State of Michigan

Department of Licensing and Regulatory Affairs

Employment Relations Commission

FACT FINDING REPORT AND RECOMMENDATIONS

In the matter of fact finding between

Norton Shores, City of

and

Teamsters, Local 214

Michigan Employment Relations Commission Case No. L12 C-0296

DATE OF FACT-FINDING PETITION:	June 21, 2012
DATE OF PRE-HEARING CONFERENCE:	October 12, 2012
LOCATION OF PRE-HEARING CONFERENCE:	telephone conference
DATES OF HEARING:	December 18, 2012
LOCATION OF HEARING:	Norton Shores, MI
DATE HEARING CLOSED:	December 18, 2012
FACT FINDER:	Gregory M. Saltzman

APPEARANCES:

For City of Norton Shores:

Mr. Ronald A. Bultje, Esq., Scholten Fant, outside counsel

Ms. Carrie Larks, director of administrative services, City of Norton Shores

Mr. Jerry Bartozek, public works director, City of Norton Shores

For Teamsters Local 214:

Mr. Robert P. Vasquez, business representative, Teamsters Local 214

Mr. Gordie Anderson, bargaining unit member

Mr. Scott Ellison, bargaining unit member

Mr. Matt Clark, bargaining unit member

I. General Background

The City of Norton Shores (hereinafter the Employer) has a population of approximately 24,000 and is located in Muskegon County in western Michigan. The Employer has ongoing collective bargaining relationships with a police patrol unit, a police supervisory unit, a firefighters unit, and a public works unit. Teamsters Local 214 (hereafter the Union) is the bargaining representative for the public works unit, consisting of all regular full-time and part-time employees of the Employer, excluding police, fire, parks/recreation, clerical, professional or technical, and supervisory employees. Members of the bargaining unit represented by the Union do street, drainage, and utility work for the Employer. There were 29 members of the public works bargaining unit as of the date of the fact finding petition.

The collective bargaining agreement between the Employer and the Union expired on June 30, 2012. The parties attempted to negotiate a new contract but were unable to reach agreement, despite the assistance of a MERC mediator. The Union petitioned for fact finding. The petition listed the following unresolved issues: wages, insurance, and retirement.

The Employer and the Union reached tentative agreement on many issues, including wages, prior the fact-finding hearing. But bargaining unit members declined to ratify an Employer settlement proposal dated November 6, 2012.

During the December 18, 2012, fact finding hearing, the parties agreed that the following local government units were appropriate external comparables for the City of Norton Shores: the City of Grandville, the City of Holland, the City of Kentwood, the City of Muskegon, and the City of Walker. At the end of the hearing, both parties expressed willingness to try to reach a settlement on the remaining issues prior to the February 1, 2013, deadline for submission of briefs; but no settlement was reached.

II. The Proposals of the Parties

The issues still in dispute as of the time that the parties submitted briefs were as follows:

A. Health Insurance Premium Contributions by Active Employees

The Employer proposed, and the Union accepted, a cutback in health insurance benefits that substantially increased out-of-pocket payments. The current health plan (a Blue Cross Blue Shield Community Blue plan) provides 100% coverage for in-network services with no deductible, and it has copays of $10 for office visits, $10 for generic drugs, and $20 for brand-name drugs. Effective with the ratification of the new collective bargaining agreement, bargaining unit members will be covered by a BCBS Simply Blue health plan that will provide only 80% coverage; require a deductible of $250 single and $500 family; and raise copays to $15 for office visits and $15/$50 for prescription drugs.

The parties disagree, however, on employee contributions for health insurance premiums. Prior to October 1, 2012, each employee contributed $20 biweekly ($520 per year) towards health insurance premiums. Effective October 1, 2012, this $20 biweekly contribution was eliminated, but employees were required by statute to pay the increase in health insurance premiums (an amount exceeding $20 biweekly). Premiums will go down substantially when members of this bargaining unit switch to the Simply Blue health insurance plan with higher out-of-pocket payments. ***The Employer wants to reinstate the $20 biweekly contributions by bargaining unit members for health insurance premiums once members of the bargaining unit switch to the Simply Blue health insurance plan. The Union objects.***

B. Retiree Health Insurance for Those Hired after July 1, 2012

Under the expired collective bargaining agreement, the Employer provides retiree health care coverage equal to what was in place when the employee retired from the City of Norton Shores, with the retirees continuing premium contributions at the rate they made just prior to retirement. This health plan covers retirees until age 65 and their dependents. Any employees retiring after active employees switch to the Simply Blue plan will be covered by the Simply Blue plan rather than the Community Blue plan when retired.

The Employer proposed two major cutbacks in post-retirement health insurance benefits for those hired by the City of Norton Shores after July 1, 2012. First, the Employer would no longer provide health insurance for spouses or dependents of retirees. Second, the retiree health plan would change from a defined-benefit plan (with retirees continuing whatever contributions they made to premiums prior to retirement, and the Employer responsible for the remainder of the premium) to a defined-contribution plan (with the Employer contributing a fixed dollar amount per month for retiree premiums, and the retiree responsible for the remainder of the premium).

The Union seems to have accepted the first cutback (elimination of insurance for spouses and dependents of retirees hired by the City of Norton Shores after July 1, 2012). The Union also seems to have accepted the principle of the second cutback (switching from a defined benefit plan to a defined contribution plan). But the Union rejects the specific dollar amount of the proposed Employer contribution for retiree premiums. ***The Employer proposes that the Employer contribute $15 per year of service, up to a maximum of $450 per month, for retiree health insurance premiums for retirees who were hired by the City of Norton Shores after July 1, 2012. The Union proposes that the Employer contribution be $20 per year of service, up to a maximum of $600 per month.***

C. Pension Contributions by Employees Hired after July 1, 2012

The Employer provides a defined-benefit pension plan administered by the Municipal Employees' Retirement System (MERS). The expired collective bargaining agreement required employees hired prior to July 1, 2010, to contribute 1% of pay to the MERS plan and required employees hired after July 1, 2010, to contribute 2% of pay. The Employer proposed, and the Union accepted, that employees hired after July 1, 2012, be shifted to a different MERS defined benefit plan with less generous benefits (cutting the multiplier from 2.5% of final average compensation for those hired before July 1, 2012, to 2.25% for those hired after; calculating final average compensation over the highest five years rather than the highest three years; and requiring 55-year-olds to have 25 years of service rather than 15 to be eligible for a pension). The Employer proposed, and the Union accepted, increased contributions to the pension plan by bargaining unit members hired prior to July 1, 2010: in the second year of the new contract, the employee contribution would rise from 1% to 1.75% of pay; and in the third year, it would rise to 2.5% of pay.

The Employer brief proposes a distinct set of pension contribution rates for employees hired between July 1, 2010, and June 30, 2012, but the Union brief asserts (page 13) that no employees

in this bargaining unit were hired during this period. If this Union assertion is correct, then there is no need for purposes of resolving the present dispute to consider different pension contribution rates for (a) employees hired between July 1, 2010, and June 30, 2012, and (b) employees hired after June 30, 2012.

The Employer and the Union clearly disagree on pension contributions by employees hired after July 1, 2012. There may, however, be some confusion (possibly on the part of the fact finder) about what each party's exact position is.

In the management settlement offer dated November 6, 2012, reproduced in Union Exhibit 5, the Employer proposed that employees hired after July 1, 2012, contribute 3% of pay to the MERS pension plan, apparently in all three years of the agreement. Employer Exhibit 6, presented at the December 18, 2012, fact finding hearing, also showed a constant employee contribution rate throughout the three-year agreement: 2.5% on the written document, corrected orally at the hearing by the Employer to 3%.

In contrast, the Employer brief dated February 1, 2013, proposed that employees hired after July 1, 2012, contribute 3.75% to MERS in the second year and 4.5% in the third year. The Employer brief (page 5) also asserts that Employer Exhibit 6 incorrectly stated the Employer proposal in not showing higher employee contribution rates in the second and third years.

The Union brief does not address the proposal in the Employer brief for employee contributions of 3.75% or 4.5%, but it seems safe to assume that the Union would find employee contributions of 3.75% or 4.5% even more objectionable than employee contributions of 3.0%.

According to the fact finder's notes from the December 18, 2012, hearing, the Union position on MERS contributions for employees hired after July 1, 2012, was as follows: "union has accepted 2.5% immediately for new hires, but not 3%." The Union's brief of February 1, 2013, seems consistent with the fact finder's notes. But the Employer's brief (page 2) interprets the Union's position differently:

> Apparently, the Union believes that during the three years of a New Agreement, employees hired after July 1, 2012 should contribute to their reduced pension plan the same amounts contributed by employees hired after July 1, 2010, i.e., two percent of their compensation during the first year; 2.75 percent during the second year; and 3.5% during the third year.

The fact finder's sense is that the current position of each party is as follows. ***The Employer proposes that employees hired after July 1, 2012, contribute 3% of pay to the MERS plan in the first year of the agreement, 3.75% during the second year, and 4.5% in the third year. The Union proposes that employees hired after July 1, 2012, contribute 2.5% of pay to the MERS plan immediately and that this 2.5% rate continue throughout the three-year term of the agreement.***

III. Rationales Presented by the Parties

The issues in dispute are economic. The parties addressed four common norms for assessing economic proposals: employer ability to pay, compensation offered by this employer to other employee groups, compensation provided by comparable employers to employees in the same occupation as this bargaining unit, and compensation now received by employees in this bargaining unit.

Ability to Pay

A key issue in many labor disputes in Michigan in recent years has been the extent to which limitations on the Employer's ability to pay necessitate reductions in employee compensation. In this case, the Union has already agreed to significant cutbacks in the health insurance and pension plans. The question is whether these cutbacks suffice to bring the Employer's compensation costs to a level within its ability to pay.

The Union makes the following assertion in its fact finding brief (pp. 2-3):

> At no time during the course of negotiations or Mediation did the Employer make a claim of inability to pay. The City of Norton Shores has been and continues to be in very solid financial standing. According to documents published on the City of Norton Shores 2012 Performance Dashboard. . . the general fund balance increased from 14.6% in 2010 to 19.9% in 2011. The Performance Dashboard also reveals that annual per capita general fund expenditures reduced from $361 in 2010 to $346 in 2011.

> The City of Norton Shores has continued to experience growth in population and new construction. . . Cumulative New Housing Starts during Fiscal Year 2012 reached the highest levels since Fiscal Year 2008. Cumulative Construction Value during Fiscal Year 2012 topped $35,000,000!

The Employer did not expressly claim, either at the fact finding hearing or in the Employer brief, that the City of Norton Shores was unable to pay for the Union's proposals regarding health insurance and pensions. There was no claim, for example, that the Employer had recently made or anticipated making reductions in staffing due to budget problems.

The Employer did, however, note its substantial unfunded liability for pensions and post-retirement health insurance benefits. The Employer brief (page 6) states that, "The City's pension plan is only 57 percent funded. To address the unfunded liability, the City continues to pay more than the minimum required by MERS each year, but obviously a significant amount of time will be needed to cover the unfunded liability of $18,000,000." Similarly, on page 9, the Employer brief states,

> the City's unfunded liability for retiree health insurance is well over $38,000,000.00. Currently, the City is paying over $990,000.00 per year to fund that liability. However, the City auditors have recommended that the City pay more than $2,610,000.00 per year to fund the liability of more than $38,000,000.00 within a reasonable period of time. The City has not been able to make that type of annual contribution and therefore has not been able to comply with the recommendation of the City auditors.

Compensation Offered by This Employer to Other Employee Groups

The Union argued that members of this bargaining unit should not be treated worse than other employees of the City of Norton Shores. The Union brief (pages 15-16) analyzes Employer Exhibit 4, which reports pension plan contributions for different groups employed by the City of Norton Shores. The Union brief notes that Employer Exhibit 4 does not report any information about pension contributions by nonunion employees (the management, professional, technical, and clerical unit, or MPTC) hired prior to July 1, 2006. But a November 27, 2012, e-mail message from a Carrie Larks to Robert Vasquez (included in Union Exhibit 9) indicated that these nonunion employees do not contribute to the MERS pension plan—a contrast to the 1%

contribution currently made by members of this bargaining unit hired prior to July 1, 2010, and the 2.5% contribution that they will make during the third year of the contract.

The Employer brief (page 5) states that "Only a few individual employees (e.g., Police Chief and Police Lieutenant), plus MPTC employees hired by the City before July 1, 2006, do not contribute" to the pension plan.

On page 16, the Union brief interprets Employer Exhibit 4 as stating that the Employer has proposed a 3.5% employee contribution in year three of the agreement for the police patrol unit and the police supervisory unit employees hired after July 1, 2012. The fact finder does not know if the Union was aware, prior to receipt of the Employer's February 1, 2013, brief, that the Employer had proposed a 4.5% contribution rate for members of the public works bargaining unit hired after July 1, 2012. But it seems plausible to assume that the Union would object to the discrepancy between 3.5% and 4.5%.

The Employer also uses internal comparability as an argument. The Employer brief (pages 7-8) states:

> [T]he City is unwilling to reduce the premium co-payments for employees represented by the Union to nothing, even if the health insurance plan going forward is not as generous as it was in the past, because the Union employees would then be in a favorable position compared to all other City employees. With its non-union employees, and with each of its bargaining units which have been involved in negotiations since the passage of Public Act 152 of the Public Acts of 2011, the City has implemented or negotiated for a new health insurance plan which will not be as generous as the prior health insurance plan, and for a continuation of the premium co-payments of $520.00 per year. There is no reason to treat the employees represented by the Union in a way which is **better** that the City is treating any of its other employees.

Compensation Provided by Comparable Employers

Union Exhibit 7 characterizes wages for public works employees of Norton Shores as "solidly in the 'middle of the pack'" of wages paid by comparable employers to public works employees. But the Union brief asserts (page 4) that average hourly wages in this bargaining unit are lower than those paid by comparable employers for similar workers. The Union argues that members

of this bargaining unit have accepted lower wages because the City of Norton Shores offered better employee benefits. The Union suggests that the Norton Shores health plan may no longer be superior to that offered by comparable employers once Norton Shores switches to the Simply Blue plan with higher out-of-pocket payments for health care. According to the Union brief, even if Norton Shores offers somewhat generous employee benefits after the health insurance and pension cutbacks already agreed to by the Union, these somewhat generous benefits are offset by somewhat low wages.

The Employer brief (page 3) asserts, "the wages paid by the City to employees represented by the Union are certainly competitive with the wages paid by comparable municipalities." The Employer also asserts that Norton Shores provides more generous benefits to public works employees than do comparable employers. Employer Exhibit 5 indicates that pension contributions by employees are higher in Grandville, Kentwood, and Muskegon (though not in Holland and Walker) than they are in Norton Shores. Employer Exhibit 6 indicates that comparable employers have switched to a defined contribution pension plan for new hires (indeed, Grandville made the switch in 1995), while Norton Shores still has a defined benefit pension plan for new hires. Employer Exhibit 8 indicates that annual employee contributions for health insurance premiums are more than twice as high for public works employees of comparable employers than they are for public works employees for the City of Norton Shores. Employer Exhibit 10 indicates that retiree health benefits for newly hired public works employees are less generous in Kentwood, Muskegon, and Walker than what the City of Norton Shores has proposed; but they are slightly more generous in Holland (city pays $450 per month for all retirees, not just for retirees with 30 or more years of service) and substantially more generous in Grandville (city still committed to a defined benefit health plan for retirees).

Interestingly, the Union had objected to the Employer's proposal that Muskegon Heights and Muskegon Township be considered comparable employers. But Employer Exhibit 10 shows that both of these communities still offer defined benefit health plans for retirees, with Muskegon Heights offering 100% employer-paid premiums for the retiree only and Muskegon Township offering 25% employer-paid premiums (possibly for both the retiree and dependents, though this was not clear).

The Employer brief (page 7) argues that, "in asking that its employees not be required to make any [health insurance] premium co-payments, the Union is asking for a concession which no other comparable city provides for its employees."

Compensation Now Received by Employees in This Bargaining Unit

The Union argued that consideration should be given to significant cutbacks in health insurance and pensions that the Union has accepted, effective with the ratification of the new collective bargaining agreement. Union Exhibit 8 claims that the Employer will save $132,313 in health insurance premiums for this bargaining unit once they switch to the new health plan with higher out-of-pocket payments. The Union objects to reinstating the $20 per month employee contribution to premiums on the grounds that "the savings of $132,313.00 should be enough!" Similarly, Union Exhibit 9 states that "The Union believes that the reduction in benefit level [for pensions of employees hired after July 1, 2012] is a significant enough change. To require an increased level of future retiree contribution to that reduced benefit plan is excessive."

IV. Fact Finder's Analysis of the Issues

Ability to Pay

It is financially prudent for the Employer to reduce its unfunded liability for pensions and post-retirement health insurance. Nevertheless, the cutbacks in benefits already agreed to by the Union will substantially reduce the Employer's unfunded liability. Furthermore, the recent decline in real estate prices seems to have ended, as has the recent severe business cycle downturn. Although there is a lag between changes in property values and changes in property tax collections (because property taxes are based on assessments in prior years), improvements in the real estate and labor markets should eventually increase revenues available to local governments from property taxes and state aid. Given that the Employer has not expressly asserted that it lacks the ability to pay for the Union's proposals, there is no basis for concluding that the Employer's ability to pay precludes adoption of the Union's proposals.

Compensation Provided by Comparable Employers

The Employer has made a convincing case that health insurance and pensions for the public works employees of the City of Norton Shores are not substandard by the benchmark of what comparable employers pay similar workers. It is particularly notable that every comparable employer requires public works employees to contribute part of the cost of the premiums for

health insurance (as shown in Employer Exhibit 8). Converting the Norton Shores health insurance plan to a noncontributory plan would be a ***qualitative*** difference that would break the compensation pattern provided by comparable employers.

Compensation Offered by This Employer to Other Employee Groups

The Employer presented evidence about its ***proposals*** regarding pensions and health insurance for the police patrol and supervisory units, but these proposals apparently had not been accepted by the relevant union or awarded by an Act 312 arbitrator as of February 1, 2013, when the Employer brief was submitted. It is possible that these Employer proposals will not be adopted. If they are not adopted for the police units, then internal comparability suggests that they should not be adopted for the public works unit, either.

Compensation Now Received by Employees in This Bargaining Unit

In my view, the Union's strongest argument is that the Union has already accepted major cutbacks in health insurance and pensions and that further concessions would require bargaining unit members to give up too much at one time. On the other hand, it is understandable that the Employer would want (1) to maintain the principle (established effective July 1, 2004) that employees contribute part of the cost of health insurance premiums and (2) to reduce its unfunded liability for pensions and post-retirement health benefits.

One could maintain the principle of employee contributions for premiums while acknowledging the impact on employees of major increases in out-of-pocket medical expenses by cutting the employee contributions for health insurance premiums back to their level in 2004-2008: $10 per pay period ($260 per year).

With regard to post-retirement health insurance, the Union made a very significant concession in agreeing that employees hired after July 1, 2012, would switch from a defined benefit plan covering both retirees and spouses to a defined contribution plan with fixed dollar contributions to premiums by the Employer. Furthermore, Union acceptance of much higher out-of-pocket payments for health care reduces the Employer's health care costs not only for current employees, but also for retirees. These concessions will go a long way towards reducing the Employer's unfunded liability for post-retirement health insurance, especially for newly hired employees. In view of likely future increases in health insurance premiums, a $450 cap on the

Employer's monthly contributions for premiums seems quite low—so low that many retirees might not be able to afford health insurance. I agree with the Union that this cap on Employer contributions for premiums should be set somewhat higher, at $600 per month.

Bargaining Process and Pension Contributions for New Employees

It appears that the parties may not have communicated effectively to each other the details of their proposals regarding pension contributions for employees hired after July 1, 2012.

The Employer appeared to believe that the Union proposal was that employees hired after July 1, 2012, would contribute 2% of pay to the MERS pension plan in the first year of the collective bargaining agreement, 2.75% in the second year, and 3.5% in the third year. But the fact finder's sense is that the Union position is that such employees should contribute 2.5% in all three years.

The Union appeared to believe that the Employer still adhered to its November 6, 2012, settlement offer, requiring employees hired after July 1, 2012, to contribute 3% of pay to the MERS pension plan in all three years of the new collective bargaining agreement. Employer Exhibit 6, as presented at the December 18, 2012, fact finding hearing, does not indicate that the Employer was proposing increases in the second or third year of the new collective bargaining agreement in pension contributions by employees hired after July 1, 2012. But the Employer brief of February 1, 2013, specifies employee contributions of 3.75% in the second year and 4.5% in the third year.

Ideally, the parties would have communicated more effectively during the bargaining process about the details of their proposals regarding pension contributions. I am extremely reluctant to recommend, as a fact finder, an increase in employee pension contributions to 3.75% in year two and 4.5% in year three when it is possible that the Union had no knowledge of this Employer proposal at the time that the Union prepared its fact finding brief.

V. Recommendations of the Fact Finder

I make the following recommendations regarding a new collective bargaining agreement:

A. Health Insurance Premium Contributions by Active Employees

Beginning with the date that bargaining unit members are covered by the Blue Cross Blue Shield Simply Blue plan, there shall be deducted from each covered employee's pay check each pay period a sum of $10.00 ($260 per year total) for the group health insurance plan. Such deductions are hereby authorized by this agreement.

B. Retiree Health Insurance for Those Hired after July 1, 2012

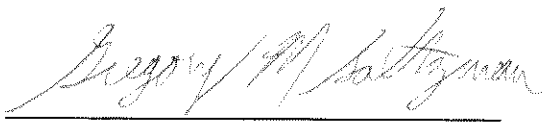
For employees hired after July 1, 2012, retiree health care will be made available to only the employee upon retirement. The City will contribute, on a monthly basis, $20 X years of service up to $600 toward the premium.

C. Pension Contributions by Employees Hired after July 1, 2012

Employees hired after July 1, 2012, will contribute 3% of their salary to the MERS pension plan.

CONCLUSION

The above report represents the Findings of Fact and the Recommendations arrived at as a result of the hearing I conducted and my review of the parties' submissions.



Gregory M. Saltzman
Fact Finder

Issued: February 7, 2013
at Ann Arbor, Michigan