty-one (21) exhibits. The combined exhibits of the parties exceeds eight hundred (800) pages of information. Comprehensive post-hearing briefs were submitted to the Fact Finder on April 14, 2023. The briefs, testimony and evidence have been given careful consideration.

II. STATUTORY CRITERIA

This fact finding was held pursuant to the Michigan Labor Mediation Act – PA 176 of 1939, as amended [MCL 423.1, *et seq*] and the Public Employment Relations Act (PA 336 of 1947, as amended [MCL 423.201, *et seq*].

The purpose of fact finding is to provide factual findings and conclusions and to submit recommendations to assist the parties in reaching a contract settlement. Neither of the above statutes provides guidance on the criteria or factors to be utilized by a fact finder in making such recommendations. However, many fact finders routinely find guidance in the statutory criteria set forth for Act 312 arbitrations.

III. STIPULATIONS AND PRELIMINARY RULINGS

- The parties stipulate to the jurisdiction of the Fact Finder.
- The parties stipulated that the only contract issue before the Fact Finder was a wage reopener for July 1, 2022 and that said issue was economic.

- The parties stipulated that the Employer would be raising ability to pay during the course of the fact finding hearing.
- The parties were unable to agree on comparables. Prehearing briefs on the issue were submitted to the Fact Finder on or about January 20, 2023. On January 31, 2023, the Fact Finder issued a preliminary ruling that he would consider (for purposes of this fact finding only) the following communities as comparable to the City of Benton Harbor: City of St. Joseph, City of Buchanan, City of Big Rapids, City of East Grand Rapids. In addition, all internal comparables for the City of Benton Harbor would be considered.

IV. COMPARABLES

There is no evidence in the record that the parties have ever relied upon external comparables prior to these proceedings.

The Union proposed the following communities as comparable to the City of Benton Harbor:

City of St. Joseph
City of Battle Creek
City of Big Rapids
City of Kalamazoo
City of East Grand Rapids
City of Buchanan

The City of Benton Harbor maintains that the only comparables that should be considered by the Fact Finder are internal comparables consisting of public safety officers and public safety command officers. The City argued that the comparables proposed by the Union do not have Benton Harbor's financial constraints or ability to pay issues. Most of the Union's proposed comparables are either too big, too far away or too affluent to be considered comparable to the City of Benton Harbor. Furthermore, none of the proposed external comparables have been under the control of an emergency financial manager or state oversight board.

Based upon the exhibits and arguments submitted by the parties, the Fact Finder concluded that for purposes of this fact finding only, the following communities would be considered as comparable to the City of Benton Harbor:

City of St. Joseph
City of Buchanan
City of Big Rapids
City of East Grand Rapids

In addition, internal comparables consisting of the Benton Harbor public safety officers and Benton Harbor public safety supervisors would be considered.

V. ISSUES BEFORE THE FACT FINDER

1. Ability to Pay.

During the hearing the parties explored the City's financial condition in depth. From 2010 through 2014 the City was under the control of two (2) different emergency financial managers. During this time frame, significant cuts were made in City personnel, wages and overall expenses. The emergency managers were followed by an additional two (2) years of state oversight. It is not surprising that thirteen (13) of the current nineteen (19) bargaining members were hired after these events.

The Union argues that the City's financial position is stable and in fact has improved year over year. Consequently, the City can easily afford a wage increase that will bring bargaining unit members in line with the wages received by similar employees in comparable communities.

Union witness John Keenan (AFSCME Corporate Governance Analyst) testified that he reviewed the City's annual financial reports for fiscal years 2019 through 2021 found it's financial condition to be very strong based on its unrestricted fund balance which far exceeds the recommended seventeen (17%) percent of expenditures. Based upon the 2022 year end report, Mr. Keenan maintains that the City projects a surplus for 2023 and is likely to out perform as it has in prior years. Mr. Keenan testified that the City could have as much as a sixty-seven (67%) percent unassigned fund balance in 2023. Based upon growing revenues, expenditures and

surpluses in two of the last three years, Mr. Keenan opined that the City is in very strong financial condition.

The City takes issue with the Union's conclusions. On cross-examination, Mr. Keenan acknowledged that his analysis of the City's overall financial condition focused primarily on the general fund. Mr. Keenan admitted that he did not take into consideration the City's thirty-eight (38%) percent funding level in the MERS Pension System or its required one to two million dollar annual contribution to the fund through at least 2040. Mr. Keenan acknowledged that he did not look at the City's long-term debt or its infrastructure needs. Furthermore, he did not take into consideration the drinking water crisis and the need to replace lead pipes and water lines throughout the City. Finally, Mr. Keenan admitted that he did not look at any of the City's cash flow issues or consider the City's shrinking population, or its housing issues and significant level of poverty. All of this compounded yet further by a 32% drop in income tax revenue in fiscal year 2021, and a meager increase of 5.7% in property tax revenue from fiscal years 2020 to 2022. The City maintains that these issues paint quite a different picture of the City's financial health than the one the Union seeks to advance.

No doubt the City has many issues which impact its overall financial health. Nevertheless, this Fact Finder believes that the City has the ability to pay a wage increase for contract year beginning July 1, 2022. Whether that increase is five (5%) percent as proposed by the City or six (\$6.00) dollars as proposed by the Union is discussed later in this report. The Fact Finder also notes that bargaining unit employees are not paid exclusively out of the general fund. **City Exhibit 21** reflects that all or a portion of wages for more than fifty (50%) percent of the bargaining unit comes from other funds. In particular, the utility and road funds. To the extent these funds have the financial health to meet the Union's six (\$6.00) dollar wage demand is unclear from the record.

2. Wages.

The only economic issue before this Fact Finder is the issue of wages for the contractual time period of July 1, 2022 through June 30, 2023. The City is offering a five (5%) percent wage increase consistent with what the public safety police officers and public safety supervisors received in their wage reopeners for the same time period. The Union proposes a six (\$6.00) dollar an hour increase for all bargaining unit members. In essence, a wage increase ranging from 32.1% to 42.6% depending on the employee's classification.

The Union submits that its proposal is both reasonable and financially feasible. Based upon the City's strong financial position, it can easily afford the additional \$188,801.54 increase required to bring bargaining unit employees in line with those wages paid at comparable communities. The City's five (5%) percent wage proposal will do little to improve the wage disparity at Benton Harbor. The Union also maintains that the Fact Finder should ignore the wages received by internal comparables as they are in a completely different occupational group. It suggests that is unfair and unjust to compare laborers and basic technicians to sworn public safety officers.

The City maintains that its offer of a five (5%) percent wage increase is extremely reasonable given the settlements reached with its two (2) public safety bargaining units. The City submits that its wage proposal would cost a financially feasible twenty-eight thousand (\$28,000.00) dollars per year. The Union's wage demand would be in excess of two hundred thousand (\$200,000.00) dollars. The City further points out that the wage increase in Big Rapids for 2022 was two (2%) percent. In Buchanan the wage increase was three (3%) percent on July 1, 2022. Wage increases in St. Joseph and East Grand Rapids were roughly five (5%) and three (3%) percent, respectively. Both of these communities have substantially larger property tax bases than Benton Harbor. Furthermore, none of the comparables have Benton Harbor's issues with

shrinking population and wide-spread poverty. Bottom line, the City of Benton Harbor is nothing like the comparable communities selected for these proceedings.

Admittedly, the selected comparables for this fact finding pay higher wages than Benton Harbor. Bargaining unit employees recently discovered this fact after discussing wages with employees from the City of Buchanan. This wage disparity does not warrant wage increases ranging between 32.1% and 42.6% in a single contract year. Such a proposal is neither reasonable or financially feasible. Regardless of whether or not the City could afford such an increase, there is absolutely no support for it. This Fact Finder believes that the focus should be on the percentage increases and not overall wage gap. Utilizing this method, the City's offer of five (5%) percent is more than appropriate based upon the percentage wage increases received by the internal and external comparables.

Accordingly, it is my recommendation that the employees receive a five (5%) percent wage increase retroactive to July 1, 2022. This recommendation is supported by the testimony, exhibits, internal and external comparables and relevant factors.

VI. SUMMARY OF RECOMMENDATIONS

1. Ability to Pay.

City has the ability to pay

2. Wages.

I recommend the Employer's proposal of a five (5%) percent increase. I further recommend that the increase be retroactive to July 1, 2022.

Dated: May 2, 2023


Kenneth W. Zatkoff
Fact Finder