STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of: MERC Case No: D11 A-0086

The City of Dearborn
Petitioner (Employer)

and

Teamsters Local 214
Respondent (Union)

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Fact Finding Report and Recommendations

This opinion is issued pursuant to MCL 423.1 *et seq* in response to a petition for fact finding filed by the City of Dearborn on September 30, 2011. The petition concerns ongoing labor contract negotiations between the City of Dearborn and Teamsters Local 214. As of June 26, 2012 Teamsters Local 214 represented 105 employees comprised of: Parks and highway workers, custodians, maintenance workers, and water and sewer department workers. Both parties have submitted briefs, rebuttal briefs, and an extensive number of exhibits.

The most significant evidence considered in this proceeding was an affidavit of the Dearborn Treasurer and Finance Director James O' Connor dated July 2, 2012, a transmittal letter from Mr. O'Connor to the mayor and city council dated May 29, 2012, a property tax valuation chart prepared by the City Finance Department dated April 13, 2012, and Mr. O'Connor's Comprehensive Annual Financial Report for the year ended June 30, 2011. Although these exhibits speak for themselves, several sobering observations should be mentioned: (1) If present trends continue, the city's general fund balance will be exhausted or nearly exhausted by June 30, 2015; (2) Health care costs are expected to nearly triple from 7.2 million dollars in the year 2000 to 21.1 million dollars by the year 2015; (3) The City's contribution to direct benefit pensions and post employment health care have increased from 7 million dollars in the year 2000 to 21.5 million dollars in the year 2012; (4) From 2008 to 2012, the city of Dearborn's property tax value has decreased by over one billion dollars; (5) Personnel costs account for 74% of the City's general fund expenditure budget. It is clear that the City's present financial situation is untenable.

It is also clear that both parties have bargained in good faith, and that the Union has agreed to a number concessions to assist the City in meeting its financial challenges. Nonetheless, several issues remain. This opinion will address those issues presented by the parties minus those that were removed from consideration in response to an objection by the Union. The Union's objection was that the parties had not adequately discussed the removed issues.

Contract duration

The parties agree to a four-year contract from July 1, 2010 through June 30, 2014.

Health Care Contribution

The City has already implemented the 80/20 option made available to it by 2011 Public Act 152 being MCL 15.561 *et seq.* The health care contribution accordingly is no longer in issue.

Employee Contribution to Defined Benefit Plan

The City proposes a 5% employee pension contribution, refundable only if the lifetime annuity is forfeited. Contributions would be pre-tax payroll deductions. If the contribution is withdrawn, the lifetime annuity would be forfeited. The Union counters with a proposal of 4%. The Union's reasoning is that the 4% figure would create a cushion of sorts to protect its membership from future increases in its health care co-pay.

Given the Union's many concessions, the 4% figure is recommended with the contributions being refundable only if the lifetime annuity is forfeited, and with the contributions being pre-tax payroll deductions.

Proposed addition of section 6.15

MCL 423.215(11) and (12) provide as follows:

(11) The following are prohibited subjects of bargaining and are at the sole discretion of the public employer:

(a) A decision as to whether or not the public employer will enter into an intergovernmental agreement to consolidate 1 or more functions or services, to jointly perform 1 or more functions or services, or to otherwise collaborate regarding 1 or more functions or services.

(b) The procedures for obtaining a contract for the transfer of functions or responsibilities under an agreement described in subdivision (a).

(c) The identities of any other parties to an agreement described in subdivision (a).

(12) Nothing in subsection (11) relieves a public employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in subsection (11)(a) on its employees.

In accordance with the above statute, the City proposes adding the following contract provision as paragraph 6.15 in Article VI Management Rights: "To consolidate, cooperate, and/or enter into interlocal agreements with other employers to the maximum extent permitted by law, subject only to the legal obligation to negotiate regarding the effect thereof." The Union objects to this addition to the contract unless the following language is added: "and subject to the terms of this contract."

Given the statute's clear pronouncement that the public employer's options listed in the statute are within in its sole discretion and are prohibited subjects of bargaining, the Union's position is without merit.

Although the wording of the City's addition is benign, the following language—which more closely mirrors the statute—is recommended: "To enter into an intergovernmental agreement to consolidate one or more functions or services, to jointly perform one or more functions or services, or to otherwise collaborate regarding one or more functions or services. Nothing in this paragraph relieves the employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in this paragraph on it employees."

Employee contributions to defined contribution plan

The City currently contributes a maximum of 8% in matching funds to an eligible employee's defined contribution pension plan. Defined contribution plans cover employees who are hired after July 1, 2002. The City contributed $439,743.00 to employee defined contribution plans during the fiscal year that ended June 30, 2011.

The City proposes reducing its current 8% match to 4%. The Union opposes this reduction. Based on the City's obvious need for drastic long-term cost reductions, the City's proposal should be adopted.

Proposed modification of Retiree Medical Savings Accounts (RMSA)

The City established retiree medical savings accounts (RMSA) for eligible employees in 2010. The funds are to be available to employees, their spouses and dependents to offset the cost of health care during retirement or after separation of service. These accounts are for employees that are not eligible for post-employment health care. Employees are required to contribute $25.00 twenty-four times a year through pre-tax withholdings. The City contributes $1,500.00 a year. City contributions cease at retirement or termination. Employee contributions are 100% vested while the City contributions vest after five years of service.

Currently only employees hired on or after November 15, 2010 must participate in the RMSA program. The city proposes that all employees hired on or after July 1, 2002—the effective date of the defined contribution plan—also be included in the RMSA

program. As the City notes, this will place all defined contribution employees on an equal footing. This proposal should be adopted.

Emergency Financial Manager

The City proposes that the following language be added to the contract: "An emergency manager appointed under the Local Government and School District Fiscal Accountability Act can reject, modify, or terminate the collective bargaining agreement as required in the Act. Provisions required by the law are prohibited subjects of bargaining." The City cites MCL 423.215(7) and (8).

Given the voters' rejection of Public Act 4 of 2011, The Emergency Manager Law in last November's referendum, it is recommended that no reference to an emergency financial manager be made in the contract, unless it is required by future legislation.

The Patient Protections and Affordable Care Act

The City proposes adding the following language to the employment contract in response to The Patient Protections and Affordable Care Act: "The Employer reserves the right to change, amend, modify, and/or discontinue the existing health insurance benefit program in response to developments associated with the Patient Protections and Affordable Care Act ('Act'), and as said Act may be from time to time changed, amended, defunded, or modified, including the right to so act in response to (a) regulations issued pertaining to said Act, and/or (b) judicial interpretations of said Act. The Employer will first consult with the Union regarding any action(s) it may take.

Should the Union feel that any such Employer action is not reasonable under the circumstances, the Union may grieve. An arbitrator shall give appropriate deference to the Employer's determination as to reasonableness."

The Union opposes this proposed language as extreme and asserts that it was not included in a recent police union settlement. Regardless of any other union settlement, the Union's argument is persuasive. The first half of the first sentence of the proposed addition, "The Employer reserves the right to change, amend, modify, and/or discontinue the existing health insurance benefit program in response to developments associated with the Patient Protection and Affordable Care Act . . ." gives the City *carte blanche* authority to unilaterally modify the employment contract in response to its perceptions of developments associated with the Patient Protection and Affordable Care Act. The second half of the first sentence, "and as said Act may be from time to time changed, amended, defunded, or modified, including the right to so act in response to (a) regulations issued pertaining to said Act, and/or (b) judicial interpretations of said Act," is more restrictive, but it still amounts to the authority to unilaterally modify the employment contract subject only to consultation with the Union and the grievance process.

It is recommended that the city's proposed language be rejected and that paragraph 26.1(C) of the last contract be retained.

Safety Incentive Awards Program

The Safety Incentive Awards Program should be discontinued. This conclusion is based on a review of the affidavit of Kimberly Craig, which includes a memorandum from the Department of Labor dated March 12, 2012. The memorandum from Deputy Assistant Secretary Richard E. Fairfax specifically addresses employment programs similar to the Safety Incentive Awards Program. Mr. Fairfax suggests that such programs violate Section 11(c) of The Occupational Safety and Health Act of 1970 because they can discourage employees from reporting injuries. His reasoning is sound and persuasive.

DRIVE

MCL 408.477 requires a discontinuation of employee payroll deductions for the Teamster's political action committee: Democrat Republican Independent Voter Education (DRIVE). No purpose would be served by including a dormant provision in the employment contract for DRIVE payroll deductions that would take effect if the law were changed.

Wage Freeze

Both parties agree to a wage freeze for the term of the contract.

New employee health care premiums

The City proposes that health care premium costs for new hires should include a minimum employee share of 20% or the City's share shall be cost competitive with the new state preferred provider organization health plan on a per-employee basis in accordance with 2011 Public Act 152 being MCL 15.561 *et seq.* As the City points out in its brief, this has already been implemented, and the issue is moot.

The "Me Too" Proposal

The Union has vigorously made a case for a "Me Too" provision in the pending labor contract. Basically, a "Me Too" provision would provide that any concessions made by the Union would sunset at the expiration of its contract if other unions did not make similar concessions. The City opposes the Union proposal.

Although the Union's proposal does intuitively strike one as fundamentally fair, it is unfortunately, inherently unworkable and counterproductive. Given the City's projected long-term trends of reduced property tax revenue, rising health care costs, and burdensome pension costs, the City is in need permanent cost reductions. Along with that, certainty is needed. The possibility of a concession sunsetting upon the expiration

of the labor contract would add a variable of uncertainty to the City's long-term financial planning which would hamper not only City officials but its employees as well.

Dennis P. Grenkowicz 12/30/12