

In the Matter of Act 312 Statutory Arbitration between:

CITY OF MUSKEGON,  
Employer

-and-

POLICE OFFICERS LABOR COUNCIL,  
Labor Organization.

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MERC Case No. L03 A-7006

**PANEL'S FINDINGS, CONCLUSIONS, AND ORDER**

Before an Act 312 Panel consisting of:

BENJAMIN A. KERNER, Chair  
JOHN C. SCHRIER  
MARK P. DOUMA

Dated: October 18, 2004

## INTRODUCTION.

Pursuant to 1969 Public Act 312, as amended by 1972 Public Act 127, M.C.L.A. 423.231 et. seq., on March 18, 2004, the Michigan Employment Relations Commission appointed the undersigned Neutral Chair to resolve a dispute between the parties as to the terms and conditions of work for employees in the police officers' bargaining unit.

The parties had a pre-hearing conference with the Neutral Chair on April 27, 2004. At that conference the scope of the issues in dispute was reviewed. The parties agreed to a set of comparable communities, to be used in presenting data at the anticipated hearing. The parties also agreed on a number of procedural matters related to the conduct of the hearing. The parties have also filed their waivers as to the timely start of hearing and those are a matter of record.

On September 1, 2004, the Neutral Chair was informed by conference telephone call with the parties' representatives that the parties had reached substantial agreement on all issues in dispute. The parties wished to express their agreement through a stipulated award. Accordingly, the scheduled September 23 and 24<sup>th</sup> hearings were adjourned. The Neutral Chair set a schedule for concluding the case by stipulation and the parties have substantially adhered to that schedule.

It should be noted that the mechanism of presenting the Panel's findings, opinions, and order by way of a stipulated set of contract changes is expressly anticipated by 1969 Public Act 312. Therein, at Section 9, M.C.L. 423.239, the statute sets forth the grounds on which the arbitration panel shall base its findings. Prominently featured as the second item is, "The stipulations of the parties." Thus, it is entirely legitimate and specifically authorized for an Act 312 arbitration panel to base its findings, conclusions and order on the stipulations of the parties. In the following 3 pages the stipulations of the parties as to the issues in dispute are set forth. In setting forth these stipulations the Neutral Chair has established that both parties waive their right to hearing in this matter; both parties waive their right to present last best offers (other than the stipulations); and both parties waive their rights to brief the issues in dispute. By signing this Award, the parties' representatives on behalf of the City of Muskegon and the Police Officers Labor Council confirm their waiver of these statutory rights.

Furthermore, it is the intent of the parties, as established by item 8 below that all the issues not referenced in the stipulations which follow are to be considered withdrawn from the consideration of the Panel. Thus, the 8 stipulations which follow constitute the entire agreement regarding issues in dispute. The parties' representatives confirm, by signing this Award, that the 8 stipulations which follow are the entire agreement with respect to issues in dispute.

The parties stipulate to the following contractual changes:

1. Section 14 (Working Hour and Schedule). The parties have agreed to a change in the schedules to reflect an 8.5 hour shift. The agreement is memorialized in a Tentative Agreement dated December 8, 2003. The parties shall revise various contract provisions to correspond with the Tentative Agreement.
2. Section 16.1 (Seniority). The contract language shall read as follows:

16.1 Each newly appointed police officer shall serve a one (1) year probationary period, which may be extended for up to three (3) months in the director's sole discretion. If said person is discharged from employment during said probationary period, there shall be no recourse to the grievance procedure as to said discharge and said action shall be deemed final.

3. Section 23.1 (Insurance). The contract language shall read as follows:

#### 23.1 HEALTH INSURANCE, EMPLOYEES AND DEPENDANTS

The Employer has in effect, covering each of the employees covered by this Agreement and his/her dependents, a group hospital-medical insurance and major-medical plan administered by a health care administrator. During the life of this Agreement, the same insurance, or insurance comparable to that presently in effect (as of 1/1/89), will be maintained by the Employer on behalf of each employee, except as modified herein. During the life of this Agreement, each employee shall receive the option of enrolling in a Health Maintenance Organization. The Health Maintenance Organization's benefits are not within the control of the employer and, as such, subject to change by the Health Maintenance Organization. The group hospital major medical health plan (City plan) shall include dependents, and have a major medical cap of \$100,000 per covered individual. Effective January 1, 1995, the major medical cap shall increase to \$150,000 per covered individual. Effective \_\_\_\_\_ (date of award), 2004, the major medical cap shall increase to \$300,000 per covered individual.

Children required to be supported by the employee by court order covering the employee are included as dependents under the health care plan regardless of residence of the said child.

#### PREMIUM CO-PAY

Effective January 1, 2002, the Employer shall pay the full cost of health insurance, as long as premiums do not exceed \$400 per month. To the extent that the premiums exceed \$400 per month, the balance of the premium is to be paid by the employee to a maximum of \$10 bi-weekly. Effective \_\_\_\_\_ (date of award), 2004, the maximum premium co-pay shall be \$20 bi-weekly.

#### PRESCRIPTIONS

The City shall maintain a prescription drug plan with a drug rider providing for a \$10 co-pay for generic drugs, and \$20 for name brand. Effective \_\_\_\_\_ (date of award), 2004, the prescription drug plan shall have a drug rider of \$20 co-pay for generic drugs, and \$40 for name brand. However, if there is no generic drug available, the co-pay shall be \$20 for brand name drugs. For employees in the HMO, the HMO shall determine the co-pay.

The Employer may offer prescription drugs by mail order, with employees encouraged to use such benefit.

During the life of this agreement, the same group hospitalization and major medical insurance or insurance comparable to that in effect as of January 1, 1995 shall be maintained by the Employer on behalf of employees who retire under the age of 65. Upon attaining age 65, the employee's coverage shall be changed to a Medicare supplement.

#### 23.8 RETIREES, SEPARATION DATE AFTER 1/1/04

For retired employees who retire on or after \_\_\_\_\_ (date of award), 2004, the Employer shall maintain a prescription drug plan with a \$20 co-pay for generic drugs and a \$40 co-pay for brand name drugs for and on behalf of employees within this bargaining unit and their spouses. Under this coverage, if there is no generic drug available, the co-pay shall be \$20 for brand name drugs. This coverage shall terminate upon the death of the retiree and their spouse.

Section 23.8 and 23.9 shall be re-numbered to be sections 23.9 and 23.10.

#### 23.11 COVERAGE

For employees who retire on or after September 1, 2004, the City's obligation to provide retiree health insurance, and prescription is limited to the retired employee and spouse of the retiree at the time of retirement.

#### 4. Section 25 (Military Leave). The contract language shall read as follows:

25.5 Members who are called to active duty with the Armed Forces of the United States shall have the rights and duties as prescribed by the City of Muskegon Civil Service Rule IX, Section 2(2), "Military Leave of Absence" rule as it may be amended from time to time. The members of this unit are entitled to the greater of the benefits provided by the "Military Leave of Absence" rule, this contract, City Commission policy or federal law.

#### 5. Section 34 (Pensions). The contract language shall read as follows:

34.1 A member who retires on or after January 1, 1986 pursuant to Section 12 or Section 13 of the Policemen and Firemen Retirement System Ordinance may elect to be paid a refund of all or part of the accumulated contributions standing to the member's credit in the reserve for employee contributions at the effective date of retirement. A member who terminates City employment with a pension payable pursuant to

Section 14 of the Policemen and Firemen Retirement System Ordinance may elect to be paid a refund of all or part of the member's accumulated contributions on the effective date of retirement. Provided, however, that any member who withdraws accumulated contributions prior to the effective date of retirement shall forfeit any right to a pension. Upon election of this refund provision, the retirant's straight life pension shall be reduced by an amount which is actuarially equivalent to the refunded accumulated contributions. The actuarial equivalent amount shall be computed on the basis of the mortality table, adopted by the Board of Trustees, and the interest rate, computed using the same actuarial assumptions that are used to compute the City's annual pension contribution, in effect at date of retirement. The retiring member may elect option A or option B, as provided for in the ordinances, in conjunction with the refund provision of this paragraph.

34.9 A member who retires on or after December 30, 2006, shall be entitled to a level straight pension equal to 2.75% of the member's final average compensation multiplied by the member's credited service, not to exceed seventy-five (75%) percent of the member's final average compensation. A member who elects to receive a deferred retirement is not eligible for this benefit and shall receive a level straight life pension equal to 2.5% of the member's final average compensation multiplied by the member's credited service.

34.10 Any member who has attained voluntary retirement age and has 25 or more years of credited service in force may retire pursuant to Section 62-311 of the City of Muskegon code of Ordinances. For members retiring prior to December 31, 2006, the voluntary retirement age shall be 53. For members retiring on or after December 31, 2006 the voluntary retirement age shall be 51.

Section 34.9 shall be renumbered 34.11 and Section 34.10 shall be renumbered 34.12.

6. Appendix A (Wages). The wage schedule shall be revised to reflect an annual wage increase of 2% on January 1, 2004, January 1, 2005, and January 1, 2006. Retroactive wage payments shall be made as soon as administratively feasible after the award.
7. Section 39 (Durational and Renewal). The contract language shall read as follows:

The contract will be reopened, at the City's request, within six (6) months for the limited purpose of negotiating a substantive modification to the retirement plan (including the possibility of a defined contribution plan instead of the present defined benefit plan) for employees hired after March 1, 2005. If the parties cannot agree on the modification to the retirement plan, the issue shall be subject to interest arbitration.
8. This stipulation resolves all outstanding contractual issues and issues not covered by this Stipulated Award are deemed withdrawn.

## ORDER

The Panel adopts and incorporates as its Order the language on all 8 issues specified above, as written out above.

Benjamin A. Kerner

Benjamin A. Kerner  
Neutral Chair

John C. Schrier

John C. Schrier  
Employer Delegate

Mark P. Douma  
/D.K.

Mark P. Douma  
Union Delegate