MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
MICHIGAN AFSCME COUNCIL 25,
AFL-CIO, LOCAL 3604.01

-and-

RESPONDING PARTY:
SAGINAW HOUSING COMMISSION,

RECEIVED
STATE OF MICHIGAN
JUN 14 2018
EMPLOYMENT RELATIONS
COMMISSION
DETROIT OFFICE

MERC CASE NO.: D17E-0532

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A. 336 of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

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Advocates

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PETITION FILED: September 12, 2017
PANEL CHAIR APPOINTED: November 15, 2017
SCHEDULING CONFERENCE HELD: January 3, 2018
HEARING DATE: March 6, 2018
REPORT ISSUED: May 24, 2018

TABLE OF CONTENTS

1. INTRODUCTION AND BACKGROUND 1
2. STATUTORY CRITERIA 1
3. STIPULATIONS AND PRELIMINARY RULINGS 2
4. COMPARABLES 2
5. ISSUES BEFORE FACT FINDING 3
   ISSUE 1 – MANAGEMENT RIGHTS (JUST CAUSE) 3
   ISSUE 1 – Management Rights (Just Cause) - Recommendation 7
   ISSUE 2 – HEALTH INSURANCE 7
   ISSUE 2 – Health Insurance - Recommendation 8
   ISSUE 3 – WAGES 8
   ISSUE 3 – Wages - Recommendation 11
6. SUMMARY OF RECOMMENDATIONS 11
   ISSUE 1 – MANAGEMENT RIGHTS 11
   ISSUE 2 – HEALTH CARE 11
   ISSUE 3 – WAGES 11

WITNESS LIST

1. Ronald Stanley, Property Manager
2. Lesley Foxx, Executive Director

1. INTRODUCTION AND BACKGROUND

> The Saginaw Housing Commission (the "Commission") provides low-income public housing within the City of Saginaw, Michigan and administers Housing Choice Vouchers (Section 8) within Saginaw County. The Commission also offers a Family Self-Sufficiency Program to the recipients of its services. Michigan AFSCME Council 25, AFL-CIO Local 3604 (the "Union") represents the Commission's Property Managers and Section 8 Manager. The Commission also has other employees represented by the Service Employees International Union, Local 517M ("SEIU") as well as other non-union administrators. Because the Commission and Union have been unable to reach an agreement on the issues of wages, healthcare, and management rights, these unresolved issues have been referred to fact-finding by Union petition.

[Employer's Brief.]

The Union and Employer are parties to a collective bargaining agreement which was effective from July 1, 2014 through June 30, 2017. The Union represents two property managers and one Section 8 manager. The parties engaged in negotiations for a new CBA on May 26, June 6, June 23 and thereafter engaged in mediation with a MERC appointed mediator.

(a) The parties agreed in the prehearing conference that there were three outstanding issues, viz:

1. Management Rights (just cause);
2. Health insurance;
3. Wages.

2. STATUTORY CRITERIA

There are no statutory criteria established for fact finding matters. However, most Fact Finders adopt the guidelines set forth in Section 9 of Act 312 which applies to compulsory arbitration for public safety (police and fire) employees. The specific criteria in Act 312 which are relevant and applicable in this case are as follows:

(b) The lawful authority of the employer.

...

(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 in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, and commonly known as the cost of living.

(g) 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.

...

(i) Other factors that 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.

MCLA 423.239.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties reached agreement on several issues and those tentative agreements are incorporated herein.

4. COMPARABLES

The Union offered the following four comparables:

1. Marquette Housing Commission;
2. Detroit Housing Commission;
3. Lansing Housing Commission;
4. Inkster Housing Commission.

The Employer offered 12 comparables, viz:

1. City of Grand Blanc and Supervisory Group – CBA (See Employer Exhibit 7);
2. Bay City Housing Commission – wages (See Employer Exhibit 9);
3. Saginaw Township and Teamsters – CBA (See Employer Exhibit 10);
4. City of Burton Supervisors – CBA (See Employer Exhibit 11);
5. Meredith Corporation – CBA (See Employer Exhibit 12);
6. Charter Township of Hampton – Non-supervisory (See Employer Exhibit 13);
7. Charter Township of Hampton – Police Lieutenants (See Employer Exhibit 14);
8. 37th Judicial Circuit Court and Technical Processional Office Workers (See Employer Exhibit 15);
9. Saginaw Township Board of Education – CBA (See Employer Exhibit 16).
10. University of Michigan and Police Officers – CBA (See Employer Exhibit 17).
11. Gray Television Group – CBA (See Employer Exhibit 18);
12. Screen Actors Guild – Agreement (See Employer Exhibit 19).

5. ISSUES BEFORE FACT FINDING

The parties agreed the following three issues are before the Fact Finder:

1. Management Rights (first course; modified arbitrary and capricious standard);
2. Health Insurance;
3. Wages.

ISSUE 1 – MANAGEMENT RIGHTS (JUST CAUSE)

The expired CBA between the parties contains a typical just cause provision regarding discipline and discharge. The applicable provisions of the CBA are as follows:

> Article 3.L – to discipline and discharge employees for just cause, recognizing that this bargaining unit is composed of supervisory employees and that the performance of supervisory and other management-related functions increases the importance of satisfactory work performance and continued confidence by the Commission for continued job security.

Article 20 – Discipline, Section 1. Types of disciplinary action. It is recognized by both the Employer and the Union that all matters regarding disciplinary action must take into account not only the seriousness and number of offenses, but also the employee's past record and performance and the circumstances under which the offense was committed. Disciplinary action will be for just cause. Disciplinary action shall be progressive except in instances where the violation is of a serious nature.

The Union seeks to maintain the above language in a renewed CBA.

The Employer initially proposed to replace the just cause standard with an arbitrary and capricious standard, but later modified its proposal to create a new section in Article 20 (Section 4) to read as follows:

A. The arbitrary and capricious standard of review for discipline and discharge shall be applied in accordance with the following principles:

- It is arbitrary and capricious to discipline or discharge an employee for misconduct where there is no credible evidence that the employee committed the alleged offense.

- It is arbitrary and capricious to discipline or discharge an employee for poor performance without providing the employee prior notice of their performance issues.

- It is arbitrary and capricious to discipline or discharge an employee where other similarly situated employees have not been disciplined or discharged for equivalent misconduct or poor performance of which the Employer is aware.

- It is not arbitrary and capricious to issue the next disciplinary step including discharge, where the employee has been previously progressively disciplined.

- It is not arbitrary and capricious to immediately discharge an employee who has committed a serious violation.

The rationale for the proposed change by the Employer is that since it is a small agency, the Commission's leadership (which is the Executive Director, Lesley Foxx) is charged with investigating any employee misconduct and fashioning an appropriate response while simultaneously being responsible for the operation of the Commission with little supporting personnel. According to the Employer, this impairs the Commission's ability to "undertake its

public mission by requiring it to inordinately process every employee offense before responding."

In support of its position, the Employer cites a CBA from the Screen Actors' Guild and Meredith Corporation (KMOV-TV). Even though that is a private industry contract, I would otherwise find it relevant except that involves an entirely different environment (TV broadcast to thousands of viewers) where the parties recognize that misconduct can have serious consequences threatening the TV station's very livelihood. The Employer also relies on the external comparables of the Saginaw Township Community Schools and the U of M CBA with its police officers. The provisions cited in the Saginaw Community Schools is as follows:

> After completion of the probationary period, employees will be disciplined and/or discharged only for just cause. Discipline and/or discharge will not be arbitrary and capricious.

The Employer offered the interpretation that the second sentence applies to the level of discipline to be determined. However, without more testimony from the parties to that contract that reading is not clear. Another reading is that the two sentences are in conflict with one another. Perhaps most significantly if second sentence was only intended to refer to a level of discipline, it would have said that "the level of discipline or the discipline to be imposed will not be arbitrary and capricious." The language is, at best, ambiguous. The U of M CBA has similar limitations. First, it clearly spells out examples of conduct that amounts to just cause. Second, it limits discipline to not being clearly excessive in relation to the alleged offense, one of the hallmarks of just cause. Third, the U of M CBA wipes out any discipline occurring more than two years previously.

On the other side of the ledger, the Union offered as comparables Housing Commissions for Marquette, Detroit, Lansing, and Inkster all providing for the traditional just cause standard

for discipline and discharge.[1] When Executive Director of the Commission, Lesley Foxx, was asked about the need for the change in the just cause standard, "to reasons which are not arbitrary and capricious," she testified that the change was based on an incident where an employee was sought to be terminated by the Commission, but the Commission was advised by counsel that under the just cause standard, the discharge could be overturned at arbitration. Thus, the Employer wanted a less strict standard for termination in order to discharge an employee more easily.

In my opinion, unfortunately, one incident does not justify a change in a standard which has been long accepted in private and public employment and for which there are thousands of arbitration opinions. In fact, in the case cited by Ms. Foxx, the Commission apparently did the prudent thing and followed their counsel's advice. There is no assurance that the counsel's advice would have been any different had there been an arbitrary and capricious standard. However, there is a more significant reason why the change is not justified. For the same reason that the Employer argues that the Housing Commission is a small operation with limited personnel and resources, by the same token there is less opportunity to review a potential discharge. In many cases, two heads are better than one in deciding whether to terminate an employee. In several employment settings, more than two people are often involved in signing off on a discharge decision, while in this case, discharge of an approximately $50,000 employee may not necessarily be career-ending, it may nevertheless be a difficult job to replicate for an

[1] It is noteworthy that the Employer offered several other CBA provisions (but not the discipline provision) from the following entities: Flint Housing Commission; City of Grand Blanc; Bay City Housing Commission; City of Burton; Charter Township of Hampton – non-supervisory and lieutenants; 37th Judicial Circuit Court; and Gray Television Group. The only provisions of those CBAs that were exhibits dealt either with the issue of health insurance or wages. Since the provisions of those contracts dealing with just cause were not introduced, I conclude those agreements would not have been helpful to the Employer.

employee. In this case, there is as the parties acknowledge, essentially one decision-maker, that being the Executive Director. She may very well be fair and judicious in her decisions regarding personnel, nevertheless, there is no other person to weigh in with another perspective. While the Employer may regard the Executive Director's decision on running the day to day operations of the Commission as singularly important, the only way that job gets done effectively is by her efforts and the personnel that she supervises. Thus, decisions involving personnel are every bit as important, if not more important, than some of her day to day activities. Based on the reasons for the change proposed by the Employer, the comparables and the fact that there is a well-established body of decisional cases as to what just cause means, the Employer's proposal is not recommended.

ISSUE 1 – Management Rights (Just Cause) - Recommendation

I recommend that the current contract language be retained.

ISSUE 2 – HEALTH INSURANCE

The Employer proposed the following language with regard to health insurance:

> The Employer may modify or change the health insurance plan and/or benefits as long as much modification or changes are made on a consistent basis among all Commissioned employees. Modifications or changes made to the health insurance plan which are specific to the bargaining unit shall only be made after notice and opportunity to bargain is made to the Union.

The Union objects to this new Employer CBA language since the Employer could unilaterally change the health care plan for all Commission employees without bargaining with the Union. Currently the Commission has 11 employees under its health care plan with one employee opting out of coverage and another ineligible for coverage. As the Employer observed in its brief, negotiating a separate health care plan for three employees in his bargaining unit does

not make economic sense and in all likelihood, the premiums would be higher than the current group of 11 employees that are covered. While the Employer did not present any Housing Commissions that have similar provisions in their health care provisions, they did offer a number of other comparables with similar provisions (i.e., Saginaw Township, City of Burton, University of Michigan, 37th Judicial Circuit Court, and Charter Township of Hampton, both supervisory and non-supervisory CBAs). There is an additional reason why I recommend that the Employer's proposed language be adopted and that is that the non-bargaining unit employees including the Executive Director are covered by the same insurance plan and they would obviously have their interests to be protective of while at the same time assuring the bargaining unit no worse coverage. The comparables, economic reality and self-interest support the Employer's proposal.

ISSUE 2 – Health Insurance - Recommendation

I recommend that the Employer's language be adopted.

ISSUE 3 – WAGES

The Employer has proposed the following wage increases:

July 1, 2017	2.5% across the board increase
July 1, 2018	2.5% across the board increase
July 1, 2019	Wage re-opener

The Union, for its proposal, has offered the following:

Effective July 1, 2017	All members make at least $50,000 per year. 2% increase to both classifications July 1, 2017; July 1, 2018; and July 1, 2019

Currently property managers earn an annual salary of $46,691.84; Section 8 property managers are compensated annually at $55,265.60. Initially, the Union proposed parity between the bargaining unit classifications since they both are Managers. However, testimony from Executive Director Foxx established that the reason for the higher Section 8 manager salary is because they perform the job duties of a property manager and additionally manage the affairs of Section 8 including directly reporting to HUD. Later in bargaining, the Union dropped its demand for parity and amended its position as indicated above.

The record also established that there have been no wage increases in the bargaining unit for the past six years due to severe financial problems that the Commission had. Thanks to the efforts of the Executive Director, the Commission resolved its financial problems and in 2014 was out of the oversight of HUD.

The Employer points out that the Commission's revenue is based solely on funds from the federal government, particularly the Department of Housing and Urban Development (HUD) and receives no money from Saginaw County or any other tax levy from the County citizens. In addition, the Commission is under strict guidelines to vigilantly monitor its expenses and report periodically to HUD with respect to its activities. The Employer points out that in an effort to somewhat mitigate the effects of the 6-year wage freeze, it proposed a 2.5% wage increase for the first two years of the CBA with a reopener for the third year. It further observes that the same proposal was offered and accepted by the SEIU bargaining unit, the employees that the

present bargaining unit supervises. In addition, that same wage increase was given to the Commission's non-union employees.

Particularly significant to the undersigned is that the Commission's proposed wage increase, when added to the existing salaries of the three employees, the employees are among the highest paid in the region. Flint managers earn between $40,000 and $41,600 annually; the Bay City Housing Commission employees earn between $41,808 and $44,034. As significantly, the comparables offered by the Union, the Marquette Housing Commission, the Detroit Housing Commission, the Lansing Housing Commission and the Inkster Housing Commission all provide for Manager salaries significantly less than that provided by the Saginaw Housing Commission.

Given all of the above including the fact that the internal and external comparables favor the Employer and the 6-year wage freeze favors the Union, I recommend the Employer's wage proposal with one modification. That modification is that there be a third year fixed wage increase of 2% effective July 1, 2019. This will avoid the necessity of bargaining in the third year for a very small bargaining unit and allow the Employer more than sufficient time to plan for the third year wage adjustment. Wage reopeners are sometimes more trouble than they are worth. Moreover, A 2% adjustment is likely to be, at least based on the last ten years, in line with the cost of living increases that have generally been experienced as reflected in the Department of Labor Cost of Living Index (currently listed as 2.4% in the All Cities Index whether urban or wage earner). The current PH budget has a surplus of slightly over $33,000.

This recommendation for a 3 year CBA would cost $10,435 in wages, less than 1/3 of the present (2017-18) PH budget surplus.[2]

[2] The Section 8 Admin budget reflects a surplus of $19,872.

ISSUE 3 – Wages - Recommendation

I recommend adoption of the Employer's wage proposal with the modification that there be a 2% ATB increase to both classifications effective July 1, 2019.

6. SUMMARY OF RECOMMENDATIONS

ISSUE 1 – MANAGEMENT RIGHTS

Status quo – present contract language.

ISSUE 2 – HEALTH CARE

As Employer proposed.

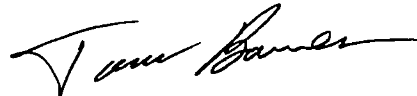
ISSUE 3 – WAGES

Effective 7/1/17 the 2% increase to both classifications.

Effective 7/1/18 the 2% increase to both classifications.

Effective 7/1/19 the 2% increase to both classifications.

Respectfully submitted,



Dated: June 14, 2018

Thomas J. Barnes
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Mediator's Report on Acceptability of Fact Finder's Recommendation

Case Nbr: D17 E-0532 **Mediator:** Richard Ziegler
Fact Finder: Thomas J. Barnes

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1. How was the fact finder's recommendation received by the Employer? (Check One)

____ A. Completely Accepted
____ B. Partially Accepted
____ C. Completely Rejected

2. How was the fact finder's recommendation received by the Union? (Check One)

____ A. Completely Accepted
____ B. Partially Accepted
____ C. Completely Rejected

3. What subsequent steps followed the fact finder's recommendation? (Negotiations, Mediation, etc.)

____

____

____

____

4. Did the fact finder's recommendation influence the settlement of the case? If so, please describe:

____

____

____

____

(Confidential/Restricted)

Case Nbr: D17 E-0532 **Mediator:** Richard Ziegler
Fact Finder: Thomas J. Barnes

(Confidential/Restricted)