



## Human Resources Department

Date: May 23, 2008

To: Phil L. Nelson, City Manager

From: Peggy E. Sears, Human Resources Director

Subject: Request for Information from Councilwoman Kerwin

You have asked me to respond to Councilwoman Kerwin's request for information on the long-term implications should non-represented employees choose to unionize. I will attempt to address this issue from four aspects: financial, legal, operational flexibility and employee-employer relations, all of which are critical and very realistic considerations.

By way of background, it is worth repeating that the two employee groups that are not represented by a union have historically led the way with benefit reductions that have resulted in significant savings to the City, contrary to statements previously made in the recent public hearing on the 2008 budget. Some of these benefit reductions include: (1) elimination of longevity payments (first implemented in 1993 for Classified and Exempt employees, but it wasn't until 2001 that this was finally negotiated with all union groups, and that was achieved only through the interest-based approach to negotiations. We had tried to gain that concession in the previous 4 contracts but were unsuccessful in the Act 312 arbitration process); (2) elimination of long-term disability payments after 5 years; (3) increased co-pay for prescription drugs; (4) reduction/elimination of the cash payment in lieu of subscribing to health insurance; (5) increased cost sharing of health insurance premiums; (6) implementation of a retiree health savings plan to replace retiree health insurance; (7) reduction in the Employer contribution toward defined contribution pensions. These benefit reductions provided a basis for us to effectively argue for similar concessions with the unionized employees.

Wage increases, however, have been led by settlements arrived at in union contract negotiations. Still, across-the-board increases have been less for non-union employees, and, Classified and Exempt employees do not enjoy the same automatic step increases that are in place for union employees (which are based purely on time in service). The non-represented employees must demonstrate by their level of performance that they have earned a merit increase (a philosophy which I wholeheartedly support and believe is best for the organization).

The combined across-the-board and merit increase is at or below the union increase percentages.

As indicated previously, to the extent that employees feel they are being taken advantage of, they will seek other means of obtaining what they want and feel they deserve by seeking union representation. We witnessed this scenario with our Police Captains who joined the command officer union in 1989 in order to get the benefits they felt they deserved, and with our Fire Staff Officers who unionized in 1995 in order to obtain salary and benefit considerations that the City was otherwise unwilling to grant. There has already been considerable discussion within the last two days by employees who are contemplating joining a union. With that understanding, it is important that the Troy City Council be aware of, and prepared for, the potential long-term effects of this shift.

### FINANCIAL CONSIDERATIONS

The financial impact could be far reaching and very long term, and nearly impossible to reverse. Time and manpower investment in negotiating a first contract is significant. The TFSOA contract took two years to complete. This entailed paying the salaries of five employees (more often 8-10 employees for the more complex union groups) who are meeting every 5-7 days for 4-6 hours each day over a two year period; outside labor counsel costs of 40K-50K; retroactive salary increases and overtime payments, and recalculation of the base wage for purposes of computing overtime pursuant to the Fair Labor Standards Act.

Internal financial issues can easily be taken into consideration when determining non-union employee raises. However, the negotiation process relies heavily on external comparables who may or may not be in the same economic situation as Troy. For example, one of our primary comparables recently settled two 5-year contracts, both of which provided a 3% wage increase for each of the 5 years. This kind of settlement weighs heavily in the mind of an arbitrator. I know from experience that the fact that Troy is using the fund balance to balance the budget won't be given serious consideration by an arbitrator if s/he sees there is an opportunity to raise revenue by increasing taxes. This is not a popular option, I realize, but the reality of how an arbitrator exercises his authority won't go away simply because it is unpopular.

### LEGAL CONSIDERATIONS

We have three union groups who are eligible to proceed to Act 312 arbitration if unsuccessful in negotiations and mediation: the Troy Command Officers Assoc., the Troy Police Officers Assoc., and the Troy Fire Staff Officers Assoc. Other employees in the Police Department are potentially eligible for Act 312 representation, and may or may not be eligible to join an existing union; that is a decision that would be settled by the Michigan Employment Relations Commission.

In the Act 312 process every aspect of wages, fringe benefits and working conditions may be brought forth, and unfortunately it often becomes a game of 'who's got the most issues' (the theory being if you start with more you end up with more). And whereas in the last 7 years (since using interest-based bargaining) we have easily arrived at an agreement on four

comparable communities for the purposes of determining external equity, the Act 312 process historically involves the use of many more comparables once each side has argued their rationale (based on SEV, population, square miles, density, or other criteria they believe is to their advantage to use).

Unions subject to Act 312 must first negotiate to impasse, then request mediation, then be certified by a mediator that they are at impasse. Only then can the arbitration process actually begin. Both sides argue in front of an arbitrator in a quasi-judicial setting in which transcriptions are made and each party is represented by legal counsel. The arbitrator writes the 'award' (i.e. settles each issue) and his determination is final and binding on both parties. One of the risks in entering the Act 312 process is that the arbitrators often are not educated in municipal finance or pension administration. Consequently, you do the best you can in developing your exhibits and arguing your case and hope for a reasonable, rational outcome that you can afford. And again, the process can be lengthy and time-consuming; it can take up to 6 months for an arbitrator to be named, and a year or two for the process to be completed.

The Michigan Municipal League continues to lobby on behalf of municipalities to change the way in which the Act 312 process operates, but it is difficult at best to make progress.

#### ORGANIZATIONAL CONSIDERATIONS

Our employees have demonstrated time and again their level of commitment, pride and integrity in the jobs they perform. They have proven their willingness to discuss problems and reach solutions that are beneficial for both sides.

This flexibility is significantly reduced under a union contract because the relationship is now governed by collective bargaining laws. Areas in which this flexibility suffers may include changing work schedules, types of assignments made, work sharing, the disciplinary process, promoting employees and even in rewarding employees. Contract language can dictate how these decisions are made, and management cannot unilaterally make changes.

These issues have the potential for presenting serious roadblocks to the *Budgeting for Outcomes* endeavor we are undertaking. The ability to streamline government services and realize economic efficiencies will be severely restricted.

#### EMPLOYEE/EMPLOYER RELATIONS

Finally, the impacts on the organization as it currently exists, both in terms of the relationship between employees and the City, and the services we are able to offer the citizens of Troy needs to be recognized. Until now we have enjoyed a relationship wherein the union employees have accepted necessary concessions and the City in turn has granted competitive salary increases without the necessity of collective bargaining. This process was successful because of the trust-building that has evolved over time. Likewise, the employment relationship with non-union employees is one in which we are mutually interested in the concerns of the other and in working together to reach a solution.

Unions originate because trust and/or credibility have been destroyed, or because the employees feel undervalued. The problem-solving approach goes away and morale suffers. These can all be overcome, but it takes time to re-build that trust, presuming the desire is there.

This report extends to areas beyond which Councilwoman Kerwin requested. The long range implications have the potential to affect areas which do not necessarily fall under the category of finances or flexibility, but because they are interrelated I think they more fully address Councilwoman Kerwin's concern.

Please advise if I can provide additional information or clarification.