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IN THE MATTER OF ARBITRATION BETWEEN

CITY OF CEDAR SPRINGS,

-and- MERC Case No.: G85 G-784

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

/

Cedar Springs, City of

APPEARANCES:

For the Employer: Jack R. Clary, Esq.

For the Union: Fred A. Guido, Esq.

ISSUE:

Does the Arbitration Panel, pursuant to PA 312 (MCLA 423.240), have authority to issue an award retroactive to the date of certification of the Association by the Michigan Employment Relations Commission?

INTERIM AWARD:

The Panel has authority to address the merits of the Association's last best offer that the retroactive date of the contract be July 11, 1985, the date of certification of the Association by the Michigan Employment Relations Commission.

September 24, 1987 Richard L. Kanner, Arbitrator

Does the Arbitration Panel, pursuant to PA 312 (MCLA 423.240), have authority to issue an award retroactive to the date of certification of the Association by the Michigan Employment Relations Commission?

APPLICABLE STATUTE

MCLA 423.240 Sec. 10. A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration. (emphasis supplied)

BACKGROUND

The Association was certified by the Michigan Employment Relations Commission on July 11, 1985 as the exclusive bargaining representative. On January 7, 1986 the Association requested bargaining on a first collective bargaining agreement. The petition for arbitration pursuant to PA 312 was filed on March 13, 1987.

The Association contends that the PA 312 arbitration panel has authority to issue an award retroactive to the date it was

certified. The City contends that, as to an initial contract, no retroactivity can be ordered. The contract takes affect on the date of the arbitration panel's award. However, in the alternative, the City contends that, if the panel has the authority to order retroactivity, it is limited to the date the petition for PA 312 arbitration was filed.

DISCUSSION AND OPINION

The subject issue revolves around the interpretation of the emphasized portion of s/s 10 above, and particularly, the intent of the phrase "to the commencement of any period(s) in dispute." Essentially, the Association reads such phrase as allowing it to demand any contract beginning date it chooses giving the arbitration panel the authority to determine the merits of its last best offer. To the contrary, the City reads said phrase to apply only to a successor contract wherein, as is usual, the parties negotiate a new contract to start immediately after the preceding contract has ended. Accordingly, as to an initial contract, it should begin on the date of the PA 312 arbitration award.

I am persuaded to the Association's position.

The intent of the phrase "to the commencement of any period(s) in dispute" can be ascertained by reference to the legislative history of PA 312. Such history encompasses the original retroactive provision in s/s 10 in the 1969 PA 312, and the amendment to such provision in 1977. As to the 1977 amendment, the House Legislative Analysis sheds light on its intent.

It appears that in 1969 s/s 10 read as follows:

"Increases in rates of compensation or other benefits awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding."

Accordingly, where, for example, a collective bargaining agreement ended on December 31, 1986; PA 312 arbitration was requested on April 10, 1987; and the fiscal year ended June 30, 1987; the arbitration panel could award retroactivity to July 1, 1987, but not prior thereto.

The act was amended in 1977 to correct an abuse. Unions were filing for arbitration prior to the end of the fiscal year in order to ensure retroactive benefits regardless of the fact that the parties were still engaged in productive bargaining.

The House Legislative Analysis recites:

"The Police and Firefighter Arbitration Act, Public Act 312 of 1969, currently provides that an increase in compensation awarded by an arbitration panel may only take effect at the beginning of the next fiscal year following the award unless a new fiscal year has begun since the start of arbitration proceedings in which case the award may be retroactive to the start of that fiscal year. This provision has resulted in the practice of employee groups automatically filing for arbitration prior to the end of the fiscal year to ensure that benefits would be retroactive, even though contract negotiations may have been proceeded smoothly. This effectively halts good

faith bargaining.

Accordingly, in my view, it is clear that the legislature corrected said abuse by no longer making it necessary for unions to file for PA 312 arbitration prior to the start of a new fiscal year. It did so in the 1977 amendment by allowing the PA 312 arbitration panel to award retroactive to the "start of the contract period." Therefore, I agree with the City that the present s/s 10 intends that the word "period(s)" be inferentially preceded by the word "contract". But I do not agree with the City's interpretation of the phrase "contract period" as limited to the beginning date for a successor contract, and that no retroactivity appertains to an initial contract or at best retroactivity can be awarded to the date of the petition instituting PA 312 arbitration proceedings.

Sub-section 10, as to retroactivity, applies as well to initial contracts as to succeeding contracts for the reason that it must be presumed that the legislature was well aware that a PA 312 proceeding is often requested in both cases. There is a total absence of any language in s/s 10 restricting retroactivity only to succeeding contracts. Given such fact, s/s 1 of PA 312 comes into play as follows:

> "It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficiently operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of

this Act, providing for compulsory arbitration, shall be liberally construed." (emphasis supplied)

In connection with the City's alternative position that retroactivity cannot "commence" on the date of the Association's petition, it is noted that the phrase reads "period(s) in dispute". (emphasis supplied) The City asserts that, in the subject case, there is no "dispute" as to the fact that MERC certified the Association on July 11, 1985. Accordingly, that date cannot serve to trigger retroactivity as it is not "the commencement" of any period in dispute." (e.s.) Therefore, according to the City, the "dispute" can only "commence" after mediation has been completed, impasse reached, and a petition for PA 312 arbitration filed.

I am constrained to disagree with the City's analysis of such phrase. In my view, the City mistakenly reads the phrase as "commencement of any dispute" rather than "commencement of any period in dispute." (e.s.) In furtherance of the latter phrase, the Association's demand for the start of the contract on July 11, 1985 is the date of "commencement" of such "period".

In my opinion, the "dispute" herein is based upon the Association's demand for a "contract period" to begin on July 11, 1985, and the City's rejection of such demand. But, as stated, when the "dispute" arose is not pertinent. What is pertinent is the fact that the City "disputes" the Association's demand that the contract "commence" on July 11, 1985.

The City further argues that, to allow the Association to

demand a contract period retroactive to "any" period of time in an initial contract could lead to unreasonable results. For example, a Union could demand a contract retroactive to a period prior to the enactment of the PA 312 statute in 1969. Also, when contract provisions, particularly the grievance procedure, is made retroactive in a first contract to some date preceding the conclusion of bargaining and consequent request for a PA arbitration, the employer might be placed under a contract duty which was not contemplated by it at the time.

Further, the City asserts that normally initial collective bargaining agreements begin upon the conclusion of the bargaining period. In furtherance of such argument, the City relies upon PA 312 s/s 9 h as follows:

> Sec. 9. 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 uon the fololowing factors, as applicable:
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> . . . .
>
> (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.

Accordingly, the City argues that s/s 9 (h) mandates that the

above "normally or traditionally" accepted approach relative to beginning a first contract should be ordered by the panel. But such arguments, as to the reasonableness or efficacy of the date of beginning a first contract, bear on the merits of such Association last best offer, and not on the issue of the ab initio authority of the Panel to address the issue of the date of the contact. It may well be that the City might prevail on the Panel to accept its last best offer as to the date of beginning the subject first contract by a showing that the Association demand is unmeritorious. But, as stated, the Association has a right to demand any beginning date, and so long as that contract "period" is "disputed" by the City, the arbitration panel has the authority to address such issue.

INTERIM AWARD

The Panel has authority to address the merits of the Association's last best offer that the retroactive date of the contract be July 11, 1985, the date of certification of the Association by the Michigan Employment Relations Commission.

September 21, 1987

Richard L. Kanner, Chairman

William Birdseye, Panel Member

Jack Clary, Panel Member