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In The Matter Of The Act 312 Arbitration Between)
City of Alpena)
and)
Police Officers Labor Council)

11/3/93
Sub. J. S. K.

MERC Case
No. L92 D0035

The proceedings were authorized by the provisions of Act 312. A pre-hearing conference was held January 26, 1993 at the MERC offices and hearings May 20 and 21 in the Alpena Convention Center. The Employer was represented by Mr. Dennis B. DuBay, Attorney and the Union by Mr. Kenneth W. Zatkoff, Attorney. Other members of the arbitration panel were Mr. Joseph Fremont for the Employer and Mr. Thomas Kreis for the Union. A record of the proceedings were taken and transcribed by Mr. Raymond Marcoux. Last best offers were submitted on June 4, 1993. The parties waived the time limits specified in the Act. Post-hearing briefs were submitted on August 20, 1993. The panel met in executive session on September 27, 1993 to discuss decisions on the issues. There is no challenge to the panel's jurisdiction.

Witnesses for the Employer:
Oscar Rye
John Hodges

Witnesses for the Union:
Nancy Ciccone
Thomas Kreis

Introduction:

This Act 312 arbitration addresses the following issues covering Patrol Officers and Dispatchers:

Pensions - Patrol Officers only
Retiree Health Insurance
Active Employee Health Insurance
Call-In Pay
Wages - Patrol Officers and Dispatchers
Contract Language - Subcontracting
Contract Language - Public Safety Officer in lieu of Patrol Officer

All other issues have either been withdrawn or are covered by tentative agreements.

The parties mutually agreed to the choice of comparable communities, namely Big Rapids, Cadillac Iron Mountain, Ludington, Mainstee, Menominee, and Petoskey.

Gordon F. Knight

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

RECEIVED
Alpena, City of

STATUTORY AUTHORITY

Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Section 8 of Act 312 states in relation to economic disputes that:

The arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions, and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9. (emphasis added)

Section 9 of Act 312 contains eight factors on which the arbitration panel shall base its opinions and orders. The factors are as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) A 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 within other communities generally:
 - (i) In public employment in comparable communities;
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices of 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 presented during the pendency of arbitration proceedings.
- (h) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by competent, material and substantial evidence on the whole record. This is supported by the Michigan Supreme Court's decision in City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980). In that case the court commented on the importance of the various factors as follows:

The legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the legislature has made their treatment, where applicable, mandatory in the panel through the use of the word "shall" in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to insure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of the case. Although, of course, all "applicable" factors must be considered. Id. p. 484.

ISSUES

The parties stipulated that the new collective bargaining agreement is for three years, and will consist of provisions from the prior 1989-1992 contract, tentative agreements reached during the negotiations for the new contract and the decisions on issues before the arbitration panel and contained here.

GENERAL BACKGROUND AND CONDITIONS

The city's population is declining. Compared to the comparable communities, it is below average in population density, and its per capita income is equivalent to average. The total amount paid in taxes exceeds any of the comparables. Unlike any of the comparable communities the SEV for Alpena declined from 1991 to 1992.

The City is faced with some \$600,000 to \$900,000 in expenditures per year to replace an ageing sewage system. The City's expenditures for police services as a percentage of the total budget has been increasing. The City's general fund balance has decreased significantly in recent years. Its bond rating has been lowered due to the state of its finances.

The Consumer's Price Index with or without its medical component has not increased as rapidly as patrolmen's salaries since 1967.

Issue: Wages for Patrol Officers (economic)
Union Proposal: Effective 07/01/92 - 5% increase
Effective 07/01/93 - 4.5% increase
Effective 07/01/94 - 4.5% increase

Employer Proposal: Effective 07/01/92 - 3% increase
Effective 07/01/93 - 3% increase
Effective 07/01/94 - 3% increase

Discussion:

7/7/94 The maximum annual base wage for Alpena Patrol Officers at \$2,441.00 is currently \$3,040.00 below the average of the comparables. With the Employer's proposed 3% increase the annual base wage for Alpena officers would be \$2,303.00 below the average for the comparables. With the Union's proposed 5% increase, the figure would be \$1,819.00 below the average.

(Note: For the "out-years" of 93/94 and 94/95, a 2% increase was inserted for those communities on which data was not available.)

Using these assumptions and following the Employer's proposed 3% increase for 93/94, the Alpena base annual wage would be \$2,269.00 below the average of the comparables. With a subsequent 3% increase in 94/95 the similar figure would be \$2,151.00 below the average.

Also using the same assumptions and following the Union's proposed 4.5% increase for 93/94, the Alpena base annual wage would be \$1,382.00 below average. With a subsequent 4.5% increase in 94/95 the similar figure would be \$835.00 below average.

The Employer argues that base salaries should not be used in isolation inasmuch as patrolmen in Alpena make no pension contribution (if hired before 11/26/89) like only 2 other comparable communities. Accordingly, wage data was developed comparing Alpena annual base pay to average net pay for the comparables (base pay minus pension contributions). Using the same assumptions of 2% increases for missing data, with the Employer's proposal the Alpena patrolmen would be \$1,170.00 below average for 92/93, \$1,104.00 in 93/94 and \$962.00 in 94/95. Similar figures incorporating the Union's proposal would be \$682.00 below average in 92/93, \$217.00 in 93/94 and \$354 above average in 94/95.

Data was also developed to reflect total compensation for patrolmen with 10 years of service. Both parties submitted exhibits of this nature. In terms of what items are included and omitted, both have deficiencies but the Employer's more closely approximates a realistic picture. Nonetheless the panel chair notes that Alpena's patrolman with 10 years service would still be some 4.5% below the average of the comparables (comparing current Alpena data to 92/93 data for comparables). It warrants mention that 6 of the 8 Alpena patrolmen have less than 10 years service.

Regarding internal comparables the total percentage wage increase during the term of the current contract (3 years) was 9% for patrolmen, compared to 11% for the police command unit, 10.5% for the firefighters, 8.4% for the clerical group (USWA), 8.1% for the public works group (USWA) and 10.5% for the non-union group.

The percentage wage increases during the term of the proposed contract are 3.5% for the clerical group (USWA) and 3% for the public works group (USWA) in 92/93 and 3% in 93/94.

In assessing the two proposals, each in their entirety, one is forced to note that Alpena compensation-base salary or net- is significantly below the average of the comparables. Closing the gap is clearly warranted. The question becomes how far the gap should be closed and how fast. In answering this, one must consider the decision criteria specified in the Act, including, but not limited to, the Employer's financial resources, the total compensation, the cost-of-living index and the historic position of the City's compensation in addition to compensation for similar responsibilities in the comparable communities.

Regarding the Employer's ability-to-pay, a close reading of the evidence is persuasive that its position is fragile but significantly short of imminent collapse.

Considering the foregoing, it is concluded that the Employer's proposal closes the compensation gap too slowly

whereas the Union's proposal, by contrast, does so too rapidly. A blending of the two proposals represents an optimum solution.

Clearly the blending of the two proposals presents a number of possible combinations. After careful consideration of the numerous possibilities, wage increases of 3%, 4.5%, 4.5% is superior. This strikes an equitable balance of concerns between the limits of the City's financial resources and the disparity between the compensation for Alpena patrol officers and that of comparable communities. It also takes into account the other decision criteria specified in the Act.

Decision:

Effective 07/01/92 a 3% increase (City proposal)
Effective 07/01/93 a 4.5% increase (Union proposal)
Effective 07/01/94 a 4.5% increase (Union proposal)

Concur:

Dissent:

(Signature) (with yr 2 & 3) *Joseph W. Fremont (year #1)*
(Signature) (with yr 1) *Joseph W. Fremont (year #2 & 3)*

Issue: Wages for Dispatchers (Economic)

Union Proposal:

Effective 07/01/92 a 3.5% increase
Effective 07/01/93 a 3.5% increase
Effective 07/01/94 a 3.5% increase

Employer Proposal:

Effective 07/01/92 a 3% increase
Effective 07/01/93 a 3% increase
Effective 07/01/94 a 3% increase

Discussion:

The maximum annual base wage for Alpena dispatchers at \$19,906.00 is currently \$954.00 above the average of the comparables. With the Employer's proposed 3% increase the annual base wage for Alpena dispatchers would be \$1,191.00 above the average. With the Union proposal of 3.5% the figure would be \$1,291.00 above the average.

(Note: for the "out-years" of 93/94 and 94/95 a 2% increase was inserted for those communities on which data was not available.)

Using these assumptions and following the Employer's proposed 3% increase for 93/94, the Alpena annual base wage would be \$1,355.00 above the average. With a subsequent 3% increase in 94/95 the similar figure would be \$1,502.00 above the average.

Also using the same assumptions and following the Union's proposed 3.5% increase for 93/94, the Alpena annual base wage for dispatchers would be \$1,561.00 above average. With a subsequent 3.5% increase in 94/95 the similar figure would be \$1,821.00 above average.

Considering the impact of the minimal employee pension contribution the comparison of Alpena dispatchers annual base wages and the average of the net wages for dispatchers in comparable communities does not change the overall picture from the foregoing. For each of the three years the wages of the Alpena dispatchers exceed the average of the comparables with the gap widening over the period. The gap for each of the three years using the Union's proposal of 3.5%, 3.5%, 3.5% exceeds that of the Employer's proposal.

The exhibit on total compensation lends additional support to the clear conclusion that the current annual compensation for Alpena dispatchers is still clearly superior to the average of those in comparable communities.

In considering the Employer and Union wage increase proposals, one is faced at the outset with the favorable position of Alpena dispatcher's compensation. The Employer's proposal would retain this position of superiority and the Union's proposal would enlarge it over the term of the contract.

In proceeding to a conclusion one finds no compelling reason to expand the already favorable position of dispatcher wages in Alpena compared to those in other communities as would be the case were the Union's proposal to be adopted. By contrast the Employer's more modest proposal retains the Alpena's historical position while placing less of a financial burden on the City's financial resources.

Decision:

Employer's proposal in its entirety:

Effective 07/01/92 a 3% increase

Effective 07/01/93 a 3% increase

Effective 07/01/94 a 3% increase

Concur:

Dissent:

Issue: Pension for Patrol Officers

Union Proposal:

Effective July 1, 1993

Increase the final average compensation multiplier from 2.1% for the 25 years and 2% thereafter to 2.25% for all years of service.

*All Patrol Officers shall contribute 3.15% into the pension plan.

Employer Proposal:

Retain current language and add no additional contractual provisions.

Discussion:

In terms of the multiplier amongst the comparables, Alpena currently is next to the lowest out of 7 others for the first 25 years of service at 2.1% and for the multiplier over 25 years of service Alpena is tied for second place at 2%.

Regarding the employer contributions, Alpena is tied with two other communities for the lowest contributions, namely zero (if hired before 11/26/89, otherwise 3% of \$4,800.00 and 5% thereafter until vested at 10 years).

In terms of the multiplier amongst internal comparables the 2.1% multiplier for the first 25 years is higher than the clerical (USWA) and public works (USWA) groups as well as the non-union group, equal to the firefighters, and lower than the police command group at 2.25%. The comparisons of the multiplier for service over 25 years is the same, namely less than the police command group, equal to the firefighters and, superior to the other three groups.

83K The Union's proposal, in effect, is to increase the pension multiplier to equal that of the police command group and concurrently to increase the employee pension contribution from zero (see conditions referred to earlier) to 3.15%, which closely approximates that of the police command group. The Union claims that its ^{MEM} numbers are absorbing the cost associated with the pension improvement.

83K The Union claims that the Employer's contribution to the pension plan ^{MEM} have declined to 3.65% in 1992. It also asserts the plan is over-funded with assets well in excess of its pension obligations. Furthermore the Employer's contribution towards its unfunded pension benefit obligation has been zero since 1983.

The Employer points out the advantages of the employees minimal contribution and while the 2.1% multiplier for the first 25 years of service is surpassed by some of the comparables, the 2% multiplier for years of service over 25 is superior to all but one. It asserts that the Employer contribution is matched only with that of the police command group and superior to all the other of the Alpena employee groups. Also the multiplier is only exceeded by the police command group amongst all other internal groups and the command group makes a substantial contribution. The Employer using an actuarial report of the Alpena retirement system shows that although the City's contribution to the police

pension plan has declined over the years in 1992-93, it made a contribution of 5.58% of police payroll.

The proposals here on pensions, particularly as they relate to employee contributions, cannot be examined in isolation but also must be considered in terms of their impact on compensation considered earlier. The effective date of 07/01/93 in the Union's proposal would mean that the 4.5% increases in the last two years of the contract would be offset by the 3.15% employee pension contribution.

The Union claims that, in effect, the cost of the increased multiplier will be paid by the additional 3.15% employee contribution to the pension fund.

Despite conflicting numbers there is no definitive costing of the Union's proposal. One can reasonably assume that whatever the increased cost associated with the increase in the multiplier, it is substantially offset by the increase in the employee contribution. One can say with a much greater degree of certainty that the Union's proposed multiplier is identical to that of the police command and the employee contribution proposal very closely approximates that of the command group.

(A City exhibit lists the employee contribution of the command group as 3.15%, identical to the Union proposal, with a footnote "If hired after 12/30/89 contribute 3% of \$4,800.00 and 5% thereafter".)

In attempting to reach a conclusion on this issue, two considerations are salient; one is the desirability of internal consistency with similar benefits extended the closely allied police command group; and two, the relatively modest cost involved.

In this respect the Union's proposal is preferred. This conclusion is made despite the modest superiority of the City's position relative to the comparables particularly for long service employees and also the increased superiority of the benefits compared to other internal employee groups.

In this conclusion, as in all others, the significance of decision criteria 9(h) should be given consideration namely "such other factors as...normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...."

Decision: The Union proposal

Increase the final average compensation multiplier from 2.1% for the first 25 years of service and 20% thereafter to 2.25% for all years of service.

All Patrol Officers shall contribute 3.15% into the pension plan.

Concur:

Dissent:

Issue: Retiree Health Insurance (Economic)

Union proposal:

The City shall pay 50% of the cost of health insurance provided for in Article XIV, Section 1 for all future retirees and their spouse up to age 65 or until said employee becomes eligible for Medicare whichever is first. In the event the retiree is not eligible for Medicare the City shall continue to pay 50% of the cost for retiree and spouse.

Employer proposal:

No change but with the addition to Article XIV, Section 2, "The City's contribution to the cost of retiree's health insurance shall not exceed \$100 per month." *JK*

Two of the comparable communities make no provision for retiree health insurance in their contract. In another, the retiree pays the entire cost. Of the remaining four communities Alpena's benefit (in terms of contribution and coverage period) is somewhat inferior to three and equivalent to one.

Only one community covers the retiree spouse after 65.

With respect to internal comparables the Patrol Officer retirees have health insurance benefits superior to three groups. The City pays 50% of the health insurance costs for retiree fire-fighters - but not for spouse. The police command benefits is superior but only if hired before April 1, 1986 and ineligible for Medicare. The police command benefit does not provide for spouse coverage to retirees.

In assessing these proposals the item of spouse coverage is of particular significance. The current retiree spouse coverage before 65, is about average but the Union proposal which includes coverage would improve its position. Of special significance is the Union's proposal for spouse coverage after 65, if the retiree is not eligible for Medicare. This benefit would be superior to all but one of the comparables.

It is reasonable to assume that with anticipated life expectancies, spouse coverage after the retiree reaches 65, has the potential to represent a considerably larger cost element than the spouse coverage prior to 65.

No cost data, particularly regarding spouse coverage, was present. The Union's proposal incorporating this element is more "open-ended" whereas the Employer's proposal with a cap is more precise and more closely within the range of the similar benefit extended to those in comparable communities.

Decision: Employer proposal

No change in Article XIV, Section 2 but with the addition: "The City's contribution to the cost of retiree health insurance shall not exceed \$100 per month."

Concur:

Dissent:

Issue: Health Insurance For Active Employees (Economic)

Union Proposal:

No Change

Employer Proposal:

Add the following new Section 3 to Article XIV - Insurance and re-number the current Section 3 to Section 4:

Effective May, 1993, the City's contribution towards payment of an employee's medical insurance shall not exceed the cost of a corresponding plan from the previous year by more than 10%. The employee's most recent designation under the "single, two-person, or family" classification shall be used as the basis of comparison of current cost to cost under the preceding year, irrespective of the employee's previous classification.

The employees shall establish a health care committee to study and recommend the medical insurance plan of the group. The City shall notify the health care committee within three working days of receipt of a written notice from the insurance provider of any rate change. The committee shall direct amendments to the group health insurance plan of the bargaining unit for the purpose of reducing the insurance rates. The committee shall communicate such amendments in writing to the City. The City will submit any necessary documentation to initiate the amendments to the insurance carrier within five working days from receipt of the committee's written notification of the amendment. The savings generated through any rate

reductions initiated by the committee will be applied to offset current or future medical insurance costs in excess of the City's contribution. Any costs for medical insurance in excess of both the City's contribution and the committee generated rate reduction savings shall be paid by the employees. An employee's share will be computed according to his/her relative percentage of the total medical insurance cost of the group.

Amongst the comparables only one has a premium sharing feature. Amongst internal comparables none share premium costs.

While the rapid increases in health care costs must be recognized and the Employer's proposal is a sincere attempt to control such increases nonetheless there is simply no significant precedent for such a novel approach - neither in the comparable communities nor for other employee groups within the City.

Decision: Union proposal - no change

Concur:

Dissent:

Issue: Call-In Pay (Economic)

Union Proposal:

No change

Employer Proposal:

Article V, Section 4 to read:

"Any employee ordered and reporting for work when he or she was scheduled to be off duty, shall be paid a minimum of two (2) hours at the rate of time and one-half, and may be assigned to work the two (2) hour minimum period. Officers scheduled for court will call the police desk one-half (1/2) hour prior to court time to insure the case will proceed as scheduled."

The Employer's proposed minimum time and rate is similar to four comparables and superior to two others.

The police command group has a minimum of 4 hours call-in but at the regular rate. The Employer's proposal is superior to the clerical (USWA) group, and the public works (USWA) group. The non-union employees have no provision. Because of the unique work schedule of the fire-fighters, comparison is difficult.

The Employer's proposal is in line with comparable communities and still superior to other City employee groups.

The additional requirement that patrol officers be assigned work during the call-in period seems reasonable even though it may not be common in comparable communities. The officers are being paid during the period and the Employer as a consequence is entitled to expect services to be rendered in return.

Decision: Employer proposal

Concur:

Dissent:

Issue: Job Title Change (Non-economic)

Union Proposal:

No change

Employer proposal:

All contractual references to Police Officer to be changed to Public Safety Officer.

The City acknowledges this proposal does not have precedents with comparable communities. It points out that the officers work in a Public Safety Department housed in a Public Safety Building and under Public Safety Director. No disadvantage will accrue to the Union. No change in job duties are involved.

Decision: Employer proposal

Concur:

Dissent:

Issues: Sub-Contracting (Non-economic)

Union Proposal:

Article XVII, Section C-9(c) modified to read: "When the City has decided to subcontract work normally performed by Public Safety Dispatchers, the City will notify the Union and if requested, meet and discuss the subcontracting. The City reserves the right to subcontract bargaining unit work provided such work does not result in the layoff or reduction of the existing work force."

Employer proposal:

No change

The principal issue is not the notice to the Union but the prohibition of any sub-contracting test that results in layoff or work force reduction. No similar provision exists in contracts of the comparable communities. There is no similar contract on the Employer for other City employee groups.

The absence of any precedents and the considerable restraint on management rights incorporated in the Union proposal is a significant obstacle to acceptance.

Decision: Employer proposal

Concur:

Dissent:

The Union has withdrawn the following issues: Increase in pension benefits for dispatchers and holidays for dispatchers.

A tentative agreement has been reached concerning the uniform allowance for patrol officers. The Union has withdrawn the issues of uniforms for dispatcher but accepts the Employer's offer which adds the following to Article XVII:

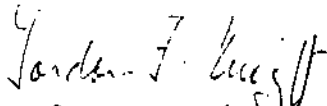
M. At the time of hire and thereafter on each anniversary date of employment, the Department shall provide to each Public Safety Dispatcher two (2) pairs of black slacks as selected by the Department."

It should be noted that although all the decision criteria in Section 9 of the Act have not specifically articulated in the discussion of each issue they nonetheless have been considered.

The parties stipulate that decisions on the issues covered here together with the tentative agreement between the parties constitute a complete collective bargaining agreement for a term of three (3) years and unless mentioned specifically to the contrary are effective July 1, 1992.

The panel chair expresses deep appreciation to his fellow panelists for their helpfulness in the deliberations leading to these decisions.

Nov. 3, 1993 JFK
~~October 19, 1993~~


Gordon F. Knight
Panel Chair