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Sub.

STATE OF MICHIGAN
COMPULSORY ARBITRATION

IN THE MATTER OF THE ACT 312
ARBITRATION BETWEEN:

CITY OF FLINT (Employer)

-and-

POLICE OFFICERS LABOR COUNCIL,
LIEUTENANTS AND CAPTAINS (Union)

Arbitration Arising Pursuant to Act 312
Public Act of 1969, as amended
MERC Case #L96 K-1008

FINDINGS, OPINION AND ORDER

ARBITRATION PANEL:

<u>Mario Chiesa</u>	Impartial Arbitrator and Chairman
Marcantonio Morolla	Employer Delegate
John Steele	Union Delegate

APPEARANCES:

For the Employer:	Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C. By: Dennis DuBay 440 East Congress, 5th Floor Detroit, Michigan 48226-2917
For the Union:	John A. Lyons, P.C. By: Mark Douma 675 E. Big Beaver Road Suite 105 Troy, Michigan 48083

Flint, City of

INTRODUCTION

The petition leading to this Act 312 arbitration was filed by the Union on May 5, 1998. I was notified by MERC in a letter dated August 12, 1998 that I had been selected to act as the impartial arbitrator and chairperson of the arbitration panel. It is noted that both parties waived, both in writing and then on record at the hearing, all the time limits contained in the statute and regulations.

On April 28, 1999 a pre-arbitration conference was held at the Employer's facilities in Flint, Michigan. The hearing was commenced and concluded on October 7, 1999. An executive session followed immediately thereafter, with the Findings, Opinion and Order following as soon as possible.

ISSUES

The parties stipulated that the Collective Bargaining Agreement to be created as a result of this arbitration would have an effective date of July 1, 1997 through and including June 30, 2002.

While initially there were a number of issues outstanding, the parties managed to reached agreement on all outstanding issues, with the exception of one issue which relates to Article 26 - Retirement. The stipulated award entered into by the parties regarding the resolved issues appears as follows:

"STIPULATION

"The parties agree to the following partial stipulated Award in the above-referenced matter. The parties further stipulate that all other issues have been withdrawn except the one remaining issue which shall

be submitted to the Panel for decision and award, i.e., The Union proposal with respect to Article 26 - Retirement.

"FLINT POLICE LIEUTENANTS AND CAPTAINS ASSOCIATION

"1. Agreement from date of ratification to and including, June 30, 2002, with wages and pensions retroactive as herein described.

"2. Article 27. Hospitalization Insurance - Effective January 1, 2000, increase prescription drug to \$10 on all plans.

"3. Article 29. Dental Insurance - Effective January 1, 2000, increase Class I and II per person per contract year benefits from \$750 to \$1,000 and increase Class III benefits from \$650 to \$1,000 lifetime.

"4. Article 42. Tuition Reimbursement - Effective July 1, 1998, revise the tuition reimbursement by changing the \$150 per fiscal year to \$800 per fiscal year, and adding a \$4,000 per fiscal year cap on total tuition expenditures for the bargaining unit. Also, change the one (1) year period for remaining in the City's employ to three (3) years, deducting 1/36th from the employee's final pay for each monthly or portion thereof lacking the three-year requirement.

"5. Article 14, Section 2. Clothing Allowance - Effective July 1, 1999, increase the Clothing Allowance from \$420 to \$480.

"6. Effective July 1, 2000, the longevity steps at 11, 16, 21, 25 and 27 years shall be computed by adding the dollar differential between each step and the five-year rate in effect on June 30, 2000 and adding it to the five-year rate. For example, effective the beginning of the pay period on or after July 1, 2000, the 11 thru 15-year longevity step for Lieutenants would be \$59,767.77 (i.e., the 7-1-2000 5-year basic rate of \$58,778.48 plus \$989.29 -- the dollar differential between the 5-year top rate and the 11-year longevity in effect on June 30, 2000). For 2001-2002, the 11-15th year step would be \$61,237.23 (i.e., the 7-1-2001 5-year basic rate of \$60,247.942 plus the frozen dollar differential of \$989.29).

"7. Appendix 'A' Wages

Effective beginning of pay period on or after July 1, 1997, increase wages in Appendix 'A' by 3.5%.

Effective beginning of pay period on or after July 1, 1998, increase wages in Appendix 'A' by 2.5%.

Effective beginning of pay period on or after July 1, 1999, increase wages in Appendix 'A' by 2.5%.

Effective beginning of pay period on or after July 1, 2000, increase wages in Appendix 'A' by 2.5% (but see longevity change).

Effective beginning of pay period on or after July 1, 2001, increase wages in Appendix 'A' by 2.5% (but see longevity change).

Applicable retroactivity for 1997-98, 1998-99, and 1999-2000, through date of ratification shall be paid to eligible employees and those former bargaining unit members who have retired during said period, within thirty (30) days following ratification by the City. In addition, a one-time only lump sum payment of \$500 minus applicable deductions will be paid to employees in the bargaining unit on the date of ratification. Said amount shall be included in the retroactivity check for eligible employees.

"8. All other items shall continue as provided in the 1995-97 agreement."

FINDINGS AND OPINION

The issue in question concerns the language in Article 26 - Retirement. It has been characterized as economic. The language contained in the current Collective Bargaining Agreement, which is a compilation of the 1992-1995 contract and the 1995-1997 revisions, appear in a document attached hereto and made part hereof and referenced as Appendix A.

The parties' positions and their last offers of settlement are memorialized in a stipulation which reads as follows:

STIPULATION

"The parties agree that all issues have been settled (in the stipulated Award) or withdrawn except the one remaining issue which shall be submitted to the Panel for decision and award, i.e., the Union proposal with respect to Article 26 - Retirement. The parties agree that the issue is economic and the final offers of settlement on this issue are as follows:

"Union

"The following new Section will be added to Article 26 - Retirement.

6. Article 26. Retirement - The parties agree to the following changes to the retirement plan to cover the period July 1, 1997 through June 30, 2003, with the understanding that retirement plan changes shall not be subject to negotiations for said six (6) year period.

- a. For all employees hired on or before January 1, 1978, the employee's normal retirement benefit shall be the greater of (a) the employee's years of service multiplied by 2.5% times the employee's final average earnings based on the highest two of the last five years prior to retirement; or (b) the employee's accrued financial benefits under the retirement plan on the day immediately prior to the effective date of this provision computed as if the employee had retired on that date but without reduction for early retirement.

For all employees hired after January 1, 1978, the 2.6% multiplier and the final average period of three of the last five years will remain in effect.

- b. Said two out of five exception for FAC shall be discontinued and it shall revert back to three out of five when the last employee eligible for the two out of five (i.e., hired on or before January 1, 1978), retires or leaves said Lieutenants and Captains bargaining unit.

"City

"Maintain the status quo and make no changes in Article 26 - Retirement."

Section 9 of Act 312 of Public Acts of 1969, as amended, outlines the criteria which an arbitration panel must use in determining whether which last offer of settlement is acceptable. To state it in another fashion, as to each economic issue, 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.

While all the factors in Section 9 will not be displayed, it is almost universally accepted that comparisons between bargaining units employed by the same employer and performing essentially the same, or at least very closely related work, are very important. While certain other bargaining units may have differing needs and proposals, there are some issues which transcend bargaining unit lines. Many times issues related to the elements of a pension benefit fall in that category.

In that regard, the tentative settlement agreement related to retirement in the Police Sergeants unit appears as follows:

"6. Article 28. Retirement - The parties agree to the following changes to the retirement plan to cover the period July 1, 1997 through June 30, 2003, with the understanding that retirement plan changes shall not be subject to negotiation for said six-year period.

"A. Effective the first pay period on or after the date of ratification, raise the pension multiplier from 2.5 to 2.6 for all employees hired after January 1, 1978 and for all employees entering the Sergeants bargaining unit after the date of ratification (without regard to their date of hire).

"B. Effective the first pay period on or after date of ratification, change the period for the final average compensation to two out of last five years rather than three out of five for employees hired on or before January 1, 1978 in the bargaining unit on the date of ratification. Discontinue said two out of five and revert back to three out of five when the last employee eligible for two out of five retirees or leaves said Sergeant's bargaining unit.

"C. Effective first pay period on or after date of ratification, increase employee contribution to pension plan by 1% to 5.5%.

"D. Enter into a side Letter of Agreement which will provide that in the event the City voluntarily enters into a two out of five FAC with the Lieutenants and Captains Unit, the pension multiplier for employees hired prior to January 1, 1978, shall be increased to 2.6%. It is understood that this does not apply to any award from a 312 Arbitrator.

"E. Anyone retiring from July 1, 1996 to date of ratification, shall have their pension recalculated at the applicable rate set forth in Paragraphs A or B above."

The tentative agreement regarding the Pension issue in the Flint Patrol Officers bargaining unit appears as follows:

"3. Pension - The parties agree to revise the Retirement plan to provide the 2 out of 5 FAC Option for Police Officers hired prior to 1978 under the following conditions:

"A. Effective the first pay period, on or after ratification, for all employees hired on or before January 1, 1978, who retire after the date of ratification, the employee's normal retirement benefit shall be the greater of (a) the employee's years of service multiplied by 2.5% times the employee's final average earnings based on the highest two of the last five years prior to retirement or (b) the employee's accrued financial benefit under the Retirement Plan on the day immediately prior to the effective date of this provision (i.e., 2.6 + 3 out of 5) computed as if the employee had retired on that date but without reduction for early retirement.

For all employees hired after January 1, 1978, the 2.6% multiplier and the final averaging period of three of the last five years will remain in effect.

"B. Said 2 out of 5 exception for FAC shall be discontinued (and it shall revert to 3 out of 5) when the last employee eligible for the new 2 of 5 provision (i.e., anyone hired on or before January 1, 1978) retires, terminates or otherwise leaves the FPOA bargaining unit.

"C. The Retirement plan shall not be subject to negotiation for a period of five years, i.e., July 1, 1998 through June 30, 2003.

"D. Enter into a side Letter of Agreement which will provide that in the event the City voluntarily enters into a 2 out of 5 FAC with Lieutenants and Captains Unit (for post-78 retirees), the pension multiplier for employees hired prior to January 1, 1978 shall be increased to 2.6%. It is understood that this does not apply to any award from a 312 Arbitration (nor does it apply if the 2 out of 5 is only given to pre-78 hires).

"E. Anyone retiring from July 1, 1998 to date of ratification shall have their pension recalculated at the applicable rate set forth in Paragraph 3.A above."

Testimony from a Union witness suggests that essentially the Union was willing to take the same package the Sergeants were offered, with some modification, because this unit already had a 2.6% multiplier. According to the testimony, the Union's proposal was essentially to try to attempt to provide some internal consistency.

Clearly the evidence in the record supports adoption of the Union's last offer of settlement. Keeping in mind that the issue is economic, the panel is constrained to adopting one or the other's last offer of settlement in total. The Employer's position was to maintain the status quo, while the Union's has been

displayed above. The provisions existing in the other Police bargaining units, along with the testimony contained in the record, convinces the panel that application of the Section 9 criteria requires that the Union's last offer of settlement be adopted.

ORDER

The panel orders that the Union's last offer of settlement be adopted.

Mario Chiesa 12-4-99
Mario Chiesa
Neutral Chairperson

John R. Steele
Union Delegate

Maureen Morley-Dissent
Employer Delegate 11/24/99

Appendix A

Officer showing the period of active duty and the allowance made by the State of Michigan or other governmental authority for such service. It shall be the duty of the Chief of Police to forward such letter to the Director of Finance.

ARTICLE 25 VETERANS RIGHTS AND BENEFITS

A member who has been in the Armed Services of the United States under military leave from the City of Flint and subject to the limitations provided by law and who is released or discharged from such duty under honorable conditions, shall be afforded all rights provided governmental employees under the provisions of P.A. 1951, No. 263, as amended (M.C.L.A. 35.35; M.S.A. 4.1486).

ARTICLE 26 RETIREMENT

Section 1. General

An employee shall be allowed to retire voluntarily with pension benefits at twenty-three (23) years of credited service. Employees hired on or after July 1, 1994, shall be allowed to retire voluntarily with pension benefits at twenty-five (25) years of service and age fifty (50). Said employee's pension payments will be figured on the average of the highest annual compensation paid said employee during any period of three (3) years of his credited service contained within his five (5) years of credited service immediately preceding the date of his employment with the City last terminates. Effective January 1, 1994, the multiplier will be 2.5% per year.

Employment after twenty-five (25) years of service shall be conditioned on the employee being able to fully perform his job duties. Any dispute as to the employee's physical or mental condition shall be resolved in accordance with Article 21, Section 4, Paragraph 3.

An employee may take a deferred retirement after completion of fifteen (15) years credited service. Such deferred retirement shall be paid in accordance with Section 35-25 of City of Flint Ordinance No. 2496, as amended May 19, 1975, effective May 26, 1976.

An employee who retires without necessary service credits to receive pension benefits will be considered as retiring without pension benefits and will not be eligible for Blue Cross/Blue Shield benefits nor pension payments. Such employee will be refunded all of the accumulated contributions standing to such employee's credit if the employee makes proper application.

Section 2. Annuity Withdrawal Option

Within thirty (30) days following the date the member attains the rank of Police Lieutenant, a Police Lieutenant may elect the option of voluntary withdrawal of his own accumulated contributions. Failure to elect this option within the specified time will preclude withdrawal of his own accumulated contributions upon retirement. A member who elects this option shall immediately thereafter have his contribution to the retirement system increased from 4.5% to 8.5% of the compensation paid him by the City. A member who has elected this option may at time of application for retirement choose to have 25%, 50%, 75% or 100% of his accumulated contributions returned in a single payment. The member's pension shall then be reduced by the actuarial equivalent of the accumulated contributions withdrawn as determined by the City's actuaries. The accumulated contributions for the member in the employee's savings fund shall be reduced by the amount of the single payment.

In the event a member elects the aforementioned option, upon refund of the employee's accumulated contributions, the employee shall receive "Regular Interest" on his accumulated contributions. "Regular Interest" shall be defined as in the Definition section of the Retirement Ordinance (i.e., 1% per annum, compounded annually).

Nothing contained in this Section 2 shall be construed to prohibit an employee who elects this option from electing other applicable options provided in the Retirement Plan.

Section 3. Employee Contribution Rate

The employee's contribution to the retirement system shall be 4.5% of the compensation paid him by the City.

Section 4. Purchase of Military Time

Any full-time employee presently employed in the position of Police Lieutenant may, on a one-time only basis, prior to January 1, 1982, elect to receive credit, for retirement purposes only, for time served in the armed forces of the United States on active duty for other than training purposes, and for which he received an honorable discharge. The maximum amount of military service for which he may receive credit is thirty-six (36) months and such credit shall be given only upon payment to the retirement system of a contribution computed in the following manner: Induction rate for patrolman in effect at the time of making the election multiplied by the existing contribution rate, multiplied by the number of years of military service, with interest at the rate established by the Director of Finance, computed from date of hire.

Said contribution shall be made in one installment, payable in no event later than thirty (30) days following the date of

retirement. In the event an employee does not deposit the contribution required hereunder at the time of making the election, the contribution shall be increased $\frac{3}{4}$ of 1% per month, from the date of election to the date of payment, and shall be compounded annually on the amount due. No credit shall be granted for any military service for which the applicant is receiving a pension or which has been used in establishing entitlement to a pension from any other source.

Said service shall not be used for the purpose of meeting minimum requirements for retirement, including, but not limited to, deferred or voluntary retirement.

The employee shall be required to submit a certificate or other document from the military authorities indicating the character of service and nature of separation.

Section 5. Pop-Up Option

Employees, at the time of retirement, and only at such time, may elect to receive Pension Option "B," "Joint and Survivor Pension," or Pension Option "C," "Modified Joint and Survivor Pension," and a "pop-up" basis. If elected, upon the divorce from, or the death of, the named beneficiary, the retirant's pension shall thereafter be paid as if the retirant had elected the straight life form of payment. The change to the straight life form shall be effective the month following the divorce or death.

The actuarial tables used in calculating the "pop-up" option shall be such that there shall be no increased cost to the City or the retirement system.

Section 6. Ordinary Death Pension

The ordinary death pension under Section 25 of the retirement system shall be changed from twenty (20) years of credited service to fifteen (15) years of credited service.

ARTICLE 27 HOSPITALIZATION INSURANCE

The City shall provide to each employee Michigan Blue Cross/Blue Shield Medical and Hospitalization Insurance, MVF-II with prescription rider (generic drugs, \$5 co-pay) and Master Medical, (\$100 per person, \$200 per family, with 80/20 co-pay), fully paid at semi-private rates and including mandatory second opinion surgery and prevent. Such insurance shall begin per terms of the "New Hire Agreement" as entered into between the City of Flint and Michigan Blue Cross/Blue Shield as per past practice.

**Tentative Agreement Between City of Flint and
Flint Police Lieutenants & Captains Association (POLC)
July 1, 1995 — June 30, 1997**

I. Wages:

Increase Captain base rate of pay by 3.0%, then for all members of bargaining unit:

Effective July 1, 1995 — 3.5%

Effective July 1, 1996 — 3.0%

II. Longevity:

Effective July 1, 1995, add 2% longevity step at start of 27th year.

III. Shift Premium:

Effective for all employees entering bargaining unit from first Lieutenant's promotional list promulgated after the current November 15, 1994 promotional list, and thereafter, modify shift premium to \$1.00 per hour for second shift and \$1.25 per hour for third shift.

IV. Twenty Year Retirement Window:

For all employees currently in bargaining unit, the normal retirement age for employees will be twenty (20) years of service during the period September 1, 1996, through January 1, 1997.

V. Pension Multiplier & Employee Contribution:

Effective July 1, 1996, pension multiplier will be raised 0.1% to 2.6%.

Effective July 1, 1996, employee pension contribution is raised by 1.0% to 5.5%.

Effective for all employees entering bargaining unit from first Lieutenant's promotional list promulgated after the current November 15, 1994 promotional list, and thereafter, who are not able to fold in sick and annual leave severance payments into final average compensation, employee retirement benefits shall be subject to Section 415, Internal Revenue Code limitations. For all other employees (i.e., those predating the above and/or all employees who may fold sick and annual severance payments into final average compensation), an excess benefit trust will be created to pay benefits, if any, which exceed Section 415 limitations.