STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the matter of Act 312 Arbitration between:

CITY OF CITY OF BLOOMFIELD HILLS	Case No. D02 A-0009
Employer,	Arbitration Panel:
and	Jerold Lax, Chairperson Frank Klik, Union Delegate
POLICE OFFICERS LABOR COUNCIL	Steven H. Schwartz, Employer Delegate
Union.	

Appearances:

For the Employer:	For the Union:
Steven H. Schwartz, Esq. 31600 W. 13 Mile Road Suite 125 Farmington Hills, MI 48334	Peter P. Sudnick, Esq. 675 East Big Beaver Suite 105 Troy, MI 48083

OPINION AND AWARD

I. Factual background

This arbitration proceeding under Public Act 312 of 1969 (MCLA 423.231 et seq) involves the City of Bloomfield Hills (hereinafter "City") and the Police Officers Labor Council (hereinafter "Union"), representing some 20 public safety officers in the City's Public Safety Department which provides both police and fire services to City residents. After

expiration of the parties' prior collective bargaining agreement on June 30, 2002, the parties successfully negotiated all matters to be included in a new collective bargaining agreement for the period July 1, 2002 – June 30, 2005 except the nature of the pension system. The Union desired that the status quo be maintained, namely a defined benefit plan for all unit employees with, among other features, a multiplier of 3%. The City, while agreeing that the defined benefit plan be maintained for all unit employees hired prior to January 1, 2004, desired that employees hired on or after that date participate instead in a defined contribution plan.

A formal hearing, restricted to the pension issue, was held on October 20, 2003. The parties stipulated that the following cities be regarded as comparables for purposes of evaluating the positions of the parties; Grosse Pointe Farms, Grosse Pointe Woods, Grosse Pointe Shores, Grosse Pointe Park, Grosse Pointe, Farmington, Fraser, Beverly Hills, and Berkley. Written briefs were submitted after the hearing concluded.

The following decision summarizes the conclusion of the panel.. All panel members are in agreement that this award shall be regarded as timely under Act 312. In rendering this award, the panel has adhered to the directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable.

(1) The lawful authority of the employer;

(2) Stipulations of the parties;

(3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs;

(4) 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.

(5) The average consumer prices for goods and services, commonly known as the cost of living;

(6) 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;

(7) Changes in any of the foregoing circumstances during the pendence of the arbitration proceedings;

(8) 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 sector or in private employment.

Further, as the pension issue is agreed by the parties to be economic, the panel has adhered to the directive of Section 8 of the statute that it adopt the best offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9. The panel notes, however, that each Section 9 factor need not be accorded equal weight. *City of Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980).

II. Resolution of Disputed Issue.

As indicated previously, under the expired collective bargaining agreement, unit members participated in a defined benefit pension plan which included, among other things, a 3% multiplier. The Union's final offer is that the status quo be maintained. The City's final offer is that the status quo be maintained with regard to employees hired prior to January 1, 2004, but that employees hired on or after that date participate in a defined contribution plan with the employees and employer annually contributing, respectively, 5% and 15% of base wage.

The City, in support of its position that the status quo be modified, argued vigorously that its agreement in 1999 to increase the multiplier from 2.5% to 3% had been a mistake, which had come about largely as a result of a now-departed City Manager having misinformed

the City Council as to the prevalence of a multiplier of this magnitude in other communities and as to the likelihood that an arbitration panel would require such a multiplier if the City did not voluntarily include it in its contract with the Union. Beyond this historical explanation of the terms of the expired agreement, the City contends that the defined benefit plan has resulted in the City's pension fund being seriously underfunded, and that replacing the defined benefit plan with a defined contribution plan, at least for new employees, will enable the City not only to administer its finances with a greater degree of predictability, but will enable the City to reduce the likelihood that underfunding will significantly increase. The City also suggests that the adoption of a defined contribution plan will have advantages for employees as well as for the City, notably the portability of pension funds if an employee seeks employment elsewhere and the ability of employees, under a defined contribution plan, to manage their own investments.

The Union contends that whatever the accuracy of the City's historical explanation of the origin of the features of the benefit plan in the expired contract, the City should at the time have sought the necessary factual, financial, and legal information to avoid what in retrospect it regards as a mistake. The Union also argues that it had agreed to relinquish a wage increase in 1999 in exchange for the increased multiplier. The Union finally urges that its last offer is more consistent with statutory factors, in particular the City's ability to pay and the pension benefits available in comparable communities. With regard to the suggested advantage of a defined contribution system to employees, such as portability, the Union notes that under the City's offer, an employee would not be able to withdraw City contributors to the pension system until he or she had been employed for 10 years. The Union also suggests that creation of a two-tiered system, where one group of unit members worked under a defined benefit plant

while another worked under a defined contribution plan, would be demoralizing to the work force and therefore inconsistent with public welfare.

While the evaluative factors of Act 312 do not, by their terms, include correction of mistakes a party may have made in prior negotiations, and while the historical background of the adoption of the 3% multiplier by the parties may therefore be somewhat irrelevant, it is also true that if present circumstances dictate modification of the status quo in light of the statutory factors, a 312 panel may decree such a change. It is also true that the record supports the City's assertion that its unfunded accrued pension liability and its required annual contributions increased significantly since 1999, the year the multiplier rose from 2.5% to 3%, although the extent to which the 3% multiplier accounts for these increases is not entirely clear. It is understandable that, confronted with this situation, the City would seek to alter the pension plan in a manner which provides greater certainty as to the amount of contribution required. Nonetheless, for reasons set forth in greater detail below, this majority of the panel is of the view that the Union's final offer best comports with statutory requirements.

It should first be noted that the present City Manager acknowledged during the hearing that while a defined benefit plan may impose certain difficulties, the City does not claim that it is unable to pay the benefits in question. While the City's ability to pay is not the exclusive determinant of the result, a consideration of both external and internal comparables lends support to the conclusion that the status quo should be maintained.

The City understandably places great weight on the fact that none of the nine external comparables utilizes a multiplier as high as 3%, the highest (Berkley) being at 2.8%, and the plurality being at 2.5%. It is also noteworthy, however, that none of the comparable communities has adopted a defined contribution plan, and all appear to use a defined benefit

plan. A city witness testified that "there are many more DB plans than DC plans" in use for police and fire employees.[1] While City evidence suggested that only 3.48% of surveyed municipalities use multiples of 3% or greater, the same evidence indicated that 54.1% of the surveyed municipalities use a multiplier of between 2.5-2.9% with no indication as to the distribution within that scope. The fact that all the external comparables use a defined benefit plans, albeit with lower multipliers, inclines the majority of the panel to conclude that the comparables do not support a fundamental alternation in the type of plan involved. While there is of course no guarantee that if the City had proposed reducing the multiplier it would have succeeded in obtaining such a reduction either through negotiation or arbitration, such an approach would, in the view of the panel majority, have been more consistent with what is found in comparable communities. It might also be noted that although the City's multiplier exceeds that found in comparable communities, the City also limits the maximum pension to 80% of final average compensation, thereby imposing a cap on the amount of any pension despite the fact that the 3% multiplier would enable an employee to approach this cap more quickly.

Internal comparables, while presenting some support for the position of each party, do not alter the majority's view as to the ultimate result in this case.[2] The City and the Teamsters Union, according to the record, did agree to a contract extension which included a defined

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1 Arbitrator St. Antoine, in City of Livonia and Livonia Fire Fighters Union (Case No. D96 I-2157), an Act 312 decision appended to the City's brief, did cite an article indicating increased use of defined contribution plans.

2 The City appended to its brief the 312 award in City of Troy and Police Officers Labor Council (Case No. D 98 A-0040), in which the undersigned chairperson served as chairperson of the panel, in support of the proposition that it is appropriate to award a defined contribution plan to achieve consistency with internal comparables. While such consistency is an appropriate consideration, the award in the Troy case dealt only with using a defined contribution plan for employees who were already functioning under such a plan in another city department before moving to the police unit.

contribution pension plan for new hires for public works employees. The contract covering Public Safety sergeants, however, provides a defined benefit plan with a 3% multiplier, and will remain in effect until June, 2004.

The Union's contention that morale and public safety would suffer by adopting a two-tiered system, with a defined benefit plan for existing employees and a defined contribution plan for new employees, is difficult to assess empirically and is, at present, a matter of some controversy in several employment contexts. The record, while providing some support for the Union's contention that the agreed terms of the new contract will provide savings to the City in the area of health insurance, does not develop the contention in any detail. It is nonetheless the view of the panel majority, for the reasons earlier stated, that the Union's final proposal on the pension issue should be awarded, with the contract to contain the following language:

Retirement Benefits

Employer will provide retirement benefits coverage for all employees under Group No. 6302-2 in the Michigan Municipal Employees Retirement System Plan as follows:

A. Adopt non-standard FAC multiplier of 3% (B-4) provided, however, the Employer will pay the initial $6,000.00 non-standard plan administration fee and will remain responsible to pay any and all annual administrative costs associated with the adoption of such benefits.

B. BenefitE-2;

C. RS-50;

D. Benefit F-50/25;

E. FAC-3.

Panel member Klik concurs. Panel member Schwartz dissents as follows:

The majority Opinion and Award discusses, but avoids ruling on the central issue in the case – that the Public Safety Officers only received the 3.0 multiplier as a result of the former

City Manager's misleading the City Commission as to the cost and reasonableness of a 3.0 pension multiplier. The Union in its Brief acknowledges this history and the record is undisputed that the City Manager "negotiated" this benefit only months before he also received this benefit and then retired.

The statutory factors do not support the majority Opinion's reasoning. The majority Opinion acknowledges that the 3.0 multiplier has significantly hurt the financial solvency of the Retirement System. It ignores the undisputed fact that no comparable community offers a 3.0 multiplier and the undisputed record that less than 4.0% of all law enforcement officers in the State have a 3.0 multiplier. It also ignores that the record that the City has taken steps to correct its error by eliminating the 3.0 multiplier for new hires in the Teamster's bargaining unit and all newly hired non-union employees. It further ignores the undisputed record that the City has foregone any infrastructure improvements for two years and has made significant budget reductions, including reducing the Public Safety Department by attrition. Finally, it ignores the undisputed testimony that the City's offer would provide the new Public Safety Officers with a generous pension.

The majority's Opinion perpetuates a fraud upon the City by extending a 3.0 multiplier indefinitely for all new hires.

This award is issued 4/7, 2004.

Jerold Lax, Chairperson

Frank Klik, Union Delegate

Steven N. Schwartz, Employer Delegate