

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF ROYAL OAK

-and-

MERC ACT 312 CASE NO. D00 B-3008

**ROYAL OAK POLICE
OFFICERS ASSOCIATION**

SECTION 41A.0

1996-1999 CBA

SUPPLEMENTAL ACT 312 OPINION AND AWARD

APPEARANCES:

UNION: L. RODGER WEBB, ATTORNEY.
PANELIST/ADVOCATE

EMPLOYER: DENNIS B. DuBAY, ATTORNEY,
PANELIST/ADVOCATE

SUBJECT: SECTION 41A.0

**STATEMENT
OF ISSUE:** WHETHER ANY PORTION OF SECTION 41A.0 IS TO REMAIN
IN THE 1996-1999 COLLECTIVE BARGAINING AGREEMENT.

**SUPPLEMENTAL
REQUEST AND
BRIEF FILED:** JUNE 27, 2003

**SUPPLEMENTAL
AWARD DATE:** AUGUST 8, 2003

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ARBITRATOR'S OPINION AND AWARD

BACKGROUND

The Parties have submitted to the Undersigned an issue in relation to the Act 312 Opinion and Award issued on September 16, 2002.

The provision in controversy is Section 41A.0 – PARKING ENFORCEMENT. The provision is displayed:

“Section 41A.0 – PARKING ENFORCEMENT

41.A.1 The City may hire part-time parking enforcement officers with the following guarantees:

- (a) The City will guarantee ten (10) full time Police Service Aide positions and one (1) full time parking enforcement position. Upon retirement of the present Parking Meter Enforcement Officer, the City will guarantee eleven (11) full time Police Service Aide positions.**
- (b) Part time employees will not be eligible to work Police Service Aide duties other than parking enforcement. Part time parking enforcement officers shall not be part of the bargaining unit nor covered by this agreement, it being understood that the City shall have the right to determine compensation and working conditions for such personnel.**

- (c) This agreement does not preclude the Employer from utilizing full time PSAs for parking enforcement."

The respective positions of the Parties are as follows:

Union

"In this case, the Union took the position that it would not bargain over its right of representation of part-time parking enforcement officers, only, and ultimately filed a representation petition at MERC to accrete them to its extant unit. The City, in negotiations, at 312, and in the representation hearing, took the position that representation of part-time PMEOs was a mandatory subject of collective bargaining, and herein that the arbitrator was empowered to retain the parties' no-representation of part-time PMEOs provision (i.e., §41A.1(b)) in the collective bargaining agreement over the Union's objection, or, in any event, should render no change in deference to the issue pending at MERC (which solely concerned the Union's waiver of its representation rights). See the parties' Act 312 post-hearing briefs. Thus, the second sentence in §41A.1(b) is the only provision of §41.A that was ever put in question, by either party." (Emphasis in original.)

Employer

"The 'issue' presented to the Act 312 arbitration panel was whether the entire Section 41.A should be eliminated from the contract (Union final offer) or whether the entire Section 41.A be continued unchanged in the contract (City final offer). Both parties treated the matter as one 'issue' under Act 312, because Section 41.A was one integrated agreement with respect to part-time Police Service Aides. The contract section provided that the City could employ part-time parking enforcement officers 'with the following guarantees.' The guarantees included: in subsection (a) a City promise to maintain 10 Police Service Aides positions; in subsection (b) a Union promise that part-time personnel would not be in the bargaining unit or covered by the contract, it being understood that the City would have the right to set compensation and working conditions for part-time personnel; and in subsection (c) an agreement that full-time personnel could still be used for

parking enforcement duties. As set forth above, at the hearings the Union represented that if it prevailed on representing the part-time personnel, the City would not '...be obliged to abide by the 10 full-time PSA guarantee, either...' and that the Union did not object to removing the other side of the trade, i.e., the guarantee of 10 full-time positions."

(Emphasis in original.)

The Union references the Decision and Direction of Election issued by MERC on September 4, 2002. The MERC directed an election among the following employees:

"All full and regular part-time parking enforcement officers."

The Panel herein determined the above decision "is dispositive of the issue presented."

In its Decision, the MERC did discuss the circumstances leading to the Petition filed by the Union herein:

"During negotiations for a successor contract, the Union sought to remove a section of the contract which deals with parking enforcement officers. Section 41A. This section reads as follows:

41.A.1 The City may hire part-time parking enforcement officers with the following guarantees:

- (a) The City will guarantee ten (10) full time Police Service Aide positions and one (1) full time parking enforcement position. Upon retirement of the present Parking Meter Enforcement Officer, the City will guarantee eleven (11) full time Police Service Aide positions.
- (b) Part time employees will not be eligible to work Police Service Aide duties other than parking enforcement. *Part time parking enforcement officers shall not be part of the bargaining unit nor covered by this agreement*, it being understood that the City shall have the right to determine compensation and working conditions for such personnel. [Emphasis added.]

- (c) This agreement does not preclude the Employer from utilizing full time PSAs for parking enforcement.

This section has not been part of the previous 1992-1995 agreement, but was negotiated in the 1996-1999 agreement in return for salary and benefit improvements by the City."

The point here is that the MERC had an awareness of more than the fact that the Union was seeking to accrete all full and regular part-time parking enforcement officers to the Bargaining Unit.

The Panel "remark" that the MERC Decision was "dispositive of the issue presented" was in reference to the Last Best Offer of the Parties. The Union's Offer was as follows:

"Parking Enforcement (per ROPOA's statement at Hearing it withdraws its earlier-submitted proposal, and takes the position that the section should be eliminated, for the reason that the agreement underpinning it, that part-time parking enforcement officers shall not be part of the unit, is a permissive subject respecting which the ROPOA declines to bargain; the Union will brief this issue)."

The City Offer was as follows:

"50. Parking Enforcement – Section 41A.0 - Parking Enforcement - Economic

City Final Offer of Settlement

Maintain status quo. Retain current contract language and add no additional contractual provisions on this issue."

In its decision, the MERC commented on the Union's Last Best Offer as follows:

"In submission of its last best offer to the Act 312 arbitrator, the Union proposed eliminating Section 41.A."

The above corresponded with the Panel's understanding of the situation. The Panel reached the above understanding from the Union argument that the Panel had no authority to tell


the Union what organizational rights it had. In that connection, the Panel understood the Union to also acknowledge that the City was not bound by the 10 position guarantee in Section 41A.1.

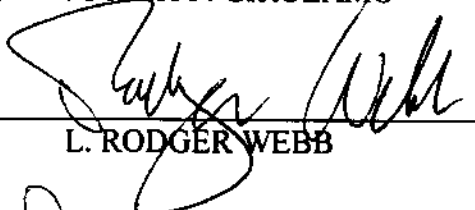
The Union has also advanced an equitable argument:

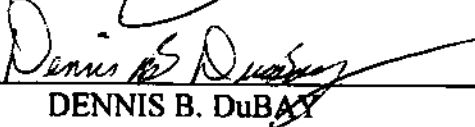
"To be fair to both sides, the proper remedy would be to restore the status quo ante, meaning prior to the advent of part-time PMEOs, when there were no part-time PMEOs, and police officers and PSAs did all police work, including parking enforcement."

Section 41A.0 was negotiated in its entirety in the 1996-1999 Agreement. A return to the status quo ante would seemingly entail elimination of the provision in its entirety from the Agreement.

Based on the above considerations, the Panel determines that Section 41A.0 is deleted from the Collective Bargaining Agreement having an effective date of July 1, 1999.


JOSEPH P. GIROLAMO


L. RODGER WEBB


DENNIS B. DuBAY

August 8, 2003