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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,
RIVERVIEW COMMAND OFFICERS,

Union,

and

MERC Act 312
Case No: D91 C-0541

CITY OF RIVERVIEW,

Employer.
/

APPEARANCES:

For the Union: Kenneth Zatkoff Esq.

For the Employer: Ruthanne Okun, Esq.

OPINION AND AWARD

Dated: September 12, 1994

INTRODUCTION

This is a compulsory arbitration filed by the Police Officers Labor Council (POLC), City of Riverview Lieutenants and Sergeants Association ("Union")¹ against the City of Riverview ("City" or "Employer"). As such, this proceeding is governed by Act 312 of 1969, as amended, MCLA 423.231, et. seq. That statute, which is designed to resolve collective bargaining disputes between municipal police and fire departments and their employers, mandates that in reaching its decision the Arbitration Panel must consider all of the factors set forth in Section 9 of that law. While those factors need not be equally weighed, the Michigan Supreme Court has expressly declared that all applicable factors must be considered.

The Petition for Arbitration in this case was filed by the Union when an impasse in negotiations for the July 1, 1991 - June 30, 1994 collective bargaining agreement was reached.² Richard L. Kanner, Esq. was appointed Chairperson of the Arbitration Panel. The City designated Joseph W. Fremont as its Panel Delegate, and the Union selected Brian J. Smith as its delegate.

THE STANDARDS FOR THE ARBITRATION PANEL'S DECISION

The seminal case which guides the Panel in reaching its decision is the Michigan Supreme Court's opinion in City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980). In

¹The Union formerly was referred to as the Labor Council of Michigan Fraternal Order of Police.

²The collective bargaining agreement which is under consideration by this Panel expired on June 30, 1994, and the parties are ready to begin negotiations for a successor agreement.

that case, the City of Detroit brought an action seeking review of an arbitration award made pursuant to 312 and challenging the constitutionality of the Act. After discussing the statute's time limitations,³ the Court cited Section 9 and declared that "the [312] panel's decisional authority has been significantly channeled by eight specific factors or standards listed in Section 9." MCLA 423.238. That Section, the Court concluded, "trenchantly circumscribes the arbitral tribunal's inquiry" and "commands the panel to 'base its findings, opinions and order' relative to those narrow disputes on the eight listed 'factors as applicable'" 408 Mich at 453. The Court listed those eight factors:

- (a) The lawful authority of the employer.
- (b) Stipulations 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 service 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

³Those time limitations have been waived in this case.

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 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.

Further, the Court noted that the Panel's decisional authority is circumscribed by the Act's provision which requires that, the panel shall adopt the last offer of settlement, which in its opinion, more clearly complies with the factors presented in Section 9.

It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered.

COMPARABLE COMMUNITIES

Section 9(d) of Act 312 requires this Panel to base its decision concerning economic issues in part on a comparison of wages, hours, and working conditions of persons performing similar

services in "comparable communities." Prior to the hearing, the parties agreed that the following seven (7) communities would be considered comparable to the City of Riverview:

1. Brownstown Township
2. Flat Rock
3. Grosse Ile Township
4. Southgate
5. Trenton
6. Woodhaven
7. Wyandotte

Each of these communities is located within Wayne County and, except for the City of Flat Rock, all are contiguous to the City of Riverview.

THE FINANCIAL ABILITY TO PAY FACTOR (SECTION 9(c))

Considerable argument ensued at hearing concerning the right of the City to present evidence relative to the above factor in view of its failure to precipitate such issue during mediation proceedings. The Chairperson held that the City did not have such right. Given the last best offers of the parties and the resultant present posture of this PA 312 proceeding and the Panel's ultimate decision, the Panel deems such argument as academic. This is for the reason that, as hereinafter discussed, the Panel adopts the City's last best offer on the pension issue because its position vis-a-vis the comparables fully supports it.

In view of the Panel's acceptance of the City's pension offer, the City has further offered to accept the Union's offer relative

to wages and health insurance riders.

WAGES

The Union is requesting the following across-the-board salary increases for lieutenants and sergeants for each year of the collective bargaining agreement as follows:

Sergeant	Lieutenant
Effective 7/1/91: 3%	Effective 7/1/91: 3%
Effective 7/1/92: 3%	Effective 7/1/92: 3%
Effective 7/1/93: 3%	Effective 7/1/93: 3%

City's last offer of settlement for all classifications:

Effective 7/1/91: 2%
Effective 7/1/92: 2%
Effective 7/1/93: 2%

THE PENSION MULTIPLIER ISSUE

UNION PROPOSAL

Increase the current multiplier to 2.5% for all years of service with a seventy (70%) percent cap.

CITY PROPOSAL

2.5% for all years of service with a 70% maximum benefit, based on final average compensation (FAC) calculated to include base wage and longevity only.

The present multiplier is 2% with a 25 year cap and 1% after 25 years.

DISCUSSION AND OPINION

Of the nine employees currently in the subject unit (sergeants and lieutenants), four are members of the bargaining team and six of the employees are already eligible to retire. One additional employee already has retired (C-15-7). Accordingly, the pension

issue is of prime importance.

The Union contends that the City offer, by limiting (FAC) to include only base wages and longevity, would eliminate the present contract inclusion of five additional items such as shift premium, accrual pay for vacations and sick days, overtime, and call-in pay. (Union Exhibit 3). The Union points out that the following sets forth the number of items included in FAC by the comparables:

Current # of Items
Included in FAC

Flatrock	8
Grosse Ile Twp.	10
Southgate	10
Trenton	8
Woodhaven	3
Wyandotte	5
Riverview	7

(Union Exhibit I-3).

Therefore, since presently the City with seven items included in FAC is approximately at the medium, the Union asserts that to "take away" said five items would place the City at the bottom of the comparables.

But, as the Chairperson emphasized at hearing, it is not the multiplier, number of years included in FAC, minimum retirement age or any of the other items included in FAC which are significant relative to accepting the City's position vis-a-vis the comparables. (Tr. 31-34). These factors in combination and amount vary considerably among the comparables. What is significant is the total amount of the pension received by the bargaining unit as a result of combining these items in comparison with the total

pension denoted as the median among the comparables. It is significant in this connection that there is no evidence in the record denoting the dollar amounts which said other five FAC items add to the total pension. Nancy Ciconne testified that the Union included only wages and longevity on Union Exhibit I-4, 5 because "actually (it) is the only other factor included in final average compensation for each of the comparables." (Tr. 22). She added, "But longevity is the only factor that I could determine that was a concrete figure. Overtime is a variable, the sick leave days. All the other items are variable." (Tr. 22).

The parties have agreed that the social security benefit received by the bargaining units in Flatrock, Woodhaven, and the subject city should be included in the total pension figure. Therefore, FAC (the last three years average compensation including longevity) times the multiplier times 25 years plus social security equals total pension.⁴ (Union Exhibit I-4). The following comparison taken from Union ex. I-4, as modified per the notes appended hereto, is pertinent:

⁴The Union's exhibit I-4, 5 hypothesizes that the average retirement at age 50 will last 25 years.

RIVERVIEW COMMAND
ACT 312

RETIREMENT

JURISDICTION	F.A.C.	YEARS IN F.A.C. ¹	SALARY ¹	MULTIPLIER @ 25 YEARS	PENSION BENEFIT @ AGE 50	VALUE OF POST RETIREMENT BSC.	PENSION PAYMENTS	SOCIAL SECURITY PAYMENTS	TOTAL PENSION PAYMENTS ²
Brownstwn Twp. Defined Contribution Plan (N.A.)									
Woodhaven	3		38,126	62.50	23,829		595,725	120,000	715,725
Grosse Ile Twp.	3		38,162	56.25%	21,466	160,995	697,645		697,645
Flatrock	5		36,198	62.50%	22,634		565,850	120,000	685,850
Southgate	3		42,364	62.60%	26,602		665,050		665,050
Trenton	3		40,847	50.00%	20,423	43,909	564,696		564,696
Wyandotte	1		43,396	43.75%	18,986		474,650		474,650 ¹
Median									675,450
Riverview	3		40,382	62.50%	25,239		630,969	120,000	750,969

Source: Collective Bargaining Agreements
Includes only base wage and longevity and modifies Union I-4 to reflect the Unions 3% wage and its 2.5 multiplier offers.
Comparison for employee who is hired @ age 25, retires @ age 50, and lives to age 75.
Union Exhibit I-4 states in error that the multiplier is 62.5. The City corrects this figure, per the Wyandotte contract, to 43.75. Therefore the total pension payment figure on Union Exhibit I-4 of \$678,062 should be corrected to \$474,650 as above.

It readily appears that, even when limiting the FAC to include only base wage and longevity, the Union is placed at the top of the comparables and is highest by \$35,244 over Woodhaven or \$1,410 per year. The City is \$75,519 over the median or \$3,021 per year.

To whatever degree the elimination of said five FAC items would detract from the \$3,021 per year City advantage over the median, such figure is not in evidence. Therefore the fact that the elimination of said five factors in the FAC puts the Union at the bottom among the seven comparables in terms of number of such factors is inconsequential.

The Union contends that there is no evidence to support such "take away" of said five items presently included in the FAC. The Panel does not agree. As above emphasized, the fact that the Union is at the top relative to the comparables based upon a FAC figure which is limited to base wage and longevity is ample evidence supporting the City offer.

The City offers a significant pension improvement. Not only would the pension multiplier be increased from 2.0% to 2.5% (or by 25%) for the first 25 years of service, but it would be increased to 2.5% for all years of service, even for those years worked after 25. At present, the pension multiplier of Riverview command officers is reduced to 1.0% after 25 years of service. Thus, the City is offering to more than double the pension multiplier for employees who choose to remain working after 25 years. Significantly, 7 of the 9 command employees currently working have more than 25 years of service. (C-15-7).

Of the communities which do provide a 2.5% multiplier for any of their employees, only Flat Rock and Woodhaven do not reduce the multiplier after 25 years of service. In the latter communities, the FAC salary is lower than that in Riverview. In fact it is significantly lower in Flat Rock.

As to the internal comparables, the City further points out that the City employs about 100 full-time employees and approximately 200 part-time seasonal personnel (II, 104). Section 9(d) of Act 312 not only requires a comparison of the employees involved in the arbitration proceeding with employees performing similar services in "comparable communities," but also requires a comparison with other employees generally. Members of this bargaining unit receive equal and, in most cases, greater benefits than other bargaining units and employee groups. As indicated by the actuary for the pension plan, police officers already have a better pension plan in numerous respects. As a result, the City's contribution to the Retirement System for police officers is more than double its contribution for other employees.

AWARD

The Panel awards the above City offer as to the pension multiplier issue.

Given the above Award and the City's further offer to accept the Union's above wage offer for three years in the light thereof, any discussion of the merits of the parties' respective position relative to the wage issue is not warranted.

AWARD

The Panel awards the above Union offer as to wages for three years of the contract.

BONUS DAYS

AWARD

The parties in their last best offers have proposed and agreed to modify the bonus day language to reflect the exact same language contained in the patrol officers' collective bargaining agreement, to wit:

Section 3. Bonus Days.

If an employee uses five (5) or less sick days in any one period between July 1 and June 30, he shall be entitled to five (5) bonus leave days not chargeable against his regular sick or vacation accrual, to be used in the following fiscal year beginning July 1.

Members of the bargaining unit hired after June 9, 1989 shall earn bonus days in accordance with the following schedule:

of Sick Days Used # of Bonus Days Earned

five (5)	zero (0)
four (4)	one (1)
three (3)	two (2)
two (2)	three (3)
one (1)	four (4)
zero (0)	five (5)

Officers requesting bonus days shall give thirty (30) days notice of such request. Less than thirty (30) days notice shall be subject to approval of the Chief of Police or his designee. Unit members shall give the Chief seventy-two (72) hours notice of intent to use a bonus day and subject to the Chief's approval, it shall not be withheld if it can be allowed without creating overtime.

Bonus days may be taken in conjunction with vacation days, provided it does not create overtime and does not preclude a unit member from scheduling a full week's vacation.

As a result of the parties' last best offers, the above modification should be considered as stipulated to between the parties.

HEALTH CARE RIDERS

City Proposal:

Discontinue reciprocity riders - ML, FAE-RC, VST as of date of Award.

Union Position:

Maintain status quo.

Currently, the Riverview patrol officers and command officers receive reciprocity riders - ML, FAE-RC, and VST. These riders provide the following benefits:

ML - waives member liability of the greater of \$5 or 10% of any diagnostic service or lab test.

FAE-RC - first aid emergency. Waives \$15 indemnity on emergency room visits and covers emergency room under basic coverage rather than Master Medical.

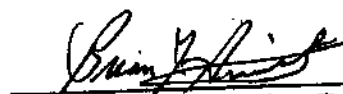
VST - voluntary sterilization covered as basic service. In absence of rider, cost is borne totally by the employee.

The City has agreed to withdraw its last best offer in the light of the Panel's Award of the City's offer relative to the pension multiplier.

AWARD

The Panel awards the Union's last best offer as to health care riders.


Richard L. Kanner, Chairperson


Brian J. Smith, Union Delegate
The Union Delegate descends as to that portion
or the award on the items to be included in (FAC)
final average compensation.

Joseph W. Fremont, City Delegate

Date: September 12, 1994

Richard L. Kanner, Chairperson

Brian J. Smith, Union Delegate

Joseph W. Fremont
Joseph W. Fremont, City Delegate

Date: September 12, 1994