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STATE OF MICHIGAN
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EMPLOYMENT RELATIONS COMMISSION
FACTFINDING

IN THE MATTER OF THE FACTFINDING BETWEEN:

CITY OF EAST DETROIT

-and-

MICHIGAN AFSCME COUNCIL 25, AFL-CIO

Factfinding
Case No. D 85 G-1847

Court Reporter, City of

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FACTFINDING RECOMMENDATIONS

APPEARANCES

For the Union

Ralph A. Liberato

For the City

Dennis B. DuBay, Esq.

Pursuant to a request for factfinding by the Union, a hearing was held before Fact Finder Martin L. Kotch at the offices of the City of East Detroit on April 21, 1986.

BACKGROUND

The parties in this matter have reached an impasse, and have been unable to resolve contractual disputes despite the intervention of a State Mediator. The current impasse follows a previous one, which resulted in the implementation of an "impasse contract" by the City in 1983. In June of 1984, mid-term of the contract implemented by the City, the parties negotiated a revised agreement. This agreement added an additional year to the contract, and provided for certain wage and benefit increases.

The supplemental agreement between the parties, entitled "CONTRACT AMENDMENT," reads in pertinent part:

2.) Hospitalization - It is understood that the City will continue to seek improved hospitalization coverage at the same or lesser cost.

3.) Article 18 Section A - The salary schedule shall be open to negotiations for the contract year beginning July 1, 1985.

4.) Wages - It is understood that the City will pay the entire employee's pension contribution of 6.25%.

8.) It is understood that Local 1917 will participate on a "Me Too" basis relative to wages, only, on any other contract that the City of East Detroit negotiates for the contract year 1984-85 and 1985-86. It is understood that this "Me Too" clause will not be operable on any wages that are mediated and/or arbitrated.

The discussions had by the parties leading up to the Contract Amendment were memorialized in a letter from Paul A.

Flynn, then City Manager, to Ralph Liberato, representing AFSCME Local 1917, dated June 26, 1984. That letter sums up the provisions to be included in the Amendment, and reads in pertinent part:

This will confirm our discussion of Thursday, June 21st, concerning the tentative agreement between AFSCME Local 1917 and the City of East Detroit:

c) Hospitalization - It is understood that the City will continue to seek improved hospitalization coverage at the same or lesser cost.

d) Wages - It is understood that the City will pay the entire employee's pension contribution of 6.25%. **** It is also understood that wages, alone, will be reopened for the 1985-86 contract year.

f) It is understood that the Union will file with MERC a position review for Messrs. Rusin and Holland; and the City will review the Ms's. Senske and Petrone matter for review with the committee.

h) It is understood that Local 1917 will participate on a "Me Too" basis relative to wages, only, on any other contract that the City of East Detroit negotiates for contract year 1984-85 and 1985-86. It is understood that this "Me Too" clause will not be operable on any wages that are mediated and/or arbitrated.

Upon the institution of discussions pursuant to the reopener provided for in the Contract Amendment, the Union put forward four proposals:

1. An 8% wage increase across the board.

2. Restoration of previous hospitalization coverage under Blue Cross and Blue Shield.

3. Correction of the wage inequity of Ms. Bernice Senske.

4. Bring all supervisory employees under the jurisdiction of AFSCME 1917.

At the negotiations, the City took the position that the only proposal properly on the table was that relating to wages, no other being permissible under the terms of the reopener as provided for in the Contract Amendment. The Union did not press the 4th proposal, and agreed to withdraw it and submit it through other proceedings to MERC.

The City countered the Union's wage proposal with an offer of 4% on July 1, 1985, and 2% on January 1, 1986. The City has maintained this posture throughout the reopener negotiations, through the mediation process and before the Fact Finder. The Union made several alternative proposals in the negotiation and mediation stages: 6% and 2%; 5% and 3%; and finally, 4% and 2% (the City's numbers) provided the City would alter the salary schedule for Ms. Senske. No agreement was reached, and a request for factfinding was made.

POSITIONS OF THE PARTIES

The Union argues that all three remaining issues are properly before the Fact Finder. Each of these items relates to money, either in the form of direct wages, adjustment of salary schedule, or in the form of increased benefits. There is no reason why such alternative means of compensation should not be included in a wage reopener.

The evidence brought before the Fact Finder (exhibits 9 through 23) had never been presented during negotiations or mediation. The comparable communities cited by the City refer to some without collective bargaining, and do not contain total information concerning salaries and direct and indirect payments. Such information is present concerning the City's payroll. Its absence from the data on other communities detracts from the relevance of that information, and weakens the City's claim of a fair wage proposal offered to the Union.

The Union has asked that Ms. Bernice Senske's salary schedule be adjusted. She is acting in the capacity of Court Administrator. The City's argument that the City Clerk is also the Court Administrator is incorrect, since court employees work for the judges, not the City.

The City contends that nothing but the Union's wage demand was properly a subject for negotiations under the contract reopener, and consequently only this is properly before the Fact Finder. Both the Contract Amendment and the June 26, 1984 letter from City Manager Flynn to the Union make it clear that the only subject matter for negotiations under the contract reopener was wages.

The City argues that the issue of health insurance is not properly before the Fact Finder. It is not wages. In fact, the City has discharged its obligation to seek better coverage. Any allegation of failure to do so could properly have been the

subject of grievance arbitration. It is not properly a subject for factfinding.

With respect to Ms. Senske, the City contends that this question too falls outside the purview of the contract reopener, limited only to wages. The meetings concerning Ms. Senske, mentioned in the June 26, 1984 letter, were in fact held. At these meetings, the Union attempted to have Mr. Senske's position reclassified to that of Court Administrator. The City refused to do so. Now, the Union has come forward and relabeled its position as one dealing with pay adjustment, when in fact it remains an attempt to reclassify a position, a matter not covered by the contract reopener.

As to the merits of the claim on behalf of Ms. Senske, the City argues that she reports to city officials, and generally directs the clerical work of the court. Analogies to the District Court system elsewhere are misplaced. The Municipal Court system of the City is unlike that of District Courts found elsewhere in the state It is essentially a part-time court, with a part-time judiciary. City control of personnel is much clearer in this system.

The City contends, additionally, that Ms. Senske's case was dealt with in the 1982-83 contract. There, Ms. Senske's position on the salary schedule and her classification were specifically addressed. The parties agreed to an across-the-board salary adjustment plus a specific dollar

adjustment for Ms. Senske until her salary equals that of other supervisors. That provision is still in force. Finally, the City argues that the Union brought forth no evidence that Ms. Senske's classification or salary was out of line with other unit employees, or that the agreed-upon salary adjustment was in some manner unfair. Moreover, a change in her salary would disrupt the schedule for other unit employees, with no justification shown for this.

As to the wage demand, the City first contends that the presence of the "Me Too" clause limits wages in the reopener year to its offered 4% plus 2%, since that is the agreement arrived at with Teamsters Local 214, representing the general employees of the City. The City contends that this should be dispositive of the wage issue.

Beyond this, the City contends that its offer is fair, reasonable and compelling. The City's direct and indirect payments to unit employees already provide them a high compensation level. Additionally, salary history over the past five years indicates that the 4% plus 2% offer is in line with recent salary history, and of course, is in keeping with contracts made with other units.

The payment of the pension contribution of 6.25%, as provided in the 1984 agreement, relieved the employees of a significant after-tax payment, and thus had the effect of raising their salaries. In light of this, the 4% plus 2% is

more than generous. The Consumers' Price Index has risen at a very slow pace. Projections indicate that this slow rate of advance will continue. In this regard also, the City's offer is generous.

The City contends that its proposal, when viewed in the light of 1985-86 salary schedules for supervisory personnel in comparable communities, is quite high. The Union's argument that Department Heads received some additional pay adjustments in 1984-85 is irrelevant. These Department Heads are not comparable personnel. Their compensation package is substantially different, based on different criteria, and in no way can it form a basis for argument that supervisory personnel have been unfairly treated.

ISSUES

The first matter which must be addressed is that of determining which matters raised in the factfinding are properly before the Fact Finder. In the June 26, 1984 letter referring to discussions which had led to a tentative agreement, and were to culminate in the Contract Amendment, the following language appears: "It is also understood that wages, alone, will be reopened for the 1985-86 contract year." The actual language of the 1984 Contract Amendment provides for a reopener in these words: "Article 18 Section A - The salary schedule shall be open to negotiations for the contract year beginning July 1,

1985."

There is little doubt as to what then City Manager Flynn had reference to in his letter when he spoke of "wages, alone," as the only subject for reopened negotiations in the following year. There is no doubt whatsoever as to the meaning of the Contract Amendment itself. It makes reference to a specific portion of the main Contract, by Article and Section. Article 18 is titled Salaries, and Section A, likewise so styled, contains a schedule of salaries for each unit position. The dollar figures for these positions, and, arguably, the additional stipend for Administrative Aide/Court Clerk (Ms. Senske,) constitute the exclusive permissible subject matter for the reopener, and likewise, therefore, the only matter properly before the Fact Finder. It is the conclusion and recommendation of the Fact Finder that this be the only issue deemed within his authority.

Despite having so concluded and recommended, the Fact Finder would make the following observations on the merits of the issue of hospitalization. The Union brought forward no evidence that the City had not pursued its obligation to seek other coverage. This was its only obligation, and testimony from the Assistant City Manager indicated that the City had discharged and continues to discharge that obligation in good faith. In the absence of further indications to the contrary, even were the subject matter deemed appropriate, this Fact

Finder would conclude that the City had met its obligation under the Contract.

The issue concerning Ms. Senske is overlaid with confusion concerning the employment status of those who perform services in the court system. Additionally, the City contends that what the Union seeks is a job reclassification, not a salary readjustment, and thus is not properly before the Fact Finder under the terms of the contract reopener. There is merit to the City's position, particularly given past positions of the Union, but there is likewise the danger of excessive formalism. Presumably, although this was never made entirely clear, the Union would, on Ms. Senske's behalf, forgo the honor of the title for the salary it believes she deserves. This would, of course, put the issue squarely into Article 18 Section A, undoubtedly the subject of the contract reopener.

The Fact Finder believes that this Gordian Knot can be severed without unraveling and passing upon the vagaries of judicial vs. municipal authority. The parties clearly have been aware of the situation concerning Ms. Senske. The City has refused, in meetings with the Union, to reclassify her as "Court Administrator." In the last contract, a stipend was added to the salary schedule by the parties in order to bring her to the pay level of supervisor.

What is missing from all this, in terms of the factfinding process, is anything evidentiary to suggest what Ms.

Senske's duties are, and in what manner they so differ from others on the salary schedule, that a title change, and/or a substantial, but unspecified increase in salary ought to be recommended for her. "Court Administrator" is something of a term of art, and the duties attendant upon such a position are, to a reasonable degree, known and standardized. Nothing has been brought forward indicating that Ms. Senske discharges such responsibilities. And again, nothing has been brought forward which suggests that the discharge of such duties as she now in fact performs are qualitatively different from, and more complex than duties discharged by others on the present schedule. Absent such a substantive showing, it is the recommendation of the Fact Finder the no change in title or salary be made with respect to Ms. Senske.

Since the Union has withdrawn its proposal to bring all supervisory personnel under its jurisdiction, the sole issue remaining for consideration relates to wages.

The City has taken the position that the "Me Too" clause in the contract disposes of the salary issue, since it has previously signed a contract with Teamsters Local 214 containing a 4% and 2% wage increase provision. The City contends that the inclusion of the "Me Too" clauses in the contracts of both Unions bespeaks an effort by all parties to have uniform and equal treatment between the two units. As a result, the City contends that the presence of the "Me Too" clause in this

contract is dispositive on the issue of wages, the previous agreement with Teamsters Local 214 establishing the "Me Too" wage for Local 1917.

The Union argues, and persuasively to this Fact Finder, that the "Me Too" clause serves only as a floor, or as a catch-up device, not as a maximum. To conclude otherwise would be to envision a Union's agreeing to an employer's negotiating, in a multi-unit setting with such clauses present, with the least strong unit, thus freezing all others into the wage structure arrived at with that unit. In the absence of more concrete evidence that Local 1917, in agreeing to a "Me Too" clause in the contract, was committing itself to whatever another unit had agreed to with the City, this Fact Finder concludes and recommends that the "Me Too" clause should not be regarded as dispositive of the issue of wages between the parties to this agreement.

Since the inception of negotiations on this salary issue, the City has remained constant in its offer: 4% on July 1, 1985, and 2% on January 1, 1986. For its part, the Union has moved from an 8% demand through various stages: 6% plus 2%; 5% plus 3%; and finally, an acceptance of the City's 4% plus 2% offer, contingent upon an adjustment for Ms. Senske, which the City refused to make. The Union now appears to seek a 5% plus 3% salary increase, although its position is somewhat imprecise, other than in its rejection of the City's offer as inadequate.

The City has marshalled an array of statistics to buttress its position that its 4% plus 2% offer is fair and reasonable. The City calculates a cost to it of 5%, with compounding bringing salary levels to about 6% for the contract year in question. The City argues that its employees already enjoy a relatively high level compensation package, citing overtime, pay in lieu of vacation, and COLA, as mechanisms which increase the value of the package well beyond stated schedule levels.

Perhaps most telling in the City's arguments are those of continuity and comparability. As it demonstrates, this wage offer is in line with recent past settlements between it and this unit. Additionally, its offer matches that agreed to by Teamsters Local 214. While, as indicated above, such a factor is not dispositive in terms of the "Me Too" clause, it is evidence of reasonableness in the City's position.

As to comparability with other cities, the City has marshalled evidence suggesting that its offer is well within the salary increase pattern for other communities. These data are not complete, and do not reflect all possible elements of the respective compensation packages. Nonetheless, looking solely to salary increase, the issue here, the City's proposal is slightly above the average. When such factors as the 1984 pension payment and the compounding effect are looked to, the City's offer becomes even more attractive.

Little has been brought forward by the Union to buttress its claim that the offer is less than fair. The Union has pointed to some deficiencies in the data presented by the City. Comparable statistical data are elusive matters at best. Those brought forward here, while not, as indicated above, as thoroughly detailed as the information concerning the City's payroll, are adequate to provide a framework for decision. This is particularly so where no counter-information exists from which one might derive a contrary conclusion.

The City has demonstrated a reasonable salary offer, in line with past local history, settlements with other local units, and comparable communities. It has further brought forward evidence, admittedly speculative, as the Union charges, that CPI indicators suggest a slow rise in the cost of living, leaving the offered salary schedule well protected against forseeable inflationary impact.

Considering the foregoing, with respect to the issue of wages, the Fact Finder recommends that the wage increase for the contract year 1985-86 be 4% effective July 1, 1985, and 2% effective January 1, 1986.

SUMMARY OF RECOMMENDATIONS

1. Wages be considered the only issue open for review under the factfinding process.

2. The City be considered as having met its obligations under the contract with respect to seeking improved hospitalization coverage.

3. There is found insufficient evidence to warrant any change in either title or salary schedule for Ms. Senske.

4. The "Me Too" clause in the contract not be deemed dispositive of the wage issue.

5. Increases in the salary schedule for the contract year 1985-86 be set at 4% effective July 1, 1985, and 2% effective January 1, 1986.

Respectfully Submitted,

August 14, 1986

Martin L. Kotch
Fact Finder