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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Fact-Finding Case No. D00 B-1008

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Fact-Finding Report in the matter of the Fact-Finding between

The City of Dearborn

-and-

International Brotherhood of Teamsters, Local 214

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DATE OF FACT-FINDING PETITION:	August 10, 2001
DATE OF FACT-FINDER APPOINTMENT:	October 10, 2001
DATE OF PRE-HEARING CONFERENCE:	January 23, 2002
DATE OF HEARING:	March 11, 2002
DATE HEARING AND RECORD CLOSED:	March 11, 2002
FACT-FINDER:	Richard N. Block
APPEARANCES:	

For International Brotherhood of Teamsters, Local 214

Mr. James Markley, Secretary-Treasurer and Business Agent  
Mr. John Joyner, CS  
Mr. Mark Gentner, MIS  
Mr. Dennis Mooney, Highways  
Mr. Craig Champagne, Parks  
Mr. Kevin Vallely, Water

For City of Dearborn

Mr. John Entenman, Attorney, Dykema Gossett  
Dr. R.K. Archer, Mayor's Office  
Ms. Kim Craig, Assistant Corporation Counsel  
Mr. Jim O'Connor, Finance Department  
Mr. Greg Orner, Recreation Department Director

## FACTS AND BACKGROUND

The most recent agreement between the City of Dearborn (hereinafter the City) and Teamsters Local 214 (hereinafter the Union), representing employees in the operative bargaining unit, was effective on July 1, 1997 and expired on June 30, 2000 (Jt. Ex. 5).<sup>1</sup> Negotiations for a new collective agreement began in June, 2000. The parties held 14 meetings between June 21, 2000 and December 7, 2001. There was a 6-month interruption in negotiations while the chief union negotiator was ill, and this may have been a cause of delays and reaching impasse. On August 10, 2001, the Union filed a petition for fact-finding with the Michigan Employment Relations Commission (MERC). On October 10, 2001, Richard N. Block was appointed by MERC as fact-finder.

Following submission of the petition, the parties continued negotiating. On December 7, 2001, the parties reached a tentative agreement on some of the outstanding issues (Jt Ex. 1). At a pre-hearing conference on January 23, 2002, the parties agreed that the following issues would be submitted to fact-finding; prescription drug co-pay for active employees and retirees, and time limits on retention of absenteeism, attendance, and tardiness records. In addition, the parties agreed that the Union could submit up to three additional issues to fact-finding. This was confirmed in a January 24, 2002 letter from the Fact-Finder to the parties (Jt. Ex. 2). By letters dated January 28, 2002 and January 29, 2002, the Union submitted the following four additional issues: maintain status quo on rounding to the nearest nickel; maintain two days off for all seven-day operations; maintain pay for 2080 hours if the payroll period is changed; and the pension

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<sup>1</sup>The classifications in the bargaining unit are listed in Article XX of the most recent collective bargaining agreement (Jt. Ex. 5).

multiplier (Jt. Exs. 3-4). The City did not object to the Union submitting four issues rather than three issues. The parties agreed that all issues not submitted to fact-finding were considered resolved.

## **ISSUES IN DISPUTE AND FACT FINDER RECOMMENDATIONS<sup>2</sup>**

During the hearing, the parties addressed the issues from different points of view. The Union focused on external comparables, i.e., comparisons between its proposals and the provisions in collective agreements of other cities it considered similar. The Union proposed seven cities as comparables: Livonia; Royal Oak; Sterling Heights; Taylor; Troy; Warren; and Westland (Un. Exs 4,11).<sup>3</sup> The use of these cities as comparables is based on the Union's contention that their taxable values and population are all roughly comparable to the tax valuation and population of the City (Un. Ex. 4). In addition, it should be noted that all of the cities are in the Detroit metropolitan area and likely compete in the same labor market as the City.

The City's case was based on internal comparables, i.e. comparisons between its proposal to the operative bargaining unit and its agreements with three other bargaining units in the City; 19<sup>th</sup> District Court employees (City Ex. 1), Communications (Dispatch) Supervisors (City Ex. 2),

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<sup>2</sup>The issues will be addressed and numbered in the order in which they were presented at the hearing rather

<sup>3</sup>The City points out that Union's proposed list of comparables includes only six of the fourteen comparables that have been used in Act 312 proceedings involving the City and the police and firefighter units (represented by the Police Officers Association of Michigan and the International Association of Firefighters, respectively), and that the list of Union comparables includes one city - Warren - that is not on the list of Act 312 comparables. (The Act 312 comparables are Ann Arbor, Dearborn Heights, Farmington Hills, Livonia, Novi, Pontiac, Roseville, Royal Oak, St. Clair Shores, Southfield, Sterling Heights, Taylor, Troy, and Westland) The City also notes that Act 312 comparables were chosen by objective criteria: plus or minus 50% in population and within 25 miles of the City of Dearborn. The Union notes in response that the operative unit is not eligible for Act 312 arbitration and that it is not bound by the comparables from those proceedings in which it was not involved.

and Supervisory, Technical, Professional (STP, City Ex. 3), which includes the supervisors of the operative unit.<sup>4</sup> All of these agreements expired on June 30, 2000, the same date as the operative agreement.

### ISSUE 1: ROUNDING TO NEAREST NICKEL

#### Proposal of Union

The Union proposes to maintain the language in the 1997-2000 collective agreement

#### Proposal of City

Although the record does not establish the exact language of the City's proposal, the City is requesting the right to round the employees' hourly wages up to the nearest five cents in the first and third year of the collective agreement and down to the nearest five cents in the second and fourth year of the collective agreement.

#### Position of the Union

The Union opposes rounding, proposing that the parties maintain the status quo under which the employee receives exactly the negotiated wage without rounding. The Union notes that no other city in the group of cities it proposes be used as comparables uses a system of rounding (Un. Exs. 4-5).

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<sup>4</sup>The City also negotiates with five other bargaining units: Police Supervisory, Police Nonsupervisory, Fire, Communications Nonsupervisory, and the Municipal Workers of Dearborn (MWD), a unit composed largely of clerical employees. The record establishes that the City has reached a tentative agreement with the MWD, a unit for which the previous agreement also expired on June 30, 2000, and the City urges that this tentative agreement should also be considered as a comparable for the purposes of this proceeding. I disagree. No agreement exists until the tentative agreement is ratified; therefore the MWD agreement cannot be considered an agreement for the purposes of these fact-finding proceedings.

### Position of the City

The City contends that this proposal is part of an attempt to create a universal pay scale for all city employees. This is a well-known concept from the federal government. This permits employees to be placed in broad bands of "widths" of five cents, which is far more manageable than bands of "widths" of one cent. The City notes that the "one year up, one year down" system is an attempt to maintain everybody at uniform pay rates; otherwise some people with a difference in their actual hourly wage as small as one cent would experience a difference in their paid hourly wage of as much as five cents. The City observes that all three agreements that have been ratified have agreed to permit the City to exercise the "nickel option:" the court employees (City Ex. 1, p. 36), the communications supervisors (City Ex. 2, 18), and the STP unit (City Ex. 3, p. 27). The City notes that it has not yet exercised the "nickel option" and will not exercise it until all units have agreed to it. Thus, currently, everybody is at the nearest cent.

### Fact-Finder Rationale and Recommendation

Although the Union is correct that none of its comparables have a "nickel option" as proposed by the City, three of the units that have settled - the court employees, the communications supervisors, and the STP unit - have agreed to this provision. In this sense, the record regarding the comparables is approximately "equal," the Union's comparables do not have the "nickel option," while the City's comparables do have the "nickel option." In this matter of pay administration greater weight should be given to internal comparables than to external comparables. It is important that all employees who work closely with each other be on similar pay administration systems. More specifically, favoring the City's proposal is the fact that one of the units that has agreed to this, the STP unit, includes the supervisors of the operative unit. It is

reasonable to have employees and their supervisors on the same pay system. Moreover, I find that the City's reason for making this proposal is rational - administrative efficiency in processing payroll I also find that operative unit employees will not be disadvantaged over the life of the agreement. Accordingly, the Fact-Finder recommends that parties agree to the City's proposal for Issue 1, "Rounding to the Nearest Nickel."

## ISSUE 2: TWO CONSECUTIVE DAYS OFF ON SEVEN-DAY OPERATIONS

### Proposal of Union

The Union proposes that the current language be retained. As the City's proposal is aimed at the a specific site, the Union proposes that the parties examine the situation and periodically meet and discuss problems over a six month period so that the problems to not become grievances.

### Proposal of City

"Section 18.1, Add: In a seven-day operation, a recreation department employee's normal work week shall consist of five (5) consecutive work day, with two (2) consecutive days off. The normal work week may not necessarily by Monday through Friday. In order to satisfy seasonal needs and otherwise deliver services, a recreation department employee may, on occasion, not receive two (2) consecutive days off in a work week. The right of the City to so schedule an employee shall not be abused

It is understood and agreed that the City retains appropriate managerial flexibility with respect to scheduling of recreation department employees so as to make the best and most efficient use of split shifts, weekend work, and job rotation. Further, recreation department employees may be limited as to use of vacation and personal time off in order to satisfy seasonal and other demands of their classification."

### Position of the Union

Although the previous collective agreement required that all employees on seven-day operations have two consecutive days off, the City is proposing that the new collective agreement include an exception to the two-consecutive days-off requirement for recreation department employees. The Union also notes that the City is proposing additional flexibility for the recreation department on split shifts, weekend work, and job rotation. Although the Union acknowledges that the purpose of this City proposal is to address staffing at new recreation facilities, primarily the Ford Community Performing Arts Center (Ford Center)<sup>5</sup>, it proposes that the parties take six months to "shake things out," to determine what the staffing requirements will be, and to determine the employees' interests with respect to those requirements. The Union believes a mutual understanding can be reached. The Union notes that five of its seven proposed comparables require two consecutive days off for at least some employees in seven-day per week operations (Un. Ex. 4, 6). The Union is also concerned that the City could manipulate employees schedules to deprive them of overtime.

### Position of the City

The City argues that it needs the flexibility to schedule recreation department employees in the bargaining unit for two non-consecutive days off primarily because of the three bargaining unit employees at the recently opened Ford Center. The City points out that the Ford Center is the largest municipal facility of its kind in the country, and it is uncertain as to how the Center will be used and how it will need to schedule work; thus it believes it will need maximum flexibility in

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<sup>5</sup>The Ford Center for the Community and Performing Arts is a 198,000 square foot community center with a 1200 seat theater, two gymnasiums, two swimming pools, exercise equipment, and various outdoor sports facilities (e.g., soccer fields, baseball fields). It cost \$43 million and opened in 2001.

staffing. The City points out that the STP unit has agreed to permit employees to be scheduled for two non-consecutive days off.

#### Fact-Finder Rationale and Recommendation

The City's argument for this proposal is maximum flexibility in staffing a large, new operation, the Ford Center. Thus, its proposal makes an exception to the two consecutive days off rule only for the bargaining unit employees in the recreation department, three of whom are assigned to the Ford Center. One of the two relevant internal comparables, the STP unit has agreed to this provision; the other internal comparable, the MWD, has not.<sup>6</sup> The Union notes that its comparables require two consecutive days off for some employees. Under the City's proposal, that will also be case for this unit; all employees except those in the recreation department would be under the old language with two consecutive days off. The Union advocates "seeing how things shake out," but, in essence, this is what would happen. The new agreement would expire on June 30, 2004. This would give the parties approximately two years of experience with staffing the Ford Center, permitting them to bargain the next contract with more information than they currently possess. The Union's concerns on manipulation of employee schedules to avoid paying overtime are speculative; it has brought forward no complaints about such manipulation. To the contrary, the record establishes that the bargaining unit recreation department employees assigned to Camp Dearborn have had overtime opportunities (City. Ex. 9). Although Camp Dearborn is a seasonal operation, and overtime would be expected there, this suggests that when overtime is needed from recreation department employees by the employer, it

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<sup>6</sup>The other two units that have otherwise been used as comparable for this unit, the court employees and the communications supervisors, have no members assigned to the Recreation Department.



is provided. Accordingly, the Fact-Finder recommends that parties agree to the City's proposal for Issue 2: "Two Consecutive Days Off on Seven Day Operations."

### ISSUE 3: CHANGE IN PAYROLL PERIOD

#### Proposal of the Union

The Union has proposed retaining the status quo under the 1997-2000 agreement

#### Proposal of the City

"The payroll period shall be Sunday through Saturday at the City's discretion. Should the payroll period convert to Sunday through Saturday, an employee with earned time off (e.g., vacation, personal, sick) can cash in a day so as to get a 10 workday check" (Jt. Ex.1).

#### Position of the Union

The Union opposes the City's attempt to change the payroll period from Tuesday to Monday to Sunday through Saturday. The Union contends the change will cost the employees eight hours and they will not be paid for a full year of work (2080 hours) in the year in which the City makes the transition. The Union has offered options for City that would permit it to change the payroll period without the loss of a day of pay, such as a rolling change or a one-time payment of eight hours. The Union does not oppose the change in the payroll week; it merely oppose a loss in pay. The Union notes that none of its seven proposed comparables have a provision for changing the payroll period (Un. Ex. 7).

### Position of the City

The City argues that its rationale for this proposal is improvement of service for all city employees. The payroll period runs 14 days, from a Tuesday to a Monday, with employees paid the following Thursday, for all hours worked in the previous two-week period. This provides the City only two workdays to process payroll. The City is proposing that it have the right to change to a Sunday through Saturday payroll period. This will provide the City with increased time to process payroll, especially during weeks when there is a holiday. It also facilitates the use of direct deposit, because it takes extra workdays to assure that the information is processed through the automatic clearinghouse into employee accounts. The City notes it would not implement this change until all units agree, as it must implement this for all city employees.

The City denies that any employee will lose a day of pay. It does admit however, that the employee's check from the transition week will have one day less of pay (for employees on Monday-Friday schedules, the check will include only nine days). Moreover, the City notes that its proposals protects employees who need a full 10-day paycheck by permitting employees so situated to cash in a paid day off. The City notes that the court employees, communications supervisors, and STP units have agreed to this proposal.

### Fact-Finder Rationale and Recommendation

As the Union does not in principle oppose the change in the payroll week, the only Union concern is whether the employees will lose a day of pay. It is clear they will not; their paycheck will simply be short one day during the transition week. They will be paid for all days they work. Moreover, because this change will not likely be implemented for some time, until all units agree to it, bargaining unit employees can prepare for the eventuality of one short paycheck. The

City's rationale for proposing this seems reasonable, and the other City units, the City's internal comparables, have agreed to it (City Ex. 1, p. 17; City Ex. 2, 20; City Ex. 3, p. 28). The Union has presented no information that such a provision would make it far worse off relative to its external comparables. Accordingly, the Fact-Finder recommends that parties agree to the City's proposal for Issue 3, "Change in Payroll Period."

#### ISSUE 4: PRESCRIPTION CO-PAY

##### Proposal of Union

Retain language in on Drug Rider in Sections 27.2.A, 27.2.B, 28.1.A and 28.1.B in 1997-2000 agreement.

##### Proposal of City

"Section 27.2(A) and (B). Effective 7/1/02, increase drug rider co-payment to \$10 (generic)/\$20 (brand).

"Section 28.1(A) and (B). Effective 7/1/02, increase drug rider co-payment to \$10 (generic)/\$20 (brand).

##### Position of the Union

The Union argues that City's proposal to raise the prescription co-pay from \$5 to \$10 on generic prescriptions and to \$20 on brand-name prescriptions would result in bargaining unit employees incurring higher co-payments than their counterparts in the comparable cities. The Union notes that all seven of its comparables have \$5 co-payments (Un Ex. 8). The Union argues that if the Company needs relief, it should consider a gradual increase in co-payments. The Union

also argues that, consistent with practice that provides for comparable health insurance for retirees and employees, the \$5 co-payment should also apply to retirees.

#### Position of City

The City states that the purpose of this proposal is provide it with some health care cost relief. The City notes that health care costs have increased at a greater annual rate since 2000 than in the previous 18 years (City Ex. 5), and that its insurance carrier has said that this is largely due to increasing costs for prescription drugs. Moreover, the carrier has informed the City that the its plan is rich, relative to other plans, and its levels of co-payments are low. The City also notes that the trend line of its personnel costs is increasing faster than the trend line of its tax revenue, and that health care costs are a substantial component of personnel costs. The City also notes that the three other units with which it has reached agreements have agreed to this change

#### Fact-Finder Rationale and Recommendation

The City has shown that the annual increase in health care costs over the last two years is greater than it has been over the past eighteen years, supporting its position that some relief is appropriate. As with the "nickel option," this is an issue for which the comparables offset, but to which greater weight should be given to the internal comparables proposed by the City. It is reasonable to have all City employees on the same health care plan; employees who work with each other should have similar levels of health insurance in order to preserve equity among the City's employees. Accordingly, the Fact-Finder recommends that parties agree to the City's proposal for Issue 4, "Prescription Co-Pay."

## ISSUE 5: DISCIPLINARY RECORDS

### Proposal of the Union

The Union proposes a two-year time limit on the retention of all records regarding employee discipline

### Proposal of the City

"An employee's disciplinary record will be maintained in his/her personnel file, and may be used as the basis for future discipline as follows:

Attendance/tardiness/absence record: no time limit

All other discipline will not be considered if more than two (2) years old."

### Position of the Union

The Union opposes the City's proposal to maintain employee disciplinary records regarding absenteeism and tardiness for an unlimited time. The City's proposal would make absenteeism and tardiness a separate category from all other discipline, which has a two-year time limit. The Union notes that six of its comparables have limits on the maintenance of disciplinary records, with the limits ranging from 18 months to four years (Un. Ex. 9). The Union believes that the two-year time limit for all discipline except absenteeism and tardiness is acceptable, and that there is nothing that sets absenteeism and tardiness apart from other discipline. Substantively, the Union is concerned that attendance problems that occurred many years ago could be used against an employee.

### Position of the City

The City points out that until these negotiations, none of the agreements had any time limits at all. The City notes that it is willing to agree to a two-year time limit for all records

except attendance. For attendance, it needs records over time to examine patterns. Moreover, some people improve and then regress, and the City needs records to demonstrate that this has occurred. The City has notes that two of its internal comparables, the STP and Communications Supervisor agreements, have no time limit (City Exs. 2-3), while the court employees unit has a three-year time limit (City Ex. 1, p. 8). Finally, the City argues that if it attempts to use records that are unreasonably old and the case goes to arbitration, an arbitrator is not likely to give these old records great weight.

#### Fact-Finder Recommendation

The Union is essentially basing its position on due process and fairness, while the City claims it needs to have time to examine patterns of absenteeism. Both of these positions have merit. The bargaining unit members are entitled to have old attendance records cleared from their files, especially when they have succeeded in resolving attendance problems. The City's proposal, which would permit maintaining records for an unlimited time, puts employees who have improved at risk; they never know if the records will be used against them or how much weight those records will be given by an arbitrator, should a case go that far. I understand the City's concern regarding determining patterns. After a period of time, however, records become so old, and employee behavior so far in the past, that the patterns become irrelevant. I also note that six of the cities that the Union has proposed as comparable have time limits on the retention of records, suggesting that City's position is inconsistent with the practices of other jurisdictions.

In view of this, the recommendation will be for a provision that will permit the City sufficient time to discover patterns, while still protecting employee due process. Accordingly, the Fact-Finder recommends that the parties adopt neither the Union's proposal nor the City's

proposal. Rather, regarding Issue 5, "Disciplinary Records, "the Fact-Finder recommends that the parties adopt a three-year time limit for the maintenance of time and attendance records while maintaining the two-year limit on the retention of records for other discipline.

#### ISSUE 6: PENSION MULTIPLIER FOR CURRENT EMPLOYEES<sup>7</sup>

##### Proposal of the Union

The Union proposes that the pension cap in the current collective agreement be raised to 75%. Employees would receive 2.5% of Final Average Earnings (FAE) multiplied by the years of service, up to a 30-year maximum

##### Proposal of the City

The City is proposing that the pension cap in the current collective agreement be raised to 70%. Employees would receive 2.5% of FAE multiplied by the years of service, up to a 26-year maximum, and 1.25% of FAE multiplied by the years of service for years 27-30.

##### Position of the Union

The Union notes that current pension multiplier is 2.5% with a 65% cap, and the Union proposes that the cap be raised to 75%. The Union points out the City's cap is lower than four of its comparables (Livonia, Royal Oak, Sterling Heights, Westland), but concedes that four of the comparables (Royal Oak, Sterling Heights, Taylor, and Troy) require employee contributions (Union Ex. 10). The Union also notes that Westland has a two-tier system, with a lower multiplier for employees hired after the agreement than for employees who were employed when the agreement was signed (Un. Ex. 10).

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<sup>7</sup>The parties have agreed on a 401(k) plan for new employees and this plan is not in dispute.

### Position of the City

The City believes that its proposal for an increase in payouts for long-service retirees is fair and financially affordable. It is concerned about a higher payout because it expects that it experienced losses in the pension account over the last two years.

### Fact-Finder Rationale and Recommendation

There is less information regarding comparability on this issue than on other issues, but the information that was presented favors the City's proposal. The STP unit has agreed to the City's proposal, and the members of that unit supervise the operative unit. There is a basis for these two units to have similar pensions. The Union's information regarding comparability is ambiguous. While some of its proposed comparables have a higher cap, others require employee contributions. The City has required no employee contributions from this unit, and its proposal requires no contributions. It is unclear whether employees are better off with higher benefits and an employee contribution, or lower benefits and no contribution. When this information that favors the City's proposal is combined with the fact that the City's proposal increases payouts for long service (over 27 years) employees, the case for the City's proposal is stronger still. Accordingly, the Fact-Finder recommends that parties agree to the City's proposal for Issue 6, "Pension Multiplier."



## SUMMARY OF FACT-FINDER RECOMMENDATIONS

<u>Issue</u>	<u>Fact-Finder Recommendation</u>
1. Rounding to Nearest Nickel	City's Proposal
2. Two Consecutive Days Off on Seven Day Operations	City's Proposal
3. Change in Payroll Period	City's Proposal
4. Prescription Co-Pay	City's Proposal
5. Disciplinary Records	Three-year time limit on retention of record on attendance/tardiness/absenteeism; two-year time limit on retention of record for other discipline.
6. Pension Multiplier for Current Employees	City's Proposal

April 19, 2002  
Date

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