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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Case No. L 99 A-7011

Opinion and Award in the matter of the Act 312 arbitration between

Coloma Township

- and -

Police Officers Labor Council

DATE OF MEDIATION:	June 16, 1999
DATE OF ACT 312 PETITION:	June 21, 1999
DATE OF IMPARTIAL ARBITRATOR APPOINTMENT:	August 2, 1999
DATE OF PRE-HEARING CONFERENCE:	October 6, 1999
DATE OF HEARING:	February 4, 2000
LOCATION OF HEARING:	Coloma, Michigan
DATE HEARING CLOSED:	February 4, 2000
DATE LAST, BEST OFFERS SUBMITTED:	February 18, 2000
DATE POST-HEARING BRIEFS SUBMITTED:	April 5, 2000
DATE RECORD CLOSED:	April 5, 2000
DATE OF EXECUTIVE SESSION:	May 9, 2000
ARBITRATION PANEL:	

Richard N. Block, Chair and Impartial Arbitrator
Charles F. Ammeson, Township Delegate
James J. Quinn, POLC Delegate

Coloma Township

APPEARANCES:

For Coloma Township

Ms. Anne L. Buckleitner, Attorney, Troff Petzke & Ammeson

For Police Officers Labor Council

Mr. Timothy J. Dlugos, Attorney, John A. Lyons, P.C.

ISSUE IN DISPUTE

ECONOMIC

Pensions

LAST BEST OFFERS OF SETTLEMENT

LAST BEST OFFER OF TOWNSHIP

Pension

The current defined contribution plan shall be continued without change.

UNION'S LAST BEST OFFER OF UNION

Issue: Article 14 - Insurance and Pension

Through this proposal, the Union seeks to modify the existing pension plan under Section 14.4 to read as follows:

Section 14.4 Pension Plan. Employees shall contribute six percent (6%) of their base salary with the Employer contributing six percent (6%). These funds shall be deposited in an I.R.A. at a financial institution of the employee's choosing.

Effective July 1, 2000 employees shall be covered by the M.E.R.S. Plan Benefit B-2, with the F-50 (25/50) and FAC-3 Riders. On this date one-half (1/2) of the money accumulated by the employees from the previous pension plan as of 12/31/98 shall be rolled over to M.E.R.S. Employees shall continue to contribute six percent (6%) towards the cost of the pension plan with the Employer paying any additional costs.

This Last Offer of Settlement also includes a modification of Section 11.3 in order to help finance the above proposal:

Section 11.3 Paid Sick Leave. No sick leave credit shall be granted for the first six (6) months of employment. Thereafter, sick leave shall be allowed at the rate of twelve (12) days per year during the employment period. Employees may accumulate up to one hundred eighty (180) sick days, of which may be taken upon retirement at the end of twenty (20) years of service. These days shall be the accumulation of sick days not used during the employee's last yearly rate of pay. Should an employee take an early requirement, quit, or be discharged for just cause, the employee would be eligible for sick time accumulation as scheduled below:

10 Years
5 Years

Ninety (90) Days
Forty-Five (45) Days

Employees shall furnish satisfactory evidence of illness where illness shall exceed two (2) days. The submission of a doctor's certificate or report from the employee's treating physician shall be considered satisfactory evidence for the purpose of this Section. Employees shall be expected to report any absence before the beginning of their normal working day to the Department. Two (2) days of unreported absence may be considered a voluntary termination of employment.

Effective July 1, 2000 one-half (1/2) of the employees' presently accumulated sick leave shall be forfeited to defray the costs of the above pension change.

BACKGROUND

This proceeding was initiated by a Petition for Arbitration filed by the Police Officers Labor Council (hereinafter the Union) on June 21, 1999 pursuant to Public Act 312 of 1969. The Union represents the one employee in the police supervisory unit in Coloma Township (hereinafter the Township).

In that petition, two issues were listed in dispute: base wages and pensions. At the hearing in this matter on February 4, 2000, the parties stipulated that the issue of base wages had been resolved with the unit receiving a wage increase of 3% effective April 1, 1999, 3% effective April 1, 2000, and 3% effective April 1, 2001 (Tr. 2). Accordingly, the Award will address only the

issue of pensions. In addition, the parties, by their actions, have agreed to waive the statutory time limits.

POSITIONS OF THE PARTIES

Position of the Union

Comparability. At the outset, the Union argues that its comparables, the cities of Allegan, Dowagiac, and Otsego, along with one of the Township's comparables, New Buffalo, are the most appropriate for deciding this case. The Union notes that these four communities are similar to Coloma Township in terms of population, State Equalized Value (SEV), Taxable Value (TV), and department size. On the other hand, two of the three comparables proposed by the Township, the Village of Coloma and Chikaming Township, are not close to Coloma Township on these four criteria.

Merits. The Union points out that the Township is not contending that it is unable to pay for the Unions's last offer. Therefore, the Union argues, this case is a matter of willingness to pay rather than ability to pay.

The Union also points out that there are inherent disadvantages to the current defined contribution plan that make it undesirable. The amount of the pension the employee will receive is uncertain; if the employee does not invest well, the employee could lose money. A defined benefit plan, which the Union is proposing in its final offer, is predictable. It guarantees employees a known and certain benefit. It guarantees the financial future of the current employees and any new hires.

The Union notes also notes that the pension plan in Coloma Township is worse than the plans in the four communities the Union argues are comparable. The Union points out that Allegan and Dowagiac have defined benefit plans. Although Otsego and New Buffalo have defined contribution plans, both of these plans are superior to the current plan in Coloma Township with respect to the Employer's contribution.

The Union notes that the cost of its offer will be \$169,912, but that it is willing to make concessions to help fund this liability. The Union in its last, best offer proposes that one-half of the funds in the employee's current pension plan, \$71,000 of \$142,000, be rolled into the MERS plan. The Union note that this is the Employer's contribution to the current plan. The Union is also willing to make a 6% contribution from the unit, reducing the Employer's contribution from 27.2% of payroll to 21.8% of payroll. The Union is also willing to forfeit half of the employee's accumulated sick leave which he could cash out on retirement. The Union argues that this constitutes an additional unit contribution of \$12,157.43.

Taking all this into account, the Union is proposing that the employee contribute almost half of the cost of the change in the pension plan. The Union believes that this large a contribution warrants a decision to award its last best offer as the contractual provision.

The Union also notes that the cost for new hires would be 7.4% of payroll. This is only 1.4% of payroll more than the Employer currently pays.

Based on the foregoing, the Union argues that its offer is supported by substantial, competent, and material evidence. The Union requests that its final offer be granted.

Position of the Township

The Township argues that adopting the Union's final offer, which would convert the defined contribution pension plan in the current agreement to a defined benefit plan (MERS Plan Benefit B-2, F-50 (25/50), FAC-3) would be contrary to the factor of public interest as provided in Act 312. The Township points out that the total police budget has been between \$450,000 and \$550,000, of which approximately 85% is salaries. The one employee in the bargaining unit is eligible to retire in August, 2002. Even with the employee contribution of one-half of the funds in the employee's IRA and one-half of the accumulated sick leave, proposed by the Union in its last offer, the Township would incur an immediate liability of \$87,529.07. Given the modest size of the Township police department budget, this amount is so large as to be contrary to the public interest.

The Township contends that close scrutiny of the Union's proposal demonstrates the absence of a commitment to the defined benefit plan it claims it is requesting. Under the Union's last offer, the one employee in the bargaining unit could fund the entire MERS plan. He has \$142,000 in his IRA and \$22,765 in accrued sick leave. The total contribution required in the command unit is \$169,912, and a contribution by the employee of 100% of the funds in his IRA and 100% of his accumulated sick leave would come close to funding the MERS plan.

The Union's proposal would, in effect, provide a "gift" of over \$87,000 to this employee. This would increase his annual compensation by 73%, 24 times the justifiable pay increase of 3%.

The Township also contends it would be unwise to award the defined benefit plan to the supervisory unit, but not to the patrol unit. A difference would cause friction between the units and would be an administrative burden on the Township.

The Township also contends that it has not budgeted for these expenses. Forcing the Township to use these funds for these purposes would be contrary to its fiduciary responsibility. The Union's last offer would impose a long-term burden on the Township, with nothing of value returned. The Township also believes that the voters would likely reject a police millage that was to be used to fund this pension. The Township argues it is not prudent to take Township funds to finance a second retirement plan for these employees

Finally, the Township contends that awarding the Union's final offer may be outside the jurisdiction of the Act 312 arbitration panel. The Township argues that the funds in the IRA's belong to the employees, and the panel may not have the authority to convert all or part of the IRA's of individual employees to the MERS plan without their individual consent.

For all these reasons, the Township requests that the Union's final offer be rejected, and that its final offer be awarded as the resolution of the pension dispute.

DISCUSSION

Act 312 requires the arbitration panel to consider eight statutory factors when rendering an arbitration award under the statute. Each party's final offer in this case will be analyzed with respect to the statutory factors.

The Lawful Authority of the Employer.

There is no evidence on the record that directly bears on the issue of whether one or both of the final offers is outside the lawful authority of the employer. The Township, however, argues that the Union's final offer may be of questionable legality because it is not clear that a collective

agreement may require an employee to transfer all or part of personal IRA account to a MERS account. The Township has cited no legal authority in support of this argument. Accordingly, the panel concludes that neither final offer would be outside the lawful authority of the Employer.

Stipulation of the Parties.

There are no stipulations of the parties that bear on selecting either final offer. Accordingly, the panel concludes that this factor is irrelevant to the Award.

The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet Those Costs.

The Township argues that the cost of the Union's last offer would be so great as to be contrary to the public interest. The Union, for its part, argues that the Township has the financial ability to absorb the costs of its offer.

With respect to this issue, the record establishes that the Union proposal requires that the current employee in the supervisory unit be immediately vested upon adoption of the proposal, that the Township would accrue the liability upon adoption, and that this liability must be funded (Tr. 4). The record also establishes, without contradiction, that the current annual total salary payment for the supervisory unit is \$39,853 and the current annual total retirement payment for the supervisory unit is approximately \$2,391. (Er. Ex. 1, Tab 4. p. 1). The 3% wage increases upon which the parties have agreed (Tr. 2) would result in a salary to the employee of \$41,049 in the first year of the contract, \$42,280 in the second year of the contract, and \$43,549 in the third year of the contract. Under the Township's final offer, associated contributions to the employee's

IRA, at 6%, would be \$2463, \$2537, and \$2613, assuming the employee does not retire on August 4, 2002, consistent with his eligibility. Even if the employee in the unit retires, presumably the employee would be replaced at a salary comparable to employee's current salary. This would be consistent with what the Township has been paying under the previous agreement. As the Township has been able to absorb these costs, and there is no evidence on the record that police millages (Tr. 7) in the Township have not passed during the previous contract when the Township contributed 6%, the record establishes that a 6% contribution increase such as proposed by the Township in its last best offer is consistent with the factor of the public interest.

The record establishes that if the Union's final offer were adopted, the pension payment would be increased in year 1 from \$2463 under the Township's final offer to \$87,529.07 under the Union's final offer. If adopted, this would be an increase of 3,454% in the pension contribution in the first year of the collective agreement, and an increase of 101% in wages and pension paid to the employee in the first year of the collective agreement.¹ Adding this payment alone to the current department would result in an increase of 17% in the total budget of the Department.² Even assuming some increase in employee morale resulting from awarding the Union's final offer, the record does not establish that the increase in morale is sufficient to offset the very high cost to the Township of the Union's final offer.

Based on the foregoing, the panel finds that this factor substantially favors the final offer of the Township.

¹Wages plus pension is assumed to \$43,512 (\$41,049 + 2363) under the Township's final offer.

²The total police budget is assumed to be \$500,00, the midpoint of the budgetary range of \$450,000 - \$500,000.

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; and (II) in Private Employment in Comparable Communities.

The Union has proposed that Allegan, Dowagiac, Otsego, and New Buffalo be considered comparable to Coloma Township. Of these four jurisdictions, the employees in two, Allegan and Dowagiac, have MERS defined benefit plans, and two, Otsego and New Buffalo, have defined contribution plans (Un. Ex. 1, Tab 6). Thus, with respect to the basic type of plan, the Union's proposed comparables are inconclusive regarding the question of whether the Union's final offer should be adopted. Half of the comparables proposed by the Union have the type of plan the Township proposes and the Union opposes, and half have the type of plan that the Union proposes and the Township opposes. Put differently, as to type of pension plan, the comparables support both final offers.

The Union points out that the Employer contribution proposed by Coloma Township for the supervisory unit is below the Employer contribution in Otsego and New Buffalo, the Union's proposed comparables that have defined contribution plans (Un. Ex. 1, Tab 6). While the Union is correct in pointing this out, and even if one assumes that this factor slightly favors the Union, the Union is not proposing a defined contribution plan under which the Township's contribution is at the level of Otsego and/or New Buffalo. The Union is proposing abandonment of the defined contribution plan in favor of a defined benefit plan. The defined benefit plan proposed by the

Union, represents a fundamentally different concept in retirement payments than the defined contribution plan. The record does not provide any evidence as to how the defined benefit plan proposed by the Union will remedy any deficiency in the level of Township contribution to the defined contribution plan the Township proposes.

The record includes no evidence regarding the pension benefits for comparable private sector employees. Based on the foregoing, the panel finds that defined benefit and defined contribution plans are equally frequent among the four comparables. Thus, the record supports neither offer as to type of plan. The Union is slightly behind its comparables in terms of Township contribution to the defined contribution plan, and such a differential may address the matter of the size of the Township contribution to a defined contribution plan. Such a record does not speak directly, however, to the merits of the Union's proposed final offer of a defined benefit plan. Therefore, the factor of comparability does not clearly support awarding either final offer.

The Average Consumer Prices for Goods and Services, Commonly Known as the Cost of Living.

Neither party has presented evidence regarding this factor. Accordingly, this factor shall not be considered in rendering this award.

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.

Neither party has presented evidence regarding this factor. Accordingly, this factor shall not be considered in rendering this award.

Changes in Any of the Foregoing Circumstances During the Pendency of the Arbitration

Proceedings. Neither party has presented evidence regarding this factor. Accordingly, this factor shall not be considered in rendering this award.

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. Although neither party cited this factor as explicitly relevant, the Township has argued against awarding the Union's final offer to the supervisory unit but not to the nonsupervisory unit.³ The Township argues that such a difference would cause friction between these units. This argument would seem to address the comparative relationship between two bargaining units in the jurisdiction doing somewhat comparable work. This is a factor that is traditionally taken into consideration in determining terms and conditions of employment. Although the Township has presented no evidence that the existence of a differential would cause friction, common sense suggests that, to the extent possible, and consistent with the importance of other factors, bargaining units that work closely together and perform generally comparable work, as is the case for the supervisory and

³MERC Case No. L99 A-7012, heard the same day and with the same record as the instant case, but with a separate award per stipulation of the parties (Tr. 2).

nonsupervisory police units in the Township, should have comparable terms and conditions of employment. As the Award for the nonsupervisory unit is be the final offer of the Township,⁴ this factor supports the Award of the Township.

Another factor that is often considered is fundamental fairness. There is no evidence on the record that the pension contribution under the previous agreement resulted in a substantial disadvantage to the bargaining unit members. Although the Union claims that a defined benefit plan is more desirable and superior to a defined contribution because of the certainty of payments, the level of benefits paid under a defined contribution plan relative to a defined benefit plan depends on the employee's success in investing. The desirability of a defined contribution plan relative to a defined benefit plan cannot be determined. It varies with the risk preferences of employees. Indeed, the most recent collective bargaining agreement between the parties included a defined contribution plan (Un. Ex. 1, Tab 3, p. 15). Moreover, the record establishes that the employee in the unit has accumulated \$142,000 in his defined contribution plan (Tr. 8), which suggests that a defined contribution plan has been acceptable to these parties for some period of time. Taken together, this record demonstrates that these parties have never considered a defined contribution plan unfair.

Overall, the record does not so strongly establish that defined benefit plan is so inherently superior to defined contribution plan so as to make the latter unfair. The factor of fairness does not support the Award of either party.


⁴Opinion and Award in the matter of the Aet 312 Arbitration between Coloma Township and the Police Officers Labor Council, MERC Case No. L99 A-7012.

CONCLUSION

The foregoing discussion indicates that one factor, the welfare of the public, strongly favors the final offer of the Township, while "other factors" somewhat favors the final offer of the Township. Two factors, the lawful authority of the employer and comparability, favor the final offer of neither party. Four other factors, stipulations, the cost of living, the lawful authority of the Township, and changes in circumstances, are not relevant to this case. Thus, the panel finds in favor of the Township, and awards the Township's final offer.

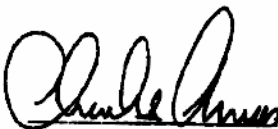
AWARD

The Award of the panel on the issue of pension shall be the last, best offer of the Township.



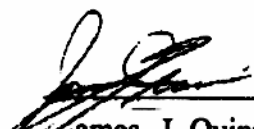
Richard N. Block, Date
East Lansing, Michigan
Impartial Chair

Concur

 6/3-00

Charles F. Ammeson Date
Township Delegate

Dissent

 6/14/00

James J. Quinn, Date
Union Delegate