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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of:

CITY OF DETROIT

Employer,

-and-

SENIOR WATER SYSTEMS CHEMIST
ASSOCIATION,

Union.

MERC Fact Finding
Case No. D09 J-1060

**FACT FINDER'S FINDINGS OF FACT,
REPORT AND RECOMMENDATIONS**

APPEARANCES:

FOR THE CITY OF DETROIT:

Valerie A. Colbert-Osamuede, Attorney

FOR SENIOR WATER SYSTEMS
CHEMIST ASSOCIATION:

James M. Moore, Attorney
Emilie Rothgery, Attorney

Prologue

In the current collective bargaining cycle between the City of Detroit and its numerous bargaining units, there have been at least four Fact Finding Reports beginning with this Fact Finder's Report and Recommendations issued on September 11, 2009 involving the City and the Detroit Building and Construction Trade Council. Most recently, there has been an Act 312 Award between the City and the Detroit Police Lieutenants and Sergeants Association with the last signature signed on April 5, 2011. Echoing the finding of facts made by this Fact Finder in Detroit Building and Construction Trade Council in September 2009 and again in February 2011

involving the Senior Accountants, Analysts and Appraisers Association and by Fact Finder William E. Long in 2010 involving AFSCME Council 25, Fact Finder Donald Burkholder, in a fact finding involving the Association of Municipal Engineers on February 7, 2011 began his report recognizing “the fact of the City’s dire financial circumstance ...” concerning the obvious “the City of Detroit is for a number of years has been seriously troubled financially.” (Page 2).

Fact Finder Long concluded, “The facts presented from an analysis of financial data, both historically and currently, should lead any reasonable person to conclude that the City’s financial situation is dire.”

These findings cause fact finders to make concessionary recommendations. The facts lead to no other conclusion.

Since this Fact Finder issued his February 2011 fact finding involving the Senior Accountants, Analysts and Appraisers Association, the criteria known as the strike criteria is taking on significance in arriving at the recommendation here for a major strike began in September 2010 within the City limits of the City of Detroit and did not conclude until recently involving the Detroit Symphony Orchestra which gives some indicia of what might be a settlement if in fact the public employees of the City of Detroit could legally strike. In addition, effective March 16, 2011, the legislature of the State of Michigan adopted Act No. 4 of Public Acts of 2011, the so-called financial manager act which impacts municipalities undergoing deficits.

This is the settling which this Fact Finder in 2011 proceeds to review the facts as applied to the SWSCA-City of Detroit negotiation impasse and to make recommendations.

Background

The Senior Water Systems Chemist Association (SWSCA) represents approximately 40 members/employees who work in the Detroit Water and Sewerage Department (DWSD). These members hold the titles of Microbiologist, Senior Systems Chemist, Senior Analysts and Senior Systems Analysts. SWSCA members are responsible for maintaining the quality of water that is distributed to 137 communities within Southeast Michigan.

The City and SWSCA are parties to a Collective Bargaining Agreement in effect, by its terms, from July 1, 2005 to June 30, 2008. Following the facial expiration of that agreement, the parties commenced negotiations for a successor agreement in October 2008. The parties reached tentative agreements on a number of issues in bargaining sessions held sporadically through January 2010. However, when negotiations and subsequent mediation failed to result in a full agreement, the Association filed a petition for fact finding pursuant to 1939 P.A. 176, MCL 423.201, *et seq.* The Michigan Employment Relations Commission appointed Hon. Edwin M. Bladen to serve as the fact finder.

The Association presented testimony of three of its witnesses during a single day of hearing held on July 20, 2010. Shortly after the first day of hearing concluded, the parties were notified by Judge Balden that, in light of the fact finding report issued by Fact Finder William Long on June 25, 2010 in *City of Detroit and AFSCME Council 25*, MERC Case No. D09 A-0062, MERC would not sanction more than two additional hearing days. Due to MERC's directive and to other circumstances, the City and the Association agreed to submit their respective positions to the Fact Finder for consideration, based on the existing transcript, previously exchanged exhibits, affidavits where necessary, and written post-hearing arguments.

In approximately October 2009, the parties were notified by Judge Bladen that he was stepping down as fact finder for unspecified reasons. At the request of MERC Director Ruthanne Okun, the parties conferred and ultimately agreed to ask that the Commission appoint the undersigned to serve as Fact Finder for the remainder of the proceedings. MERC notified this Fact Finder of the appointment by letter dated November 29, 2010. The parties agreed to submit the case to this Fact Finder on briefs.

By agreement, there was no testimony taken or hearing held before this Fact Finder. Instead, the parties relied on the record consisting of one day of live testimony taken on July 20, 2010 before Edwin Bladen, the hearing transcript for 22 days of hearing in the fact finding proceedings between the City of Detroit and AFSCME in 2009-2010 MERC No. D09 A-0062, the William Long Fact Finding Report in MERC Case No. D09 A-0062 dated June 25, 2010, this Fact Finder's report in the Building Trades Council and the City of Detroit fact finding, the City's exhibit book and the exhibit book of SWSCA, and the Lieutenants and Sergeants 2011 Act 312 opinion and award. In addition, the Fact Finder viewed the fact finding report and recommendations of Donald R. Burkholder in Association of Municipal Engineers and City of Detroit MERC Case No. D09 JD-056 as well as the testimony of Woodrow McCarthy, retired Assistant Director of Financial Services for DWSD presented in that fact finding. This Fact Finder also took note of his fact finding report involving the Senior Accountants, Analysts and Appraisers Association, which is MERC Case No. D09 J-0128, which is a public record.

The last brief in this matter was filed with this Fact Finder on May 23, 2011. The last correspondence from the parties transmitting certain evidence to this Fact Finder was June 1, 2011.

The Issues

The issues that are in dispute between the parties are:

1. A variety of health care insurance issues, including Medicare issues and insurance coverage for retirees, as well as early retirements.
2. Wages, including furlough days.
3. Overtime.
4. Holiday and excused time off.
5. Timekeeping.
6. Vacation.
7. Longevity.
8. Retirement.
9. Tuition Refund.
10. Numerous additional provisions referred to as “as is” proposals and a number of new memos.

The Criteria

The statute providing for fact finding does not set forth any explicit criteria for a fact finder to follow in preparing a Report and Recommendations. However, the Legislature, in providing for compulsory interest arbitration involving police and fire labor disputes in Act 312 of Public Acts of 1969, did set forth the following list of criteria that is to guide arbitration panels in resolving contract disputes submitted under that Act:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed

new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) in public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as external comparables with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements, which are not specifically enumerated in Section 9. This means that, in addition to the enumerated Section 9 criteria, an Act 312 Arbitration Panel can utilize criteria used by fact finders.

Among the criteria utilized by fact finders are the bargaining history of the parties, both past and current, as well as the “art of the possible,” namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations.

This Fact Finder, as Chairman, described the “art of the possible” in a 312 Opinion that he issued in *County of Lake and Command Officers Association of Michigan*, MERC Case No. L02 H-9004 (2004), where he wrote at page 4:

The “art of the possible” in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In an earlier 312 opinion, this Fact Finder, as Chairman, articulated the concept of the “art of the possible” when he noted that the goal of an Act 312 Chairman is to effect the settlement the parties would have reached if negotiations continued and the parties are confronted with the realities of the situation for, in *County of Ottawa Sheriff's Department and Police Officers Association of Michigan*, MERC Case No. L96 H-6011 (1998), this Chairman observed:

A very distinguished arbitrator, Theodore St. Antoine of the University of Michigan Law School, in two recent act 312 Arbitration proceedings, pointed out that as to an Act 312 panel, to best preserve health, voluntary collective bargaining, “the soundest approach for an outsider in

resolving union-employer disputes it so try to replicate the settlement the parties themselves would have reached, had their negotiations been successful.” See, e.g., *County of Saginaw and Fraternal Order of Police*, MERC Case No. 190 B-0797 (1992); *Macomb County Professional Deputies Association and County of Macomb*, MERC Case No. E91 I-1674 (1992). This is, indeed, an appropriate consideration and falls within the concept of Section 9(h).

In other words, the concept of the art of the possible is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In addition, fact finders consider what is sometimes referred to as the “strike” criteria. Recognizing that public employees in Michigan cannot engage in a strike and that Act 312 is a substitute for a strike, a Panel, following the dictates of 9.H, could consider the result of strikes that may have occurred in the City of Detroit and their outcomes as a guide to what may have resulted if the SWSCA were permitted to go on strike. There is also the impact of legislation that has recently been passed and potential legislation that may impact on negotiations.

There is no reason why the art of the possible, as well as the strike criteria and what the Chairman has now referenced as the legislative criteria, along with the other criteria cannot be factors in arriving at the Recommendations that follow.

It also should be recognized that the particular circumstances may dictate that certain criteria be emphasized more than other criteria.

The Michigan Supreme Court, in ruling on the constitutionality of Act 312 and its application, in an opinion of Justice Williams in *Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980) at 484, Justice Williams wrote:

We disagree with the city's contention. The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the

statutory factors that consideration required by law. The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in § 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word "shall" in §§ 8 and 9. In effect then, the § 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. Since the § 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered. Our comment in *Midland Twp v State Boundary Comm*, 401 Mich 641, 676; 259 NW2d 326 (1977), is here apposite.

"Merely because some criteria were factually inapplicable or were found by the commission to be of less importance than other criteria does not mean that the commission 'ignored' relevant criteria. The commission may regard a particular criterion to be of decisive importance outweighing all other criteria."

In other words, though an Act 312 Panel must consider all applicable factors, as Justice Williams noted, the Panel can emphasize certain criteria over others in resolving contested issues.

The point this Fact Finder makes is that, even when applicable under Act 312, though the Supreme Court has stated that all the factors are to be considered, some factors can be emphasized, depending on the circumstances, over others. This particularly would follow in fact finding where no specific statutory criteria applies to fact finding even though this Fact finder, among others, intends to follow the At 312 criteria as these criteria offer a guidance.

Based upon the above comments, there is no doubt that the prevailing criteria as applied to the dispute now involving the City and the SWSCA is the ability of the City to fund the proposals and the comparison of the Association with other employees, both union and non-union employees, of the City, along with the strike, legislative and the art of the possible criteria.

The Ability to Pay

Relying on the testimony of Pamela C. Scales, Budget Director of the City of Detroit since 1999, that had been presented in MERC Case No. E05 F-0687 as well as budget documents prepared by the City, this Fact Finder, after reviewing the revenue sources of the City of Detroit, the City's then unemployment rate which at the time was 14.2%, and the City's continued expenses exceeding revenue, noted that Ms. Scales correctly described the City's financial position as "very dire". At page 3 of the June 19, 2006 Fact Finding Report, this Fact Finder observed:

| <u>Fiscal Year</u> | <u>Total Expenditures⁽¹⁾</u> | <u>Final Operating Results</u> | | <u>Surplus/(Deficit) As a Percent of Total Expenditures</u> |
|--------------------|---|--------------------------------|----------------|---|
| | | <u>Surplus</u> | <u>Deficit</u> | |
| 2000-01 | 1,488,793,205 | | 26,395,130 | -1.77% |
| 2001-02 | 1,576,041,291 | 1,555,594 | | 0.10% |
| 2002-03 | 1,601,368,138 | | 69,063,211 | -4.31% |
| 2003-04 | 1,577,561,963 | | 95,032,523 | -6.02% |
| 2004-05 | 1,587,505,777 | | 144,948,805 | -9.13% |
| 2005-06 est | 1,482,251,538 | | 62,839,031 | -4.24% |

Note (1): Includes transfers and contributions

With the exception of the 1979-80 and 1980-81 fiscal years, the deficit in 2004-05 was the highest percentage of deficit as compared to total expenditures in the history of the City since 1964-65, as well as the highest dollar amount. These figures suggest that, rounded off, during the last six fiscal years beginning with the 2000-01 fiscal year, the City has experienced an approximately \$398 million deficit. Despite efforts, which will be discussed later in this Report, the City is still running a deficit based upon the estimates of 2005-2006 of almost \$63 million, or 4.24% of the total expenditures.

What this means is that the City is spending more each fiscal year than it is receiving in revenue. And this recent history of surpluses and deficits is a barometer of the City's financial health which, by any standard, is indeed most difficult.

(June 19, 2006 Fact Finding Report).

The above statement is a starting point of recognizing that, since the Detroit Building and Construction Trade Council fact finding report, the City's financial health, under any definition,

had become more dire than at the time this Fact Finder was writing the September 11, 2009 Building and Construction Trade Council Report.

As indicated, there were fact finding meetings conducted by Fact Finder Long involving Council 25 of the American Federation of State, County and Municipal Employees and the City of Detroit. The City in that fact finding presented a Budget Department presentation. At page B1 the City presented a history of general fund surplus/deficit beginning with the 2000/2001 fiscal year, noted by this Fact Finder in the June 19, 2006 Report. The subsequent general fund surplus/deficit history reveals a continuing, rapidly deteriorating financial situation in Detroit as noted below:

| <u>Fiscal Year</u> | <u>Total Expenditures⁽¹⁾</u> | <u>Final Operating Results</u> | | <u>Surplus/(Deficit)</u> |
|--------------------|---|--------------------------------|----------------|---|
| | | <u>Surplus</u> | <u>Deficit</u> | <u>As a Percent of Total Expenditures</u> |
| 2000-01 | 1,488,793,205 | | 26,395,130 | -1.77% |
| 2001-02 | 1,576,041,291 | 1,555,594 | | 0.10% |
| 2002-03 | 1,601,368,138 | | 69,063,211 | -4.31% |
| 2003-04 | 1,577,561,963 | | 95,032,523 | -6.02% |
| 2004-05 | 1,587,505,777 | | 155,404,035 | -9.79% |
| 2005-06 | 1,410,081,217 | | 173,678,707 | -12.32% |
| 2006-07 | 1,278,109,169 | | 155,575,800 | -12.17% |
| 2007-08 | 1,181,358,285 | | 219,158,137 | -18.55% |
| 2008-09 unaudited | 1,428,288,629 | | 326,000,000 | -22.82% |
| 2009-10 budget | 1,602,254,042 | | n/a | n/a |

Note (1): Includes transfers and contributions

Though the figures presented before Fact Finder Long for 2000-2005 were slightly different than the figures presented to this Fact Finder, they essentially match. At the time this Fact Finder issued his Report with the Building Trades Council on June 19, 2006, the 2005-2006 deficit was predicted to be 4.24% total expenditures. The figures turned out to be double that amount, namely, from 69,000,000 to 155,000,000, or 9.79% of the total expenditures. This figure continued each year thereafter to increase so that by 2008-2009 the deficit, figure-wise, the highest in the history of Detroit since 1964-65 was 326,000,000, or 22.82% of the general fund.

At no time since 1964-65 had the City ever had such a high percentage of deficit total expenditures, namely, that the City was spending more than it was receiving in revenue. This deficit, as the history reveals, is cascading at an alarming pace, almost beyond description.

In presenting this case before this Fact Finder, the City relied, as already noted, on the budget presentation to Fact Finder Long as well as the transcript of the hearing before Fact Finder Long and in particular the testimony of Budget Director Scales. When the budget presentation book is reviewed, along with the testimony of Budget Director Scales, it becomes obvious that the deteriorating financial health of the City is due to factors beyond the control of the administration, requiring major economic adjustments in the operation of the City.

The City's population has been in decline since 1950 when the City had a population of 1,849,000 persons representing 29% of the State of Michigan's population. The 2010 census suggests that the City's population is around 875,000, or approximately 9.1% of the State population.

The dropped population inflates the significant impairment of the City's tax revenue stream which relies primarily on property tax, income tax and State aid as well as the wager tax. In 1972, the City had 23,000 employers. In 2002, the City had 8,691 businesses/employers, meaning a loss of 63% of businesses since 1972. Significantly, the largest loss came from manufacturing – 73% – and wholesale trades – 74% – whereas there is now an increase, but still an overall loss in service employers. Service employers contribute less to the City's tax base because of the property involved and service employees are usually paid lower wages. (Vol. 1 pp. 17-18).¹

¹ Vol.1 refers to the transcript of testimony before Fact Finder Long.

In 1980, in the entire Metro area there were 1.8 million people employed, 23% of which were employed within Detroit. In September 2009, the Metro area had 1.7 million people employed, but in Detroit that number had declined to 17%, meaning that a number of the employed persons employed in the Metro area were outside of the City of Detroit. In November 2009, the City had the highest unemployment rate in the United States, namely, 25.4%. (Volume 1, p. 23). These figures impact the City's tax base, whether it be income tax, property tax or other tax fees.

Budget Director Scales explained that Proposal A, passed in 1992, put a cap on yearly property tax increases resulting in the inability to collect \$88 million in property tax. In 1950, 61% of the general fund expenditures were covered by property tax collections. In 2009, 14% of the City's general fund is covered by property tax collections. To understand the meaning of this figure, it is noted that suburban cities such as Ann Arbor receive 67% of its general fund revenue property tax, Dearborn 74% and Roseville 78%.

The City of Detroit since 1963 has had an income tax. City residents pay a 2.5% income tax rate and non-residents pay a 1.25% rate. At its highest point for the accounting period 1969, the City had 468,370 individual resident tax returns filed, 234,892 non-resident tax returns were filed, plus 11,605 corporation tax returns and 3,749 tax returns for a total of 710,998 tax returns. In 2008, the number of resident returns was 128,525. The number of non-resident returns was 125,167. Corporate returns were 7,183 and partnerships were 2,172 for a total of 262,043, which represents a dramatic loss in income tax returns.

The City does collect other fees and taxes, including a solid waste fee of \$300 to residents for garbage disposal, a library tax which cannot be used for any general fund expense, a utility

tax which by law is to support police services and cannot be used to cover the general allocation fund and a wagering tax which the City receives pursuant to Act 69 of 1997 with the opening of permanent casinos. This is based on consumer gambling which in recent times because of economic conditions has been reduced. It is also recognized in recent times General Motors and Chrysler underwent bankruptcy. Though both are no longer in bankruptcy, there was a period of time, particularly as to Chrysler, where the Chrysler plant in Detroit was employing less employees subject to income tax than prior to bankruptcy.

The City does receive revenue sharing, but this is being cut by the State due to the State's financial situation. For the fiscal year 2009-2010, the State has cut its revenue sharing by 11% to all municipalities, which equals a \$29 million reduction in State revenue sharing for the City of Detroit. (Volume II, p. 86).

There are certain enterprise activities which are not affected by the condition of the general fund, including the airport, building and safety, municipal parking and the Detroit Water and Sewerage Department, and are supposedly self-financing. However, the general fund has subsidized the DDOT and municipal parking.

\$441,299, 597 or 27.54% of the general fund is allocated for salary and wages. \$361,658,993 of the general fund is allocated for employee benefits, or 22.57%. This means that over 50% of the general fund is allocated for employee wages and benefits. The cost for hospitalization for 2009-2010 for active employees was \$105,256,332 and the cost for retirees is \$149,787,983.

It becomes clear that a major portion of the expenses from the general fund are employee costs.

The rating agents have reduced the City's bond rating because of its financial conditions. This has impact on the City's ability to borrow and has increased the cost of borrowing.

By any definition, as pointed out, the City is facing a difficult financial situation. The City has adopted a debt elimination plan. This plan was promulgated under Mayor Cockrel and continues under Mayor Bing. Before Fact Finder Long, Ms. Scales testified as to some of the aspects of the deficit elimination, noting:

Q (By Ms. Colbert-Osamuede) Finally, I want you to look at Union Exhibit No. 46, which is identified in the record as the Ken Cockrel Deficit Elimination Plan.

If you recall, there were some questions asked as to the last I think it is three pages of this exhibit from Mr. Mack about certain things that had not been implemented from this deficit Elimination Plan. Do you recall that?

A I do.

Q I want you to take a look at this plan and tell us what has been implemented, if you know, from this plan?

FACT FINDER LONG: What page are you looking at there?

Q (By Ms. Colbert-Osamuede) It is the last three pages, which is the chart, beginning on the first page of that chart.

A In this plan, you go down to the Health Department, Improved Process for Reimbursement. That did occur in the 2009-2010 fiscal year.

The Crime Lab did occur. The Crime Lab was transferred to the State, so those payments did occur.

The Cobo Center Operation Reductions did occur. Cobo was transferred to an authority, so that savings has been achieved.

The ITS and I guess, really, from ITS down to Ombudsman, those changes did occur. Those positions were eliminated in the 2009-2010 budget, and the Operational Cost Savings did occur for the 2009-2010 fiscal year.

MR. MACK: That includes the Ombudsman?

THE WITNESS: Yes. ITS, Human Rights, Law, BZA, Auditor General and Ombudsman.

FACT FINDER LONG: Just for the record, BZA is Board of Zoning Appeals.

THE WITNESS: Part of the Transportation occurred as part of phase three layoff. It wasn't \$10 million, but there was the hundred and thirteen reduction in Transforation.

The GSD savings did occur, and there was a reduction in the amount of seasonals hired and the parks that were cut.

FACT FINDER LONG: What does GSD stand for?

THE WITNESS: I'm sorry, General Services Department.

MR. MACK: You said there was a what with respect to the parks that were cut?

THE WITNESS: There was a reduction in the number of parks that were cut.

MR. MACK: The number of parks.

THE WITNESS: The number, and seasonal employees were not hired was what their savings was discussing, and that did occur during the year.

FACT FINDER LONG: The note says reduction in grass cutting also. That occurred as well –

THE WITNESS: Yes.

FACT FINDER LONG: – in addition to reducing the number of parks. Correct?

THE WITNESS: Right.

FACT FINDER LONG: For part of that?

THE WITNESS: Right.

MR. MACK: Wouldn't that be the same –

THE WITNESS: It is the same thing; it is reducing the number of parks that we actually cut. The Mayor's Office cut did occur. The downsizing was part of 2009-2010 budget.

The Police did occur. We did operational savings in police departments prior to 2009-2010, and the same thing with the 36th District court.

The next page, the DPW partially was implemented. There was a shift to seasonal inspectors. The savings wasn't \$1.2 million, it was probably half of that \$600,000. That did occur.

The GSD Vacant Lot Cuts were reduced. In the past, we had four cuts on vacant lots. Last year, we did two cuts on vacant lots.

The Planning and Development Operational Savings did occur. That was reduced in the 2009-2010 budget.

The Non-Departmental Subsidy Reduction did occur. We did a reduction to subsidies for Zoo, Historical Museum of African-American History last year.

Then the balance of the General Services Department, City Clerk, Elections, Board of Ethics and Cable, those operational cuts did occur, and that is really cuts in operating supplies, general dollars that they spent.

That is it on this list.

FACT FINDER LONG: Obviously, looking at those pages of that exhibit, those cuts are shown as obviously continuing then in the fiscal year 2010-2011 budget. Correct?

THE WITNESS: Correct. These were part of the 2009-2010 budget, so the 2009-2010 budget was reduced, and that savings continues every year going forward.

FACT FINDER LONG: Yes. Were those savings reflected in the 2010-2011 – well, you are not into the – you are just presenting a 2010-2011.

THE WITNESS: Right. These savings were part of the fiscal year 2009-2010 budget, and they will continue in the 2010-2011 budget.

(Vol. 11, pp. 1491-1495).

Mayor Bing in his budget address for the fiscal year 2010-2011 set forth a plan for sound fiscal policy. In this respect, Mayor Bing noted:

* * *

We took immediate steps; completing the Cobo and Greektown Casino deals, saving more than \$7 million and \$8 million respectively, collecting nearly \$6 million in delinquent receivables, and saving more than \$11 million between layoffs and budget required furlough days. We also completed the long-overdue 08-09 CAFR, which released \$23 million we were owed from state revenue sharing.

The successful sale of our fiscal stabilization bonds was one of the first signs that we are beginning to repair our image and I would like to thank this Council for its support. The response by investors was overwhelming. They placed \$500 million in orders for \$250 million in bonds, helping us lower the interest rate to save the city \$1.1 million on its annual debt service. In a city as cash strapped as we are, that vote of confidence from Wall Street is significant.

* * *

This budget ends the practice of using past budgets instead of actual cash needed to determine funding for our operations. For example, our Planning and Development Department was budgeted for \$6.3 million in operating costs last year. They spent \$800,000 less than that so we took that money and cut it out of this year's budget. That's something that hasn't been done in years and it will save us more than \$10 million next year.

* * *

This administration also promised to put an end to politics as usual and tell the truth, even when it wasn't popular. We've cut out all the unfunded vacant positions from this budget. The 2009-10 budget included more than 500 positions without a dollar to actually fill them. This is something past administrations used for political reasons, most notably in the police department to create the perception that there were more officers on the street than the City actually had on the force.

Our citizens deserve to know the real numbers, without the phantom positions or the fuzzy math. As a businessman, I expect a real budget with real numbers and a plan that delivers real results.

* * *

The phrase doing more with less is probably all too familiar to our taxpayers. They have become accustomed to receiving less. The problem is city government never tried to more. It's been operating exactly the same way for generations. We will not continue down that road. That's why nearly every department will see staff and spending reductions in this budget. My staff alone is shrinking by 20% and my office budget will go down almost \$1 million. I encourage this honorable body to follow suit.

* * *

This initiative is part of our risk management savings project that we believe will save \$3.75 million dollars this year. We are also targeting a 5% reduction in hospital spending by negotiating lower administrative fees for our plan and reviewing dependent coverage and claims. Those who have taken advantage of lax oversight by the City in years past will not continue to get a free ride. We estimate savings of at least \$12 million through this audit.

* * *

The City has also done a poor job of going after money it is owed. One of my new Department Directors recently informed me that in reviewing the books, she found a 2- year old \$486,000 default judgment that the city had never attempted to collect. In a City facing financial crisis, that kind of oversight is appalling.

My administration has already set a more aggressive tone, collecting nearly double what was budgeted for in delinquent collections and we anticipate another \$6 million in this budget. We also plan to work with the state to improve income tax collections, specifically focusing on those who take city tax deductions without filing city tax returns. Whether intentional or not, we will aggressively go after every dollar. And beginning this year, we will make electronic filing available for personal property tax payments. Together, these initiatives are expected to bring in an additional \$15.5 million.

From my first day in this office, I've talked about the need for restructuring city government to secure our long -term financial future. I pleased to announce today that two more measures proposed by my Crisis Turnaround Team will be completed and result in savings in this budget. We are expected to turn over management of City Airport by June, saving half a million dollars. And Mistersky Power Plant will be mothballed very shortly, saving the City another \$5 million.

Additional consolidations and eliminations are occurring and planned in a number of other areas. Consolidation of office space city wide is underway. The Department of Administrative Hearings is moving into available space in the Coleman Young building saving a minimum of \$150,000. Cable is doing the same, saving another \$500,000. We are also consolidating administrative functions for the workmen's compensation for the Police and Fire Departments saving \$870,000.

We have reduced the number of city bank accounts from 320 to 150 and cut contract services in the finance department by \$1 million, with the goal to complete more work in-house. Budget required furlough days for personal service contracts will save at least \$9 million. And with the appointment of a Chief Procurement Officer, we have set a goal to negotiate 5 citywide contracts with the potential to save the city another

\$5 million.

* * *

The bottom line is that in addition to the deficit elimination plan and the points made by Mayor Bing, the City has proposed to reach what amounts to a wage reduction by a budget required furlough days, as well as other concessions. These proposals, so the City argues, are part of the City's attempt to stabilize its financial situation.

Admittedly, this Fact Finder has repeated virtually the statements he made in the February 1, 2011 Senior Accountants, Analysts and Appraisers Association Fact Finding Report. But the City's financial situation still continues to be most serious and the facts as they existed in February 2011 continue in June 2011, despite the efforts of the City to control its costs.

Eight days after this Fact Finder issued his February 1, 2011 Fact Finding Report as to the Senior Accountants, Analysts and Appraisers Association, Fact Finder Donald R. Burkholder on February 8, 2011 in a Fact Finding Report involving the Association of Municipal Engineers (AME) and the City of Detroit at page 2 wrote confirming this Fact Finder's analysis of the City's financial situation:

Permeating the five days of hearing was the fact of the City's dire financial circumstance. Detailed testimony and documentation regarding City finances during the June 2010 AFSCME fact-finding by William E. Long, as well as his analysis of City finances, was accepted at the outset by in order to reduce repetition of testimony and redundancy of documentation concerning the obvious: the City of Detroit is and for a number of years has been seriously troubled financially. In sum, Mr. Long concluded that "The facts presented from an analysis of the financial data, both historically and currently, should lead any reasonable person to conclude that the City's financial situation is dire." The question then becomes whether and if so, to what extent, members of the AME bargaining unit are exempt from that finding.

In April 2011, Act 312 Chairman Thomas W. Brookover in Case No. D09 G-0786 involving the Detroit Police Lieutenants and Sergeants Association quoted extensively from Fact

Finder Long's opinion emphasizing the City's financial situation. After doing so, Chairman Brookover noted that State shared revenues to Detroit are decreasing. In all likelihood, this decrease will accelerate. The point is after this Fact Finder's February 1, 2011 Report, subsequent reports by neutrals confirm that the City's financial situation is indeed "dire".

The Senior Water Systems Chemist Association cannot avoid this fact.

The Water and Sewerage Department Funds

In addressing the City's financial situation, the Association notes that the Water and Sewerage Department is financed by fees and therefore is a proprietary or enterprise entity not relying on the general funds of the City. For this reason, the Association argues that this Fact Finder should base his recommendations on this fact rather than the City's overall financial situation. In this regard, the Association Advocates write in their post-hearing brief:

Employees represented by the Association in this case work within two distinct divisions - water and sewerage - that are administratively operated by the City of Detroit Water and Sewerage Department. The operations of the City's Water and Sewerage Department, for the purposes of this fact finding proceeding, are financed by two major proprietary (a/k/a enterprise) funds: the Water Fund (Code 41) and the Sewage Disposal Fund (Code 42). Proprietary funds are described in the City's Comprehensive Annual Financial Report (CAFR) as, "When the City charges customers for services it provides, whether to outside customers or to other agencies within the City, these services are generally reported in proprietary funds. Proprietary (e.g., Enterprise) funds utilize accrual accounting, the same method used by private sector businesses. Enterprise funds report activities that provide supplies and services to the general public (e.g., Transportation Fund)." The two funds are (and must be maintained as) legally separate and distinct from the City's General Fund. Article 7, Section 7-1503 of the Home Rule Charter provides:

All monies paid into the city treasury from fees collected for water, drainage or sewerage services shall be used exclusively for the payment of expenses incurred in the provision of these services, including the interest or principal of any obligations issued to finance the water supply and sewerage disposal facilities of the city, and shall be kept in separate funds.

Stated another way, the Water Fund and the Sewage Disposal Fund are self-supporting; the revenues in these funds are not linked to property taxes, resident and/or non-resident income taxes, or State revenue sharing funds. Instead, revenues are generated by user fees to the individuals, businesses, and communities that rely on the DWSD for water supply and/or sewage removal and treatment. The current tax cost to the City to support the DWSD is \$0. Assn. Ex. 69. As noted in the 2010-2011 Budget Analysis for the Water Department, there is "no projected surplus or deficit for the Water Department of the DWSD for fiscal year 2009-2010." Assn. Ex. 69. The same result was anticipated in for the Sewerage Department for the same fiscal year. Assn. Ex. 71.

In short, the Association urges the fact finder in this case to make a finding that the City - and more specifically its water and sewerage department - is financially solvent at this time and is in a position to pay for modest, long-promised, yet long-delayed improvements to the wages and benefits for this small group of highly-trained and skilled individuals who provide a critical service not just to the residents of the City of Detroit, but also to a large percentage of the residents of Southeast Michigan.

In response, the City relied on the testimony of Woodrow McCarty, former Assistant Director of Financial Operations for the Detroit Water and Sewerage Department who for 29 years worked in either accounting or finances at the Department. Mr. McCarty had testified in the fact finding between the Association of Municipal Engineers and the City of Detroit. Mr. McCarty explained he and his staff prepare the Department budget beginning in August of each year; that based upon the proposed budget, a decision is made as to whether to ask for a rate increase; that rate increases could only be approved by the City Council, who could reject same; that rejection of rate increases could impact on the finances and financial health of the Department; that recent budgets have taken into account Department personnel at all levels would be taking furlough days; that if the furlough days and other concessions were not made, this would affect the budget and could affect the financial health of the Department. In this regard, in testifying before Fact Finder Burkholder, Mr. McCarty indicated that the Department expenses were exceeding its revenue:

The Water Department for the last three years, our operating costs and our debt services have exceeded our revenues. There has been a decrease in net assets, which is a result of our operating costs and our debt service, which are our expenses, debt services being the amount of money that we pay on the – our outstanding bonds, and coupled with operating costs and depreciation of our equipment.

Those costs have exceeded the revenues that we have been able to generate, which in turn has resulted in a negative or decrease in our net assets which is the same as – which would be equivalent to a loss, you know, in the – in a business sense.

(Tr. pg. 502 of Burkholder hearing.)

Mr. McCarty's testimony indicated the Department has been and continues to be affected by the financial conditions in Detroit and in the region. He also testified, as the City noted in its post-hearing brief before this Fact Finder, that there was a reduction in force in the WSD in 2007/2008 and that engineers were laid off as a result; that employees in the Water and Sewerage Department have taken furlough days, including employees represented by AFSCME and the Society of Chemists Association and Technicians as well as management employees. Fact Finder Burkholder recognized what Mr. McCarty was stating for Fact Finder Burkholder concluded in the discussion of his fact finding report as follows:

... Despite the fact that AME members employed in DWSD are working in an enterprise, profit-making organization, they are nevertheless City employees with all of its advantages and disadvantages....DWSD is a City organization, and was created by the City. Therefore, I recommend that its AME members, similar to the experience of other non-312 City workers, will need to "bite the bullet." I.e., take BRF days, experience reductions in benefits, as well as less generous working conditions, with 0% wage increases...

In other words, Fact Finder Burkholder concluded that just because DWSD was an enterprise organization this fact did not exempt the Department from the City's financial woes. This Fact Finder would agree with Fact Finder Burkholder on this point.

The Detroit Water and Sewerage Department is a City organization. Mr. McCarty

admitted that his ability to raise revenues depends on rates as determined by the City Council; that currently the Department is operating at a deficit. If this continues, this could have an impact on the City's overall finances and rating with the credit rating agencies. Furthermore, there are a substantial number of other employees in the Detroit Water and Sewerage Department that as a result of fact finding and negotiations have experienced concessions. If a small group of employees who are working for the City of Detroit, using Burkholder's words, did not "bite the bullet," such failure would undermine the City's total effort to control its deficit and costs and to bring its costs in line with its overall revenues.

In other words, this Fact Finder agrees with Fact Finder Burkholder on the issue of funding sources of the Detroit Water and Sewerage Department.

The Comparables

This Fact Finder has already referred to the recent fact finding reports, including two of his own, where concessions were recommended, including the furlough days. At least 27 other City unions, if not more, including AFSCME, have now experienced concessions, including budget required furlough days (BRF). The point is the recommendations of the other fact finders, as well as this Fact Finder, as to other bargaining units is that other bargaining units have taken major concessions of the type being advanced by the City here. It makes no difference as to what is occurring in external comparables. The problem is that the City of Detroit is in a dire financial situation and has embarked on a deficit elimination plan which includes controlling its labor costs. The facts must be reviewed as applied to Detroit's finances. It is the internal comparables in such a situation that control over external comparables.

The Strike Criteria

This Fact Finder has made reference to the strike criteria. Fact finding is a procedure adopted by the legislature to be utilized by public employees in Michigan who do not have the legal ability to strike. This being the case, if there was during the period a major strike in the area and the results of the strike are known, this could serve as a guidance to the Fact Finder in making recommendations.

As already alluded to, there was a six month strike of the Detroit Symphony Orchestra in Detroit over the issue of concessions. When the strike ended, it was reported that members of the Orchestra did take a substantial pay cut. No matter how skilled the members of the Association may be, if they had the opportunity of striking, based upon the experience of the Detroit Symphony, because of the City's dire financial condition, the Association members would end up agreeing to concessions as did the Detroit Symphony members.

The Legislative Criteria

This is a most recent criteria brought about by current activity in the State Legislature. Act 4 of Public Acts of 2011 provides for the imposing of a financial manager in certain situations for certain public employers under certain conditions. The imposing of a financial manager could perhaps have consequences that may not be to the benefit of Association members. For this reason, it would seem that the Association members should understand there is a need to be helpful in assisting the City in the deficit elimination plan to avoid any potential challenge to their Collective Bargaining Agreement. This is a factor that this Fact Finder has considered, along with the City's fiscal condition.

Issues and Recommendations

Introduction

For ease of review, this Fact Finder will set forth below the specific issues as to which the parties are in dispute and discuss their proposals and then, after each issue, make a recommendation. The Fact Finder will then issue a “catchall” statement adopting the recommendations that he set forth in the discussion under each issue.

1. Article 2 – Management Rights

Both parties have proposed modifying Article 2, “Management Rights.” This dispute brings forth the art of the possible criteria. A number of economic issues between the parties impact on the City’s deficit elimination plan.

When it comes to the management rights language, the current language has been in the parties’ contract for some time. The parties have been able to live with this language. In the give and take of bargaining, if left to their own devices without the aid of fact finding, this Fact Finder under the art of the possible criteria is convinced that the parties would agree to continue the current Article 2 language because their respective positions would not hold up a contract, so to speak, if other items were in place. The fact that this language has been in the contract for a sufficient period of time convinced this Fact Finder that there is no need to change this language with one exception.

The Association does make the point that the Department should provide copies of the rules, policies and procedures to all SWSCA officers. Although the proposals says “provide copies,” it would seem that what is of concern here are Department policies for, with the exception of adding a provision of furnishing Department rules, policies and procedures as

affecting SWSCA members to SWSCA officers, the Fact Finder recommends that the language of Article 2, "Management Rights," remain as is in the current contract.

2. **Article 21 – Overtime**

The Association proposes some changes to the overtime provisions. The City proposes eliminating overtime payments for hours in excess of the regularly scheduled shift per service day and that overtime be paid only for hours in excess of 40 hours. The City proposes eliminating compensation past practice language concerning employees in 24-hour operations and restrict overtime calculation only to the actual time worked. The City proposes to eliminate sick leave, holidays, vacations, jury duty and time off due to job-related or off-duty injury as worked time for the purposes of computing overtime.

Before Fact Finder Long, the same proposals were made where applicable. He rejected the elimination of holidays and jury duty proposal of the City. He agreed on sick time and vacation time. This Fact Finder agrees that vacation time and sick time should be eliminated as time worked as well as time off due to job-related or off-duty injury; that jury duty and holiday time be considered as time worked.

In regard to eliminating overtime in excess of a regularly scheduled shift, although this is not required by the Fair Labor Standards Act, this has been part of the parties' contract for a number of years. When one considers the art of the possible, it is doubtful whether the parties would have agreed to this change.

In regard to the 24-hour operations, the overtime calculation should be limited to the actual hours worked except if holidays or jury time are involved. Thus, this Fact Finder will recommend that methods of computing overtime, sick leave, vacations or time off for job-related

or off-duty injury shall not be counted as time worked. This exclusion shall also apply for employees in 24-hour operations. Holidays and jury duty shall be counted as time worked for overtime calculations. Otherwise, there will be no change in the overtime language. This is the Fact Finder's recommendation.

3. **Article 22 – Holidays and Excused Time Off**

Both the Association and the City have made proposals as to holidays and excused time off. Both provide for change in relevant days for optional holiday closings. The City proposes permitting use of mandatory furloughs for any of the days listed. The City also proposes that new hires not be eligible for bonus vacation days.

This Fact Finder will recommend that new hires not be eligible for bonus vacation days and that the change in relevant days for optional holiday closing, as proposed by the City, and that the City shall permit use of mandatory furlough days for any of the days listed. Otherwise, the proposed changes of the City and the Association are not recommended.

4. **Article 24 – Vacations**

The Association proposes certain additional vacation benefits. The City proposes to reduce vacation days for new hires to five days for the first five years of service and to cap vacation days earned for new hires at 15 rather than 20 days after 15 years of service and, as to the layoff period, increased from 30 to 60 days for a lump sum payment.

Considering the fact that the City is attempting to control its labor costs, the City's proposals on vacations are reasonable, particularly as to the reduction of vacation days and to cap vacation days will only apply to new employees. The layoff period language seems reasonable. For this reason, this Fact Finder will recommend the adoption of the City's position as to

vacations.

5. **Article 25 – Sick Leave**

The Association proposes certain additions to the sick leave. The City's proposes reducing sick leave from 12 days to 10 days for new hires, eliminate five reserve sick leave days for new hires, and eliminate bonus vacation days for new hires and a two-tiering plan to take effect when the payroll system is capable.

This Fact Finder recommends adopting the City's position on sick leave as just outlined and rejects the Association's position because of the issue of cost control and the provision only applies to new hires and not current employees.

6. **Article 26 – Longevity Pay**

The City proposes to eliminate longevity payments for all employees. The Association proposes modifications and opposes the elimination of longevity.

In this economic climate, this is not the time to provide for increased longevity payments. For this reason, the Association's proposals are rejected. The question is whether longevity payments should be eliminated. True, in the City of Detroit Building Trades Council fact finding in 2009, this Fact Finder did recommend the continuation of longevity payments. Similarly, for the Senior Accountants, Analysts and Appraisers Association on February 1, 2011, this Fact Finder recommended the continuation of longevity payments. The latter recommendation came after the Long fact finding as to AFSCME Council 25 was issued in June 2010.

Fact Finder Burkholder in the Association of Municipal Engineers fact finding issued on February 7, 2011 after this Fact Finder's report in the Accountants which was issued on February 1, 2011 recommended the adoption of the City's position as to longevity. The significance of the

Burkholder recommendation is that it included employees who were also employed in the Detroit Water and Sewerage Department.

It must be remembered that the Building Trades Council fact finding was issued early in the collective bargaining cycle and represented a report that was adopted by the Trades Council. As the negotiation cycle progressed, the City was changing positions as to longevity in order to control costs.

In this respect, the Association's Advocate argues that the DWSD "could save by eliminating existing longevity payments for the 40 members of this unit \$30,000 – a mere 1.8% of the total longevity cost paid out of the City enterprise funds, and 0.33% of the City-wide longevity payments." This Fact Finder appreciates this argument.

Yet, this Fact Finder notes that this contract runs from July 1, 2008 to June 30, 2012. It has a year left. This Fact Finder recognized that Fact Finder Burkholder recommended that longevity be eliminated, as did Fact Finder Long, based on economic considerations. In this case, the reason to eliminate longevity will be prospective and in this contract only affect employees for the remaining one year. It may be small, but the City needs the savings. And on further reconsideration, after the Senior Accountants, Analysts and Appraisers Association fact finding, this Fact Finder concludes that the City's proposal to eliminate longevity payments when this contract is ratified by the City Council is appropriate. Under the circumstances, this Fact Finder so recommends.

7. **Article 23 – Timekeeping**

The City proposes modifying the payment of overtime to be consistent with the proposed changes to Article 21, which have been recommended by this Fact Finder. Only as consistent

with the recommendations as to overtime made by this Fact Finder will the Fact Finder recommend the modifications as to payment of overtime as proposed in Article 23 by the City.

8. **Article 33 – Retirement Provisions**

The City proposes to modify the retirement provisions to provide if the employee presents medical documentation disputing the independent medical examiner's findings, the matter is to be referred to and resolved by a third physician appointed by the IME and the employee's treating physician.

Such a provision under the Family and Medical Leave Act has been adopted by Congress in disputes of whether employees qualify for FMLA. With such a precedent, there is no reason to adopt the Association's proposal for the City's proposal is fair and allows a neutral medical person to make the final evaluation in the event there is a dispute. This Fact Finder so recommends.

9. **June 11, 2007 MOU – Shift Scheduling**

The Association proposes to eliminate this MOU. The City proposes to keep this MOU. This Fact Finder finds no reason to eliminate this MOU and therefore adopts the City's position.

10. **Article 46 – Duration**

The parties are in agreement that the duration of the successor agreement shall be from July 1, 2008 to June 30, 2012. For the purposes of this Report, this Fact Finder confirms this agreement by so recommending.

11. **MOU – Service Improvement Process (SIP)**

The Association proposes to delete this MOU. The City's position is to reduce the maximum merit pay increase from 6% to 5%. The Association's Advocates in their post hearing

brief on this point write:

The Fact Finder is surely wondering why the Association would seek to eliminate a plan that provides for pay increases based on merit, particularly at a time when the City is otherwise proposing to freeze or cut wages and benefits. The answer is practicality – the SIP no longer serves the purpose(s) for which it was intended.

Based upon his reading of the respective briefs and considering all the facts, this Fact Finder agrees with the Association as to the deletion of this MOU and so recommends.

12. **Article 40 – Wages; Exhibit 1, Wage Schedule**

The Association agrees with the City that there be no wage increases across-the-board for July 1, 2008, July 1, 2009 and July 1, 2010. The City also proposes there be no wage increases for July 1, 2011. The Association proposed a wage increase for July 1, 2011 and then a wage increase for June 30, 2012, as well as certain special adjustments on July 1, 2010. The City also proposes no wage increase on June 30, 2012.

In other words, the City's proposal is no wage increases across-the-board or no special adjustments for the life of the contract.

In addition, the City proposes implementing 26 mandatory budget furlough days without pay for three consecutive 12 month periods and proportionate adjustment to vacation accrual, longevity payments, sick leave, overtime and worker's compensation, but no effect on retirement computations.

The fact of the matter is Fact Finder Long opted for such a proposal, including that the City's proposal would include language that would permit the BRF days to extend beyond the contract expiration day in order to complete the required number of BRF days.

This Fact Finder with the Senior Accountants, Analysts and Appraisers Association opted

for BRF days as did Fact Finder Burkholder. BRF days are a fact of life in Detroit. Negotiations cannot avoid same. They are needed as a cost concession for the City in its budget elimination plan. For this reason, this Fact Finder rejects the wage proposals of the Association and recommends that there be no across-the-board wage increases for the life of the contract as proposed by the City, including no wage increase on June 30, 2012 and the proposal of the City that for three consecutive 12-month periods there be 26 mandatory budget furlough days without pay and that the provision shall provide language that would permit the BRF days to extend beyond the contract expiration date in order to complete the required number of BRF days.

13. **Article 31 – Hospitalization, Medical, Dental and Optical Care Insurance**

This Fact Finder takes notice that a financial cost to the City is the cost of having hospitalization, medical, dental and optical care insurance to its employees. The City is concerned about the escalating cost of such insurance and, therefore, has proposed to its various unions health insurance changes. This was a major subject of discussion before Fact Finder Long in the fact finding involving AFSCME Council 25. There was detailed testimony presented before Fact Finder Long concerning health care.

The City in this proceedings has in effect made the proposals that were proposed before Fact Finder Long, namely, mandatory use of generic drugs, limitation on prescription drugs (lifestyle drugs), Medicare advantage, employees who retire on or after the effective date of the Agreement, new hire eligibility for medical coverage, new hire enrollment in the Medical Plan Design Option II, new hire eligibility for optical coverage, new hire employees medical coverages ceases at age 65, elimination of sponsored dependents, family dependent eligibility for family continuation, no coverage for a retiree's family if after retirement the retiree marries or

remarries, requirement to enroll in Medicare Parts A and B, failure to enroll in Medicare will terminate coverage, non-duty disability retiree is not eligible for medical coverage, clarify hospital coverage for persons who retire with 25 years of credited service, spousal health care enrollment with current employer, and no duplicate hospital coverage.

Fact Finder Long adopted all the recommendations on the issues set forth above as to medical, hospitalization, dental and optical care insurance and some modification as to the effective date as to certain retirees. This is a persuasive precedent. This Fact Finder will recommend the adoption of the City's proposals on hospitalization, medical, dental and optical care insurance as recommended by Fact Finder Long and adopt the Long recommendations as his own.

14. **MOU – Defined Contribution Program**

The City proposes a memorandum of understanding that there be continued negotiations on the prospect of placing new hires into a defined contribution benefit plan. The Association rejects such a proposal. The Fact Finder recommends that the City's position be adopted. There is no disadvantage to the Association if the parties continue to negotiate as to a defined contribution benefit plan. There is no reason not to adopt the City's position that there be an agreement to continue such negotiations.

15. **Tuition Refund**

The Association proposes that the tuition refund in the contract remain as is. The City proposes that the tuition refund be suspended until July 1, 2012 and that effective July 1, 2012 only employees with three years of service eligible to participate will be eligible for tuition refund. This proposal by the City is a function of the City's concern to control costs. The same

proposal was proposed to this Fact Finder in the Senior Accountants, Analysts and Appraisers Association and this Fact Finder accepted the City's proposal. This Fact Finder finds no reason to deviate from his previous recommendation and will recommend the City's position as to tuition refund.

16. **Miscellaneous**


It was represented that the Memorandum of Understanding concerning alternate health care proposals by agreement are to be deleted. It was also represented that the Memorandum of Understanding concerning wage concessions, City Exhibit, Tab 10, Association Exhibit 59, agreed to be deleted by the parties. The Fact Finder so notes.

Comments

"There is no joy in Mudville," quoting from "Casey at the Bat". This Fact Finder takes no joy in issuing these recommendations. The financial situation in Detroit is desperate. The brief filed on behalf of the Association made excellent arguments and under different circumstances may have been persuasive, but not in the financial situation faced by the City. The members of the Association will be disappointed. But the facts are what they are. The stakes are very high for both the City and the members of the Association, considering that Act No. 4 is lurking in the background. The facts require that the Association close ranks and join with the City and quickly come to agreement on a contract based on the recommendations herein.

RECOMMENDATIONS

Under each issue, this Fact Finder has made recommendations and hereby adopts the recommendations as stated.


GEORGE T. ROUMELL, JR.
Fact Finder

June 17, 2011
(Last Exhibit submitted June 1, 2011)