

2208

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING**

CITY OF TRENTON

And

MERC Case DO6 L-1981

AFSCME COUNCIL 25, Local 292

Report

A. Robert Stevenson, Fact Finder

September 28, 2007

FINDINGS, OPINION AND RECOMMENDATIONS

The Fact-Finding hearings on this matter were held August 8th & 9th, 2007, in the City of Trenton, Michigan.

Present of AFSCME Council 25:

Ben K. Frimpong	Attorney for the Union
Jeanette Diflorio	Council 25
David Shanaver	Union President Local 292

Present for the City of Trenton:

Steven H. Schwartz	Attorney for the City
Scott Church	Human Resource Director
Robert Cady	City Administrator
Christine Adnoczki	City Controller
Frank Audia	CPA, Plante Moran (August 9, 2007)

My findings, opinion and recommendations follow.

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral, can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. Criteria can include the financial ability of the governmental unit to fund the award, and comparables both internally and with other similarly situated public and private employers in the geographical area.. The fundamental duty of the Fact Finder is to inquire fully into the facts involved and to issue non-binding recommendations regarding the matters in dispute.

INTRODUCTION

Petitioner AFSCME Council 25, Local 292 ("Union") filed for Fact Finding December 9, 2006, seeking to resolve the ongoing contract negotiations between the parties. The Union issues cited in the Petition included Health Care, Retiree Healthcare and Wages. A Pre-Hearing Conference (by phone) was held on May 14, 2007. Hearing on the petition was held August 8th and 9th, 2007 during which the Fact Finder heard evidence from both the Union and the City. Both parties had an opportunity to cross-examine witnesses for the other side and to explain their positions in written briefs.

The City and the Union stipulated on June 6, 2007 to 10 Open Issues

- Article 30 - Wages
- Article 34 - Duration/Effective date of contract
- Article 15, Section 1 - Accrual of sick days-days credited each year; tied to increase in sick days paid out at separation. Use of family sick days
- Article 18, Section 1 - Community Blue PPO Benefit Level. Prescription Drug Co-Pay. Premium Sharing-employee contribution to premium (15%)
- Article 18, Section 5 - Retiree mirroring of health care benefits/effective date of mirroring
- Article 25 Section 2, A - Work schedules-Five 8-hour days for Parks and Recreation
- Article 33, Section 2 - Minimum staffing requirements at Ice Arena

- Article 29 - Meal Tickets-Eligibility, value and eliminate one hour of additional compensation
- Article 16, Section 2 - Saturday Holidays
- Article 27, Section 3&4 - “ In the Hole”/Permit Required Confined Space Entry Premium

The Parties agreed on June 11, 2007, to a list of Comparable Communities:

Brownstown Township;

Monroe;

Riverview;

Southgate;

Woodhaven; and

Wyandotte

All the City’s active employees are to be considered internal comparables.

During the Fact Finding Hearing certain matters were resolved (see Joint Ex.1).

According to its Petition AFSCME Local 292 represents over 50 employees. The bargaining unit has all general City employees. The Union’s contract with the City expired on June 30, 2005. The firefighters on November 7, 2006 and police command union on August 6, 2007 reached a negotiated agreement with the City, without Act 312 arbitration. The patrol officer union, represent by the Michigan Association of Police, had their contract resolved in Act 312 arbitration dated August, 2007 by arbitrator Thomas Gravelle. AFSCME Local 292 is not eligible for Act 312 arbitration and has elected Fact Finding.

Mr. Shanaver served as the key witness for the Union. Mr. Shanaver has been employed with the City for about 32 years and serves as president of Local 292. In his testimony he went through all the articles in dispute and gave detailed summations of the Union’s position on each.

The Union in its Post Hearing Brief recognizes that the employer, just like other employers in the same or similar situations has to deal with today’s economic inconsistencies. Nevertheless, the Union has had its share of loss of benefits as the economy has slowly declined. The Union is at this juncture trying to hold on to the

remainder of benefits and provisions that it deems very important, after several concession have been made on very critical issues (see Union Post Hearing Brief p2).

A key issue in this case is the City's ability to pay. Because employee compensation is a major part of the City's budget, caution is necessary in making financial commitments to the City's employees. In recent years, the City of Trenton like many local units of government has experienced financial difficulties. The City states that Trenton is a fully developed, blue-collar community with little capacity to increase revenue through property taxes or other sources (City Post Hearing Brief p2). Although Trenton is limited in its revenue growth, it faces significant pressure from certain uncapped expenditures, such as health insurance for active employees and retirees. It has no ability to reduce the health insurance cost for retirees. These conflicting pressures severely hamper the City's ability to offer an economic package to active employees that would substantially increase its operating costs. Local 292 represents about 1/3 of the General Fund Budget (City Ex. 29) and according to the City has a profound effect on the City's budget (City Post Hearing Brief p.2).

The City's position is that in these negotiations the Union has refused to recognize the serious financial issues facing the City and the pattern already well established by settlements it reached with its other bargaining units (see City Post-Hearing Brief p.1). Details of the contract negotiations, the City's financial condition and actions taken can be found in the testimony of Robert Cady, City Administrator, Christine Ardnocski, City Controller, Scott Church, Human Resources Director and Frank Audia of Plante and Moran. Their testimonies included constraints on raising revenue from property tax, revenue sharing and other income, as well as cost cutting measures and post-retirement Health Insurance Funding.

At the hearing, City expert witness Frank Audia of Plante & Moran explained that Michigan municipal finance may be viewed as "a three-legged stool." One leg is property tax. Another is state revenue sharing. The third leg is other revenue (such as fees and construction permits).

In Trenton the city's major source of revenue is property taxes. The property tax base in Trenton is dominated by industry that is in decline. The largest current taxpayer is Chrysler who is being given substantial tax incentives to build a new plant (City Ex

33,34). The City's second largest source of income is revenue sharing which has declined 31% from 200-2001 to 2007-2009 and Trenton has no control over the future of state - shared revenues (City Ex. 41). Trenton's continues to drop in population with 50% of the residents' incomes at less than \$50,000(City Ex. 33,43). In the category of Other Income or Revenue, interest income has dropped 28% from 2000-2001 to 2007-2008 (City Ex.32). And by law, fees for services cannot be raised more than the actual cost of service (City Ex. 41). Since 2001, the City has either abolished or not filled twenty-eight full-time positions. In fiscal year 2005-2006 the City was forced to use approximately \$437,000 from its fund balance to balance its General Fund (City Ex. 41). Although it projects to break even in fiscal year 2006-2007, it is only doing so with further employee reductions, deferring capital expenditures and a one-time transfer from a special revenue fund (City Ex 41). Post- Retirement Health Insurance Funding which is projected to be an additional cost of \$2.7 million annually will further worsen the City's ability to balance the budget with re-occurring revenues (City Post Hearing Brief p7).

Such testimony was not disputed by the Union.

ARTICLE 30- WAGES

The parties' wage offers are as follows (C. Ex.7; U. Ex. F at p. 9)

<u>Period</u>	<u>City</u>	<u>AFSCME</u>
July 1, 2005	0%	0%+ \$1,200 signing bonus
July 1, 2006	2.0% (no retroactivity)	2% (with retroactivity)
July 1, 2007	2.5% (no retroactivity)	2% (with retroactivity)
July 2, 2008	2.0%	2%
July 1, 2009	2.0%	No proposal
July 1, 2010	2.0%	No proposal

The Fact Finder notes that the contract expired July 1, 2005 and the date of this decision is September 28, 2007 and a contract has not been settled to date. The Union's bargaining position as to health benefits delayed the negotiations on wages and lost the opportunity for cost savings that could be applied to signing bonuses and retroactivity

(City Post Hearing Brief p.12). Union witness David Shanaver acknowledged on direct examination that the City was consistent through negotiations that it wanted the same health insurance changes it demanded of the firefighters and non-union employees. Two days before the date of this fact finding hearing, the City reached agreement with its police command union with a wage increase of 2.5% in 2009 and a 1.0% increase in 2010. The City's offer is consistent with its current labor contracts and in view of its economic condition should be accepted. I would recommend the City's offer of settlement.

ARTICLE 34-DURATION
EFFECTIVE DATE OF CONTRACT

Even though the parties had previously reached a tentative agreement on a four year contract with the settlement of the command officers' agreement covering 2009 and 2010, circumstances have changed. The contract will probably not be resolved before the end of this calendar year. Therefore, the first two and one-half years of this contract will have elapsed before it is ratified. While the parties agreed to a four year contract, this in effect will be a four year contract going forward. Such a contract protects the employees from further erosion of benefits and locks in guaranteed annual wage increases. For these reasons I would recommend the contract cover the period to 2011 and the effective date of the contract be July 1, 2005 as the previous contract expired June 30, 2005.

ARTICLE 15-ACCRUAL OF SICK DAYS- DAYS CREDITED
EACH YEAR; TIED TO INCREASE IN SICK DAYS PAID OUT AT
SEPARATION/USE OF FAMILY SICK DAYS

The City seeks to bring the number of “family sick days” to be consistent with its other bargaining units. Currently there are unlimited “family sick days” (City Post Hearing Brief p.19). The police command and patrol officers receive five days per year and firefighters receive 60 hours (2 ½ days) per year. I would recommend 5 “family sick days” be the new cap.

During the hearing the parties agreed to maintain the status quo regarding the payment formula and the number of sick days provided each year.

ARTICLE 18 Section 1 COMMUNITY BLUE PPO BENEFIT LEVEL/
PRESCRIPTION DRUG CO-PAY/ PREMIUM SHARING-EMPLOYEE
CONTRIBUTION TO PREMIUM (15%)

There are four components to the health insurance issue for active employees: the PPO level, the elimination of Blue Care Network (an HMO), the prescription drug rider and the employee contribution to health insurance. The Union sought to maintain the status quo on all four issues. The City seeks to bring the benefit levels in line with other internal settlements.

PPO Level and HMO Elimination

The City seeks to eliminate the HMO option, immediately implement Blue Cross PPO Option 2 and implement PPO Option 3 effective January 1, 2009 (City Post Hearing Brief p.20). The City’s feels this is consistent with its other settlements. According to the City, most employees will not notice an appreciable difference between Option 1 and Option 2. The City also asserts that Option 3 is not a major reduction in

benefits, nor is it going to put any employee at risk of bankruptcy or financial disaster because of a medical claim (see p 20-23 City Post Hearing Brief). The Union states that PPO3 was never discussed prior to this hearing (Union Post Hearing Brief p.5).

There is no discernable pattern currently in the external comparables with regard to PPO3 coverage since 5 communities (Brownstown Twp., Monroe, Riverview Pre 2003 hire with \$365 yearly contribution, Wyandotte employees hired before 2004 and Woodhaven with a \$40 per month employee contribution have PPO1 coverage. One city, Woodhaven, has PPO2 coverage with no contribution. Southgate employees may elect PPO3 or two HMO's Health Alliance Plan or Blue Care Network. In Riverview new hires receive PPO3 and all bargaining unit employees pay \$365 per year for health insurance. (City Ex. 13).

PPO3 does not currently appear in the firefighters and the patrol officers' contracts however, their contracts expire in 2008 before the implementation of the PPO3 coverage is effective in the command officer contract of July1, 2009. Therefore I would recommend the City's position on only PPO Level 2 and the elimination of the HMO coverage option.

Drug Rider

The City does not propose changing the co-payment (\$5.00) for generic drugs purchased at a retail store, but wishes to immediately increase the co-payment to \$25.00 for brand-name drugs purchased at a retail store. It also seeks to increase the co-payment to \$7.50 and \$37.00 for generic and brand-name drugs, respectively, purchased through mail order. It also seeks to change the generic/brand-name co-payment in July 1, 2010 to

\$10.00/\$30.00 and \$15.00/\$45.00 for retail purchases and mail order, respectively. The City's position is consistent with its internal settlements (see City Post Hearing Brief p. 24) According to the City, the City's proposal is superior to the external communities because Trenton employees will elect to take the \$5 option for generic drugs, instead of the higher cost brand name drugs (City Brief p 25). I would recommend the City's proposed drug rider as a reasonable proposal.

Employee Contribution/ Premium-Sharing

Employer's Exhibit 13, External Comparability of Health Plans, shows a calculation of 15% employee contribution under PPO 2 for Trenton. M. Church testified that this calculation had never been presented to the Union. Mr. Shanaver concurred that the first time he saw the 15% calculation was during the fact finding session (see Union Brief p5).

Although the City did not make a written proposal prior to fact-finding regarding employee contribution to premium, the City did advise the Union on June 6, 2006 and December 11, 2006 that premium-sharing was a possibility under a four year contract. Further, on the Monday meeting before the first fact-finding meeting the City advised the Union that it wanted the same settlement duration and health insurance as the police command union (see p.26 City Post Hearing Brief).

The Police Command bargaining unit agreed to shoulder a small part of the health insurance by paying a monthly contribution effective July 1, 2009. The contribution is \$30 for a single contract, \$45 for a two person contract and \$60 for a family contract (City Ex p.50). The City states that this demand will also be made to the police patrol, firefighters and non- union employees when their contract expires before 2009 (City Post Hearing Brief p26). It is acknowledged that this type of contribution to premium is becoming more common in the public sector and shows up in some of the agreed comparable communities cited by the parties (City Post Hearing Brief p. 26). In the comparable cities the majority, Brownstown Twp., Monroe, Woodhaven (PPO2)

currently do not require employee contributions (City Ex. 13). In Wyandotte there is a cap on payment. And in Southgate employees pay nothing for the Health Alliance Plan an HMO but have certain contributions for other plans. The City would like the same contribution from the Union as the Police Command. While the cost of health insurance has substantially increased, this issue is too late in the bargaining process for this Fact Finding and I would recommend it be addressed in subsequent contract negotiations. I would not recommend the 15% employee cost sharing as part of this current contract negotiation.

ARTICLE 18, Section 5

RETIREE MIRRORING OF HEALTH CARE BENEFITS

EFFECTIVE DATE OF MIRRORING

Except for AFSCME, every City employee is now subject to “mirroring”. This means that future retirees get the same health insurance as active employees. Future retirees having the same health insurance as active employees will help reduce heavy insurance costs and simplify the City’s administration of health insurance plans. Further, it makes some sense for future retirees to have the same plans as active employees (who in a sense bear the burden of retiree health care costs). The level of health insurance provided to these retirees would be determined through negotiation and arbitration. At the hearing the Union modified its position and indicated that it would accept “mirroring” for future retirees, but request that five employees who retired after June 30, 2005 as well as those retiring before settling the contract, be exempted from “mirroring.” Therefore, Union position is that “mirroring” not be effective until the contract is signed. According to the City throughout the negotiations the City insisted that “mirroring” be applicable to all employees who retired after July 1, 2005 and is consistent with all of the other bargaining units (City Post Hearing Brief p 18). If an employee retired by June 30, 2005, they have a vested right to the retiree health insurance provided in the July 1, 2002- June 30, 2005 contract. However, the contract for employees retiring after July 1, 2005 is not resolved; therefore, no vesting has occurred for those retirees. I recommend that “mirroring” should be adopted for all employees who retired after June 30, 2005. If

employees were eligible to retire before that date they should have done so to avoid “mirroring.” The effective date of “mirroring” should be July 1, 2005.

ARTICLE 25, Section 2, A
WORK SCHEDULES - FIVE 8 – HOUR DAYS
FOR PARKS AND RECREATION

The contract provided for a four day, 10 hour day for parks and Recreation employees. The four day work week was manageable when the Parks Department had significantly more employees. With a smaller workforce, the City needs the flexibility to shift to a five day, 8 hour day schedule (City Post Hearing Brief p. 30). During the hearing, the Union stipulated that it would agree to the City’s proposal to revert to a five day, eight hour shift.

ARTICLE 33- MINIMUM STAFFING AT ICE ARENA

The City needs flexibility in staffing in order to reduce its costs City Post Hearing Brief p.31). The city proposes the elimination of the clause that requires a Union employee to be present when the ice arena is in operation. At the hearing the Union agreed to this provision, provided employees could bump to another position. I would recommend that current provision be dropped.

ARTICLE 29 MEAL TICKETS-ELIGIBILITY,
VALUE AND ELIMINATE
ONE HOUR OF ADDITIONAL COMPENSATION

Under the expired contract, employees received a “meal ticket” stipend of \$2.50 after they have worked 4 hours of overtime. In addition, they receive an additional hour of pay a straight time. The City proposes to increase the meal ticket stipend to \$7.50 for every four hours of overtime and eliminate the extra hour of pay. Mr. Shanaver testified that employees work through their meal and get paid for working through work (Union Post Hearing Brief p. 13). The firefighters, the patrol officers and the police command do not receive an additional hour’s pay for working four hours of overtime. According to the City no other comparable community provides an extra hour of pay (City Post Hearing Brief p.31). I would agree with the City that this is an outdated practice and I would recommend it be eliminated and that the \$7.50 meal ticket be instituted.

ARTICLE 16 Section 2
SATURDAY HOLIDAYS

The expired contract provides that if a holiday falls on a Saturday, employees who work the preceding Friday receive an additional day of pay for the holiday. Mr. Shanaver testified that this is a benefit that the members have enjoyed and that there is no severe burden on the City as such occurrences of holidays falling on the prescribed are rare. According to the City none of the six comparable communities pay an extra day of pay for a Saturday holiday (City Post Hearing Brief p.32). Other than the three public safety units that work a 24/7 schedule the non-union City employees have the preceding Friday off with pay and do not receive an additional day of pay. I would recommend that the Saturday Holiday provision be eliminated to be consistent scheduling with non-union City employees.

ARTICLE 27, Section 4 "IN THE HOLE"
PERMIT REQUIRED CONFINED
SPACE ENTRY PREMIUM

Any employee who performs work in a permit required space shall receive a premium payment of twenty cents (\$.20) per hour in addition to the employee's regular rate of pay. The City wants to eliminate this provision. Mr. Shanaver testified that this is dangerous work and amounts to hazard pay (Union Post Hearing Brief p 13). Mr. Church testified that MIOSHA requirements reduce risk; the amount paid in the past is minimal; the record keeping requirements are onerous; and that comparable communities do not have such pay. For these reasons cited by the City, I recommend this provision be deleted from the contract.

ARTICLE 27, Section 3 LICENSE PREMIUMS

The Union's position on this article is to provide an extra \$.50 cents per hour premium for employees listed in the departments for maintaining their licensing. Mr. Shanaver testified that the employees currently earn a premium only when they work in the capacity (Union Post Hearing Brief p. 13). The Union presented an Exhibit dated March 29, 2006 which showed that there was a proposal to give additional premiums to non-bargaining unit employees who maintained certain licenses. I would recommend that the current contract language be maintained at this time as no other categories have been granted licenses premiums.

ARTICLE 22, Section 6 LAYOFFS

The Union has proposed to add the following language to the current contract language "Before layoffs occur with a department all part-time, seasonal and /or temporary employees will be laid off." Mr. Shanaver testified that before any layoffs occur in any departments, the Union proposes that all part-time, seasonal and /or temporary employees citywide should be laid off first Union Post Hearing Brief p.11).. The reasoning is that any layoff will be used to erode the bargaining unit and that the current employees will be systematically replaced. Adding "all" to this section does not seem to change the meaning of the provision. I would recommend that the current provision maintained as written.

SUMMARY

These recommendations are being issued with the hope that they will be utilized by the parties to resolve the numerous issues in dispute.

October 1, 2007

Respectfully submitted,

A. Robert Stevenson
Fact Finder