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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

Am

In the matter of:

CITY OF DEARBORN,

-and-

Case No. D97 D-0730

POLICE OFFICERS ASSOCIATION OF MICHIGAN

Background

The Agreement between the parties expired on June 30, 1997. Negotiations on a new Agreement began, but rapidly reached an impasse. A mediation session was held for a full day on September 25, 1997, also to no avail. The Union applied for Act 312 arbitration on October 13, 1997. On November 14, 1997 this arbitrator was chosen to be the Impartial Arbitrator. A pre-Hearing Conference was held at the Dearborn City Hall on January 20, 1998. The delegates or Panel members chosen were Dr. Robert K. Archer for the City of Dearborn, and Mr. Gary L. Pushee for the Police Officers Association of Michigan. The advocates chosen by the parties were Attorney John A. Entenmann for the city of Dearborn and William Birdseye for the Union.

An attempt was made to reach an Agreement after the pre-Hearing Conference. The negotiators appeared to have succeeded but their proposed Agreement was rejected by the membership. It then became necessary to resume plans for the full-blown Act 312 process.

It appeared from the outset that two issues were the main impediments to a settlement, the pension escalation issue and tied into that, the question of duration of the Agreement.

Agreement was reached on comparables by using those chosen in previous Act 312 arbitration by these parties. There were fourteen cities chosen as comparables (including Dearborn). They were:

- | | |
|---------------------|----------------------|
| 1. Ann Arbor | 8. Southfield |
| 2. Dearborn Heights | 9. St. Clair Shores |
| 3. Farmington Hills | 10. Sterling Heights |
| 4. Livonia | 11. Taylor |
| 5. Pontiac | 12. Troy |
| 6. Roseville | 13. Westland |
| 7. Royal Oak | |

These combined those favored by the City as well as those favored by the Union.

Inasmuch as the last offers prior to the Hearing hinged on a decision as to the duration of the Agreement (the Union favoring a two year duration and the City, a three year duration), the Panel met on February 19, 1998 solely to decide the duration issue so as to guide the parties in their offers. Behind the issue was the pension escalation issue discussion of which was under a moratorium not to be discussed or considered for a ten year period. This ten year period was to have expired June 30, 1998, hence the Union's desire for a short duration Agreement and the City's desire for a longer one. The Panel decided on a 2-1 vote in favor of the two year duration. The City had filed an Unfair Labor Practice Charge against the Union which was heard before Administrative Law Judge Roy L. Roulhac, of the Michigan Employment Relations Commission on May 27, 1998. Judge Roulhac ruled on October 26, 1998 upholding the City's position that discussion of the pension escalator clause was a non-mandatory subject of bargaining. The Panel removed the issue from its consideration and the parties have since reached an agreement on this issue apart from this award. However, having this issue in the background threw

somewhat of a damper both on the negotiations and the Act 312 process not to speak of the delay caused by waiting for the Judge's decision.

The hearing was held on June 17, 1998 at the Dearborn City Hall. Presenting and explaining the exhibits were Ms. Ann Maurer, Labor Economist for the Union and Ms. Amy Sullivan, outside Labor Economist for the City as well as Ms. Jeanette J. Day on the staff of the Labor Relations Department of the City. Most of the exhibits were the external and internal comparisons on each of the issues. This long list is enumerated in the transcript of the Hearing and used by the Panel in its consideration.

Other witnesses who appeared before the Panel were Mr. Ronald F. Deziel, Chief of Police for the City of Dearborn and Mr. Marcel J. Pultorak, Finance Director and Treasurer of the City of Dearborn. Other exhibits presented were the City Audit and financial report for the recent fiscal year.

The issues considered at the hearing were: wages, clothing allowance, pension/retirement escalations, sick leave separation pay, prior police time towards retirement, deferred retirement medical insurance, increased deductibles for retiree health insurance, retiree or spouse regarding Medicare, arbitration in cases of claims of discrimination, disability retirement benefits, arbitrability of insurance disputes, and health care buyouts. What follows is an explanation of the position of each side on the issue and the rationale of the Panel in arriving at its decision.

1. Duration

At a meeting on February 19, 1998 the Panel decided on a two year Agreement because the ten year moratorium on negotiation of the pension escalators, it was felt to be unfair to delay unnecessarily the Union's ability to negotiate change inasmuch as other bargaining units had already brought about change for their units. The City's delegate opposed the two year duration but the issue was settled apart from this award.

2. Wages

The City's last best offer was a three (3) year percent increase in wages beginning July 1, 1997 and again on July 1, 1998. The Union requested four (4) percent increase in each of those years.

While some of the comparables might have justified the higher figure, there were two main reasons why the Panel adopted the City's offer. One is that the cost of living increase in each of those years was closer to the three (3) percent (actually slightly below), and secondly, the wage levels of Dearborn Police Officers are considerably higher than the wage levels when considering added items such as amount of overtime permitted, longevity pay and special bonuses for such things as physical fitness.

The City, through its Finance Director, did not specifically address the question of ability to pay but did project declines in revenue due to Proposal A passed four years ago and other limitations on assessments and indicated the desire of the City to be fiscally responsible while being fair to its employees.

For these reasons the Panel felt that the City's offer was the fairer of the two.

3. Clothing Allowance

The Union demanded an increase from the present \$400 annual clothing allowance to \$550 in July 1, 1997 and \$700 in July 1, 1998. Their main reason was the cost to the officers to replace their bulletproof vests when necessary. The City in its last best offer, offered an increase to \$450 to begin on July 1, 1998 but offered to pay for the replacement of the armored vests as needed even though no replacements were anticipated during the period covered by this award. With this offer by the City, even the Union was not completely dissatisfied with the Panel's adoption of the City's offer on this issue.

4. Pension/Retirement

The Panel attempted to grapple with this issue with the City contending that it was not a subject of mandatory bargaining due to an earlier Agreement providing for a ten year moratorium.

Before the work of the Panel was completed the Administrative Law Judge of MERC upheld the City in its Unfair Labor Practice charge against the Union and it was therefore removed from consideration. The Panel is happy to report however, that the parties have concluded an agreement on this issue which does not violate the Judge's order and is outside the purview of this Panel and appears to be a fair conclusion to this issue.

5. Sick Leave Separation Pay

The Union demanded an increase in the amount of unused sick leave days reimbursed upon separation from the Department from sixty (60) currently to one hundred twenty five (125) to be paid at 50% of salary. The City offered an increase from the present sixty (60) days to sixty-five (65) days.

The Panel adopted the City's offer for the major reason that the city pointed out the personnel problems in the Department as an officer nears retirement and attempts to use up all the non-reimbursable unused sick leave. Allowing the officers to carry over such a large increase in reimbursable unused sick leave would aggravate the staffing problem still further and there really was no significant argument made for going beyond the amount offered by the City.

6. Prior Police Time Towards Retirement Eligibility

Currently the Agreement allows up to five (5) years credit towards retirement for prior military service. No credit is currently given towards retirement for police service in another jurisdiction. The City wished to abolish the military service credit, pointing out that it was a provision adopted during actual conflicts and is outdated. They did not wish to add any credits for prior police work by pointing out the testimony of Chief Deziel that the Department is one of the most desirable police departments in the region and has never had any difficulty in its recruitment.

The Union's last best offer was a sort of compromise on the issue, offering a maximum of three years for either/or military service or prior police service in another jurisdiction.

It appeared to the Panel that the Union's offer was less of a departure from the current five (5) year credit and adding to it prior police service but lowering the overall total to a maximum of three (3) years was fair and equitable at this time. The Panel therefore adopted the Union's last best offer on this issue.

7. Deferred Retirement / Medical Insurance

Currently any officer who serves ten (10) years or more and takes deferred retirement is eligible to medical insurance when he reaches retirement. The City wished to abolish this perk for deferred retirees while the Union wished to maintain the status quo.

Medical insurance is a very expensive benefit and the cost of it is expected to escalate substantially in the future. The City would like to retain its officers for the full twenty five years until retirement and doesn't consider it fair to require it to pay the costs of medical insurance for those who do not make their careers in the Dearborn Department especially since it is such a high cost item.

The Panel agrees with the City position on this issue and therefore abolishes medical insurance for deferred retirees, effective January 1, 1999.

8. Increased Deductibles for Retirees after July 1, 1998.

The City wished to increase the deductibles paid by retirees whose pensions were \$40,000 per year or more. The Union offered the status quo on this issue.

The Panel felt that the City did not build a strong case to justify adding this extra cost to retirees and with ultimately removing deferred retirees from medical benefits on retirement, the Union's position seemed to have greater justification even though the Panel was not unmindful of the practice in other bargaining units of the City.

9. Retiree "or Spouse" re: Medicare

The City wished to require spouses of retirees eligible for Medicare to avail themselves of that coverage and not require the City to pay any higher premiums than that required for Medicare coverage. The Union preferred the status quo.

The Panel agrees with the City on this issue for several reasons. One is that it is already a requirement for retirees, and spouses might have been left out by an oversight. Secondly, with increased costs of medical insurance it is only prudent to utilize Medicare eligibility to help contain costs. Thirdly, this is the practice with almost every employer with which the Panel is familiar. It doesn't mean that a retiree or spouse can't seek other coverage, but must reimburse the City for the costs of premiums in excess of those charged by Medicare.

10. Arbitration / Claims of Discrimination

The City wishes to limit the remedies available to those who claim discrimination to either arbitration or the court system but not both. The Union prefers the status quo.

The Panel goes along with the Union's position despite its appreciation of the position it places the City at times. The Union built a very strong case that the City's position might even be a violation of the law in that no contract can limit remedies in areas of discrimination and equal opportunity and claims on these issues are to be treated differently than other types of grievances.

11. Disability Retirement Benefits

The City wished to amend the provision on disability retirement beneficiaries to a "current spouse" or a legal dependent as defined by the U.S. Internal Revenue Code. The Union preferred the status quo.

The Panel was impressed with the Union's contention that this has not been a problem until now but still agrees with the City that this clarifies the issue and can prevent possible abuse of the system. The Panel does not believe that the cleaning up of the language will have any disastrous effects on disability retirees or their dependents.

12. Arbitrability of Insurance Disputes

The City offered language that would prevent arbitration in disputes between an employee and an outside insurance carrier. The Union prefers the status quo.

The Panel is sympathetic to the City's position of not wanting to be brought into disputes that are strictly disputes between the employee and the insurance carrier. Nevertheless, such a dispute

could represent diminution of benefits negotiated and contained in the Agreement and the employee would be almost powerless in its dispute without help from the City.

Inasmuch as this was the only agreed upon non-economic issue where the Panel did not have to adopt the last offer of one of the parties it is possible to adopt a fair and workable compromise. This compromise still keeps the City's contract with the providers as the controlling factor but not arbitrable unless the dispute represents a violation or compromise of provisions of this Agreement as to coverage.

13. Health Care Buyout

The Panel agrees with the City's offer on this issue in that it is an added benefit to employees whose health care is not paid for by the City of Dearborn. The Union prefers the status quo but the Panel believes that the City's position simplifies the language of this provision and does no harm to the employee. The Panel rejects the contention of the Union that this represents a "marriage penalty" in that coverage by a working spouse of the City of Dearborn still represents an increased cost to the City and not a true savings justifying the buyout.

These are the issues decided by the Panel and the Award includes all other issues agreed to by the parties outside the scope of this Arbitration.

The Panel wishes to thank the advocates for both sides for their effective and professional representation of the parties. The Panel also wishes to thank the witnesses who appeared before the Panel.

It is the belief of the Panel that this Award is fair and equitable and that it can be the basis of negotiations for a negotiated settlement of the next Agreement that takes effect upon the expiration of the time covered by this Award.

AWARD

1. Duration

This Award shall cover a two (2) year period from July 1, 1997 to June 30, 1999. Certain provisions of this Award, where noted, shall be retroactive to July 1, 1997.

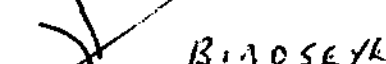
Respectfully submitted,



Bernard Klein, Panel Chair



Robert K. Archer, Panel Member (City)



Gary L. Pushee, Panel Member (Union)

2. Wages

The Panel awards the City's Last Best Offer:

Eff. 7/1/97: 3% increase

Eff. 7/1/98: 3% increase

Respectfully submitted,



Bernard Klein, Panel Chair



Robert K. Archer, Panel Member (City)



Gary L. Pushee, Panel Member (Union)

3. Clothing Allowance

The Panel awards the City's Last Best Offer:

Redraft §34.1 and 34.2 as follows:

- 34.1: Effective July 1, 1998 employees in the non-supervisory bargaining unit shall be paid an annual clothing and maintenance allowance of Four Hundred Fifty Dollars (\$450.00) per year. The annual allowance shall be prorated on the basis of a quarterly allotment and paid at the end of each

quarter. Any employee beginning or terminating his employment during the quarterly period shall receive a prorata portion of the quarterly allotment. The allowance shall continue to be paid as long as the employee renders service to the City.

- 34.2: Provided further that each employee receiving such allowance shall maintain and replace clothing as may be required by the Chief of the Department, after periodic inspections. It is further provided that the City shall furnish the new recruit with his first uniform (including vest) which shall not be charged against this allotment. It is further provided that the City will replace an employee's body armor (vest) at the City's cost on an as-needed basis.

Respectfully submitted,

Bernard Klein

Bernard Klein, Panel Chair

Robert K. Archer

Robert K. Archer, Panel Member (City)

B. ROSKYE

Gary L. Pushee, Panel Member (Union)

4. Pension/Retirement Benefit Increase

The Panel was ordered not to consider this issue due to a previously agreed to ten (10) year moratorium. However, it is the understanding of this Panel that the parties have concluded a memorandum of understanding dealing with this subject.

Respectfully submitted,

Bernard Klein

Bernard Klein, Panel Chair

Robert K. Archer

Robert K. Archer, Panel Member (City)

B. ROSKYE

Gary L. Pushee, Panel Member (Union)

5. Sick Leave Separation Pay

The Panel awards the City's Last Best Offer:

Effective 7/1/97, redraft §41.1 as follows:

41.1: Upon separation from the classified service either through:

- A. A service retirement after twenty-five (25) years of service;
- B. A service retirement after age sixty (60);
- C. A duty or non-duty disability retirement; or
- D. Upon death of an employee,

an employee shall have paid to him/her or to his/her beneficiary an amount that will be equal to fifty percent (50%) of unused sick leave, but not in excess of sixty-five (65) work days.


Respectfully submitted,



Bernard Klein, Panel Chair



Robert K. Archer, Panel Member (City)



Gary L. Pushee, Panel Member (Union)

6. Prior Police/Military Service Credit Toward Retirement

The Panel awards the Union's Last Best Offer:

Add as §46.7 of the contract:

Effective [date of award] should a member, prior to being employed by the City, serve in the military forces of the United States government (and/or as a full-time sworn law enforcement officer within the United States) such member may claim service credit, not to exceed a total of three (3) years, for service prior to his or her employment by the City. A member who elected to claim a service credit provided for in this section shall pay into the retirement system an amount equal to the annual contribution rate in effect at the time of his or her election multiplied by the period of service claimed.

The military service credit shall only be allowed to honorably separated veterans and only for active duty served in the armed forces of the United States as defined and limited in the Civil Service Bulletin dated 8/7/70 pertaining to Veterans Preference Requirements.

Current members of the retirement system as of [the effective date of award] shall make the election for police service credit on or before June 30, 1999. Those who become members after [the effective date of the award] shall make the election for police/military service credit within 2-1/2 years after they become a member. In any event, the election for police/military service credit must be made prior to the retirement. A failure to make the election on forms provided therefor within the prescribed time limits shall constitute an absolute bar to a member's obtaining of police/military service credits for police/military service rendered prior to employment with the City. The Board may waive the time limit prescribed herein for application to obtain the police/military service credit in the event of a subsequently occurring substantial disability.

To obtain the police/military service credit allowed hereunder, a member shall file an application therefor on forms provided by the City and shall either:

- (1) make a lump sum payment into the Retirement System equal to said member's annual compensation at the time of the election times the member's contribution rate then in effect times the number of years or fraction thereof for which a credit is being claimed;
- (2) execute a payroll deduction authorization in an amount which will guarantee payment within five years of the amount provided for in (1) above, together with simple interest at 6% per year from and after the date of election is made.

In any event, full payment of the principal and interest must be made prior to retirement.

The credits for police/military service allowed pursuant to this subsection shall constitute credits for pension purposes and sick leave separation pay and Blue Cross accruing at the given number of years service credit upon which the retirement is based. Longevity pay, vacation, seniority, etc., shall continue to be

interpreted and computed on the basis of service which has actually been rendered to the City. (Amended by Ordinance No. 77-1849 and further amended by Ordinance No. 79-1961.)

- (3) In any case of questions as to the service credit of any person, the board shall have power to decide the question consistent with the new collective bargaining agreement.

Respectfully submitted,

Bernard Klein

Bernard Klein, Panel Chair

Robert K. Archer

Robert K. Archer, Panel Member (City)

GARY L. PUSHEE

Gary L. Pushee, Panel Member (Union)

7. Deferred Retiree Medical Insurance

The Panel awards the City's Last Best Offer:

Eff. 1/1/99, replace existing § 38.6 with the following:

"Deferred retirees are not eligible for retiree medical benefits."

Respectfully submitted,

Bernard Klein

Bernard Klein, Panel Chair

Robert K. Archer

Robert K. Archer, Panel Member (City)

GARY L. PUSHEE

Gary L. Pushee, Panel Member (Union)

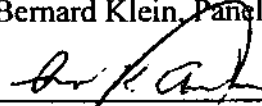
8. Retiree Medical Suffix

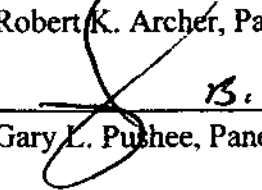
The Panel awards the Union's Last Best Offer:

No change to §38.3 of the contract.

Respectfully submitted,


Bernard Klein, Panel Chair


Robert K. Archer, Panel Member (City)


Gary L. Pushee, Panel Member (Union)

9. Retiree "or spouse" re Medicare

The Panel awards the City's Last Best Offer:

Effective 7/1/97, redraft §38.5 as follows:

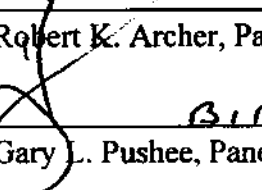
"If the retiree or spouse is eligible for Medicare and fails to make application for Medicare coverage, then the City shall not pay any greater premium than would have been paid had the retiree or spouse received Medicare. The retiree or spouse shall reimburse the City for any excess premiums paid.

In the event the City would be obligated to make contributions under a National Health Insurance Act, that would affect coverage for retirees, then the terms of this Agreement shall be subject to renegotiations."

Respectfully submitted,


Bernard Klein, Panel Chair


Robert K. Archer, Panel Member (City)


Gary L. Pushee, Panel Member (Union)

10. Arbitration (Claims of Discrimination)

The Panel awards the Union's Last Best Offer:

No change to the contract.

Respectfully submitted,

Bernard Klein
Bernard Klein, Panel Chair

Robert K. Archer
Robert K. Archer, Panel Member (City)

B. R. D. S. E. Y. E.
Gary L. Pushee, Panel Member (Union)

11. Disability Retirement Beneficiaries

The Panel awards the City's Last Best Offer:

Effective 7/1/98, add as §46.7:

"An employee retiring on a duty or non-duty disability pension cannot have a beneficiary other than a current spouse or legal dependent as defined by U.S. Internal Revenue Code."

Respectfully submitted,

Bernard Klein
Bernard Klein, Panel Chair

Robert K. Archer
Robert K. Archer, Panel Member (City)

B. R. D. S. E. Y. E.
Gary L. Pushee, Panel Member (Union)

12. Arbitrability of Insurance Disputes

The Panel, as to this non-economic issue, awards as follows:

Effective July 1, 1998 Article VII Section II shall state: "All insurances are provided in accordance with the terms and conditions of the City's contracts with the providers, which are controlling. No dispute between an employee and an insurer will

be arbitrable unless such a dispute represents a violation or compromise of the provisions of this Agreement as to coverage."

Respectfully submitted,


Bernard Klein, Panel Chair


Robert K. Archer, Panel Member (City)


Gary L. Pushee, Panel Member (Union)

13. Health Care Buyout Eligibility

The Panel awards the City's Last Best Offer:

Effective 7/1/97, rewrite §37.6A as follows:

"Employee must have health coverage via a spouse or another source as long as neither is financed in any way by the City of Dearborn."

Respectfully submitted,


Bernard Klein, Panel Chair


Robert K. Archer, Panel Member (City)


Gary L. Pushee, Panel Member (Union)

14. The following issues were settled at the Act 312 Hearing and are hereby made part of this Award:

A. Redraft § 40.2 as follows:

"Any time lost beyond the one hundred-eighty (180) day period shall first be charged against sick leave, then against accumulated overtime, and then to vacation, except that such time shall not be charged against vacation without the employee's approval."

B. Delete Article XLV (Police Cadets)

- C. Add City Exhibit 27 to contract:

ATTACHMENT "B"

MEMO OF UNDERSTANDING BETWEEN THE PARTIES

The Police Officers Association of Michigan acknowledges and agrees that Section 238.01 of the Police and Fire Revised Retirement System pension plan should be amended to eliminate the reference to Act No. 314 of 1965 and to reflect that the system must comply with Public Act 55 of 1982, as amended, with reference to its investments.

FOR THE UNION:

By:  BIRDSEYE

FOR THE CITY:

By: 

Dated: _____

- D. Vacation Leave (Article XXV): Delete obsolete schedule
- E. Longevity Pay (Article XXXVI): Delete obsolete schedules
- F. Health Care Benefits (Article XXXVII): Delete obsolete § 37.2

Respectfully submitted,


Bernard Klein, Panel Chair


Robert K. Archer, Panel Member (City)

 BIRDSEYE
Gary L. Pushee, Panel Member (Union)

This Award shall include all provisions previously agreed to by the parties which were not a subject of dispute for the Panel.

Date: November 22, 1998

Respectfully submitted,

Bernard Klein

Bernard Klein, Panel Chair

Robert K. Archer

Robert K. Archer, Panel Member (City)

BIRDSEYE

Gary L. Pushee, Panel Member (Union)
