

1919

**STATE OF MICHIGAN
COMPULSORY ARBITRATION**

IN THE MATTER OF

CITY OF WYOMING,

Employer,

-and-

Arising pursuant to Act 312,
Public Acts of 1969, as amended
Case No: L98 A-7020

POLICE OFFICERS LABOR COUNCIL
OF MICHIGAN,

Union.

ACT 312 AWARD

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman
Peter H. Peterson, Employer Delegate
Fred LaMaire, Union Delegate

FOR THE EMPLOYER

Peter H. Peterson
Miller, Johnson, Snell & Cummiskey, PLC

FOR THE UNION

Mark P. Douma
John A. Lyons, PC

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE
00 MAY 23 AM 10:51

FILED

BACKGROUND

There are 60 persons in the Wyoming Police Department Patrol Unit. An Act 312 Petition was filed on June 29, 1998.

An arbitration hearing was held on July 23, 1999. The parties agreed that all issues would be considered economic, including an Employer proposal on drug testing. This means that the panel must choose between the last best offers of the parties on all issues, including drug testing.

The parties submitted duplicate last best offers on wages. Therefore, the last best offers of both the Employer and the Union are awarded on that issue. There are additional issues concerning the relationship of pensions and the coordination of Workers' Compensation benefits, holidays, longevity and uniform cleaning. The parties have stipulated to the following comparable communities: Grand Rapids, Grandville, Holland, Kentwood and Walker.

The panel is to apply the provisions of Section 9 of Act 312. Pursuant to the City of Detroit v DPOA, 408, Mich 410, 482, the panel need not afford equal weight to all factors. The Section 9 criteria are:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) 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.

- ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
- (h) 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 factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

I

WAGES

Insofar as both the Union and the Employer have submitted the same last best offer on wages, both should be awarded.

II

PENSION AND COORDINATION OF BENEFITS BETWEEN PENSION AND WORKERS' COMPENSATION

The current contract provides for a 2.25% multiplier. It also does not provide for a coordination of benefits between Workers' Compensation and a duty disability pension.

The Union seeks to maintain the status quo concerning the coordination of benefits, except that the combined benefit could not exceed 100% of average monthly compensation. The Union also asks for an increase in the multiplier to 2.5%. It asserts that all of the comparable communities have

a 2.5% pension multiplier. Regarding the coordination of benefits, the Union points out that the Employer sought the current contract language during the last round of collective bargaining, and that under the Union's proposal, employees will not receive more than 100% of their salary.

The Employer seeks either a 2.35% or a 2.5% multiplier, but would require an employee contribution for the 2.5% rate. Further, in the absence of a coordination of benefits, the Employer would require a 1% contribution for a 2.35% multiplier or a 2.5% employee contribution for a 2.5% multiplier. The employer in its coordination of benefits offer, provides for a coordination after age 50.

The City argues that four out of five of the comparables have an employee contribution, unlike Wyoming, only two permit retirement with full benefits at age 50 and only one of the external comparables has employer paid retiree health insurance, which is the case in Wyoming. It is maintained that the Employer's overall pension effort exceeds that of the comparables.

Regarding internal comparability, the Employer asserts that none of the units in the City have a 2.5% multiplier, and that three have a 2.35% multiplier with a full coordination of benefits.

On the specific question of coordination of benefits, the Employer argues that none of the external comparables permit the benefits sought by the Union in this case. Further, it is maintained that only the police command internally prohibits a full coordination of benefits.

The Union argues that its requested multiplier represents a modest increase for the unit that is consistent with the external comparables, and that the Employer sought the lack of coordination of benefits, that it is now seeking to remove.

DISCUSSION OF PENSION AND COORDINATION OF BENEFITS

The Union is requesting an increase of the pension multiplier to 2.5%, without the addition of an employee contribution. This will have an actuarial cost to the City of 2.5% of payroll. In addition, the Union opts for something less than is sought by the City in the area of coordination of benefits.

The City is willing to offer a pension increase to the Union to 2.35%, at no cost to the membership of the bargaining unit, provided the unit is willing to give back the uncoordinated pension and Workers' Compensation benefit. In effect, the City has valued the coordination of benefits at 1% of the cost of the pension improvement to 2.35%. If the Union wants to go to 2.5%, it must, under the City's position, pay the actuarial cost over and above 2.35%, plus accept the give-back on coordination of benefits.

Although external comparability reflects a 2.50% multiplier, the majority of comparables have an employee contribution. This means that the Union offer of 2.5%, without an employee contribution, exceeds the pension benefit provided by the external comparables. Further, the overall pension benefit for Wyoming patrol officers appears to be at the top end of the external pension plans. Consequently, external comparability would not support the Union's offer on pensions, which does not include an employee contribution.

In regard to internal comparability, three out of the five internal comparables have a 2.35% multiplier with a coordination of benefits. This would support the Employer's offer. It should be noted that none of the internal comparables have a 2.5% multiplier. Consequently, internal comparability would seem to favor the Employer.

Focusing on the coordination of Workers' Compensation benefits, none of the external comparables have the benefit sought to be retained by the Union in this case. Among the internal

comparables, the police command officers and the dispatchers have the coordination of benefits that is sought by the Union.

The internal and external comparables would seem to favor the Employer. Ultimately, however, the past experience of the parties in collective bargaining and Act 312 leads to the proper result pursuant to paragraph (h) of the Section 9 criteria of Act 312.

In prior contract negotiations and Act 312 proceedings, the bargaining unit has "paid for" pension improvements through reduced wage demands. In the 1977-1980 contract, the Union agreed to accept only \$750.00 per year increases in exchange for an elimination of employee contributions to the pension plan. During the last Act 312 proceeding, the Union offered a wage freeze in the second year of the contract in exchange for lifetime employer-paid health insurance benefits.

Therefore, a simple increase in the multiplier as sought by the Union, without an accompanying concession by the Union, would not be expected in either collective bargaining or a 312 proceeding involving these parties.

Similarly, the Employer is seeking a give-back on the coordination of Workers' Compensation and pension benefits. It would not be expected that this would be achieved in collective bargaining or Act 312 without the Employer giving something in exchange to the Union.

The result most consistent with the comparables, and the bargaining and Act 312 history of the parties, is to consider the give-back on the coordination of benefits as being worth 1% to the Union. This means that an increase to a 2.35% multiplier, without cost to the Union, can be seen as the quid quo pro for the coordination of benefits.

Accordingly, Employer #4 on the pension multiplier increase to 2.35%, without an employee

contribution, should be granted along with Employer #5 on the coordination of Workers' Compensation and pension benefits.

III

HOLIDAYS

The Union seeks to add a floating holiday. The Employer seeks to maintain the status quo of 14 holidays.

The City argues that all of the external comparables currently have less holidays than Wyoming. One comparable has 13 - the rest have 12. Regarding internal comparability, it is asserted that only the command officers have 15 holidays, with the rest having 14 like the patrol officers.

The Union maintains that it should be placed on par with the command officers, and that its total number of days off is below that of the external comparables.

In terms of external comparability, it is not appropriate to consider all other forms of leave besides holidays. For instance, the fact that an external comparable might offer more funeral leave isn't necessarily germane, since most bargaining unit members will not use their funeral leave in a given year. This would also be true of sick leave, which may not necessarily be used.

When the external comparables are examined for regular and floating holidays and personal days, which are used each year, external comparability supports the Employer. Internal comparability also supports the Employer, with the exception of the police command. This is not enough to outweigh the other factors, and therefore, the Employer's offer on holidays should be adopted.

IV

LONGEVITY

The Union seeks to add a step to the longevity schedule to provide for a \$1,000.00 payout for employees with 25 or more years of service. The Employer seeks to maintain the status quo. The current benefit in Wyoming is \$900.00 for officers with 20+ years of service.

The Union maintains that the majority of the external comparables provide for an increase at 25 years. The Employer contends that with the status quo, Wyoming officers will receive larger payouts at the end of 30 years than other comparable communities. Internal comparability is also said to support the City's position.

The purpose of a longevity provision is ostensibly to encourage officers to stay employed within the City. Therefore, the total dollars that are spent for longevity in relation to other cities isn't particularly relevant: it will take more dollars to act as an incentive at a highly paid department than the dollars necessary for an incentive at a lower paid department.

A review of external comparability reveals that Walker, Kentwood and Grand Rapids all have a 25 year longevity step, and only Wyoming and Grandville do not. Therefore, external comparability supports a 25 year step in this case. Internal comparability would not support an additional step.

This is an issue where paragraph (h) of Section 9, and external comparability require the adoption of the Union's last best offer on longevity. Therefore, the Union's last best offer on longevity should be awarded.

UNIFORM CLEANING

The Union seeks to increase the cleaning dollars for uniformed officers from \$275.00 to \$350.00. The Employer seeks to retain the status quo.

The Employer maintains that four out of the five comparables pay for cleaning by themselves, and Grand Rapids provides \$150.00 for a cleaning allowance. It is noted that the police command officers receive the same cleaning allowance as the patrol officers. The Union believes that a \$75.00 increase is appropriate to cover the increased cost of cleaning.

Regarding plain clothes officers, the Union seeks to increase the payout from \$500.00 to \$575.00. The Employer would increase the payment to \$550.00. It is argued by the Employer that the external comparables are inconclusive. In regard to the internal comparables, it is noted that only the command officers receive a clothing allowance, which is noted to be the same as the patrol officers.

The Union's last best offer includes both the uniformed and the plain clothes officers. The Employer separates its last best offers in regard to uniform and plain clothes officers. This means that the panel must adopt both of the Employer offers or the one Union offer.

The key factor under Section 9 is (e), the cost of living. While the exact date of the existing contract provision on uniform allowances was not presented on the record, it is clear that there has been cost of living increases relative to the cost of cleaning for uniformed and plain clothes officers. Therefore, the Union's LBO on cleaning allowance should be adopted. The difference between the Union's and the Employer offers on plain clothes officers appears to be de minimus, and therefore

the need to provide a cost of living increase for the uniformed officers requires that the Union's overall offer be adopted.

VI

DRUG TESTING

The Employer seeks to add random testing for officers who have access to controlled substances. The Union seeks to retain the status quo.

The Employer concedes that four of the five external comparables lack a drug testing policy. However, it is emphasized that the internal comparables who have access to drugs, including the command officers, are subject to the Employer's drug testing policy.

The Union contends that the current policy permits testing for reasonable suspicion. The Employer's proposal is said to be overbroad, since it would apply to officers who even have an incidental contact with drugs during such things as a traffic arrest.

Wyoming, Grand Rapids, Grandville and Walker lack random drug testing: Kentwood only permits random drug testing for officers assigned to a narcotics unit. Therefore, external comparability strongly supports the Union.

A problem wasn't identified that would necessitate the Employer's drug testing program as part of an Act 312 award. Accordingly, the Union's last best offer on drug testing should be adopted.

AWARD*

Pursuant to Section 10 of the Act, all increases in rates of compensation and other benefits shall be retroactive to the beginning of the contract, except as otherwise indicated.

1. WAGES: Employer's and Union's last best offers.
2. PENSION: Employer's last best offer of a 2.35% multiplier. The Union's last best offer on no employee contribution to pensions is awarded.
3. COORDINATION OF WORKERS' COMPENSATION AND PENSION BENEFITS: Employer's last best offer.
4. HOLIDAYS: Employer's last best offer.
5. LONGEVITY: Union's last best offer.
6. UNIFORM CLEANING: Union's last best offer.
7. DRUG AND ALCOHOL TESTING: Union's last best offer.

* The Union dissents on all last best offers awarded to the Employer; the Employer dissents on all last best offers awarded to the Union.

Mark J. Glazer, Chairman

Dated: March 16, 2000

Dated: _____


Peter H. Peterson - Employer Delegate

Dated: _____

Fred LaMaire, Union Delegate

1. WAGES: Employer's and Union's last best offers.
2. PENSION: Employer's last best offer of a 2.35% multiplier. The Union's last best offer on no employee contribution to pensions is awarded.
3. COORDINATION OF WORKERS' COMPENSATION AND PENSION BENEFITS: Employer's last best offer.
4. HOLIDAYS: Employer's last best offer.
5. LONGEVITY: Union's last best offer.
6. UNIFORM CLEANING: Union's last best offer.
7. DRUG AND ALCOHOL TESTING: Union's last best offer.

* The Union dissents on all last best offers awarded to the Employer; the Employer dissents on all last best offers awarded to the Union.



Mark J. Glazer, Chairman

Dated: March 16, 2000

Dated: 3-22-00



Peter H. Peterson - Employer Delegate

Dated: _____

Fred LaMaire, Union Delegate

2. PENSION: Employer's 2.35% multiplier, with no employee cost to the Union.
3. COORDINATION OF WORKERS' COMPENSATION AND PENSION BENEFITS: Employer's last best offer.
4. HOLIDAYS: Employer's last best offer.
5. LONGEVITY: Union's last best offer.
6. UNIFORM CLEANING: Union's last best offer.
7. DRUG AND ALCOHOL TESTING: Union's last best offer.

* The Union dissents on all last best offers awarded to the Employer; the Employer dissents on all last best offers awarded to the Union.

Mark J. Glazer, Chairman

Dated: February 25, 2000

Dated: _____

Peter H. Peterson - Employer Delegate

Dated: 3/8/00

Fred LaMaire
Fred LaMaire, Union Delegate

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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