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In re: Detroit Police Lieutenants & Sergeants Association and City of Detroit	Act 312 Case Nos. D95 C0639 and D92 B-0206 OPINION & AWARDS

PANEL: John W. Scott, Chairman, Roger Cheek, City Delegate, and Ronald Stempin, Association Delegate.

Hearings: The hearings in these procedings were held in a hearing room of the Michigan Employment Relations Commission at the State of Michigan Plaza Building in Detroit, Michigan. There was one preliminary meeting, and there were thirteen meetings of record and one post-hearings meeting of the panel.

Records, Exhibits & Briefs: The stenographic record of the proceedings, the evidentiary exhibits of the parties and the post-hearing briefs of the parties are filed with the Michigan Employment Relations Commission in Detroit. Copies of those documents are not attached to this opinion.

Appearances: The City was represented by Brian S. Ahearn, of Stringari, Fritz, Kreger, Ahearn & Crandall, Attornies at Law, and the Association was represented by John A. Lyons, of the Law Offices of John A. Lyons, P.C.

Witnesses & Attendance: All of the witnesses gave their evidence under oath. The names of the witnesses are set out in the stenographic record of the proceedings. In addition to the panelists and the parties' representatives, the following persons regularly attended the proceedings: Commander Micheal J. Falvo, Chief Labor Relations Specialist Allen A. Lewis for the City; and Sergeants David Brozo, James Gawlowski, Eugene Goode, Woodrow Myree and Robert Webber, and Investigator Robert Henderson for the Lieutenants and Sergeants Association.

Detroit, City of

Case No. D92 B0206: By stipulation at the commencement of these proceedings, the parties agreed that settlement of the issues in Case No. D95 C0639 settles all of the issues in Case No. D92 B0206. That stipulation is in wriring and is filed with the Michigan Empolyment Relations Commission.

References in the Opinion: Throughout this Opinion, references to the DLSA are to the Detroit Lieutenants & Sergeants Association and references to the DPOA are references to the Detroit Police Officers Association.

PREFACE

The opinions expressed in this Preface are those of the Chairman, and the representatives of the parties are not required or invited to comment upon them. The Chairman's opinions here expressed are aimed at the Michigan Legislature, the Michigan Employment Relations Commission, and the general public. Nor am I quite fatuous enough to believe, as that Chairman, that any of the targets of my remarks will take any interest in them that is not purely defensive; except in the case of the somnolent general public which will have no interest in them, defensive or otherwise.

This case was concluded in thirteen hearings which were conducted over a period of more than six months, beginning of record in July, 1997. Yet I am given to understand that it was concluded in far less time and with dozens fewer hearings than in some other cases of its kind.

I have often said that Act 312 proceedings are a part of the process of collective bargaining, if the parties have invoked them; I have said that to these parties. But that does not mean that the legislature could have intended the obviously improper conclusion that Act 312 was to be a substitute for the whole, well established process of collective bargaining; well known to competent practitioners of labor agreement negotiations in the public and private sectors.

PREFACE, (cont'd.)

Nothing in Act 312 requires or so much as suggests that party decision makers and representatives should be able to resort to Act 312 proceedings without having determined their final positions on issues through negotiations with one another in the exercise of their professional competence. Competence for which I have to presume the public pays them for the exercise.

When an Act 312 panel sits to hear a case it should do so to deal from the outset of its proceedings with the last and final positions of the parties and their last best offers to one another on the issues open between them. Absolutely no rational basis suggests itself to explain why one of the parties should be able to throw the whole process of negotiations into the hands of a third person, an arbitrator, to abide the resolution of party positions which the parties should have taken before they could possibly have known they needed to invoke interest arbitration.

In its opinion in City of Manistee v. Employment Relations Relations Commission, 168 Mich. App. 422; 1988, the Michigan Court of Appeals made exactly that result possible. Parties who cannot possibly, rationally, be presumed to be in dispute on issues without knowing exactly why they are in dispute can now, by the action of one of them, toss the whole affair into the expensive process of an Act 312 proceeding without having negotiated at all. And they can do that by the merest reference to the State's mediation service, to which the Act now enables them to doff their bonnets without ever having indulged the mediation which, given the opportunity, might well have enabled them to resolve their differences without resort to Act 312.

Not all parties who resort to Act 312 as the vehicle for resolution of their interest disputes necessarily protract the proceedings under the Act; but no parties should ever be able to use the Act to avoid their own honest negotiations efforts preliminary to invocation of the Act. Party personnel who are paid by the public to take issue-positions in collective bargaining should not be able to use the Act to develop the positions they should take in the exercise of their public function. It is simply preposterous for me think that a party can ignore the State's mediation function and, through a tortuously extractive process of examination and cross examination, lasting for many days over a period of many months, tell a third person what its final positions are when it ought to be presumed that the parties know those positions when they first meet that person. And I cannot believe that the legislature could have intended such a result; such a run-on procedure which is capable of doing anything but expediting disputes settlements.

I believe that an Act 312 proceeding should last no more than a couple of days; surely no more than a week. In that time parties should state for the record what their final and best positions and offers are, together with the reasons why they took them. After all, if the parties' representatives and negotiators are competent they must know, and be accountable to know, why they took positions which would be judged in arbitration on the settlement factors set out in the Act. The Act does not come into play in that respect only when it is formally invoked. Negotiators know the Act's settlement factors and negotiate with them in view; unless they are willing to admit that they are incompetent.

Unlike all kinds of elected officials in every branch of government, arbitrators are elected directly by the actions of parties who know something about them and who know to whom they have purposely decided to give power over them. They do not blunder into cases through the indifference of an electorate or because their names are dynastic political ones. They are specifically selected by the parties because the parties know them individually or because the parties have agreed upon the mechanism of selection and are deliberately employing it in selecting the arbitrator. Yet we see from time to time complaints in the media about the inadequacies of public sector statutory arbitration. It is not the arbitrators who are at fault for any such inadequacies.

More and more I find that a valuable public service is interfered with in ways that are inexplicable. Act 312 has been eviscerated and left in a situation where responsible bargainers can comply with its spirit, and other representatives can convert its simplicity into expensive attempts to begin negotiations rather than quickly conclude negotiations which should have been concluded by the parties before one or both of them resorted to an act which had the obvious purpose of judging those negotiations at the point where they failed.

The decades old Federal Mediation & Conciliation Service arbitration panels have been assaulted by the current Director of the service in a way that makes it impossible for a competent arbitration practitioner to associate with them. And the only apparent reason for that assault is what must be the overweening ego of the Director, John Calhoun Wells, and the cooperation of an amateur in office, Spencer Abraham.

Arbitrators are supposed to be neutrals who have knowledge and experience in the common law and statutory practices and requirements of labor relations. They are not parties. They have no business including in their opinions or the subjective bases for them remarks which are political fawning. I recently read an Act 312 opinion that gratuitously observed that the problems of a large city were not the fault of its current administration or its predecessor administration. Dear me! What could have prompted such a remark; what relevant evidence of record - what relevance to the issues in collective bargaining?

In the instant case I granted the City's position on the residency issue. I did that on the basis that is the only one a knowledgeable labor negotiator could be influenced by in so doing: the parties had long since negotiated the residency requirement into their labor agreement and before me were not treating the issue as a quid pro quo justifying its removal from their Agreement. None of the City's arguments beyond that were relevant, and my personal belief is that an employee should be able to live wherever the employee choses so long as the person's work is satisfactory. An arbitrator must be able to ignore personal preferences in examining party positions and be guided, in Act 312 cases, by the statute alone. Folks who think that cannot be done, and say so, should find some other way of admit- their personal inadequacies.

Finally, and again, Act 312 proceedings should be a concise study of the reasons parties have taken the positions they have already taken on issues before resorting to Act 312. I believe the legislature of the State of Michigan intended that, and that no other view of Act 312 serves the public interest.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Residency.

AWARD: The language of the expired Agreement is to remain in effect during the life of the renewed Agreement. If during that time the residency requirement is relaxed for any other public safety bargaining unit employees it is to be similarly relaxed for the DLSA bargaining unit employees during the life of the Agreement here renewed.

COMMENT: All of the members of the DLSA unit were hired by the City with knowledge that they were subject to the rule; it was a pre-condition of employment and a condition of continuing employment. At the time of this award those requirements are true for the other public safety units, and no reason appears in the evidence to establish why this public safety unit should be treated differently from other such units unless the rule is relaxed for one or some of those units.

Where wages and other economic benefits are concerned, employees and prospective employees do not expect that benefit levels will remain unchanged over time. But a residency rule is categorical; it exists and applies or it does not. There is no evidence before the panel to indicate that the City has misled any employee into believing that the residency rule was not in effect after a DLSA employee was hired. or that it would be changed.

Finally, as I have pointed out to these parties on several occasions. the continued existence of the residency rule can be the subject of the kind of trading of issue-positions that is the stuff of collective bargaining. Much of the substance of the City's argument for preservation of the rule is that it applies to other public safety units; and that is exactly why relaxation of the rule for other such units must require a relaxation of the rule for this unit.

ISSUE of Residency, (cont'd.)

This award says nothing about the interpretations of the language of the residency requirement stated in Article 57 of the expired Agreement which may have been made by ad hoc or other arbitrators; it says only that the language of the Article is to continue in a renewed Agreement. The award says nothing to imply anything about the effect of operation of law upon the residency requirement should the parties or any of them reject this award.

ACCEPT: John W. Scott, Ronald J. Stempin.

REJECT: _____.

ISSUE of Health Insurance, (COPS PLAN), (cont'd.)
AWARD.

The health insurance plan now in effect is to remain in effect during the life of a renewed Agreement.

COMMENT: Here again the relationship between the DLSA and the DPOA cannot be ignored by the Panel. The evidence shows that the level of employee benefits of the plan proposed by the City is lower than the level of benefits now enjoyed by members of the DLSA. If the DLSA were to adopt or have imposed on it the COPs plan proposed by the City it would be in a position of doing so without knowing the fate of that plan in the collective bargaining negotiations now under way between the City and the DPOA. The plan is already in effect for the DPOA, as a result of earlier bargaining between that unit and the City and this panel has no idea whether there will be changes in that plan when the City and the DPOA complete their negotiations.

The City claims before the Panel that the adoption by the DPOA of the COPS plan, and the City's agreement to it, was a quid pro quo for increases in pay for the DPOA in its earlier negotiations with the City. The City points out that the DLSA unit here before the Panel has had the benefit of those increases during the past three years and has, therefore, had the benefit of a quid pro quo.

But the fact is that the salary increases resulting for the DLSA unit accrued to that unit by operation of law upon Article 54(B) of the expired Agreement here sought to be renewed and that the expired Article had been negotiated for and agreed to by the City and this unit, the DLSA. There is simply no evidence that the DLSA is obligated to accept the COPs plan proposed by the City on the basis that it has enjoyed a salary benefit through the negotiations efforts of another unit because of a quid pro quo which may have been negotiated with that unit.

ISSUE of Health Insurance, [COPS PLAN], (cont'd.)

It seems best to the panel to leave the present health insurance plan in effect to abide the outcome of shortly forthcoming expiration of a renewed DLSA agreement. By that time, by June of 1998, both this unit and the DPOA unit will have begun and perhaps completed negotiations for new agreements. And by that time this unit should know whether adoption of the COPS plan, with what may be improvements in the level of benefits now enjoyed by its members, may be suitable for its members and can constitute a quid pro quo in bargaining with the City. Nor should the reader forget that the issue of health benefits is still before the parties as they consider this panel's awards.

ACCEPT: _____.

REJECT: _____.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Wages & Wage Differential.

AWARD: The language of Article 54(B) of the expired Agreement is to remain unaltered in a renewed Agreement, with one exception.

COMMENT: Unlike previous demands and negotiations which produced the language of Article 54(A) of the expired Agreement, the DLSA is not here seeking the general salary increases set out in the expired Article. Instead it seeks to maintain the concept of a percentile relationship between the salaries of DLSA members and the wages of police patrol officers who are not members of the DLSA. In addition, the DLSA here seeks to increase the percentages and assure that the salaries of its members will continue to reflect the fact that DLSA members are higher ranked and paid than patrol officers.

The City does not here seek to eliminate the percentile relationship which has resulted from collective bargaining between these parties, and is of long standing in their relationship. But the City is opposed to increasing the percentage figures set out in the expired Agreement's Article 54(B).

In short, at issue here is the amount of a salary increase which depends entirely on the outcome of negotiations between the City and another bargaining unit, the DPOA, which is not subject to the powers of this panel.

The panel cannot responsibly find that wage-increasing percentages should be provided by an award without knowing the amount of the bases to which the percentages will apply.

If forthcoming negotiations or Act 312 activity result in wage increases for the DPOA unit, this award applies the percentages set out in the expired Agreement to the increased DPOA wages and continues the percentile relationship set out in that Agreement if there is no such increase.

ISSUE of Wages & Wage Differential, (cont'd.)

The Exception: As the stenographic record and the City's and the DLSA's proposals show, the parties before the panel agree that employees classified as Investigators are to some degree underpaid under the percentile relationship scheme. Since no salary retroactivity is granted by the panel to any DLSA members, they having been paid all of the salary increases paid to the DPOA unit under the current DPOA Agreement, the increase here awarded to Investigators need only be inserted in the existing language of the expired DLSA Agreement as follows:

"(1.)	Upon promotion	11%
(2.)	Upon confirmation or upon completion of one (1) year in rank, whichever occurs later	12%"

The award recognizes the parties agreement on the need for an increase in salary for Investigators and the fact that the DPOA wage factor to which the increase will apply is now unknown to the panel and the parties.

The effective date of this ~~proposed~~ award is January 1, 1998. JWS, RNC 1/5.

ACCEPT: John W. Scott, Roger N. Clark.

REJECT: Ronald J. Stanton.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Promotions, Including Charter Promotions.

AWARD: The following language in quotation marks is the award in the form of language which the parties should place in a renewed Agreement.

"Promotions to the rank of Inspector, and to that functional rank, however denominated, shall be made only from the rank of Lieutenant. To be eligible for promotion to Inspector a Lieutenant shall have held the rank of Lieutenant in the Detroit Police Department continuously for two years, and shall have submitted a request for appointment to the rank of Inspector. Promotions of Lieutenants so qualified shall be made in the order of their seniority unless the City documents that a Lieutenant it promotes to the Inspector classification has some special skill or attribute not possessed by other Lieutenants eligible for promotion, and that the City has based its out-of-seniority-order promotion on need to employ that skill or attribute. Such documentation shall be available to the DLSA and to any authority which approves promotions. Out-of-order promotions are not subject to the grievance procedure. The purpose of the documentation requirement is to assure the DLSA that the City has a sound basis for making an out-of-order promotion and that the DLSA has a record it may use in future agreement negotiations if it feels that promotions have been unfair to Lieutenants not promoted in seniority order. The present procedures governing promotions of DLSA members to the ranks of Sergeant and Lieutenant shall continue in operation, except that if the City promotes employees to those ranks out of order of their listing for promotion the same documentation above required for promotions to Inspector shall be required and employed for the same reasons."

COMMENT: Before the panel the DLSA expressed fears that its members have no protection against what it views as past abuses resulting from the City's use of out-of-order or Charter promotions. The City insisted on the fairness of its

ISSUE of Promotions, (cont'd.)
COMMENT, (cont'd.)

present administration and pointed out that the system of evaluation proposed to the panel by the DLSA to govern the promotions of Lieutenants to the renk of Inspector is superfluous to the testing and evaluation systems now in place for promotions to Lieutenant and Sergeant. The City feels that, with the testing and evaluation now in place, an employee who reaches the rank and status of Lieutenant has been well tested in the requirements of departmental command and procedure. The panel can agree with the logic of the City's position, but bases its award largely on that very position. With the evaluation that went into making a Lieutenant first a Sergeant and then a Lieutenant, no reason appears in the record to show why promotions to Inspector should not be made in order of the seniority of Lieutenants; unless the City adduces reasons to support any promotion which it feels worth the risk of alienating the feelings of its high-ranking officers.

ACCEPT: _____.

REJECT: _____.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Sick Time Accumulation.

AWARD: Paragraph 35,A,a, of the expired Agreement is amended as follows: The present final sentence of the paragraph is to be deleted, and a new final sentence substituted which will state, "The accumulation of the current sick bank is without limitation effective June 30, 1998."

ACCEPT: John W. Scott, Ronald J. Stemmer.

Reject: Roger n Cheek.

JOHN W. SCOTT
LABOR ARBITRATION

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Pension Multiplier.

AWARD: The position of the DLSA is granted and the language of its last best offer, as presented to the panel, is to be added to the parties' Agreement's Article 51 as follows:

"Each member who retires shall be entitled to a pension which when added to the annuity will provide a straight life retirement allowance equal to 2.5% of his/her average final compensation multiplied by the number of years and fraction of a year of his/her creditable service for the first 25 years."

"For years of service over 25 years the multiplier shall be 2.1%. Maximum years of service for pension credit shall be thirty-five (35) years for new plan members and twenty-five (25) years service for old plan members."

COMMENT: The panel's award is based upon the testimony of the pension plan's actuary, who serves as actuary for the plan and, therefore, for both parties in this case. The actuary testified that the pension plan can afford the improvement in the pension plan factor awarded to the DLSA without injury to the plan.

The City argued that other units than the DLSA are covered by the pension plan and that this fact means that the impact of this award on the plan cannot be measured by the effect of the award of the grant to the DLSA.

But the evidence shows that there is no real comparison between this unit and the much larger DPOA unit covered by the plan; the latter unit having about three times the number of employee members as the DLSA unit, and having an average number of years of service among its members little less than half the number for the DLSA unit. This award is effective July 1, 1997.

ACCEPT: _____

REJECT: _____.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Restricted Duty Assignments, (Sick Leave).

AWARD: Article 35 of the parties' expired Agreement is to be amended to include the language proposed by the City in its last best offer on this issue, as stated in the document titled, "City's Last Best Offers", dated November 24, 1997. That language, consisting in two pages, is incorporated into this Award by this reference. The effective date of this addition to Article 35 is June 30, 1998.

COMMENT: Adoption of this language represents a change in practice in the matter of assigning work to disabled employees, but the panel accepts the City's claim that its adoption will result in dollar savings to the City by causing employees to use sick leave time which they accrue under the parties' Agreement. The panel recognizes that there is equity in a system of assignments of work to incapacitated employees who are capable of performing some work; the employees who are injured in the course of working for the City should have preference over employees whose disability does not result from their work .

The panel also recognizes that the new language will enable the City to fairly and efficiently assign disabled employees to work in a settled and rationally based way whenever available work is exceeded by the number of injured or ill employees seeking it.

ACCEPT: _____.

REJECT: _____.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

ISSUE of Duty Disability Retirement.

AWARD: Article 51 of the parties' expired Agreement is to be amended to include the language proposed by the City in its last best offer on this issue, as stated in the document titled, "City's Last Best Offers", dated November 24, 1997. That language, consisting in seven pages, is incorporated into this Award by this reference. The effective date of this addition to Article 51 is June 30, 1998.

COMMENT: The panel accepts the City's claim that the assessment of disabilities set out in the language will result in savings for the City through improved use of its workforce, and is also influenced to favor this result by the fact that the system proposed by the City is fair to employees even though it represents a change in an existing system. The City's proposal is not altogether one without practical experience in practice because it is already in use in the DPOA unit.

ACCEPT: _____

REJECT: _____.

MERC Act 312 Case No. D95 C0639; DLSA & City of Detroit.

SUMMARY: The records and briefs, position statements of the parties on the issues, closing briefs of the parties and correspondence relating to the case are on file with the Michigan Employment Relations Commission at Detroit. No attempt has been made to include them in this set of opinions and awards.

All of the open issues in the case were settled at an executive meeting of the panel which met at the MERC offices at Detroit on February 10, 1998. All of the panel's awards are set out in the eighteen pages which precede this summary, the entire document consisting in nineteen pages.

The chairman's opinions relating to Act 312 are his own and are presented as his own. Although this case was heard and settled over a period of some six months, it required only thirteen meetings of record for its settlement. Considering the practices that have developed over time for the presentation of Act 312 cases, there was nothing dilatory about the presentation of this case. However, there is much room for improvement in the uses to which Act 312 cases are put and in no case should Act 312 cases be a substitute for collective bargaining by and between parties. Act 312 panels should be presented the final positions of parties, the reasons why they are final and a concise explanation in support of the positions and reasons. It is impossible for parties who have negotiated in good faith not to have the bases for their disagreements at their proverbial fingertips.

John W. Scott, Chairman