STATE OF MICHIGAN

COURT OF APPEALS

FLINT PROFESSIONAL FIREFIGHTERS UNION LOCAL 352,

Petitioner-Appellant,

v

CITY OF FLINT and 68TH DISTRICT COURT,

Respondents-Appellees.

UNPUBLISHED
June 17, 2004

No. 244953
Michigan Employment Relations Commission
LC No. 00-000064

AFSCME COUNCIL , LOCALS 1600 and 1799,

Petitioner-Appellant,

v

CITY OF FLINT and 68TH DISTRICT COURT,

Respondents-Appellees.

No. 244961
Michigan Employment Relations Commission
LC No. 00-000058

FLINT POLICE OFFICERS ASSOCIATION,

Petitioner-Appellant,

v

CITY OF FLINT and 68TH DISTRICT COURT,

Respondents-Appellees.

No. 244985
Michigan Employment Relations Commission
LC No. 00-000056

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

At issue in these consolidated appeals is whether the language of the City of Flint's Retirement Ordinance allows for twenty-seven pay dates to be used in calculating a retiree's final annual compensation, which is used in determining the employee's pension benefits. Also before us is the alternative issue of whether a past practice of using twenty-seven pay dates existed such that it effectively changed the terms of the parties' collective bargaining agreements. On recommendation from the administrative law judge assigned to these cases, the Michigan Employment Relations Commission (MERC) held that the clear language of the Retirement Ordinance did not provide for the use of twenty-seven pay dates, and, therefore, the amendment to the Retirement Ordinance passed by respondent City of Flint merely clarified, not modified, the collective bargaining agreement. The MERC further held that petitioners did not present sufficient evidence to establish that the past practice was so widely accepted that it modified the terms of the agreement. Each petitioner appeals as of right and their cases were consolidated for purposes of this appeal. We affirm in part, reverse in part and remand.

I

Petitioners are labor organizations that represent various bargaining units of employees of respondents. Each labor organization has a bargaining agreement with respondents,[1] which incorporates by reference the Retirement Ordinance of the City of Flint and provides that pension benefits are to be calculated according to the formula contained in the ordinance. Under the defined benefit plan, the plan at issue in this case, an employee's pension benefit is calculated using his or her final average compensation (FAC) as a factor.[2] Section 35-8 of the retirement ordinance provides, in pertinent part:

> COMPENSATION. A member's salary or wages paid by the city for personal services rendered by him to the city, and including worker's compensation paid in accordance with contracts in existence between the city and recognized bargaining units and ordinances of the city.
>
> FINAL AVERAGE COMPENSATION. . . . shall mean the average of the highest annual compensation paid said members by the City of Flint during any period of three years of his credited service contained within his five years of credited service immediately preceding the date his employment with the City last terminates.

Employees were allowed to pick their three best non-overlapping years or could rely on the retirement office to choose the years used to calculate their FAC.[3] The situation that led to this litigation apparently began in 1991 when an employee chose his own years to be used in his FAC

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[1] The City of Flint is authorized by the 68th District Court to administer pension benefits for the court's employees.

[2] The pension benefit formula is: years of service x a multiplier x FAC.

[3] A "year" for FAC purposes was any consecutive 365-day period, not necessarily a calendar year.

calculation. This person chose his years so that the first and last day of each year period were pay dates, a method which results in twenty-seven pay dates per year.

As time passed, more retiring employees began using this method to choose their years. The parties agree that this method, versus using the standard twenty-six pay periods per year, resulted in an average 3.7 percent increase in an employee's pension benefits. The instant cases were filed after the City of Flint adopted an amendment to the Retirement Ordinance on March 8, 2000, explicitly limiting the years used in the FAC calculation to twenty-six pay dates per year. Petitioners argued that this amendment violated MCL 423.210(1)(a) and (e) of the public employment relations act (PERA) by unilaterally modifying petitioners' collective bargaining agreements, and thus, constituted an unfair labor practice. The MERC decided to the contrary.

II

The MERC's legal rulings will only be set aside if they are in violation of a statute or the constitution, or if they are affected by a substantial and material error of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 322-323; 550 NW2d 228 (1996). Factual findings of the commission will be upheld by this Court if they are supported by competent, material, and substantial evidence. *Id*. at 322. "Substantial evidence" exists if there was any evidence which reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence. *Mantei v Michigan Pub School Employees Retirement Sys*, 256 Mich App 64, 71; 663 NW2d 486 (2003).

"The PERA governs labor relations in public employment" and "imposes a duty of collective bargaining on public employers, unions, and their agents." *St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 458 Mich 540, 550; 581 NW2d 707 (1998). Pension benefits is a mandatory subject of collective bargaining. *Id*. at 551. "Under the PERA, an employer commits an unfair labor practice if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless the employer has fulfilled its statutory obligation or has been freed from it." *Port Huron, supra* at 317; footnote omitted. The MERC is vested with exclusive jurisdiction to remedy unfair labor practices. *St Clair, supra* at 550.

III

The first issue we must decide is whether the language of the ordinance as incorporated into the parties' collective bargaining agreements provides for this method of choosing years that results in twenty-seven pay dates per year. Whether contract language is ambiguous is a question of law. *Port Huron, supra* at 323. Questions of law are reviewed de novo by this Court. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The parties' agreements provide that the FAC is the "average of the highest annual compensation paid said members by the City of Flint during any period of three years . . . ." Petitioners argue that the City's amendment was a unilateral change of their contract terms because there is nothing in the ordinance language which limits the number of pay dates that make up an employee's annual compensation. Petitioners further contend that twenty-seven pay dates per year is permissible under the contract because the FAC refers to "annual compensation *paid*," not paid and earned. Respondents assert that the term "annual compensation" necessarily refers to only twenty-six pay periods because annual compensation is that which is earned and

received in a fifty-two week year. Respondents argue that, therefore, the amendment was simply a clarification of an existing contract term, not a modification that requires collective bargaining.

"Compensation" is defined by the contract as "[a] member's salary or wages paid by the city for personal services rendered by him to the city . . . ." The contract does not define "annual." The MERC looked to the dictionary definition of this term, which states that "annual" refers to "of, for, or pertaining to a year," such as in "annual salary."[4] *Random House Webster's New College Dictionary*, p 56 (1990). The MERC concluded:

> Construed together, the words "annual" and "compensation" clearly mean the amount of a member's pay for personal services rendered by him to the city within a year's time. Because anything more than 26 bi-weekly pay periods encompasses pay for services rendered beyond one year's time, we agree . . . and therefore find no merit to [petitioners'] argument in this regard.

We agree with the MERC. This view is also supported by other Michigan cases which have construed identical language.

In *Stover v Retirement Bd of the City of St Clair Shores Firemen & Police Pension Sys*, 78 Mich App 409; 260 NW2d 112 (1977), this Court was charged with determining whether payments for unused sick and vacation days were to be included in calculating a retiree's average final compensation. The statute defined "average final compensation" as

> the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within his 10 years of service immediately preceding his retirement, or leaving service, or if so provided in a collective bargaining agreement . . . may mean *the average of the 3 years of highest annual compensation received by a member during his 10 years of service immediately preceding his retirement or leaving service.* [*Id*. at 411, quoting MCL 38.556(1)(f) (emphasis added).]

The *Stover* Court held, "Annual compensation received refers to that pay which is received by a member each year *for work done that year*." *Id*. at 412; emphasis added.

Similarly, in *Lansing Fire Fighters Ass'n Local 421 v Bd of Trustees of the City of Lansing Policemen's & Firemen's Retirement Sys*, 90 Mich App 441; 282 NW2d 346 (1979), the pensions were based on "final average compensation." The plaintiffs argued that accrued vacation was compensation that should be included in this figure. *Id*. at 444. Quoting *Stover*, *supra*, with approval, the Court held that annual compensation, for the purposes of calculating a retiree's final average compensation did not include accrued vacation time because annual compensation only included payments "made and received annually for work done that year." *Id*. at 445.

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[4] The MERC specifically referenced Webster's II New College Dictionary which defined "annual" as "[d]etermined by a year's time."

Accordingly, petitioners' contention that the 27th pay date should be included in this figure, because (1) twenty-six pay dates only represent 364 days of a year period, and (2) the contract language states "annual compensation paid," not paid and earned, must fail.[5] The 27th pay date represents monies received for work done in a different year period, which conflicts with the definition of annual compensation. To accept petitioners' reasoning would be to ignore this definition. This we cannot do. A contract should be construed to avoid an interpretation that would render any part surplusage or nugatory. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). Therefore, it appears at first blush that the city's amendment was simply a clarification of an existing contract term, i.e., an explicit codification of this definition.

Petitioners assert that the amendment cannot be viewed as simply a clarification or respondents' attempt to correct a mistake by requiring that the FAC calculations be done in accordance with the unambiguous terms of the contract because the retirement office's own FAC calculations did not and do not limit all three best years to twenty-six pay dates each. Therefore, petitioners argue that the term "annual compensation" is rendered ambiguous in light of respondents' past practice.

The retirement ordinance amendment read:

> Annual Rate of Compensation. A member's salary or wages earned and received annually over the course of 26 pay periods. Annual compensation shall not include income received during the 26 pay periods which was not also earned during the 26 pay periods. Annual compensation shall be consistent with the compensation schedules established by the City Council which are on file in the City Clerk's office.

Regardless of the retirement office's and the employees' past practices, the amendment clearly comports with the unambiguous terms of the contract. Even if the term "annual compensation" was erroneously interpreted from its inception, this cannot render the term ambiguous.[6] Thus, petitioners' argument is more accurately viewed as asserting that respondents' past practice regarding FAC calculations amended the clear terms of the contract, and we analyze it as such.

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[5] In a footnote in their appellate brief, petitioners argue that *Lansing Fire Fighters Ass'n*, *supra*, and *Stover*, *supra*, are inapplicable because neither involved an unfair labor practice claim and both upheld the pension boards' interpretation. But these distinctions are irrelevant for our purposes. We cite these cases only for the Courts' interpretation of "annual compensation," a term that was used in an identical context in *Lansing Fire Fighters Ass'n* and *Stover,* as in the instant cases.

[6] The cases which are cited for this proposition, that a contract term can be rendered ambiguous in light of the parties' past practice, have been overruled by our Supreme Court. *In re Loose*, 453 Mich 963; 557 NW2d 312 (1996), nullifying *In re Loose*, 212 Mich App 648; 538 NW2d 92 (1995), and *In re Loose,* 201 Mich App 361, 366; 505 NW2d 922 (1993); *Port Huron*, *supra*, overruling *Mid-Michigan Ed Ass'n v St Charles Community Schools*, 150 Mich App 763, 770; 389 NW2d 482 (1986).

IV

In *Port Huron, supra* at 325-327, our Supreme Court delineated the rules of law to be applied where a party to a contract alleges that the parties' past practice is contrary to the contract terms and has effectively amended the contract.

> In order to create a term or condition of employment through past practice, the practice must be mutually accepted by both parties. *Amalgamated [Transit Union v Southeastern Michigan Transportation Auth*, 437 Mich 441, 454; 473 NW2d 249 (1991).] Where the collective bargaining agreement is ambiguous or silent on the subject for which the past practice has developed, there need only be "tacit agreement that the practice would continue." [*Id*.] at 454-455. However, where the agreement unambiguously covers a term of employment that conflicts with a parties' past behavior, requiring a higher standard of proof facilitates the primary goal of the PERA--to promote collective bargaining to reduce labor-management strife. A less stringent standard would discourage clarity in bargained terms, destabilize union-management relations, and undermine the employers' incentive to commit to clearly delineated obligations.
>
> Requiring a higher standard of proof when there is express contract language to the contrary comports with previous Michigan cases regarding modification. Generally, parties are free to take from, add to, or modify an existing contract. *Soltys v Soltys*, 336 Mich 693; 59 NW2d 54 (1953). However, in the same way a meeting of the minds is necessary to create a binding contract, so also is a meeting of the minds necessary to modify the contract after it has been made. *Universal Leaseway Sys, Inc v Herrud & Co*, 366 Mich 473; 115 NW2d 294 (1962). A collective bargaining agreement, like any other contract, is the product of informed understanding and mutual assent. To require a party to bargain anew before enforcing a right set forth in the contract requires proof that the parties knowingly, voluntarily, and mutually agreed to new obligations. [Footnote omitted.]

The Court further stated:

> The unambiguous language controls unless the past practice is so widely acknowledged and mutually accepted that it creates an amendment to the contract. . . .
>
> The party seeking to supplant the contract language must submit proofs illustrating that the parties had a meeting of the minds with respect to the new terms or conditions--intentionally choosing to reject the negotiated contract and knowingly act in accordance with the past practice. See Elkouri & Elkouri, p 455. In such situations, it is the underlying agreement to modify the contract that alters the parties' obligations, not the past practice. *Ford Motor Co v United Automobile, Aircraft & Agricultural Workers, Local 600*, 19 Lab Arb (BNA) 237, 241-242 (Shulman, 1952). [*Id*. at 329-330.]

Because the contract term at issue in these cases is unambiguous, the higher standard of proof applies.

Here, the MERC found that petitioners did not present sufficient evidence to establish that respondents' knowingly agreed to the change in FAC calculations. A collective bargaining agreement represents certain adjustments and concessions by both parties which were bargained for during negotiations, and those parties have a right to rely on the agreement's provisions. *Port Huron*, *supra* at 330. Thus, an agreement's terms cannot be superseded by anything less than a purposeful decision evidencing similar deliberation. *Id*. In support of its decision in these cases, the MERC stated:

> [T]he use of 27 pay periods was never raised at the bargaining table, nor formally communicated to bargaining unit members. Moreover, any management officials who were aware of the situation discovered it inadvertently and did not take any action for or against it. In fact, the current Payroll and Retirement Supervisor testified that there is no source of authority for the calculation of FAC using 27 pays.

Based on the evidence presented, we cannot say that the MERC's decision was not supported by substantial evidence. *Mantei*, *supra*. While employees were not prohibited from using twenty-seven pay dates, the record does not establish that the practice was "so widely acknowledged" that a change in the terms of the contract can be said to have occurred. Thus, the past practice of employees choosing their three best years using twenty-seven pay dates *in each of the three years* did not replace the express contract provision.

But we do find that petitioners presented sufficient evidence to establish a past practice of using twenty-seven pay dates *in at least one year* that is included in an employee's FAC calculation and of including payments made but not earned during a particular year period. Therefore, we hold that the MERC did err in determining that the amendment to the City's retirement ordinance was not a unilateral modification of the parties' collective bargaining agreements.

The testimony from past supervisors and the current supervisor of the Payroll and Retirement Office unequivocally established that monies received, but not earned, in a particular year were regularly used in FAC calculations when the retirement office personnel performed the calculations, rather than the employee choosing his own years. In particular, accrued sick and vacation time was always included in the employee's final year, retroactive payments due to contract settlements were included in the year the employee received payment, W-2's were used to determine the employee's best years, and the office's practice of including a hybrid-year necessarily included twenty-seven pay dates for that year. Although this evidence does not indicate that twenty-seven pay dates were included in each of the employee's three best years, it does demonstrate the City's long-standing regular practice of including in its FAC calculations monies paid but not earned in a particular year. This methodology is clearly at odds with the amendment's directive that annual compensation shall not "include income received during the

26 pay periods which was not also earned during the 26 pay periods." Despite the clear terms of the contract, for decades the City's personnel continually utilized a method that included monies paid but not earned during a specific year period.[7] Accordingly, we find that this practice was "so widely acknowledged and mutually accepted that it created an amendment to the contract." *Port Huron, supra* at 329.

Therefore, with no negotiations and agreement between the parties as to the ordinance amendment, we find that the amendment constituted an impermissible mid-term modification to the parties' collective bargaining agreements in docket nos. 244953 and 244961. *St Clair, supra* at 567. Because pension benefits is a mandatory subject of collective bargaining, the agreements covered this subject, and there was not clear and unmistakable evidence to establish that petitioners' waived their right to bargain, *id.* at 570-571, we hold that respondents committed an unfair labor practice in violation of MCL 423.210(1)(e) by unilaterally amending the retirement ordinance.

V

We address docket no. 244985 separately because petitioner Flint Police Officers Association (FPOA) concedes on appeal that it cannot argue that the ordinance amendment was a mid-term contract modification because, at the time the retirement ordinance was amended, its collective bargaining agreement had expired and issues pertaining to the new agreement had been submitted to arbitration. Respondents argue that the outcome of these arbitration proceedings control the result mandated in docket no. 244985. Respondents contend that pursuant to the Compulsory Arbitration Act (Act 312), MCL 423.231 *et seq*., the unfair labor practice charge by the FPOA was submitted to compulsory arbitration and the City's last best offer limiting FAC calculations to twenty-six pay dates per year was adopted by the arbitration panel. Respondents argue that, therefore, their collective bargaining agreement with the FPOA was deemed in conformance with the City's position. Thus, there can be no unfair labor practice.

It is undisputed that the bargaining agreement between the City and the FPOA expired on June 30, 1998, and the subsequent agreement was effective July 1, 1998, through June 30, 2002. However, because aspects of the new agreement were in dispute, the FPOA filed a petition for arbitration on June 29, 1998. One of the issues before the arbitration panel was whether the FAC calculations should be limited to include only twenty-six pay dates for the years used in the calculations.[8] The arbitration panel concluded that, pursuant to the factors in MCL 423.239[9], the

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[7] Furthermore, we note that if a particular calendar year naturally contained 27 pay dates, the City automatically included all of the pay dates in that year's calculation.

[8] Although the FPOA's petition was filed in June 1998, twenty months before the City passed the retirement ordinance amendment, the arbitration panel chairperson was not appointed until April 29, 1999. And the first hearing was not held until April 5, 2000, which was several months after the amendment was passed.

[9] MCL 423.239 states:

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City prevailed on this issue because such a limitation would "enable the City to meet its present financial emergency" and the City was not prevailing on the issue of retiree health care; thus, the FPOA was avoiding mandatory concessions on the retiree health care issue. As a result of the panel's July 14, 2002 order, the terms of the 1998-2002 collective bargaining agreement were resolved.

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> 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.

The FPOA argues that these Act 312 arbitration proceedings are of no consequence to this action because MCL 423.243 provides that "[d]uring the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without consent of the other . . . ." Thus, the FPOA asserts that the City's unilateral action was an unfair labor practice under the PERA. We agree, but for a different reason.

A disruption of the status quo under the PERA and Act 312 are separate causes of action. MCL 423.210(1)(e); MCL 423.243; see *Bay City School Dist v Bay City Ed Assn*, 425 Mich 426, 436; 390 NW2d 159 (1986); *Metro Council No. 23, Local 1277, AFSCME, AFL-CIO v City of Center Line*, 78 Mich App 281, 284; 259 NW2d 460 (1977). Act 312 is merely supplemental to the PERA. MCL 423.244. The statute the FPOA cites, MCL 423.243, is only applicable during arbitration proceedings and the remedy under this statute for a change in the status quo is an injunction effective until the terms of the new bargaining agreement are settled by the arbitration panel's award. *Metro Council No. 23, supra* at 284-285. Because the FPOA is asserting a claim under the PERA, we need not concern ourselves with this statute. MCL 423.210(1)(e) is the appropriate statute that governs the FPOA's claim, pursuant to which petitioners' alleged an unfair labor practice. Indeed, such a claim may only be decided by the MERC. *Bay City School Dist, supra* at 438-439.

In the FPOA's situation, where the collective bargaining agreement has expired, all parties have a duty not to unilaterally change the status quo during negotiations unless the parties have bargained in good faith to the point of impasse. *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44, 54-55; 214 NW2d 803 (1974). Respondents never raised the defense of impasse and no evidence regarding an impasse was presented. And simply because a dispute is submitted to compulsory arbitration does not automatically mean that the parties have reached an impasse. *City of Manistee v Employment Relations Comm*, 168 Mich App 422, 428; 425 NW2d 168 (1988).

Therefore, the arbitration proceedings are mainly irrelevant to this cause of action. However, the ultimate contract that resulted from the arbitration panel's award (1) covered the time period during which the amendment to the retirement ordinance was made, and (2) provided that FAC calculations must be figured using only 26 pay periods per year. Thus, according to the contract's terms, had it been in place during its effective time period, the FPOA members would be limited to using twenty-six pay dates. The question becomes what effect this contract has on the FPOA's PERA claim since it was not finalized until after the MERC's decision.[10]

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[10] The cases respondents cite offer no assistance on this issue because they deal with "grievance disputes," where a contractual dispute concerning a term in an existing bargaining agreement is submitted to arbitration according to the grievance procedures provided for in the parties' bargaining agreement. Such is not the case here. Moreover, grievance disputes are not within the jurisdiction of an Act 312 arbitration panel. MCL 423.233. The arbitration panel in this case specifically noted this limitation when it stated that it was not interpreting the meaning of the

(continued…)

For the following reasons, we hold that the FPOA is entitled to recover for respondents' violation of the PERA, which occurred before the arbitration panel's award in July 2002. A contract is formed when all the necessary elements have been satisfied. Because the specific terms of the agreement between the City and the FPOA were not settled until the arbitration panel issued its decision, it is considered to have been formed July 14, 2002. And no evidence was presented to suggest that the panel's award was subsequently modified by either the circuit court, MCL 423.242, or agreement by the parties, MCL 423.240. Also, MCL 423.240 only provides that *increases* in "compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute." The statute is silent as to the retroactive application of decreases in compensation and other benefits. We believe this evinces an intent on the part of the Legislature to apply decreases only prospectively. Indeed, based on the statute's language, this Court has held that non-economic benefits could not be applied retroactively absent a specific provision in the statute providing for it. *Local 1917, Metro Council No. 23, AFSCME v Wayne Co Bd of Comm'rs*, 86 Mich App 453, 462-463; 272 NW2d 681 (1978). We see no reason to view the retroactive application of a decrease in economic benefits any differently, given the Legislature's silence on this issue. Accordingly, we conclude that the 1998-2002 bargaining agreement does not limit the FPOA members' right to relief in this case.

VI

The final question is one of appropriate relief as to all petitioners. The FPOA requests the same remedies as the other petitioners, including a restoration of the status quo as it existed before the ordinance amendment and to make whole those FPOA-represented employees who retired on or after the change in FAC calculations. We hold that any relief regarding employees represented by petitioners be limited to eligible employees who retired on or after January 20, 2000, the date the retirement ordinance amendment was passed, *and who had all three best years calculated using only twenty-six pay dates*. These employees are entitled to a FAC calculation using twenty-seven pay dates in *one of the three best years* in accordance with the City's past practice.

In docket no. 244985, this relief shall extend to June 30, 2002, the last effective date of the FPOA's 1998-2002 collective bargaining agreement. Because no evidence was presented regarding the terms of the next four-year agreement, we can not speak to relief beyond this date. As to the employees represented by petitioners in docket nos. 244953 and 244961, this relief shall extend to the last effective date of the collective bargaining agreement that was in effect at the time the retirement ordinance amendment was enacted. Accordingly, we remand these cases

(…continued)

contract, but rather was only addressing the parties' dispute in regards to the terms that were to be included in their new bargaining agreement based on the factors provided in MCL 423.239.

to the MERC to effectuate our decision and grant any further warranted relief as provided in MCL 423.216.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski