1959

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

COUNTY OF MACOMB

and

MACOMB COUNTY PROFESSIONAL DEPUTIES ASSOCIATION

THOMAS V. LoCICERO, Arbitrator
M.E.R.C. Case No. D85-I-V-2218

AWARD

Arbitration Panel

Thomas V. LoCicero, Panel Chairman
Charles E. Keller, Employer Delegate
Marc Whitefield, Union Delegate

Appearances:

Charles E. Keller
Keller, Thoma, Schwarze, Schwarze,
DuBay & Katz, P.C.
Attorney for the County of Macomb
2900 Penobscot Building
Detroit, MI 48226

Marc Whitefield
Finkel, Whitefield & Selik
Attorney for Association
2300 West Twelve Mile Road
Southfield, MI 48076

BACKGROUND

The undersigned arbitrator, appointed through the Michigan Employment Relations Commission, held hearings which resulted in an award dated July 17, 1987, (consisting of some 30 pages).

The other members of the three-member panel were:

-Charles E. Keller, as the Employer's Delegate, representing the County of Macomb, and

-Marc Whitefield, as the Employee's Delegate, representing the Association (Union).

The Panel acted on issues presented to it, but not on No. II-A (Averaging Factor); No. A-B (Voluntary Retirement) and No. A (Annuity Factor), and No. VII, entitled "Self-Funded Short-Term Disability" as requested by the Union*.

By reason of the issue titled "Self-Funded Short-Term Disability", which the Chairman of the Panel believed could not be granted because it's effect would be to amend a State Statute (Act MCL 46.128; MSA 5.333(1).

Accordingly, no award was made on the above-stated demands, but the Arbitration Panel retained jurisdiction pending further instructions.

Upon the awards being made, the Association filed suit in the Macomb County Circuit Court against the County and the Arbitrator for a declaratory judgment. Further, upon the expiration of the labor agreement and the parties failed to negotiate a new contract, the Association filed a Petition for Compulsory Arbitration with the Michigan Employment Relations Commission ("MERC") and the Commission appointed this Arbitrator to arbitrate the parties unresolved contractual disputes. (MERC Case No. D85-I.V. 2218).

---

*Issue No. VII proposes that:

"A. Averaging Factor
The Association proposes that effective for employees retiring after January 1, 1986, the final compensation act for calculating pension benefits be predicated upon averaging the employee's three (3) highest annual consecutive compensations. The effect of the Association's proposal would be to improve the averaging factor from five (5) years, to three (3) years. The County proposes that there be no change in the pension system." (Pages 15 of Arbitration Panels original Decision and Award)

In the interim, the Michigan Legislature enacted an amendment to the Public Employment Relations Act, (MCL 423,201 et seq; MSA 17.455(1) et seq,, effective December 29, 1988, amending specifically Section 12a "so as to allow a county engaged in collective bargaining pursuant to PERA to enter into an agreement that provides for employment retirement benefits in excess of those benefits otherwise authorized under 12a. Because this amendatory act is remedial in nature, it is to be given retroactive application. In light of this amendment, the trial court reached the right result. (Macomb Deputies v. Macomb Co. 182 MA 724)

In explaining it's reasoning, the Court of Appeals said:

> "Prior to enacting the amendment, the interplay between defendant's obligations under PERA and MCL 46.12a; MSA 5.333(1) was ambiguous. ON the one hand, changes in pension and retirement provisions are mandatory subjected of bargaining. Detroit Police Officers Ass'n v Detroit, 391 Mich 44, 63; 214 NW2d 803 (1974). PERA imposes on this duty to bargain a duty to bargain in good faith. Id. On the other hand, it would appear that the restrictions placed on defendant's ability to make changes in pension provisions by the unamended MCL 46.12a; MSA 5.333(1) severely diminish, if not render nugatory, defendant's statutory duty to negotiate in good faith on a mandatory subject of bargaining. By enacting the amendment, we believe the Legislature intended to clarify this ambiguity, to harmonize the two statues, and to reform the law governing this area of employment relations. We further believe that the amendment neither creates nor destroys any existing right. It does not establish in defendant's employees any right to receive benefits. Instead, it merely provides a procedure by which to ascertain the amount of benefits to be received. We conclude, therefore, that the amendment was remedial in nature and that the Legislature intended to apply it retroactively.

> Accordingly, the order of the circuit court is affirmed and the case is remanded to the MERC arbitrator for a decision and an award on the pension formula issue."

Pursuant to the decision by the Court of Appeals, therefore, this Arbitrator has reviewed the record made at the original arbitration Panel's hearings and summarizes it as follows:

COMPARABLES

The parties originally stipulated that the following would be considered as comparable:

1. Clinton Township
2. Genesee County
3. Kent County
4. Mount Clemens
5. Oakland County
6. St. Clair County
7. St. Clair Shores
8. Michigan State Police
9. Shelby Township
10. Sterling Heights
11. Warren
12. Washtenaw County

Association Exhibit 73 sets forth the averaging factor of the 12 comparable counties. Six (6) have adopted the highest 5 of 10 year factor, five (5) have the highest 3 of 10 and 1 has the highest of 2 years.

---

*This would eliminate the present 50 years requirement.

**The Association Exhibit 70a shows that six (6) of the comparable communities use a 2% factor, not a 2.25% and that five (5) use a 2.5% factor, while one (1) uses 2.4% as its annuity factor.

DISCUSSION

PENSION BENEFITS

A. Averaging Factor-Pension Issue

Now that the question of the authority of the Arbitration Panel to rule on the "Averaging Factor" issue has been established, it is necessary to consider the record.

As noted above, Association's Exhibit 73, of the 12 Comparables six (6) have adopted the highest 5 of 10 years as Averaging Factor, 5 communities have the highest 3 of 10 years, and 1 has the highest of 2 years as their averaging factor.

It appears to the Panel that a substantial number of the Comparable Communities have adopted the averaging factor of employee's three (3) highest annual consecutive compensations, and that the trend is toward that conclusion.

The Panel therefore recommends that the Union's request should be denied to the Association.

B. Twenty Five and Out.

Another benefit request proposed by the Union is that employees who have attained 25 years or more of credited service shall be eligible for voluntary retirement.* This request was considered by the panel but was denied (page 19 of Awards).

The second Association request is that the present 2,25% to 2.% for the first 26 years of credited service and 1% for each credited year; thereafter to a maximum of 65% of the employee's final average compensation.

---

*This would eliminate the present 50 years requirement.

**The Association Exhibit 70a shows that six (6) of the comparable communities use a 2% factor, not a 2.25% and that five (5) use a 2.5% factor, while one (1) uses 2.4% as its annuity factor.

The Association charges that six of the Comparable Communities presently use an annuity factor for 2.25%, equal to Macomb County's factor, but also charges that the remaining six (6) have annuity factors of 2.40% or greater.

> "Macomb County does use a factor of 2.25%, and argues that the Association's Exhibit 70a** indicates that six of the seven communities which participate in Social Security use a 2% factor. It also charges that MLA 46.12a restricts the benefit multiplier to 2%, unless the employees pay the cost of any increase in the multiplier above 2%. Thus, the County concludes that an increase to 2.5% 'would violate the statute unless the employees substantially increase their contributions to plan', and that it had received no offer to do so (County's Brief, page 13)
> "The County also points out that the cost of this benefit would be 3.01%.
> "Under the facts stated above, it is the Panel's judgment that the County program more nearly compares to the factors set forth in Section 9, and, therefore, awards the offer to the County."

C. Self-Funded Short-Term Disability

The Association proposes that effective January 1, 1987, employees should donate each year, either one sick day or one vacation day to a 'short-term disability bank'. Employees shall be permitted to utilize this 'bank' for documented sickness or disability after an absence from work for thirty (30) continuous work days and the exhaustion of sick or vacation time, until the initiation of a long-term disability.'*

*The Association is prepared to resolve any issues that may arise from this proposal on self-funded short terms disability. This includes issues such as record keeping and verification of illness or disability, or any other issue of mutual concern between the parties to assure that this self-funded short term disability program operates consistent with its intended purpose--to provide continued income to employees with serious illness or disability after sick or vacation banks have been exhausted.

> The county rejects, altogether, the Association's proposal to establish a 'self-funded short-term disability program.' It is impossible for the Panel at this time to make any award on this request because the proposal has a substantial number of unanswered questions. This is recognized by the Association since its foot-note 11 at page 35 of its brief, it suggests that it is prepared to resolve such issues as may arise. The County indicates in its discussion of the proposal that if an employee were allowed to draw from a sick bank after 30 days, each person would be eligible for an extra 1000 paid work days. 'By the ability to draw from the sick bank, an employee would lose any incentive to accumulate sick days beyond 30." In examining the contracts of the several comparables suggested as having 'some type of established short term disability program, we do not find any program which can be compared to the Association's proposal, except possibly that of St. Clair Shores, in which any employee may borrow sick days from the fund. However, it provides very little to explain its program'

CONCLUSION

No award was made in the Panel's original Awards since it had insufficient evidence to make an award, none was made. Since the Panel has little additional evidence, it believes it is best to leave that issue as presently in effect so that no change will be made and therefore awards this issue to the County.

SUMMARY

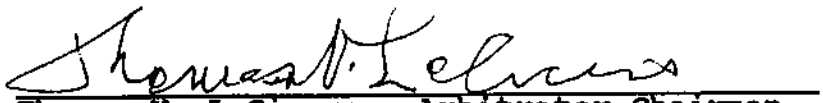
The following summarizes the awards made on the issues not originally made:

Awards to:

Union
County
County
County

Pension Benefits

A. Averaging Factor - Pension
B. Voluntary Retirement (25 & Out)
C. Annuity Factor
D. Self-Funded Short-Term Disability



Thomas V. LoCicero - Arbitrator Chairman
1105 Three Mile Drive
Grosse Pointe Park, MI 48230