

2259

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING
BETWEEN:

CITY OF IRONWOOD (City) (Employer)

-and-

MICHIGAN AFSCME COUNCIL 25 AND ITS
LOCAL 1538 (Union)

MERC Case #L07 E-5004
Union's Log #L2241-1538-07

FACT FINDING RECOMMENDATIONS

APPEARANCES:

FACT FINDER:	Mario Chiesa
FOR THE CITY:	A. Dennis Cossi Attorney for City of Ironwood 225 East Aurora Street Ironwood, MI 49938
FOR THE UNION:	Peter J. Dompierre Staff Specialist Michigan AFSCME Council 25 710 Chippewa Square Marquette, MI 49855

PROCEEDINGS

A petition seeking Fact Finding was filed by the Union and received by the MERC on November 30, 2007. By a notice dated June 24, 2008 I was informed by the MERC that I had been appointed to act as the Fact Finder in this matter. Shortly thereafter I corresponded with the parties, informing them, inter alia, that I had a very intense schedule and that it would be some time, perhaps

later in the year, before we could convene a hearing. The parties chose to proceed.

A telephonic conference was conducted on September 12, 2008. On that day I forwarded a correspondence to the parties memorializing that the hearing would be conducted in Ironwood, Michigan on Thursday, October 23, 2008. I suggested that the parties meet and engage in as much pre-hearing discussion as possible. I emphasized that the length of the hearing could be reduced and its effectiveness increased if the parties conducted their own pretrial and attempt to stipulate to as many issues, documents or factual circumstances as possible.

The hearing commenced at 9:00 a.m. on October 23, 2008 in the Ironwood City Hall/Memorial Building in the Council Chambers. A complete and extensive record was created and subsequently the parties filed respective position statements which were sent directly to me and which on December 8, 2008, I exchanged between the parties.

These Recommendations are being issued as soon as possible after a very thorough analysis of the record.

THE RECORD

The record in this matter was comprised of testimony and numerous documents which were submitted during the October 23, 2008 hearing. The documentation and testimony provided extensive evidence regarding the numerous aspects of this dispute. Financial data, ongoing and anticipated projects, information regarding

various aspects of the parties' proposals, historical data, etc., were all part of the record.

In addition, data regarding wage rates, benefits and other relevant considerations were submitted regarding several political subdivisions, including the cities of Wakefield, Bessemer, Ironwood Township, Bessemer Township, Gogebic County Road Commission, Ontonagon County Road Commission, Village of Ontonagon and two Wisconsin entities, i.e., City of Hurley, Wisconsin and Iron County Road Commission in Wisconsin.

There were numerous graphs, charts, budgets, analyses, comparisons, etc., and in addition, I recorded the proceedings. I have carefully reviewed and analyzed the entire record. It is impossible to comment on, or for that matter, reference each item contained therein, but nonetheless, nothing was ignored.

THE PARTIES

The prior Collective Bargaining Agreement was effective 7/1/2003 and expired on 6/30/2006, but was extended by one year with a 3% wage increase effective 7/1/2006. It defines the bargaining unit as "All regular full time and regular part-time employees, except public safety officers, library personnel, confidential secretary, supervisors and executive positions."

Documentation presented at the hearing references a number of different job classifications. Some of those included are Assistant Foremen, Sanitary Engineer Tech, Lead Person Equipment Operators, Water Meter Service and Repair, Storekeepers, Shop

Foremen, Clerks, Parks and Recreation Service Personnel, Custodians, etc.

The City of Ironwood is located on the western tip of Michigan's Upper Peninsula in Gogebic County. It was incorporated in 1889. According to the 2000 census data, it has a population of 6,293 individuals and occupies about 6.6 square miles. There are 2,841 households and 1,625 families residing in the City. The median income is approximately \$23,500 and the median family income is about \$30,350. The per capita income is \$14,131.

FINANCIAL CONSIDERATIONS

The financial environment in which this dispute arose is a major focal point of the parties' evidentiary efforts and arguments. There are scores of comparisons, analyses, displays of budgets, actual figures, general fund balance analysis, revenue and expenditure analysis and countless of other displays of economic information contained in this record.

To begin with, in a nutshell I note that the documents and the testimony establish that the 6/30/08 pre-audit general fund data shows a positive fund balance of about \$1.1 million. It was also indicated that \$691,504 was reserved for projects. The fund balance was arrived at by adding the \$103,020 of general fund revenue over expenditures to the prior year fund balance of \$1,326,013. Added to that was a fire reserve of \$8,504. Subtracted from the total was an item known as "reserved for street projects" in the amount of \$300,000. This left the current \$1,137,537 of total fund balance. I note there is a one dollar

difference between Joint Exhibit 3 and Joint Exhibit 2, but that's hardly relevant. I do note that another document submitted by the Employer, perhaps a later document, shows a fund balance of \$1,184,736.

The data submitted by the Employer suggests that the unreserved fund balance is \$492,855. It is noted that Resolution 08-011 and 08-012 reserved portions of the fund balance for street projects, first year reappraisal payments, two months of operations, etc. Funds which are reserved from a fund balance must be distinguished from funds which are restricted. Restricted funds by law cannot be utilized in any other manner than that creating the restriction. Generally these are debt reduction considerations, such as reducing debtor bond issues and similar types of legal obligations. The reserve created by the City Commission are not required by law.

On the revenue side of the picture it is noted that in 2007 property taxes amounted to 51% of the City revenues. Revenue sharing was 31% and miscellaneous charges amounted to 18%. This is quite a change from 2000 when property taxes provided 45% of the City's revenues, while revenue sharing provided 39%. Miscellaneous charges provided 14% and grants 2%. Thus, as can be seen from the data, contributions to revenue from revenue sharing have shrunk by about 8%, while property taxes have increased 6% with miscellaneous charges and grants increasing 2%. Also, there is an anticipated \$200,000 loss of revenue when current bulk customers cease purchasing water from the City. The specifics remain to be

defined, but the City is confident it will lose substantial revenue.

The trend of state revenue sharing was increasing from about 1994 to about 2002 when it reversed and began decreasing. From 2000 to 2007 property tax revenue had an increasing trend. However, the increasing trend in property tax revenue does not make up for the decrease in revenue sharing.

The evidence also reveals that at 27.72 mills Ironwood has the highest millage rate in the UP.

The City supplied information which it suggests shows that the State of Michigan is also in an economic slump. It argues that this is the ninth straight year of decline in Michigan, with auto-related employment dropping 54% from 2000 to 2008. It suggests that given that one dollar of every four is in the auto industry, the decline in the auto industry will have a very substantial and negative effect on Michigan's economy. In relation to Act 51 gasoline revenues, the City maintains that the gas tax growth is flat or declining since 2000 and for fiscal year 2007 gas taxes were reduced by 2.5%. It points out that year to date, that is, at the time of the hearing, gas taxes were reduced 6%.

The data shows that general fund expenditures in the prior fiscal year amounted to about \$2,454,212. That increased to \$3,090,088 for the fiscal year ending 6/30/08. The data suggests that employee costs take the largest chunk of expenditures. According to the graph submitted by the Employer, employee costs constitute 42% of total City expenditures. The next highest

percentage was 11%. General employees' gross pay has fluctuated since 2002. In that year the total was \$1,584,866.34. The high during that period was \$1,689,617.38. That was realized in 2005 and in 2007 the cost of employees' gross pay was \$1,622,603.49.

In summary, the record does not present an optimistic picture of the City's finances and in regard to the limited evidence available, the State's finances. It is clear that there are going to be some challenges in the future. I suggest that notwithstanding the fact that there are challenges, the recommendations I have made herein are appropriate and recognize the competing interests and the Employer's goals to control its financial destiny. Of course, the City has the option of reallocating its expenditures and perhaps seeking additional sources of revenue for needed major projects, such as the improvement of the City's water system, which is in dire need of improvement, and improving, maintaining and fixing the roadways.

CONTRACT TERM

While it may not be apparent to some, I perceive the issue regarding length of the Collective Bargaining Agreement to be one which must initially be addressed before other contract provisions are considered. It is important to understand the period of time in which the proposals in these recommendations could be operationalized.

The City's position is that the contract should be of one year duration beginning when executed, with no retroactive provisions. The Union's position is that the Collective Bargaining Agreement

should have a three-year term. I construe this is to mean that the Union desires an effective date of July 1, 2007 and a termination date of June 30, 2010. In this portion of the dispute I will formulate recommendations related to the length of the contract and the effective date. The other considerations, such as retroactivity, will be subsequently addressed.

Often cities seek a one-year contract on the theory that they will have more flexibility in dealing with unforeseen events, including financial challenges which may arise. The down side of a one-year Collective Bargaining Agreement explains the attributes of the multi-year contract. A multi-year contract provides labor peace for a multi-year period which is beneficial to both parties. Additionally, a multi-year Collective Bargaining Agreement eliminates uncertainty to the extent that an employer is aware of its financial responsibilities, vis a vis the Collective Bargaining Agreement, for a period of time. Some would suggest that this allows the Employer to more effectively plan many aspects of its operations, including the allocation of funds. Furthermore, when there are changes made to multiple aspects of a Collective Bargaining Agreement, they are often more palatable if they are timed to recognize, if possible, both parties' needs.

Recommendations must find support in the record. The record in this hearing contains a Collective Bargaining Agreement between the current parties which by its terms has an effective date of July 1, 2003 and an expiration date of June 30, 2006. However, it was stated that the parties negotiated a one-year extension with a

3% wage increase which was effective 7/1/2006. Thus, the termination date became 6/30/2007. Furthermore, evidence relating to the previously identified comparable political subdivisions establishes that where the data is available, and that is the vast majority of the entities, all contractual relationships were and are multi-year.

Thus, the evidentiary record persuades me that I must recommend that the new Collective Bargaining Agreement cover a period of three consecutive years. I note that I have seen several agreements in both the private and public sector which exceed three years, but the record in this case only supports a recommendation limited to a three-year Collective Bargaining Agreement.

MERS RETIREMENT

Currently members of this bargaining unit participate in what the parties have characterized as the City's pension plan. Its major elements are a 2.25% multiplier with no cap, 10 years vesting, 55-20 early retirement, an FAC period of the average of the five highest consecutive years of compensation, and a member contribution rate of 3% of the first \$4,200 and 5% over \$4,200. The parties agree that the pension plan should be switched to the MERS Pension Plan. Under MERS the benefit multiplier, vesting period, early retirement requirement, FAC period, and a number of other elements, remain the same as the current City plan. I note the member contribution rate under MERS is 4.79%.

What is in dispute is the Union's proposal that the FAC period be altered by the adoption of the MERS Plus FAC-3 rider.

The data for the period 2001 through 2006 shows that the average return for the MERS plan over that period was 8.29%, while the average return for the general plan was 2.45%. Clearly the MERS plan provided a better rate of return. Furthermore, the City contribution rate would have been lower under the MERS plan. However, the addition of the FAC-3 would increase the City's contribution rate, although the documentation suggests the increase would only be 1.59%. Thus, the Union suggests that given the savings, there is no financial reason for not granting the three-year FAC period.

Given the above, one could reason that there is adequate evidence to support a recommendation that the three-year FAC period sought by the Union be adopted. However, there are other considerations. For instance, a wage increase would automatically provide the plan with more funds because of an increase in member contribution and, additionally, with higher wage rates to be included in any FAC period. Additionally, there is no compelling evidence regarding the circumstances in the comparable political subdivisions that would suggest that the employees in this bargaining unit are at a substantial disadvantage when considering the various aspects of pension plans. Given the state of the record, I have no alternative but to recommend that the City's position be adopted, that is, that the conversion be made to MERS without incorporating the FAC period sought by the Union.

HOSPITALIZATION

The dispute between the parties boils down to the question of whether the Employer's liability for premiums should be capped at what is known as a CB2 2007 rate. That cap is raised in the context of the Employer's position of a one-year Collective Bargaining Agreement. In other words, if there is a multiple year contract it is not entirely clear whether the CB2 2007 rate will be capped going forward or would the CB2 rate be the cap in subsequent years. Thus, I will deal with this issue only in respect to the CB2 2007 rates and the 2008 CB15 rates reimbursed to the CB2 level.

To explain a little further, in 2007 the health insurance coverage for members of the bargaining unit was characterized as CB2. The family rate was \$1,319.51 a month, while the two-person rate and the single rate were \$1,060.29 and \$471.24 respectively. The Employer's proposal, which the Union has no quarrel with, is that the coverage going forward would be CB15 with the Employer reimbursing to CB2 level. CB15 would require greater co-pays than CB2 coverage, so the Employer's proposal would be to pay the lower premium for CB15, but supplement employees, as required, so the co-pay would equal that of the prior CB2 coverage.

The CB15 rate in 2008 was \$1,051.57 per month for full family and \$844.99 per month and \$374.44 per month for two-person and single coverage respectively. As a result, there is a substantial savings in the premium. The data provided by the Employer suggests that the reimbursement would be \$4,800 at the family and two-person level and \$2,400 at the single level. I note that in relation to

the Employer's proposal at CB15 reimbursed to the CB2 level, the Employer maintains the caveat of "if available."

Given that the 2008 CB2 rate for full family is \$1,517.44, and then \$1,219.33 and \$541.93 for two-person and single, it can be seen that there is a substantial savings of premium. In premium alone in 2008 the Employer would save \$11,542.90 per month or \$138,514.82 per year. This savings is independent of reimbursement costs which would reduce the savings, although the amount of the reduction at this point would be purely speculative.

As I indicated, there is no real quarrel between the parties regarding the adoption of CB15 reimbursed to a CB2 level. What is in question is the cap which the Employer seeks to impose. As I understand the Employer's position, the cap applies to premiums and the cap would be equal to the CB2 2007 rates. The Employer's position is that any premium costs above that would be absorbed by the employees.

It should come as no surprise that there has been a substantial increase in the cost of health care. The data regarding the period 1996 to 2007 shows that in relation to full family coverage in 1996 the cost was \$437.97, while in 2007 it was \$1,319.51. It is noted that the costs have increased at a smaller rate in the last two or three years. What also should be considered is the cost of retiree benefits. That has increased at an alarming rate, but it is my understanding that rather than on a pay-as-you-go procedure, there is pre-funding for that benefit. The record does show that several of the comparable political

subdivisions do not provide the type of retiree health care, and in some cases none at all, that is provided by the City in this dispute.

The evidence does support that at some point and in some amount the employee may be required to absorb a portion of the cost of health care coverage beyond that which employees must absorb within the plan itself, such as deductibles and co-pays. However, I cannot recommend the City's proposal.

First, there would be uncertainty regarding the increase in premium cost from year to year. The reality is that the uncertainty would be more easily dealt with by the City than by an individual employee. The City is in a better position to make adjustments to deal with that cost than would be an individual. Thus, any responsibility for premium cost absorbed by an employee should be at a fixed rate and known from year to year so employees can plan and accommodate the need to meet those costs. It is much easier for a family to function financially if the costs are known and represent a reasonable burden on the individual family.

When the entire record is considered, keeping in mind the other recommendations and their impact on the relationship, I would recommend that if the cost of a full-family premium at the CB2 2007 rate increases, an employee with full-family coverage would be required to absorb that cost to a limit of \$200.00 per year. The cap for two-person coverage would be \$150.00 per year, while an employee with single-person coverage would be responsible to the max of \$100.00 per year. This recommendation places a burden on

the employee, albeit not as intense as some may have desired, but also caps that burden at what I propose is a reasonable rate for each category of coverage.

SALARY RATES

The seniority list as of July 15, 2008, as well as the Petition for Fact Finding, indicate there are 27 members in the bargaining unit. Other documents suggest there are 25 and there is one document suggesting there are 24. The difference is essentially insignificant. What is significant is that in 1991 there were 45 employees in the AFSCME bargaining unit. Since then City management has lost two employees, going from 9 to 7, while Public Safety, and it is a combined fire and police department, have been reduced from 17 to 13 employees. Public Safety numbers do not include Dispatchers. Clearly, this bargaining unit has experienced the largest reduction by far.

Per Joint Exhibit 10, in 1990 the average wage was \$10.75 an hour. The then 44-member work force accumulated a total average annual wage of \$983,840. In 2007 when the work force was reduced to 27 employees, and although the average wage increased to \$15.50 per hour, the annual wage cost of \$870,480 was actually less by over \$100,000 than it was in 1990. It is obvious that the reduction of members of the bargaining unit have kept the wage cost to the Employer at a rather even level notwithstanding the increase in salary rates.

It appears from the information supplied in Joint Exhibit 14 that the last salary increase received by members of this

bargaining unit was effective on July 1, 2006. It is my understanding that it was a 3% increase and came about when the parties negotiated a one-year extension to the July 1, 2003 Collective Bargaining Agreement. Along with the wage increase there appear to be modifications to the components of FAC for those hired after July 1, 2006.

In dealing with this aspect of the dispute, the parties have utilized what they have characterized as an average wage rate. In fact, I was urged by the Union in its brief to analyze wages by utilizing the average wage rate. Keeping it in mind, I note that the information provided in Joint Exhibit 9 indicates, inter alia, that the average wage on July 15, 2008 was \$15.66 an hour, for an annual wage of \$32,563.65.

In Fact Findings, as in Act 312 binding arbitrations, it is typical to compare the wages and benefits existing between the parties in the dispute to the wage and benefits existing in comparable communities. This case is no different and the parties have submitted such data. Regarding such comparisons, it must be kept in mind that given the type of bargaining units involved, there may be differences in the duties and responsibilities of employees in the various classifications. Often individuals performing the same work in the communities are classified differently and, on occasion, while employees may be classified the same, such as Equipment Operator I, the duties and responsibilities differ. Furthermore, the information submitted may very well represent different contract periods. Nonetheless, while these

observations cannot be ignored, the data supplied is often very helpful.

For instance, Joint Exhibit 13 contains substantial data regarding the political subdivisions referenced by the parties. The data shows that the wage levels for various classifications in the City of Wakefield as of 7/1/07, for the most part, exceed the July 15, 2008 wage levels for members of the bargaining unit as expressed in Joint Exhibit 9. While, as I indicated, a direct comparison is difficult, what is more significant is that the percentage increases for 7/1/07, 7/1/08, 7/1/09 were and are 3% per year. The wage information for the City of Bessemer is not very helpful because it suggests there was no wage increase from 7/10/06 to 7/10/07. However, the hourly rates listed for 7/10/07, in most classifications which can be fairly compared to those in the City, are very comparable. The information in Joint Exhibit 13 regarding Gogebic County Road Commission shows the rates for January 1, 2004 and January 1, 2005. Apparently the data in Joint Exhibit 12 is more up-to-date, for it shows higher rates than those outlined in Joint Exhibit 13. As a general observation, the wages paid by Gogebic County Road Commission are comparable, or on several occasions higher than what is currently being received by employees in this bargaining unit. I note that while it may have some historical data and not be particularly relevant to the current dispute, the wage increase from January 1, 2004 to January 1, 2005 at the Gogebic County Road Commission was 35 cents per hour which range from about a 2.3% to a 2.4% increase.

The data for Ontonagon County Roads show that in those classifications where a comparison can be made with employees in this bargaining unit, Ontonagon County Roads pays a significantly higher wage rate. It is noted that on 7/1/2007, 7/1/2008, and 7/1/2009 there was a 40 cent per hour wage increase. This averaged out to about 2.3% for each year.

Joint Exhibit 13 displays the wage rates in effect on 7/1/06, 7/1/07, and 7/1/08 in Ironwood Township. However, there are only three classifications displayed and the data suggests that Ironwood Township rates are less than those paid in Ironwood. I do note, however, that the increases on 7/1/07 and 7/1/08 were 3% for each year.

The data regarding the wage rates in the two Wisconsin entities, that being the City of Hurley and Iron County, show that the wage rates for the classifications listed are much higher than those in the City of Ironwood. It is also significant to note that the various increases have been 3% per year.

There is little data regarding the Village of Ontonagon and Bessemer Township.

After thoroughly analyzing the record and keeping in mind other recommendations which affect both parties, I have concluded that a 3% increase, applied as it has been in the past, which I anticipate would be on the average wage, should be instituted for the first year of the Collective Bargaining Agreement. Frankly, there should be little dispute regarding this percentage increase for it is suggested by both parties. The only difference is that

the Employer does not propose any retroactivity. Thus, 3% is entirely appropriate.

For the second and third years of the agreement I recommend a 2.5% and 2% increase respectively. This, combined with the 3% in the first year of the agreement, would result in an approximate 7.7% over three years.

There is no question but that the data regarding comparable communities support these recommendations. The cost will be somewhat less than the cost of adopting the Union's position of 3% each year for a three-year contract. This is appropriate considering the other challenges being faced by the City. I recognize that I have recommended that the employees contribute a very modest amount to the cost of health insurance, and that possible contribution, for it is not certain, has been kept in mind when formulating these wage increase recommendations.

Another consideration in formulating the recommendations I have outlined above, is the potential of increased pressure on the City's finances during the end of the contract period; thus, the 2.5% and 2% recommendation for the last two years.

I note that there is a statement in Joint Exhibit 14 indicating that the AFSCME unit has not received an increase since July 1, 2006. This is consistent with a one-year extension to the prior contract, along with a 3% wage increase. Joint Exhibit 9 establishes that as of July 15, 2008 the average annual wage for members of the bargaining unit was \$32,563.65. When that is increased by 3%, the average annual wage increases to \$33,540.56.

When that rate is increased by 2.5%, the average salary rate would become \$34,379.07, and when that wage rate is increased by 2%, the wage rate for the last year of the Collective Bargaining Agreement would average \$35,066.65.

RETROACTIVITY

The Employer's position on this issue is that there should be no retroactivity for the 3% wage increase the parties have suggested. I note that the Employer's proposal of a 3% increase came within the context of no retroactivity in a one-year Collective Bargaining Agreement. As noted above, I have recommended a three-year Collective Bargaining Agreement. In relation to the issue of retroactivity, I recommend that the wage increases be fully retroactive. This recommendation means that the 3% shall be retroactive to July 1, 2007. I note that in Joint Exhibit 14 it is indicated that AFSCME, this bargaining unit, has not received an increase since July 1, 2006. It logically follows that if an increase were to be instituted a year later, it would be July 1, 2007. Thus, I recommend that the 3% increase that I have referenced above be instituted and retroactivity paid back to July 1, 2007. This means of course that the next recommended increase of 2.5% be retroactive to July 1, 2008. The last increase would be implemented on July 1, 2009.

The other changes recommended above should be implemented as soon as practical after the Collective Bargaining Agreement has been executed. I do not recommend retroactive application of any employee contributions to health insurance premiums.

These recommendations are based on the factual data regarding the Employer's financial status, as well as the historical dates of wage increases as memorialized in the various documents involving both the City of Ironwood and the comparable communities.

SUMMARY

I believe the recommendations I have issued in this dispute can serve as a basis for resolving the Collective Bargaining Agreement. I state this even though I know that neither party will be completely pleased with these recommendations. Nevertheless, as I indicated, with some good-faith bargaining I am convinced that the parties can resolve their issues and arrive at a mutually acceptable accord.

A handwritten signature in black ink, appearing to read 'M. Chiesa', written over a horizontal line.

MARIO CHIESA

Dated: March 18, 2009