

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CASE NUMBER: L02 A-5004

Opinion and Award in the matter of the Act 312 Arbitration between

City of Sault Ste. Marie

- and -

The Police Officers Labor Council

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| DATE OF ACT 312 PETITION: | August 20, 2002 |
| DATE PANEL CHAIR APPOINTED: | September 18, 2002 |
| DATE OF PRE-HEARING CONFERENCE: | November 12, 2002 |
| DATE OF HEARING: | April 22, 2003 |
| LOCATION OF HEARING: | Sault Ste. Marie, Michigan |
| DATE LAST BEST OFFERS EXCHANGED: | May 14, 2003 |
| DATE BRIEFS FILED: | June 23, 2003 |
| DATE RECORD CLOSED: | June 26, 2003 |
| ARBITRATION PANEL: | |

Richard N. Block, Neutral Chair
Thomas Kreis, Union Delegate
John Patrick White, City Delegate

APPEARANCES:

For the Police Officers Labor Council

Ms. Jessica A. Bray, Attorney, Green, Weisse, Rettig, Rademacher, Clark & Bray
Mr. Thomas Kreis, POLC
Officer Herbert Henderson, City of Sault Ste. Marie Police Department
Officer Thomas R. Swanson, Union Steward
Officer Derek S. O'Dell, Union Steward

For City of Sault Ste. Marie

Mr. Steven J. Cannello, Attorney, Moher & Cannello
Mr. J. Patrick White, Attorney, Varnum, Riddering, Schmidt & Howlett
Mr. Spencer Nebel, City Manager
Mr. John Boger, Finance Director
Chief Lou Murray, City of Sault Ste. Marie Police Department

BACKGROUND

The most recent collective bargaining agreement between the City of Sault Ste. Marie (hereinafter the City) and the Police Officers Labor Council (hereinafter the Union) covering the full-time non-supervisory police officers in the City expired on June 30, 2002 (Jt. Ex. 1).

Bargaining for a new collective agreement commenced, but the parties were unable to reach an agreement. Pursuant to the provisions of Act 312, mediation sessions were held on June 4, 2002 and August 15, 2002. On August 20, 2002 the Union filed a request for Act 312 arbitration. On September 18, 2002 Richard N. Block was appointed Act 312 arbitrator and neutral chair. A pre-hearing conference was held on November 12, 2002. Following the pre-hearing conference, the parties identified the following issues in dispute:

- a. Article 5 - Holidays;
- b. Article 6 - Vacation: 5- and 6-week steps;
- c. Article 7 - Leave Time: definition of "family" and employee attendance requirement, sick leave reduction/elimination and disability policy;
- d. Article 8 - Health Insurance and Pensions: cap and employee cost-sharing, deductibles and co-pay, opt-out payments, Blue Cross/Blue Shield for Workers Compensation, post-retirement contribution, pension cap;
- e. Schedule C - Wages: annual percentage increases;
- f. Attachment A - Police Training: trial period and comp banks.

The training issue was withdrawn following the pre-hearing conference. Witness lists and exhibits were exchanged by March 24, 2003. A hearing was held on April 22, 2003 in Sault Ste. Marie, Michigan during which both parties had the opportunity to present evidence and examine and cross-examine witnesses on the issues in dispute. Last, best, offers (LBO's) were exchanged on May 14, 2003 and post-hearing briefs were received on June 24, 2003. The briefs were

exchanged on June 26, 2003, whereupon the record was closed. The post-hearing briefs stated that the issues of sick leave and retirement benefits had been resolved (City Br., pp. 4, 9; Un. Br., p. 8). Accordingly, this award will be rendered only on the issues of holidays, vacations, family illness, health insurance prescription co-pays, health insurance cost-sharing, health insurance opt-out, post-retirement health plan, and wages.

STATUTORY FACTORS AND RELATED MATTERS

With respect to the factors that must be considered by the panel, Act 312 states, in relevant part:¹

(t)he arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (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 those 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.

¹See MCL 423.239.

(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.

With respect to the issues in dispute, neither party claimed factors a, b, e, f, and g were applicable. Accordingly, these factors will not be taken into account. The panel finds that the applicable factors are, for at least one of the issues, c,² d,³ and h.⁴ Discussion in the opinion regarding external comparables is considered to reflect factor d. Discussion in the opinion regarding internal comparables, the terms and conditions of employment contained in agreements covering other bargaining units in the City, is considered to reflect factor h. The terms and conditions of employment other employees in the jurisdiction are normally taken into consideration in determining wages, hours, and working conditions through collective bargaining and arbitration. All issues are economic with the exception of definition of "family illness" in the sick leave provision, which is noneconomic.

During the hearing (Tr. 149), and in its last, best, offer, the Union stated that it wished the wage increase in each year to be considered a separate issue. The City expressed no view on this matter. In order to provide it with the maximum flexibility, a majority of the panel has determined that the wage increase in each year shall be a separate issue.

COMPARABLES

For the purposes of these proceedings, the parties agree that the comparables are Alpena, Big Rapids, Cadillac, Ludington, Marquette, Menominee, Mt. Pleasant, and Traverse City.

²Hereinafter, factor c is referred to as "ability to pay."

³Hereinafter, factor d is referred to as "comparability."

⁴Hereinafter, factor h is referred to as "other factors."

LAST, BEST OFFERS, POSITIONS OF PARTIES, DISCUSSION, AND AWARDS ON

ISSUES IN DISPUTE

ISSUE: HOLIDAYS

Last Best Offers on Holidays

Last, Best Offer of the City

Employees who are scheduled and work the holiday receive an additional eight (8) hours of holiday pay. Employees released for the holiday receive holiday pay equal to their scheduled work hours.

Last, Best Offer of the Union

Status quo (Jt. Ex. 1, p. 15).

Positions of the Parties on Holidays

Position of the City

The City argues that neither the internal nor the external comparables support the Union's LBO. The City notes that the patrol officers work eighty hours over a two-week period, which is a normal workweek, and they should receive normal (eight hours) holiday pay. The City points out that neither the firefighters nor the public works employees receive 10 hours of holiday pay, and that the comparable cities do not pay a holiday premium for a 12-hour shift.

The City argues that under the current agreement, an officer on a 12-hour shift who does not work on a holiday would receive pay for only 78 hours, while an officer on an 8-hour shift who does not work on a holiday would receive 82 hours. The City argues that these losses and windfalls should not continue.

Position of the Union

The Union argues that to adopt the City's LBO would result in a loss of benefit to the employees and would make them no longer comparable with the sergeants, who receive 10 hours of holiday pay for 12-hour shift. The Union argues that neither the public works employees nor the firefighters are comparable.

Discussion on Holidays

When one party proposes a change in the status quo, the burden is on that party to show that the provision in question has resulted in serious problems or that the provision is substantially out of line with similar provisions in the collective agreements of comparable jurisdictions or with other agreements in the jurisdiction without being offset by other provisions of the collective agreement. In this case, I find that the City's LBO meets neither of these criteria. First, with respect to ability to pay, although the City spends more than it otherwise might (Tr. 13), there is no evidence that this provision creates substantial financial hardship for the City.

With respect to comparability, the record establishes that the sergeants, the unit with which the patrol unit is most likely to compare itself, receives 10 hours of holiday pay for a 12-hour shift (Jt. Ex. 2, p.2; City Ex. 18; Un. Ex.1). This evidence on internal comparables supports the Union's LBO on holidays.

Of the eight external comparables, the record establishes that two, Big Rapids and Mt. Pleasant (Jt. 11, p. 19), schedule 12-hour shifts for police officers, as does the City (Jt. Ex. 1, p. 12). In disagreement with the City, I find that these two jurisdictions provide for more than 8 hours holiday pay for 12-hour shifts. Big Rapids provides for 12 hours of holiday pay, which is more generous than the current agreement (Un. Ex. 1, Tab 6; Jt. Ex. 6, p. 19). Mt. Pleasant provides for holiday pay of one "duty day" (Jt. Ex. 11, p. 23), with a duty day defined as a minimum of eight and a maximum of 12 hours (Jt. Ex. 11, p. 19). The foregoing suggests that the comparable cities that schedule officers for 12-hour shifts provide more than 8 hours of holiday

pay and that the 10 hours of holiday pay that patrol officers in Sault Ste. Marie have received in the past for a 12-hour shift is less than the holiday pay received by patrol officers in the comparable jurisdictions that schedule 12-hour shifts. This evidence on external comparables supports the Union's LBO on holidays.

Although the City points to the possibilities of anomalies, the City has presented no evidence that these have occurred in the past. The possibility that anomalies may occur from time to time is not sufficient reason to change the status quo.

Conclusion on Holidays

A majority of the panel finds that the Union's LBO on holidays is more consistent with the statutory criteria than the City's LBO.

Award on Holidays

The last, best offer of the Union on holidays is accepted. The last, best offer of the City on holidays is not accepted.

ISSUE: VACATIONS

Last Best Offers on Vacations

Last, Best Offer of the City

Delete the 5th and 6th week of vacation accumulation.

Last, Best Offer of the Union

Status quo (Jt. Ex. 1, p. 16).

Positions of The Parties on Vacations

Position of the City

The City contends that, in the context of a 12-hour work schedule, four weeks of vacation is sufficient for rest and relaxation. Because of the 12-hour work schedule, officers work only seven days in fourteen rather than the traditional ten days in fourteen. This results in 78

additional days off during the year vis-à-vis an employee with a five-day, 8-hour work schedule. More than four weeks of vacation is outdated.

The City also notes that no current employees would be affected. It would not be until 2008 that the highest seniority incumbent patrol officer would reach 20 years.

Position of the Union

The Union argues that the fifth and sixth weeks of vacation for 20-year and 25-year employees have not been eliminated in any other bargaining unit in the City. The sergeants and clerical staff each have five weeks of vacation at 20 years and 6 weeks of vacation at 25 years. The Union contends that even-handedness requires that the City's offer be rejected.

Discussion on Vacation

As with the City's LBO on holidays, the record establishes that the City will realize some savings from this proposal, although the initial savings will not be realized by the City until 2008 (City Ex. 21), three years after the expiration of the agreement at issue in this proceedings. Moreover, to some extent, the amount the City will save depends on the number of long service patrol officers. Data on the length of service of current employees suggests, however, that few patrol officers in the City ever reach 25 years of service in the bargaining unit. There are no current employees with 20 or more years of service; the longest serving current employees have fourteen years of service (City Ex. 21). Under the assumption that the current age distribution of patrol officers is somewhat representative of the historic age distribution of officers in the City, these data suggest that any cost savings to be realized by the City are largely hypothetical, since few, if any patrol officers, ever reach the length of service necessary to qualify for five or six weeks of vacation. If it the case that the demographics of the unit change in 2005 such that it is likely that a substantial number of employees in the unit will reach 20 or 25 years of service, the City may raise the vacation issue at that time, when the agreement at issue will expire. It

appears, however, that, with respect to the issue of vacations, the factor of ability to pay can be given little weight at this time.

With respect to the internal comparables, the record establishes that the sergeants have 5 weeks of vacation at 20 years, and 6 weeks at 25 years. Thus, this internal comparable supports the Union's LBO.

With respect to external comparability, the record establishes that the vacation length of 5 weeks for employees with 20 years of service is approximately equivalent to the mean vacation length of 20-year employees among the external comparables - 24 days or 4.8 weeks (Un. Ex. 1, Tab 7). The City's proposal would move the 20-year patrol officers in the City almost a full week below the mean. The City has presented no reason on the record why 20-year patrol officers in the City should be below the mean of the external comparables. Thus, this evidence supports the Union's LBO.

Currently, the 6 weeks of vacation places any 25-year patrol officers in the City at one week above the mean of the external comparables for 25-year officers (Un. Ex. 1, Tab. 7). The City's proposal would place the 25-year at one week below the mean. Based on the comparability analysis for vacation length for 25-year employees, neither party's LBO is closer to the comparables.

As with vacations, a majority of the panel finds nothing in the record that would support changing the status quo.

Conclusion on Vacations

A majority of the panel finds that the Union's LBO on vacations is more consistent with the statutory factors than the City's LBO.

Award on Vacations

The last, best offer of the Union on vacations is accepted. The last, best offer of the City on vacations is not accepted.

ISSUE: FAMILY ILLNESS

Last, Best Offers of the Parties

Last Best Offer of the Union

The City will permit the use of up to five (5) days (actual hours vary depending on job classification of the employee) of current sick leave-time to be utilized for family illness. For the purposes of this section, family shall be defined as husband, wife, parents, children, parents-in-law, son-in-law, daughter-in-law, brothers, sisters or other relative, if this relative is living in the employee's household as a member of the regular family unit.

Last, Best Offer of the City

Define "family" as dependent of employee, and require actual attendant care.

Positions of the Parties

Position of the City

The City raises two concerns with the current language that it is attempting to address with this proposal. First, the current language does not define "family." Second, the City notes that, under this language, employees were taking time off work to under this provision, but were not actually attending to the ill family member. The City contends these are reasonable restrictions that should be granted.

The City notes that even with this language, the provision in this agreement provides the patrol officers with better benefits in this area than several of the comparables. Three of the eight comparables offer no paid family illness leave, and another three offer only 1 to 3 days. Menominee restricts the use of leave to a spouse or child under the care of a doctor.

Position of the Union

The Union requests that the status quo be maintained. The Union argues that the City's proposal creates multiple problems. The Union notes that the term "attendant care" is not

defined, and it is not clear whether that term incorporates going to the doctor, going to the drug store, or merely cooking meals. The Union also notes that the collective agreements covering the sergeants and firefighters do not have this language.

Discussion on Family Illness

As the parties have agreed that this is a noneconomic issue, the panel may choose either LBO or adopt contractual language not proposed by either party. A majority of the panel finds valid the basic concerns of the City with respect to definition of family member and the purpose of the leave. As regards the definition of family member, it seems reasonable to limit the time off to the care of those family members who are dependent on the employee; these are members of the employee's household who are dependents of the employee. These are the people who, if ill, are most likely to need the care of the employee and who are unlikely to have someone else to care for them.

As regards the question of the purpose of the leave, while a majority of the panel believes that the language in the current agreement would limit the employee to care of the ill family member while on family leave, the City has a legitimate interest in clarifying this language. A majority of the panel believes, however, that the care provided to the ill family member under this provision should not be limited to attendant care. The term "attendant" implies that the employee must be in the physical presence of the ill family member. Care for an ill family member should not be so narrowly defined; it may mean running errands or doing other tasks that the ill family member is unable to do for him- or herself.

Award on Family Illness

Based on the foregoing, the provision on family illness leave in Article 7.1 shall be the following:

The City will permit the use of up to five days (actual hours depending on the job classification of the employee) of current sick leave to be utilized for family illness. Family illness means the

illness of a dependent member of the employee's household. To use this leave, the employee must be in the actual care of the family member during the period of the leave.

ISSUE: HEALTH INSURANCE PRESCRIPTION CO-PAYS

Last Best Offers

Last, Best Offer of the City

Employee pays \$10 for generic, \$20 for non-generic prescriptions.

Last Offer of the Union

The Employer agrees to furnish Blue Cross - Blue Shield hospital, \$10 Rx Co-pay, medical and surgical insurance for employees and their dependents under the "Community Blue Program Option 1". Effective 6/30/05 or such earlier dates as the \$1,100.00 premium cap mentioned below is reached, the insurance coverage will include a prescription rider under which the employee will pay the first \$10.00 of any generic prescription or \$20.00 of any branded prescription, and the coverage will pay the balance. The Employer reserves the right to institute an alternative substantially equivalent hospital, surgical insurance program. The Union reserves the right to subject the question of substantial equivalency to an independent third party for evaluation.

Positions of the Parties

Position of the City

The City argues that the \$5/\$10 prescription co-pay is no longer comparable either internally or externally. The City notes that all of the internal and most of the external comparables pay at least \$10 for generic prescriptions; three of the comparables pay more than \$10. Six of the eight comparables pay more than \$10 for brand name prescriptions; three of the comparables have a \$20 co-pay. Therefore, the City argues that its last best, offer on prescription co-pay is reasonable and consistent with trends in the collective agreements in the comparable jurisdictions.

Position of the Union

The Union argues that its last, best offer will maintain parity with the sergeants unit on brand name prescriptions.

Discussion

First, with respect to the statutory factor of ability to pay, the record establishes that the City's LBO will result in a savings, although the record is unclear as to precisely how much the City will save. The evidence in the record on savings was with respect to a \$5/\$10 co-pay (City Ex. 41). Both LBO's provide for co-pays of \$10/\$10 and \$10/20. Thus, while the factor of cost savings favors the City, it is unclear how much the City will save.

Second, with respect to the internal comparables, the record establishes that all of the units currently have a \$10/\$10 co-pay (Jt. Ex. 2, p. 20; Jt. Ex. 3, p. 19; Jt. Ex. 4, p. 19). The sergeants agreement goes to a \$10/\$20 co-pay on June 30, 2005 or if the premium goes above \$1,100 (Jt. Ex. 2, p. 20), whichever is sooner. The Union's LBO is identical to the prescription provision in the sergeants agreement with respect to all provisions, and identical to the prescription provision in the firefighter and public works agreement with respect to co-pays. The City's LBO is equal to all of the internal comparables on the generic co-pay, but \$10 greater than all the comparables on the brand-name co-pay. Accordingly, a majority of the panel finds that the factor of internal comparables favors the Union's LBO.

Third, with respect to the external comparables (City Exs. 42-43; Un. Ex. 1, Tab 12), excluding Traverse City, which has three options, the record establishes the mean of the co-pay on the generics is \$11. Assuming the co-pay in Traverse City equals the mean of the three options, the mean generic co-pay for the external comparables is \$10.45. For the brand name prescriptions, the mean co-pays are \$15.30 and \$14.20, excluding and including Traverse City. Thus both LBO's are approximately equivalent to the external comparables on generic co-pays. The differential on the brand-name co-pay is about the same; the Union's LBO is approximately

\$5 below the mean of the external comparables, the City's LBO is approximately \$5 above the mean of the external comparables. Thus, the factor of external comparables favors neither LBO.

Overall, given the absence of evidence on cost savings and the fact that the record does not establish a substantial difference between the external comparables and the City's patrol officers with respect to a prescription co-pays, the award on this issue will be based on the factor of other factors, with emphasis on the internal comparables. The Union's LBO on prescription co-pay is similar to or identical to the prescription co-pay benefits in the City's other agreements. The record provides no reason as to why the patrol officers should enjoy a lesser prescription co-pay benefit than other City employees.

Conclusion on Health Insurance Prescription Co-pay

A majority of the panel finds that the Union's LBO on health insurance prescription co-pays is more consistent with the statutory criteria than the City's LBO.

Award on Health Insurance Prescription Co-Pay

The last, best offer of the Union on Health Insurance Prescription Co-Pay is accepted.
The last, best offer of the City on Health Insurance Prescription Co-Pay is not accepted.

ISSUE: HEALTH INSURANCE COST-SHARING

Last, Best Offers

Last, Best Offer of the City

Fifty per cent of the health care premium in excess of \$1,100 per month will be deducted from City payments to be made to the Public Employee Health Care Investment Fund. If the \$1,100 cap is reached, either party may open negotiations on health insurance.

Last, Best Offer of the Union

Notwithstanding any other section of this contract when the total Employer cost for health insurance exceeds \$1,100.00 per month for any employee the excess amount per month shall be paid 50% by the Employee up to a maximum of \$50.00 each month with the balance to be paid by the Employer. The employee's contribution shall be deducted from the particular employee's paycheck. Once the \$1,100.00 cap has been reached either party may re-open negotiations upon the issue of health insurance.

Positions of the Parties

Position of the City

The City argues that because the sergeants are generally closer to retirement than the patrol officers, the sergeants have a greater need than the patrol officers for the City to make contributions on their behalf to the Public Employee Health Care Investment Fund (commonly referred to as the PEHP). The City notes that this greater need for the sergeants is supported by the relative amounts of the City's contribution to the PEHP, \$1,000/year per employee for the sergeants, and \$600/year per employee for the patrol officers.

The City also argues that the Union's proposal to cap the employee's contribution at \$50 per month is unrealistic. The employee will never pay more than \$600 per year for health insurance, while it is expected that premiums will be approximately \$16,000 per year in 2004-05. The City argues it is committed to paying more than \$13,000 per year per employee for health insurance. The City cannot afford to absorb such a large percentage of the cost on its own, and the employee has an obligation to share the cost.

Position of the Union

The Union argues that its proposal of 50% up to \$50 per month after the \$1,100 cap is reached is identical to the sergeants agreement. The Union argues that it would rather the

employees pay their share from their own pocket than have their share come from the PEHP program, which, they contend, is inadequately funded.

Discussion on Health Insurance Cost-Sharing

As the City points out in its post-hearing brief, the parties are not far apart on this issue. Both LBO's provide for employees to share 50% of the cost of premiums above \$1,100 per month per employee. The difference in the LBO's is in the source of the employees' share and in the cap on employee's share. The City's LBO would finance the employees' share from future payments to the PEHP. Under the current agreement, these payments total \$15,000 per year, or about \$600 per employee per year, or about \$50 per employee per month (Tr. 66). The result of the City's LBO is that there is no cap on the employees' contribution, although those contributions are indirect, through foregone future contributions to the PEHP.

The Union's LBO would take the employees' share directly from the employee up to a maximum of \$50 per month, which equals the City's contribution to the PEHP. The City would pay any premium above \$50 per month per employee.

With respect to the statutory factors, the factor of ability to pay would appear to favor the City's LBO. At per employee premiums above \$1,100 per month, the Union's LBO makes the City responsible for any premiums in excess of the \$50 per month employee cap. The City's LBO continues the 50-50 split with monies to be allocated to future payments to the PEHP. Thus, the City has a lower liability under its LBO than under the Union's LBO.

With respect to the factor of comparability, the sergeants have a \$50 cap with payments directly from the employees - the Union's LBO. The firefighters and the public works agreements incorporate the City's LBO.

Of the external comparables seven either cap the employees' contribution (Big Rapids, Marquette) or do not require the employees to contribute anything (Alpena, Cadillac, Ludington, Menominee, Mt. Pleasant) (City Ex. 46; Un. Ex. 12). Only Traverse City does not cap the

employees' contribution (City Ex. 46; Un. Ex. 12). Thus, I find that the norm for police officers in the comparable cities is to either make no contribution, or have the contribution capped.

Based on the foregoing, a majority of the panel finds that the factor of comparability supports the Union's LBO. The internal comparables offset. The unit closest to the patrol officers, the sergeants, has a cap on employee contributions. On other hand, two other units in the City have their contributions taken from the PEHP allocation. The external comparables support the Union's LBO. The majority of the external comparables limit the employees' liability or place no liability on employees.

The majority of the panel also takes into account the principle that the preferred change is generally the less radical change. Under the current contract, employees share none of the cost of the premium. The Union's LBO concedes the principle of cost-sharing, which is to the financial benefit of the City. This new burden should be placed on the employees gradually.

Although the Union's LBO does cap the employees' share, the City's projections suggest that the City will not pay more than 50% of the excess of \$1,100 per employee until 2004-05 at the earliest, and only if premiums increase by 25% for 2003-04 and another 25% for 2004-05 (City Ex. 41). The 2004-05 fiscal year will be the last year of the contract, and the parties can address any concerns in the negotiations for a new contract to be effective in 2005.

Conclusion on Health Insurance Cost-Sharing

The Union's LBO on health insurance cost-sharing is more consistent with the statutory factors than the City's LBO.

Award on Health Insurance Cost-Sharing

The last, best offer of the Union health insurance cost-sharing is accepted. The last, best offer of the City on health insurance cost-sharing is not accepted.

ISSUE: HEALTH INSURANCE OPT-OUT AND FINAL AVERAGE COMPENSATION

Last, Best Offers of the Parties

Last, Best Offer of the City

Exclude health insurance opt-out payments from calculation of final average compensation for retirement purposes.

Last, Best Offer of the Union

Status quo.

Positions of the Parties

Position of the City

The City points out that this issue has arisen because an arbitration award ruled that the payments to employees who opt out of health insurance coverage must be included as part of final average compensation (FAC) for retirement purposes. The City argues that this was never the intent of the opt-out provision, and that it is inequitable for employees who are sufficiently fortunate that they do not need health insurance to also receive a higher pension payment than they would otherwise receive.

The City notes that only one of the external comparables includes the opt-out payments in the FAC calculation. Moreover, none of the internal comparables are permitted to so use the opt-out payments.

The City argues that there is no logical justification for including the opt-out payments in the calculation of FAC. There is also no justification based on the comparables.

Position of the Union

The Union points out that Arbitrator Maurice Kelman ruled that the opt-out payments were properly included in the FAC in accordance with the law and the parties' collective bargaining agreement. The Union is contending that this benefit should be maintained.

Discussion on Health Insurance Opt-Out

Currently, employees who choose to opt out of health insurance and receive a payment in lieu of health insurance have that payment included in their calculation of FAC for retirement purposes. The record establishes that the parties never negotiated about this issue. Rather, inclusion of these payments in FAC was the result of a decision by the City's payroll department without the knowledge of management (Tr. 71-72). When the City attempted to eliminate the practice, the Union grieved the issue and received a favorable arbitration decision from Arbitrator Maurice Kelman in October, 2002 (Un. Ex. 1, Tab 13; Tr. 72, 75).

In essence, the City is seeking to use the negotiations process culminating in Act 312 arbitration to reverse this arbitration award. This is an appropriate way for a party to have an unfavorable arbitration award reversed. As such, the City's LBO will be examined based on the statutory factors.

First, with respect to the statutory factor of ability to pay, a majority of the panel finds that this factor favors the City's LBO. The testimony is uncontroverted that continuation of this practice will increase the City's cost to fund the pension because increasing the FAC cause pension costs increase (Tr. 83-86).

Second, with respect to the internal comparables, the record establishes that neither the firefighters nor the public works employees have the opt-out payments included in FAC (City Ex. 51; Un. Ex. 1, Tab 13). The sergeants have limited the opt-out inclusion in FAC to those hired or transferred into the bargaining unit prior to July 1, 2002 (Jt. Ex. 2, p. 20; City Ex. 51; Un. Ex. 1, Tab 13). Overall, then, a majority of the panel finds that the internal comparables generally support the City's LBO. Two of the three other internal units do not include opt-out payments in FAC, and the third, the sergeants unit has limited this inclusion for persons hired or transferred into the unit after July 1, 2002.

The external comparables also favor the City's LBO. Of the eight external comparables, seven do not include health insurance opt-out payments in FAC (City. Ex. 52; Un. Ex. 1, Tab 13).

Based on the foregoing, a majority of the panel finds that the statutory factors of ability to pay and comparability support the City's LBO on health insurance opt out. Moreover, there is no evidence the City ever agreed to including health care opt-out payments in FAC, nor is there any evidence that parties ever negotiated about it. Inclusion of these payments in FAC was inadvertent. A majority of the panel finds that the City should not be required to absorb an addition to pension costs to which it did not agree.

Conclusion on Health Insurance Opt Out

A majority of the panel finds that the City's LBO on health insurance opt out is more consistent with the statutory factors than the Union's LBO.

Award on Health Insurance Opt Out

The last, best offer of the City on health insurance opt-out is accepted. The last, best offer of the Union on health insurance opt out is not accepted.

ISSUE: POST-RETIREMENT HEALTH PLAN

Last, Best Offers of the Parties

Last, Best Offer of the City

Keep police officers and police clerical employees in the same trust fund. Increase the \$15,000 a year contribution by 3% for 2002, 3% for 2003, and 2% for 2004.

Last, Best Offer of the Union

Under the provisions of the "Public Employee Health Care Fund Investment Act" being P.A. 149 of 1999 as amended from time to time, the Employer shall establish a trust fund for the purposes stated in the Act. The funds placed into the trust under the terms of this contract shall be accounted for separately for the police patrol unit members. The trust fund shall be managed by an Investment Fiduciary Board. Contributions annually to the fund shall be paid by the Employer

in the amount of \$15,000.00 for each year. Effective for the contract year beginning in 2002, the contribution will be an amount equal to \$750.00 for each member within this fund group. Effective in contract year beginning in 2003, the contribution will be increased to \$900.00 for each member in this fund group. Effective in contract year beginning in 2004, the contribution will be increased to \$1,050.00 for each member in this fund group. These payments shall be for the benefit of the Police Patrol Unit. The parties to this agreement agree to meet and negotiate during the term of this contract upon the terms of the various resolutions required by the Act.

Positions of the Parties

Position of the City

The City argues that the contribution amount of \$15,000 for the unit was established taking into account the fact that the patrol unit was young and would not likely draw on the fund for many years. Therefore, the contribution amount was low relative to the other units in which a large percentage of members were close to retirement.

The City also notes that the monies that were contributed to the fund were allocated from other savings in the collective agreement. The City points out that the Union is requesting increases of 25%, 20%, and 17%. Over the life of the contract, the Union's LBO would result in a 75% increase, from \$600 per employee to \$1,050 per employee. There are no other savings to justify this increase. The City also notes that, if the Union's LBO were granted, by July 1, 2004, the contribution per patrol unit member would be greater than the contribution per member of the sergeants' bargaining unit. The City argues that there is no rational or reasonable justification for such an increase.

The City argues that its LBO, which provides increases in the PEHP contribution of 3%, 3%, and 2% is reasonable, especially given the current financial situation of the City. The City requests that its LBO be accepted.

Position of the Union

The Union argues that the City's PEHP contribution for the patrol unit should be equal to that of the internal comparables, the sergeants and the firefighters. The Union notes that the City contributes \$1,000 per year per employee for the sergeants unit, and \$1, 146 per year per employee for the firefighters unit. The Union's LBO of an additional \$150 per employee per year would bring the contribution for this unit to \$1,050 per employee by the termination of the agreement in 2004. The Union argues this would create parity with the internal comparables.

Discussion

The statutory factor of ability to pay supports the City's position. Clearly, the cost to the City would be greater under the Union's LBO than under the City's LBO. The City's LBO would result in increases of 3%, 3%, and 2%. The Union's LBO would result in increases of 25%, 20%, and 16.7%.

Cost, however, is not the only consideration in determining compensation. The City benefits from a properly compensated police force, and such compensation includes making allowances for the post-retirement health care of the bargaining unit. One factor in determining proper compensation is comparison with the external and internal comparables. It is difficult, however, to make a comparison between the PEHP contributions for the patrol unit and the PEHP contributions of the external comparables. All of external comparables make their contributions on a percentage basis based on the premium (City Ex. 57).

The record does establish that the average annual contribution per member of the patrol unit is less than the annual per employee contribution for the sergeants and firefighters unit. The average annual contribution per employee of the patrol unit is \$600 (Tr. 132). The sergeants agreement requires a lump sum of \$5,000 (Jt. Ex. 2, p. 22); as there are five sergeants (Tr. 119), the average annual contribution per employee in the sergeants unit is \$1,000. The firefighters agreement includes a per employee annual contribution of \$1,146 (Jt. Ex. p. 21).

Although the patrol unit per employee contribution is lower than the per employee contribution of the sergeants and firefighters, the record establishes that the \$15,000 contribution was first negotiated into the 1999-2002 agreements based on the perceived needs of the patrol unit (Tr. 116, 122, 124, 130). Examined in the context of the firefighters and sergeants units, the record suggests that the amount the unit wishes to allocate to future retirement vis-à-vis current income is a unit-specific matter based on the demographics of that unit. A majority of the panel is unwilling to disturb a contribution that the parties negotiated based on the needs of the patrol unit. The City's proposal continues the model created during the 1999 negotiations; the Union's proposal does not. The Union's proposal attempts to impose the model that those parties agreed was most appropriate for the firefighters and the sergeants.

In addition, it is well established in arbitration that the more moderate change is to be preferred over the more radical change. The City's LBO proposes the more moderate change.

Conclusion on Post-Retirement Health Plan

A majority of the panel finds that the City's LBO on post-retirement health plan is more consistent with the statutory criteria than the Union's LBO.

Award on Post-Retirement Health Plan

The last, best offer of the City on post-retirement health plan is accepted. The last, best offer of the Union on post-retirement health plan is not accepted.

ISSUE: WAGES

Last Best Offers on Wages, Year 1, July 1, 2002 - June 30, 2003

Last Best Offer of the City

3% increase in all steps and classifications.

Last Best Offer of the Union

4% increase in all steps and classifications.

Last Best Offers on Wages, Year 2, July 1, 2003 - June 30, 2004

Last Best Offer of the City

3% increase in all steps and classifications.

Last Best Offer of the Union

3.5% increase in all steps and classifications.

Last Best Offers on Wages, Year 3, July 1, 2004 - June 30, 2005

Last Best Offer of the City

2% increase in all steps and classifications.

Last Best Offer of the Union

3.5% increase in all steps and classifications.

Positions of the Parties on Wages

Position of the City

The City argues that its proposal is the most reasonable for two reasons. First, the City points out, it is currently running an operational deficit. The City points out that, if current revenue and cost trends continue, it projects deficits of \$314,000, \$109,000, and \$468,000, in 2002-03, 2003-04, and 2004-05, respectively. The City points out that decreasing revenues and escalating health care costs are the major causes of its financial problems.

Second, the City notes that, under its proposals, the wage rates of the patrol officers in the City will continue to be in their historic location in the middle of distribution among the comparables. The City notes that, although the data on the comparables are not as relevant as one might like, because the wage adjustments in the comparables were negotiated before the decline in the state and local economies, the most common increase for 2002 and 2003 is 3%. The City's LBO is 3%, 3%, and 2%, while the sergeants received 3%, 2.5%, and 2.5%.

The City also notes that its patrol officers are paid well relative to the City's state equalized value per person. While the City ranks 6th among the comparables in SEV per person, its relative wage rank is 3rd or 4th. The officers also make 104% of the median household income in the county.

Overall, the City argues that it has long attempted to keep its officers well paid. The City argues that it's LBO will continue to maintain a well-paid police force even in the situation of the City's fiscal difficulties.

Position of the Union

The Union notes that in 1999, the City was approximately \$400 above the average. The City was \$300 above the average in 2000, and \$73 above the average in 2001. The Union notes that, although it has decreased its proposal from 5% each year to 4%, 3.5%, and 3.5%, it believes that equity requires that the patrol officers maintain their ranking in the distribution of comparables. The Union notes that increase of only 3% would maintain its rank but increase the actual differential vis-à-vis the comparable cities ranked above it.

The Union argues that is not attempting to improve its situation. Rather, it is simply attempting to maintain its status vis-à-vis the comparables.

Discussion

Focusing first on ability to pay, the City has made a strong case that it expects to be experiencing a difficult financial situation during the life of the contract (Tr. 150-63; City Exs. 4-5). The record establishes that the City projects deficits of \$314,000, \$109,000, and \$468,000, in 2002-03, 2003-04, and 2004-05, the three years of this agreement (Tr. 150-63; City Exs. 4-5). This evidence must be taken into account, and supports wage moderation.

At the same time, the panel is aware that a properly paid police force with high morale is essential to a well-functioning municipality. Regarding external comparability, the record

establishes that the patrol unit has fallen behind the external comparables. In 1996, the base wage of the patrol unit in the City was \$793 above the mean base wage of the external comparables (City Ex. 9). In 1997, the base wage of the patrol unit in the City was \$ 781 above the mean base wage of the comparables (City Ex. 9). From 1998 to 1999 to 2000, this difference in favor the City's patrol officers declined to \$413, then to \$376, and then to \$367 (City Ex. 9; Un. Ex. 1, Tab 4). By 2001, the last year for which all of the comparables have established base wages, the differential had declined to \$73. Although as the City points out, the officers remain in the middle of the distribution, their wage rate relative to the mean of the external comparables has continued to decline. The declining base wage position of the City's patrol officers relative to their historic position among the comparables must be taken into account through the factor of comparability. In addition, historical wage differentials are also relevant to factor h, other factors.

Turning to the internal comparables, the record establishes that the base wage percentage increases in the sergeants unit for 2002, 2003, and 2004 were, respectively, 3%, 2.5%, and 2.5% (Jt. Ex. 2, p. 33).⁵ This totals 8% in increases, 8.21% over the life of the agreement with compounding. The current firefighter and public works agreements terminate in 2004. For 2002 and 2003, the increases were 2% and 2.9% for the firefighters and 3% and 3% in the public works units (Jt. Ex. 3, p. 31; Jt. Ex. 4, p. 31).

Turning to the external comparables, the record establishes that the mean base wage increase for 2002 for the six jurisdictions that have settled is 3.3%.⁶ For the five jurisdictions that

⁵ In rendering this award, a majority of the panel is aware that this award may trigger an additional increase for the sergeants on July 1, 2002 associated with the 14% wage differential provision in the sergeants contract (Jt. Ex. 2). Such an increase will result in a percentage increase for the sergeants for 2002 that is larger than the 3% increase in the base wage included in the sergeants agreement. The panel is unable to address this, however, as its authority is limited to the patrol unit. Moreover, the larger the percentage increase for the patrol unit, the larger the increase for the sergeants unit in order to maintain the differential.

⁶ The six comparables that have determined wage increase for 2002 are Alpena, Big Rapids, Ludington, Marquette, Menominee, and Mt. Pleasant (Jt. Exs. 5-12).

have settled for 2003, the mean base wage increase is 3.6%,⁷ and for the two jurisdictions that have settled for 2004, the mean base wage increase is 3%⁸ (Jt. Exs. 5-12).

Based on the foregoing, it must be concluded that, overall, the base wage increases for the internal comparables for 2002 and 2003, the two years for which base wage increases can be determined for at least half of the comparables, are less than the base wage increases for the external comparables for these years. This suggests that the City and the other three bargaining units, one of which is a law enforcement unit, have recognized that the City is in some financial difficulty with respect to the factor of ability to pay, and that wage moderation is important.

Taking the foregoing into account, a majority of the panel has determined that it will award the City's wage LBO for 2002 and 2004, and the Union's wage LBO for 2003. This will result in a base wage increase of 3% effective July 1, 2002, a base wage increase of 3.5% effective July 1, 2003, and a base wage increase of 2% effective July 1, 2004. The increases total 8.5% over the life of the contract, 8.7% with compounding. This is a higher percentage base wage increase than that received by the sergeants, a recognition that the base wage of the patrol officers relative to the external comparables has declined. For 2002 and 2003, the increases of 3% and 3.5% are higher than the base increases for the firefighters and public works units. Again, this acknowledges the declining base wage of the patrol officers relative to the external comparables.

The modest increase of 2% effective July 1, 2004 acknowledges that the City's projected budget deficit for 2004-05 is \$468,000 (City Ex. 4). This is equal to the combined deficits of the two previous years.

⁷ The five comparables that have determined wage increases for 2003 are Alpena, Ludington, Marquette, Menominee, and Mt. Pleasant (Jt. Exs. 5-12).

⁸ The two comparables that have determined wage increases for 2004 are Alpena and Mt. Pleasant (Jt. Exs. 5-12).

Conclusion on Wages

A majority of the panel finds that an award of the City's LBO on wages for 2002-03 and 2004-05 and the Union's LBO on wages for 2003-04 is most consistent with the statutory factors.

Award on Wages

July 1, 2002- June 30, 2003

The last, best offer of the City on wages for July 1, 2002 - June 30, 2003 is accepted. The last, best offer of the Union on wages for July 1, 2002- June 30, 2003 is not accepted.

July 1, 2003- June 30, 2004

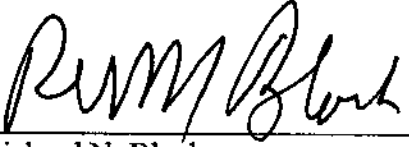
The last, best offer of the Union on wages for July 1, 2003 - June 30, 2004 is accepted. The last, best offer of the City on wages for July 1, 2003- June 30, 2004 is not accepted.

July 1, 2004- June 30, 2005

The last, best offer of the City on wages for July 1, 2004 - June 30, 2005 is accepted. The last, best offer of the Union on wages for July 1, 2004 - June 30, 2005 is not accepted.

SIGNATURES ON ALL AWARDS

August 28, 2003
Date



Richard N. Block
Impartial Arbitrator and Panel Chair

August 28, 2003

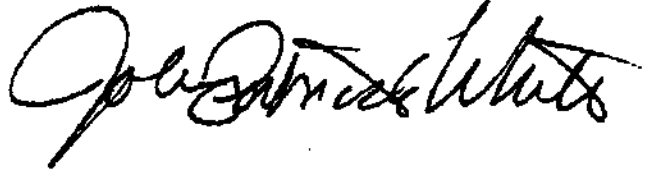
Date



Thomas Kreis*
POLC Delegate

August 28, 2003

Date



John Patrick White**
City Delegate

* Concurs on all awards to Union and dissents on all awards to City.

**Concurs on all awards to City and dissents on all awards to Union.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CASE NUMBER: L02 A-5004

Amendment to Opinion and Award in the matter of the Act 312 Arbitration between

City of Sault Ste. Marie

- and -

The Police Officers Labor Council

| | |
|----------------------------------|----------------------------|
| DATE OF ACT 312 PETITION: | August 20, 2002 |
| DATE PANEL CHAIR APPOINTED: | September 18, 2002 |
| DATE OF PRE-HEARING CONFERENCE: | November 12, 2002 |
| DATE OF HEARING: | April 22, 2003 |
| LOCATION OF HEARING: | Sault Ste. Marie, Michigan |
| DATE LAST BEST OFFERS EXCHANGED: | May 14, 2003 |
| DATE BRIEFS FILED: | June 23, 2003 |
| DATE RECORD CLOSED: | June 26, 2003 |

ARBITRATION PANEL:

Richard N. Block, Neutral Chair
Thomas Kreis, Union Delegate
John Patrick White, City Delegate

APPEARANCES:

For the Police Officers Labor Council

Ms. Jessica A. Bray, Attorney, Green, Weisse, Rettig, Rademacher, Clark & Bray
Mr. Thomas Kreis, POLC
Officer Herbert Henderson, City of Sault Ste. Marie Police Department
Officer Thomas R. Swanson, Union Steward
Officer Derek S. O'Dell, Union Steward

For City of Sault Ste. Marie

Mr. Steven J. Cannello, Attorney, Moher & Cannello
Mr. J. Patrick White, Attorney, Varnum, Riddering, Schmidt & Howlett
Mr. Spencer Nebel, City Manager
Mr. John Boger, Finance Director
Chief Lou Murray, City of Sault Ste. Marie Police Department

BACKGROUND TO AMENDMENT TO AWARD

On August 28, 2003, the arbitration panel issued the award in this matter. By e-mail message dated September 3, 2003, the City Delegate requested that he be permitted to amend the award by writing a dissenting opinion. The panel granted this request.

DISSENTING OPINION OF THE CITY DELEGATE

The City's delegate issues a specific dissent to the discussion and reasoning of the panel majority on the vacation issue. The panel concludes that ability to pay can be given little weight by making the assumption that the current age distribution of patrol officers is representative of the historic age or seniority distribution of the patrol officers. The fact that no current officers have 20 or more years of service is not a basis to assume that officers in the future will not achieve that level of seniority. To the extent this assumption is used to support the award, it is unsupported and in contravention of our statutory mandate.

September 19, 2003

John Patrick White
City Delegate