

State of Michigan  
Department of Consumer and Industry Services  
Employment Relations Commission

Act 312 Opinion and Award

In the Matter of  
Police Officers Labor Council

And

City of Lincoln Park

(Case No. D-99-0088)

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
CHICAGO OFFICE

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Arbitration Panel

Dr. Benjamin Wolkinson, Chairperson

Charles Kaminski, Union Delegate

Patricia Lulko, Employer Delegate

For the Union: Mark Douma, Attorney

For the Employer: Howard Shifman, Attorney

Date of Award: August 9, 2001

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Act of 1969 as amended. The Union filed a petition for Act 312 arbitration which was received by MERC on June 10, 1999. The impartial arbitrator and chairperson was appointed via correspondence from the Employment Relations Commission dated September 14, 2000. A pre-hearing conference was held on November 21, 2000. The arbitration panel held hearings on March 19, 2001. The Chairperson received the parties' last offer of settlement on April 2, 2001. The Union submitted its brief in support of its last position on the issues on May 30, 2001 and the City submitted its brief in support of its final position on the issues on July 5, 2001. The panel held an executive session at the City of Lincoln Park on August 6, 2001.

#### Statutory Summary

Act 312 provides for the compulsory arbitration of labor disputes involving municipal police officers and fire departments. Section 8 of Act 312 states in relation to economic issues that:

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 described in section 9. The findings, opinions and orders as to all other issues shall be based upon the applicable factors prescribed in section 9.

Section 9 of Act 312 contains eight factors upon which the arbitration panel shall base its opinions and orders. These factors include:

- a. The lawful authority of the Employer.
- b. Stipulation of the parties.
- c. The interest 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 communities generally: (i) in public employment in comparable communities (ii) in private employment in comparable communities.
- e. The average consumer price 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 hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances presented during the pendency of the arbitration proceedings.
- 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### Issues

During the course of this proceeding, the party settled many issues. The agreements reached by the parties and the language in the prior contract, which have not been deleted or altered, are made part of this award. The only issue remaining before the

Panel in this proceeding is the issue of pensions. Both parties have agreed to treat this issue as a single item.

The Union's last offer of settlement on pensions was as follows:

- (1) FAC shall include all pretax compensation, excluding non-cash benefits.
- (2) The years utilized to calculate FAC shall be those years specified in the Policeman's and Firemen's Retirement System Ordinance.
- (3) The maximum benefit upon retirement shall be 70 percent of FAC not to exceed the base wage in effect on the date the employee applies for retirement/pension benefits.
- (4) The employee contributions shall be increased 1.3 percent to 9.49 percent.

The City's last best offer of settlement on pensions was:

- (1) Effective July 1, 1999, upon retirement a member shall receive a straight life annuity equal to 2.8 percent of his/her average compensation, multiplied by the number of years and fraction of a year of credited service, subject to a maximum of 78.4 percent of his/her average final compensation.
- (2) Should the Lincoln Park Firefighters Association or Police Officers Labor Council/Lincoln Park Patrol Officers Association receive any improvements in pension benefits exceeding those benefits provided to this bargaining unit, the City shall then extend these improved benefits to this bargaining unit.
- (3) Except as provided in section A and B above there shall be a moratorium on pension improvements until June 30, 2005.

- (4) The status quo will be maintained on what is included in final average compensation and all other benefits of the current pension will remain unchanged.

Both parties vigorously supported their positions on the basis of following considerations.

#### Union Position

The Union notes that its proposal entails only one improvement in current pension benefits. This improvement is to increase what is included in final average compensation from base wage, longevity, gun allowance, and holiday pay to all pre-tax compensation, excluding non-cash benefits. Along with this improvement, the Union proposes to limit the maximum benefit to base wage at the time of retirement. The Union recognizes that some bargaining unit members will receive a higher pension benefit under the Union's proposal. However, it maintains its proposal is justified when comparable communities and internal comparable are examined.

To begin with, the Union is prepared to pay for the increased benefit that employees will be earning. If the Union's last offer settlement is adopted, the bargaining unit employees' contribution will be increased by 1.3 percent. This will more than cover the cost difference between the Employer's last offer of settlement and the Union's last offer. Additionally, in order to keep employer pension costs to a reasonable level, the Union's proposal would keep the multiplier at the current 2.5 percent rate as well as retain the maximum benefit level at 70 percent of FAC.

The Union notes that the bargaining unit currently has the highest employee contribution percentage among the comparable communities. The next highest employee contribution rate among comparable communities (Allen Park) is 2.19 percent less than

the bargaining unit's current employee contribution. If the Union's last offer of settlement is adopted, the bargaining unit employees' contribution will be 3.49 percent higher than any of the employee contributions paid by employees in comparable communities. It is only fair and reasonable for bargaining unit members to expect better than average benefits since they are paying an above average employee contribution.

Additionally, even though the bargaining unit will have the highest employee contribution percentage its members will not have the most beneficial pension among comparable communities even if the Union's last offer is adopted. While the Union's last offer of settlement caps the maximum benefit at base wage at the time of retirement, neither Garden City nor Southgate caps the maximum benefit. Furthermore, six of the seven comparable communities include more items in final average compensation than does the Employer's last offer of settlement.

Among internal comparables, all municipal employees hired before September 30 1987 and City administrators receive the same pension benefit the Union is proposing in its last offer of settlement and at a lower rate of employee contribution. Furthermore, municipal employees also receive Social Security while bargaining unit members do not.

The Union also notes that the only items included in the average final compensation in the Employer's last offer of settlement are base wage, longevity, gun allowance and longevity pay. Among these items, the only item of any significance is base wage. In this regard, the years of service utilized in calculating longevity were frozen on July 1, 1995. As a result the significance of longevity payment has decreased and will continue to do so.

The Union also contends that the risk incurred by the City were the Union's proposal adopted is minimal. The risk is minimal because the bargaining unit is willing to pay the difference in cost. Moreover, the pension system currently is over funded and the Employer gets a credit toward its contributions due to this over funding. At the same time, employee contributions remain steady even if the system is over funded. Consequently, the Employer enjoys the benefits along with the risks involved in managing the pension system. Additionally, the Employer benefits from an investment return over the last eight years of around 10 percent. This investment return is greater than the actuarially assumed investment return of 8 percent on which the Employer's costs have been calculated. The higher rates of return result in lower costs and lower Employer contributions. Even if the cost of the improved benefits under the Employer or Union's last offer of settlement are greater than expected, the Employer can always raise the issue in future negotiations and request a higher contribution rate. Finally, the Employer is financially able to accept the slight increase in risk related to the Union's last offer of settlement. In this regard, the City of Lincoln Park has a fund balance of over 5.5 million or approximately 24 percent of its budget.

The Union notes that the Employer's last offer of settlement includes a moratorium on pension benefits until June 30, 2005. If the Employer's last offer of settlement were adopted, the panel would be implementing a contract provision, which will extend three years beyond the term of this collective bargaining agreement. This raises serious problems. It precludes the Union from seeking pension improvements in the next collective bargaining agreement. It does not however preclude the Employer from seeking an increase in pension contributions. This unilateral approach is unfair.

Moreover, if the panel awards the Employer's last offer, it will open up the award to litigation, since it is questionable that the panel has jurisdiction to award a last offer of settlement on an issue that will extend beyond the terms of the collective bargaining agreement.

#### Employer Position

The City maintains that its proposal is justified by considerations of parity. In this regard, there historically has been parity between police patrol, command, and fire bargaining units. They have always had identical pensions over the last 30 years. In deviating from this practice, the Union's proposal would destabilize collective bargaining relationships in all three bargaining units.

The City's proposal is also fair. Its proposal would increase by 12 percent retiree pensions for members of the command bargaining unit. When considering improvements in wages and pensions, the City's proposal results in more than an 8 percent increase in costs for the City in the first year of the contract. Moreover, the pension increase was more costly for Command than for any other group. It was 5.06 percent for Command, 4.06 percent overall, and 3.43 percent for patrol.

The City also rejects the contention that the Union's proposal is justified because of benefits currently extended municipal employees. There are critical differences between these two groups. To begin with, municipal employees do not receive the same level of benefits that police officers and firefighters do. They do not receive unlimited vacation time, holiday pay, or have minimum staffing levels that trigger overtime work assignments. As a result, including all cash compensation in their pensions is much less costly to the City than the extension of the same benefit to the command personnel.



Considerations of external comparability also do not support the Union's position. Not a single comparable other than Southgate provides the benefits sought by the command officers. None of the external communities have the banks and pay outs that Lincoln Park does. Command personnel in Lincoln Park have greater vacation accumulation, compensatory time, and actual compensation than that received by police officers in any other comparable community.

The City maintains that its proposal should also be accepted because it is more consistent with sound fiscal management. It maintains that the Union's proposal would subject it to increased costs of uncertain magnitude. Incurring such risks is inherently dangerous especially in a community such as Lincoln Park, as its ability to raise taxes is limited and as it anticipates a serious reduction in state shared revenue in the future. At the same time, while the City does currently have a fund balance, a substantial portion of it must be set aside to cover compensated absences such as accumulated sick and vacation pay as well as to fund retiree health benefits.

#### Discussion

Many in the command unit are near retirement age and as result measures to protect their financial security, such as incorporated in the Union's proposal, are certainly understandable. At the same time, the City has presented persuasive considerations for the Panel's adoption of its proposal.

The record indicates that at least since 1980 there has been parity with respect to pension benefits across all three public safety units: police patrol, police command, and the fire department. This result is the manifestation of the parties' own collective bargaining efforts. Significantly, the Act 312 process is designed to be an adjunct to and

not a substitute for the parties' efforts to negotiate an agreement. Yet this Panel would be promoting the latter outcome were it to adopt a proposal that in a single stroke would uproot long established bargaining patterns. For this reason, deviations from the traditional pattern of pension parity in Lincoln Park should not in the absence of compelling arguments be implemented as a result of Act 312 intervention.

Significantly, the Panel finds no such compelling considerations. Initially, the Panel finds that the City's offer on pensions is fair and reasonable. The City's proposal would increase the pension multiplier from 2.5 to 2.8 percent. Additionally, the maximum amount of income to be received by command personnel as a percentage of their average final compensation upon their retirement will also be increased from 70 to 78.4. These changes will increase an officer's income upon retirement by 12 percent a year, a not insignificant amount.

Additionally, it is important to consider that the City extended the same improvements to the command personnel that it has given to the employees in the patrol and fire units, although it was significantly more costly for the City to provide these benefits to the command personnel. For example, providing the improvements only to the police officers would increase the Employer's costs by 3.43 percent. Extending the improvements to all units would increase costs by 4.06 percent. However, providing these benefits to command personnel will increase the City's pension costs for this unit by 5.08 percent. The added cost of providing this benefit to command personnel results from the fact that the command unit is composed of employees with greater years of seniority who are more likely to retire. Nonetheless, the City agreed to extend pension

improvements to this unit without seeking an increase in employee contributions to fund the added benefits.

In supporting its proposal, the Union has noted that employees in the municipal unit receive the same pension benefits it is proposing in its last offer of settlement but at a lower rate of employee contribution. In this regard, all W-2 items are considered in determining the final average compensation of municipal employees. Additionally, whereas their contribution to pensions is 8.41 percent of payroll costs, the police command contribution under the Union's proposal would be 9.49 percent. Municipal employees also receive social security while bargaining unit members do not.

Yet it is doubtful that municipal employee pensions are greater than those received by command personnel. Their salaries are considerably lower than that earned by command personnel. The municipal employee pension multiplier is only 2.5 percent as opposed to the 2.8 percent for command personnel. Additionally, whereas their maximum income benefit attainable is 70 percent of final average compensation, among command personnel it is 78.4 percent. Furthermore, unlike the police command unit, within the municipal employee bargaining unit there is a two-tiered pension structure, with all employees hired after September 30, 1987 being subject to a pension multiplier of only 2 percent. Admittedly, for municipal employees all W-2 items are computed in determining final average compensation. Yet it is important to consider that many other fringe benefits to which police are entitled, such as payouts for accumulated sick and vacation time are not available to municipal employees. Additionally, overtime is more likely offered to command personnel than to municipal employees. Consequently, incorporating all W-2 items in the computation of the latter's final average compensation

may not result in their W2 compensation base being materially broader than that enjoyed by command personnel.

Furthermore, from the standpoint of internal comparisons, the City's proposal is strongly justified by the fact that it offers to command personnel the same benefits extended to all other public safety units. These units are uniquely comparable to the command personnel as they all share in the common responsibility of providing public safety services to the residents of Lincoln Park.

Additionally, considerations of external comparability do not provide significant support for the Union's proposal. Of the seven comparable communities, only one, Southgate, allows pensions to be computed on the basis of all cash benefits received. Yet Southgate is certainly distinguishable from Allen Park, as its capacity to fund pensions out of a separate millage affords it greater economic resources to fund this benefit. A second community, East Point, allows final average compensation to be computed on the basis of all income received with the exception of gun allowance. Significantly, only two of the seven comparable communities would provide employees with the benefit sought by the Union in its proposal.

The Union has noted that acceptance of its proposal would not impose any greater pension costs on the City than that which would arise from implementation of the City's offer. This is because under the Union's proposal, employees within the command bargaining unit will cover the cost differential between its and the City's proposal by increasing their own contributions toward pensions by 1.3 percent. Additionally, the Union maintains that the current over funding of pensions, the availability of a fund balance of 5.5 million dollars, and the high investment return rate of approximately 10

percent over the last eight years demonstrate that the City incurs no real risk in agreeing to its proposal.

The Union's proposal does not appear at least in the short-term to impose any increased liability upon the City. At the same time, the City's economic position is not as solid as might be presumed from the points that the Union has raised. While the City of Lincoln Park has a fund balance of over 5.5 million dollars, according to an outside auditor, approximately two million dollars will have to be set aside to fund payment to employees upon their retirement of their accumulated vacation and sick leave. Additionally, monies of an undetermined nature from the fund balances will have to be used to cover retiree health benefits. Furthermore, the days of pension over funding because of high rates of return may well be over. The substantial declines experienced in the stock market over the past year serve as a warning that just as there might be over funding of pensions there may well be under funding as well. As the City is providing employees with a defined benefit plan, it is responsible for paying increased amounts arising from lower than expected and conceivably at times even negative investment returns. Additionally, the two to three million dollars left in the City's reserve funds after allocations have been made to cover its sick leave, vacation, and health care liabilities do not represent a substantial amount, given the City's obligation to maintain reserve funds to address emergency contingencies.

These realities justify the City's concern over the potentially negative and destabilizing implications growing out of the Union's efforts to break away from the parity agreements on pensions previously maintained by the City's public safety bargaining units. While the Union's proposal may not impose any increased costs on the

City in the short-term, the same may not be true over time. Although employees in this unit have been willing to absorb the greater costs, there is certainly no guarantee that in the future their replacements will. Thus employees scheduled to retire within the next several years may well be willing to contribute an added 1.3 percent for a few years in order to achieve lifetime increases. However, their replacements who may have to work many years before retiring may not be so inclined to contribute over nine percent a year towards pensions. Such a high rate seems well out of line with the level of employee contributions in other bargaining units. As a result the pension improvements sought by the Union might well trigger a series of new and potentially costly demands by command personnel to reduce the level of employee contributions in successive contract negotiations.

Additionally, according to the City's analysis, not disputed by the Union, the effect of the Union's proposal would be to increase pensions by 25 percent. The attractiveness of such a substantial increase may also induce other bargaining units to demand the inclusion of all pre-tax compensation in computing final average compensation. Where such demands are not accompanied by a willingness by employees to absorb the cost of such increases, the stage might be set for difficult and contentious labor-management negotiations on pensions between the City and its other bargaining units.

The City's proposal includes a moratorium on pension improvements until June 30, 2005. At the same time, the current agreement, which the parties negotiated, expires on June 30, 2002. As a result, for three years after the execution of the current contract, the Union would be unable to bargain over pensions. As a practical matter, the Union

would not be able to seek a pension improvement in the next collective bargaining agreement. At the same time it maintains that the Employer would not be precluded from seeking an increase in pension contributions and at this disparity is unfair.

These concerns are not of sufficient weight to justify rejection of the City's proposal. Given that the City has just implemented through this award significant pension improvements, a several year hiatus in further improvements is not inherently unfair or arbitrary. Furthermore, the hiatus will give both parties the opportunity to evaluate the adequacy of employee benefits as well as the investment performance of the pension fund. After considering these factors, the parties will be in a more informed and a better position to address if necessary the issue of pensions in the future.

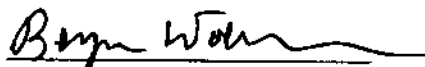
The Union has also contended that the moratorium does not treat the parties even-handedly. Thus while the Union is precluded from demanding increased benefits, the City is able to seek a reduction in current benefit levels or increased employee contributions. The Union is technically correct, as the language of the City's proposal only bars efforts to seek improvements. Yet in the absence of any evidence that the City has ever sought to reduce pension benefits, the Panel has no reason to believe that the City intends to use the moratorium to bargain in such a regressive manner. The overall good faith shown by both parties during this proceeding further suggests that this outcome is unlikely.

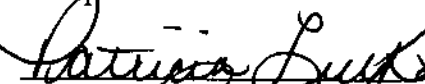
Finally, the Union has questioned the legality of a proposal which when implemented would extend beyond the terms of the parties' collective bargaining agreement. The Union has cited no opinion by MERC or by the courts, which suggests the illegal nature of or the Panel's lack of authority to implement such a proposal. Additionally, the Panel does not believe that the moratorium component of the City's

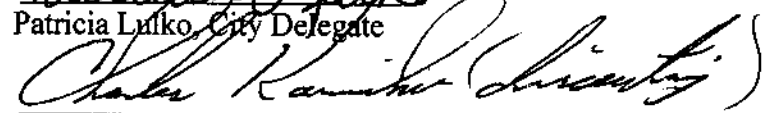
pension proposal creates any legal problems. To begin with, a moratorium does not have the effect of extending pensions beyond the term of the agreement. What it does is establish a separate contract expiration date for this benefit. Furthermore, it is not uncommon for parties to negotiate a particular condition of employment that will be subject to a different expiration date than most other provisions incorporated in the agreement. For example, parties may lock in conditions of employment for long time periods, but provide for a limited re-opener on wages. Moreover, the Panel notes that it exercises full authority to resolve conflicts over contract duration by determining the length of the agreement. If the Panel can establish the duration of all working conditions, it is reasonable to conclude that it is empowered to establish the time limits within which any single condition of employment will endure. Finally, to the degree that the moratorium raises legal questions, such questions will be ripe for consideration only following or shortly before expiration of the 1999-2002 agreement when the parties will bargain over a successor contract. The Union's legitimate interests are adequately protected by its capacity to fully identify and raise any legal challenges at that time.

Based on the foregoing considerations, the Panel, with the Union Delegate dissenting, votes to adopt the City's proposal on pensions.

August 9, 2001

  
Benjamin Wolkinson  
Chairperson

  
Patricia Lulko, City Delegate

  
Charles Kaminski, Union Delegate