

4/11/86

STATE OF MICHIGAN
Michigan Employment Relations Commission
Statutory Arbitration

In the Matter of:

Arbitration between the
CITY OF EAST LANSING
-and-
COMMAND OFFICERS ASSOCIATES
OF MICHIGAN

Pursuant to Act 312
P.A. of 1969, as amended,
MERC CASE L85-B86

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

OPINION AND AWARD

PANEL MEMBERS

Edward L. Cushman, Impartial Chairman
Theodore S. Tierney, City Delegate
William Birdseye, Union Delegate

APPEARANCES

For the City:

Theodore J. Tierney, Vedder, Price, Kaufman
& Kammholz

For the Union:

William Birdseye, Advocate
Ann Maurer, Labor Economist

BACKGROUND

The Chairman of this Panel was appointed by the Michigan Employment Relations Commission by letter dated July 16, 1985. At a meeting between the parties and the Impartial Chairman held September 30, 1985 at the City Hall, East Lansing, hearing dates were scheduled and subsequently re-scheduled for November 15, 1985, January 9, 1986 and January 28, 1986. The transcript was received subsequent to each of the hearings. Last best offers were filed by the parties February 7, 1986. Post-hearing briefs, due March 14, 1986, were received.

The Panel met March 26, 1986.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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RECEIVED

East Lansing City of

BARGAINING HISTORY AND STATEMENT OF THE ISSUE

The Agreement between the City of East Lansing (hereinafter referred to as the City) and the Command Officers Association of Michigan (hereinafter referred to as the Union) effective July 1, 1983 to June 30, 1985 (Joint Exhibit I) had by mutual agreement attached thereto a letter of understanding which reads as follows:

"If the Command Officers Association of Michigan should prevail on separating the E-2 retirement benefit for Command Officers only, or if joint bargaining is required or permitted due to demands of the non-supervisors on the subject of the E-2 benefit, the Command contract may be re-opened for purposes of negotiation on wages, differential between ranks, employer-employee contribution to the retirement system and E-2 benefits to be effective July 1, 1984 (or later)."

Subsequently, the Municipal Employees Retirement Board, based on an Attorney-General's Opinion ruled that it was possible to separate the retirement program of the Command Officers. Negotiations between the City and the Union reached impasse with respect to the Union's demand that the E-2 escalator be granted to Command Officers represented by the Union.

The ISSUE before this Panel presented by the Union in its petition for arbitration to the Michigan Employment Relations Commission is:

THIS IS A SECOND YEAR REOPENED FOR CONTRACT TERM 7-1-83 THROUGH 6-30-85

1. Pension E-2 escalator

ALL CONTRACT LANGUAGE AND LETTERS OF AGREEMENT TO CONTINUE IN EFFECT

LAST BEST OFFER

A. The Last Best Offer of the City is appended hereto as Appendix A.

B. The Last Best Offer of the Union is appended hereto as Appendix B.

The City's final offer stated in Appendix A is as follows:

"Unless, within 20 calendar days of the arbitrator's award, the Union notifies the City in writing that it rejects the E-2 retirement benefit, effective on and after July 1, 1986, the E-2 benefit shall be placed in effect provided the cost of the E-2 benefit is fully paid by the officers through payroll deduction. This award, including the rate of officer contribution, may be changed through negotiations and by mutual agreement of the parties either before or after the July 1, 1986 effective date provided herein."

The Union's final offer in Appendix B is as follows:

Add language to the contract: 31.2. "In addition to all other retirement provisions, bargaining unit employees shall receive the E-2 escalator benefit. The Employer shall pay all costs for such benefit."

Pension, E-2 Escalator to be effective June 30, 1985.

APPLICABLE STATUTORY PROVISION

The most pertinent provision of Act 312 of the Public Acts of 1969, as amended, under which these proceedings are held is Section 9 which reads as follows:

"Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the 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.
- (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."

Section 8, inter alia, provides:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factor prescribed in Section 9.

DISCUSSION

The final offers of the City and the Union (Appendices A and B) make clear that both parties are agreeable to the E-2 Escalator, but disagree as to whether the City or the employees should pay for the increased cost of providing the E-2 escalator.

The E-2 Escalator would provide a yearly cost-of-living increase of up to two and one-half percent (2½%), based on the Consumer Price Index, for all employees represented by the Union. The parties disagree as to the effective date of the E-2 Escalator, if awarded by the Panel. The City proposes that the benefit take effect on or after July 1, 1986. The Union proposes an effective date of June 30, 1985.

In applying the applicable statutory provisions, particular attention is directed to Section 9(d).

Section 9(d) provides:

"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.

The City has selected as comparable cities Battle Creek, Bay City, Burton, Holland, Jackson, Kentwood, Midland, Muskegon, Portage, Port Huron, and Wyoming. These have been determined to be comparable cities in three previous interest arbitration cases in which the City was involved.

Although the Union questions these "comparables", the Panel accepts these based on the evidence presented in the hearings before this Panel. None of these "comparable" provide the E-2 escalator (testimony by Ann Maurer, page 104 transcript, Proceedings November 15, 1985). Since the question of providing the E-2 escalator is not an issue, and comparability of wages, hours and conditions of employment were not an issue, there seems to be no need to pursue comparisons with employees of these cities at greater length.

There is need to discuss the application to the instant case of comparisons with other employees of the City of East Lansing performing similar services. Although the record of testimony and exhibits demonstrates that no City employee is covered by an E-2 provision, the Union argues that its final offer should be approved because in its opinion internal comparisons with certain other city employees (police, civilians, firefighters, police officers, non-union employees and public works employees) justify the E-2 Escalator being paid by the City.

In support of its position, the Union argues that the police supervisors pay five percent (5%) of their compensation for identical pension benefits whereas the police non-supervisors have not paid the five percent (5%) since January, 1982. The Union further argues that the fact that the police sergeants receive a seventeen percent (17%) pay differential and the lieutenants a twenty-five percent (25%) pay differential over police officers, that this percent differential

is contractual and traditional in the compensation of supervisory personnel in relation to the employees supervised.

Both sides recite the history of collective bargaining from July, 1981. A significant element was that in 1982 the non-supervisory police officers negotiated the entire payment for their retirement benefits by the City. The police supervisors did not. The City claims that an equivalent amount was paid in wages. This was not disputed by the Union and Union Exhibit 23 indicates that the police supervisors received a 5% compensation increase as did the police officers in January, 1982. The City picked up the 5% pension contribution at that time for police officers. In July, 1982 the police supervisors received an increase of 8% while the police officers received 2%.

The same union Exhibit 23 reports that the police supervisors were 32% ahead of July, 1981 in wages as of July, 1985 (while the Union and the City were negotiating and are still negotiating on a contract to replace that expired June 30, 1985) compared with police officers who were 26.4% ahead of July, 1981. The Police officer's rate as of July, 1985 resulted in part from its completed contract. The police supervisors received no increase in July, 1985 because the contract is still being negotiated. It can be assumed that the police supervisors will receive increases since Union Exhibit 23 reports a 2.5% offer.

Comparison with other employees of the City indicates that none have the E-2 benefit. The police supervisors and non-supervisors and the firefighters have the B-2, waiver 47-F retirement plan which is better than the C-1, waiver 47-F plan provided for other City employees (City Exhibit 16).

Further, the comparison of wage increases reports that police supervisors have fared better than other categories of City employees from July, 1981 to January, 1985 (Union Exhibit 23 and Table, pg. 18, City Post-hearing Brief).

<u>Bargaining Unit</u>	<u>*</u>	<u>July, 1981 to July, 1984</u>	<u>July, 1981 to January, 1985</u>
Police Civilians	a	106.6	110.0
Police Officers	b	112.9	116.3
Fire Fighters	b	123.8	123.8
Public Works	c	107.7	111.3
Non Union	a	111.6	112.1
Police Supervisors	d	124.4	124.4

*

- a Contribute 7.0% toward Social Security
- b Make no contribution
- c Contribute 7.0% toward Social Security and 5.0% toward retirement
- d Contribute 5.0% toward retirement

The Union argues that the effective date of the E-2 program, if ordered by the Panel, should be June 30, 1985 since the contract expired on that date. It is the Union's contention that the Panel's authority is therefore limited to that expiration date. Hence, the Union argues that the effective date of July 1, 1986 contained in the City's Last Best Offer is illegal.

Further, the Union argues that the City's proposal for an employee contribution cannot be granted because in its opinion it was not proposed in the proceedings before the Panel and hence the Panel is without authority to consider it.

OPINION

It is the Panel's opinion that the issue based on the final offers of the parties is whether the City or the employees represented by the Union should pay for the E-2 benefit since both parties agree on the benefit.

On that issue the Panel is of the opinion that the police supervisors fare well in comparison with other communities and with other employees with respect to wages, benefits, etc., as specified

criteria in Section 9(d), the most applicable provision of Public Act 312. Furthermore, as provided by Section 9(g) directing that attention be given to "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings," the Panel takes cognizance of the negotiations between the parties now underway for a contract replacing that which expired June 30, 1985. These negotiations as reported by the parties during the proceedings will improve the wages (2½% having been offered) and provide the parties with the opportunity to consider further any bargainable issues, including E-2, the source of payment and its effective date.

With respect to the question of the effective date of the E-2 the Union's argument that the Panel is without authority to determine any date following the expiration of the contract June 30, 1985 is inconsistent with the position taken by the Union in the hearings (see testimony of Ann Maurer, transcript, proceedings of Friday, November 15, 1985, page 77). The Union "would ask that it be effective on the date of the award, whenever it would be in the future. And this also, we recognize, would apply only to future retirees. The Union is not seeking to make it retroactive or for past retirees," and (page 121, Volume 1, transcript of proceedings of Friday, November 15, 1985) stating that "the Union is not seeking for retroactivity."

With respect to the Union's contention that the City did not propose an employee contribution for E-2 during the hearings, the City's basic argument was that the re-opener provided for in the letter of understanding contemplated bargaining "for the purposes of negotiation of wages, differential between ranks, employer-employee contribution to the retirement system and E-2 benefits to be effective July 1, 1984 (or later)." (Joint Exhibit I).

Indeed, the City in its opening statement argued that "the clear intent, the acknowledged intent of the parties was that the E-2 would be negotiated, but only in the context of wages, differentials, contribution and other key economic items" (pg. 8, transcript of proceedings of Friday, November 15, 1985).

In choosing between the last offers of settlement as mandated by Section 8, the Panel believes that the City's offer "more nearly complies with the applicable factor prescribed in Section 9.

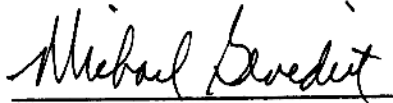
AWARD

The Panel adopts the City's Last Offer and its Award.

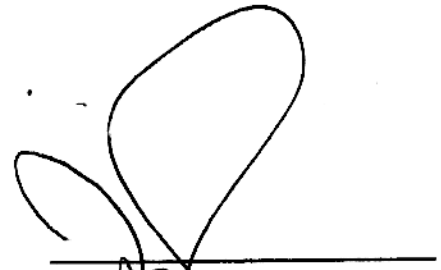
I dissent:



Edward L. Cushman
Chairman



Michael Benedict
City Delegate



William Birdseye
Union Delegate

April 11, 1986

410 Abbott Road
East Lansing, Mi 48823



APPENDIX A

Telephone
(517) 337-1731

February 7, 1986

Mr. Edward L. Cushman
23633 Elmwood Court
Dearborn, Michigan 48124

RE: INTEREST ARBITRATION)
BETWEEN)
THE CITY OF EAST LANSING, MICHIGAN)
AND) ACT 312
EAST LANSING POLICE SUPERVISORS)
REPRESENTED BY THE)
COMMAND OFFICERS ASSOCIATION OF MICHIGAN)

FINAL OFFER

Dear Mr. Cushman:

The City's final offer is as follows:

Unless, within 20 calendar days of the date of the arbitrator's award, the Union notifies the City in writing that it rejects the E-2 retirement benefit, effective on and after July 1, 1986, the E-2 benefit shall be placed in effect provided the cost of the E-2 benefit is fully paid by the officers through payroll deduction. This award, including the rate of officer contribution, may be changed through negotiations and by mutual agreement of the parties either before or after the July 1, 1986 effective date provided herein.

Respectfully Submitted,

Michael Benedict
Director of Human Resources
City of East Lansing

cc: William Birdseye
Ann Maurer
Theodore J. Tierney
Robert Foster

UNION ECONOMIC ISSUE #1

PENSION, E-2 ESCALATOR

PRESENT:

No provision or contract language.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

31.2 In addition to all other retirement provisions, bargaining unit members shall receive the E-2 escalator benefit. The Employer shall pay all costs for such benefit.

Pension, E-2 Escalator to be effective June 30, 1985.