STATE OF MICHIGAN

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

EMPLOYMENT RELATIONS COMMISSION

In the Statutory Arbitration between

CITY OF MIDLAND

-and- MERC No. L02 E-3008

MIDLAND FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1315

FINDINGS, OPINION, AND ORDER OF THE ARBITRATION PANEL

May 27, 2005

Panel:	Maurice Kelman, Impartial Chairman Joseph W. Fremont, Employer Delegate Greg A. Weisbarth, Union Delegate
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Initiation

The Union petitioned for statutory arbitration on March 26, 2003. The Employer answered and counter-petitioned on March 31, 2003. The undersigned was appointed by MERC to chair the panel on May 16, 2003.

Hearings

The proceeding was conducted pursuant to Public Act 312 of 1969, as amended (MCL 423.231 et seq.). Evidentiary hearings were held at the Midland City Offices on December 9, 2003, December 10, 2003, December 11, 2003, December 16, 2003, December 17, 2003, May 12, 2004, May 13, 2004, May 18, 2004, May 19, 2004, May 25, 2004, May 26, 2004, September 15, 2004, October 7, 2004, November 18, 2004, and November 19, 2004. Final offers were submitted on January 18, 2005, and briefs were exchanged on March 28, 2005.

Issues in Dispute

Issues relating to the following provisions of the collective bargaining agreement were presented to the panel for resolution:

Article 6, sec. 3	Sick leave
Article 9, sec. 1	Health insurance
Article 10, sec. 1	Pension
Article 11, sec. 1	Wages
Article 19, sec. 2	Duration

Stipulations of the Parties

At the prehearing conference on June 11, 2003, the parties identified the issues as set out above[1] and entered into the following stipulations:

1. The panel has proper jurisdiction and all statutory time limits are waived.

2. All issues in contention can be characterized as economic.

3. The terms and provisions of the predecessor contract (July 1, 1999 through June 30, 2002) are readopted except as altered by the panel's award.

Interim Rulings

After completion of the evidentiary hearings and before submission of final offers, the panel rendered an interim award on December 28, 2004, on the issue of contract duration. The Union's proposal for a four year term extending from July 1, 2002 through June 30, 2006 was adopted in preference to the Employer's request for a three year contract ending on June 30, 2005. The reasons for the panel's choice were set out in the interim award and are repeated *infra*.

A second preliminary matter was also resolved on December 28, 2004, by the ruling of the panel that the wage proposals for the four years in question would be deemed a unitary issue for last offer purposes, as the Employer urged, rather than as four free-

1 At the point of submitting final offers, the Union dropped proposals relating to dental insurance and a reduction in employee pension contributions (Union Issues #3 and #4).

standing issues as requested by the Union. The panel's rationale was spelled out in the written decision and need not be reproduced here.

Summary of final offers and panel's award

Issue	Union	Employer	Adopted
1. Duration	4 years (7/1/02 – 6/30/06)	3 years (7/1/02 – 6/30/05)	Union
2. Wages	3%/3.5%/3%/3.5%	2.5% each year	Union
3. Rank	FTO: increase base wage by $1500 on 7/1/05 Lt: increase base wage by $2000 on 7/1/05	FTO: status quo Lt: increase by $750 on 7/1/04 and another $750 on 7/1/05	City
4. Health	increase employee contrib. to 3% of base wage on award date; add new plan options.	change employee contrib. to 15% of premium on award date; add new plan options	City
5. Retiree health	status quo (100% city paid after age 50)	reduce City contrib. to 50% for employees hired after 7/1/05 but no prefunding contrib. for them; lower fully paid benefit. age to 46 for pre-7/1/05 employees	City
6. Pension COLA	add 5% (noncompounding) every 5 yrs for post-7/1/05 retirees	5% (noncompounding) at 5, 10, 15, and 20 yrs. for post 1/1/04 retirees	City
7. Pension multiplier	status quo (2.7%)	reduce to 2.525% as of 7/1/02	Union

8. Non-duty pension multiplier	status quo (2%)	reduce to 1.5% as of 7/1/02	Union
9. Employee pension contribution	status quo (7% plus 1% for retiree health prefunding)	raise to 8% as of 7/1/02 and continue 1% for retiree prefunding	Union
10. Sick leave payout	increase to 100% at retirement as of 7/1/05; raise max to 90 days 56-hour employees.	status quo (50% to max of 45 days for 56-hour Employees)	City

Statutory Framework

Resolution of the issues in dispute is governed by Section 9 of Act 312, MCL 423.239:

> [T]he arbitration panel shall base its findings, opinions and orders 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.

Background

The City of Midland is the principal municipality in Midland county, with a current population estimated at 42,500. Its residents to an unusual degree are affluent and well educated, and because Midland is home to three major corporations – Dow Chemical, Dow Corning Corporation, and Midland Cogeneration Venture – the City enjoys an exceptionally strong tax base.

The municipal work force comprises 377 fulltime employees (and a smaller number of parttimers). There are 43 fulltime employees in the Fire Fighters unit. Sister bargaining units are police patrol (36 fulltime), police command (10 fulltime), United Steel Workers (95 fulltime plus parttime), Midland Municipal Employees Association (50 plus parttime), and Midland Municipal Supervisory

Employees (19). Another fifty employees in a variety of job titles are unrepresented.

The last collective bargaining agreement for the Fire Fighters, covering July 1, 1999 to June 30, 2002 was the product of an Act 312 arbitration under the chairmanship of Martin Kotch. In connection with several of the current issues, our panel is being asked to revisit the previous award.

Comparable communities

Both parties accept the comparability of these six municipalities, as they did in the prior arbitration:

Battle Creek
Bay City
Jackson
Monroe
Muskegon
Port Huron

Their lists of other proposed comparables are divergent. The Union tenders four other communities which it had successfully proposed to the Kotch panel:

Dearborn Heights
Madison Heights
Meridian Township
Redford Township

The Employer maintains its opposition to those additions and proposes instead to include the same three cites that the Kotch panel rejected:

Adrian

Holland

Mt. Pleasant

Act 312 provides neither definition nor guidance in identifying "comparable communities." Any number of characteristics could be suggested as a basis for drawing comparisons. Some that spring readily to mind are total population, geographic location, socio-economic profile, size of the municipal work force, size of the bargaining unit in question, property tax base, total revenues, taxing authority. Judged by any single factor, communities may be very similar or grossly dissimilar. But how many points of comparison should be used? Two? Four? More? Also, where is the outer ring of similarity to be drawn? Does a forty percent difference, say, in population or taxable property bespeak comparability or non-comparability? And how many comparison communities are necessary to furnish adequate context for analysis of the bargaining dispute at hand? Five? Ten? Fifteen?

Left to their own devices by Act 312, it is inevitable that the advocates and their *soi-disant* experts will resort to gamesmanship when developing their comparability standards. The selection becomes an exercise undertaken with an eye fixed on the outcome. Each side in this case, for instance, accuses the opponent – with good reason – of "cherry picking" their comparable communities.

The Employer protests the Union's inclusion of three communities in metropolitan Detroit, a region well known for higher wage and benefit packages

than are characteristic of outstate Michigan. The hypocrisy is transparent, says the Employer, when one observes that union counsel never has suggested the use of Midland or other outstate comparables in a Detroit-area arbitration.

The Union in turn established that the City's expert on comparability had never failed to factor in tax base as a measure of "overall economic condition" – until the instant case, when he inexplicably dropped that criterion of comparability.

In defense of its credibility, the Employer retorts that it has consistently advocated the same set of nine comparables for Midland: first in a 1997 wage arbitration that was mooted by the parties' intervening settlement of a 1996-1999 contract; then in the Kotch arbitration for the 1999-2002 agreement; and again in the present Act 312 proceeding. In contrast, the Union did not put forward any tri-county Detroit area comparables in 1997; in 2000 it proposed another eight comparables which the arbitration panel rejected; and now it is embracing the smaller set of ten communities that received the Kotch imprimatur.

The Union responds that *adjudicated* comparables have special authority and should be considered controlling by successor panels. The current chairman is confronted with something he wrote six years ago:

> Because it is advisable to spare future negotiators the complication of recurring disputes over relevant comparables, other Act 312 arbitrators have ruled that the parties' previously adopted *or adjudicated* list of comparables should remain in force in the absence of a demonstrated change in demographics or other relevant features.[2]

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[2] *City of Mt. Clemens –and- P.O.L.C.*, MERC No. D98 A-0038 (emphasis added).

On this principle of arbitral *stare decisis* the Union argues that the ten communities certified by Mr. Kotch as Midland comparables ought to be adopted by the current panel without second guessing or supplementation, and the subject of comparability should be considered closed for now inasmuch as the City failed to show any change in "demographics or other relevant features" in the four years since the last award was rendered.

If that is the terminus ad quem of my earlier comments, I am forced to invoke the lament of the English jurist cited by U.S. Supreme Court Justice Robert Jackson when he found himself in a similar embarrassment. "Lord Westerbury, . . . it is said, rebuffed a barrister's reliance upon an earlier opinion of his Lordship: 'I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion.'"[3]

The problem is that a single Act 312's pronouncement on comparable communities will put the subject to rest only if the parties themselves are minded to follow the panel's opinion as a guide to future bargaining. Certainly the parties are not bound in any *res judicata* sense. And while, as I indicated in the above-quoted passage, there are indeed arbitrators who profess a *stare decisis* principle when it comes to identifying comparable communities, I do not believe that the doctrine of precedent has become as institutionalized or is applied as regularly in Act 312 cases as in the courts. Hence there is less disincentive for one or both bargaining parties to reopen the issue at the next opportunity. On further reflection, then, I

[3] *McGrath v. Kristensen*, 340 U.S. 163, 177-78 (1950).

have come to doubt the ability of an interest arbitrator to "spare future negotiators the complication of recurring disputes over relevant comparables" except when both sides wish to be spared that complication. This panel, accordingly, will exercise a *de novo* judgment and ascertain the comparable communities for ourselves.

For starters, we adopt the six communities the parties agree upon. Act 312 instructs the arbitrators to employ Section 9 factors, and one of them is "Stipulations of the parties." As for the other communities nominated by each side – Dearborn Heights, Madison Heights, Meridian Township, and Redford by the Union; Adrian, Holland, and Mt. Pleasant by the Employer – the test of comparability that the panel applies is two-pronged. First, a resident population not more or not less than 50% of Midland's. Second, state equalized valuation (or as reduced by Proposal A to taxable value) that is within 50% of Midland's. The 50/150 percent spread for population and tax base of course is arbitrary, but line drawing always is. A fifty percent plus or minus range nevertheless is reasonable and is commonly seen in wage arbitrations.

All the nominated communities meet the population criterion. But none of the Employer's additional comparables comes close to satisfying the tax base standard. Holland's is 26% of Midland's taxable value, Adrian 16%, and Mt. Pleasant 14%. That all three, like Midland, are "core cities," defined by the Employer as the most populous communities in their respective counties, does not

thereby make them comparables. Such was the view of the Kotch panel and it is ours as well.

The Union's four additional communities are all within 50% of Midland's SEV (although Madison Heights has only 45% of Midland's taxable value). The Employer urges us to discard the Union's three Detroit-area communities because public employee bargaining in the Wayne-Oakland-Macomb county metroplex takes place in a distinctively higher wage environment. The Employer quotes to this effect Arbitrator Paul Glendon, who wrote in a City of Jackson police arbitration that suburban Detroit, as "part of the uninterrupted urban patchwork that makes up the Detroit metropolitan area," is "significantly influenced by the metropolitan Detroit wages and employment and law enforcement conditions." They are thus "innately dissimilar" to outstate communities. Arbitrator Kotch, however, was unpersuaded by this. He stated:

> There can be no question that wages in this [metro Detroit] area generally exceed those paid in the rest of the state. That is to say, there is undoubtedly upward wage pressure brought about by the very density and complexity of business and industry in this area. Nevertheless, it must be recognized that smaller communities in this area, albeit "forced upward" in terms of municipal pay scales, do manage to pay their employees at this "inflated" level, and frequently with fewer resources at their disposal than has Midland. Impressionistically, at least, it would appear that the economic anomaly that is Midland is not unlike that of Dearborn. Ignoring Ford, ignoring Dow, is rather like ignoring the elephant in the front parlor.

This panel has no intention of "ignoring Dow." Midland clearly is exceptional, if not *sui generis*, thanks to its chemically enhanced tax base. But it is

quite possible to acknowledge "the elephant in the front parlor" without relocating the parlor to the southeast corner of the state. Even if Midland has the resources to compensate its public employees at Detroit-area rates (a proposition its fiscal witnesses would stoutly dispute), the level of Midland's generosity or stinginess is better measured in reference to other outstate Michigan communities. The "financial ability" of the public employer, to be sure, is one of the Section 9 factors, but as used in the Act it is a potentially restrictive factor – a caution to arbitration panels to consider the fiscal impact of the competing offers. "Financial ability" is by no means an open sesame for the award of incongruously high wages and benefits simply because they won't break the bank. As the Kotch panel observed, "Midland, despite its high SEV, is not required to be first among all comparables in every category." The panel accordingly finds that Dearborn Heights, Madison Heights, and Redford Township are not comparable communities, whatever their population and SEV resemblances to Midland.

As for Meridian Township, also nominated by the Union as a comparable: it satisfies our population and tax base tests and is an outstate community (an Ingham county suburb of Lansing). Meridian's population of 39,000 is almost the same as Midland's; its SEV and taxable value are closer to Midland's (at, respectively, 62% and 58%) than any of the stipulated comparables. Even its 2002 millage rate of 10.8 was closer to Midland's 11.8 than the average of the six agreed comparables (15.6). The only possible reason for excluding Meridian Township is its form of government. The relevant fact, however, is that

like the other comparables, it maintains a fulltime fire department. Whatever the structural differences between city and township forms of government, they have no bearing on the fashioning of a collective bargaining agreement for the fire fighters unit. On this point the panel agrees with Mr. Kotch's conclusion that "the City has failed to make a persuasive case as to the relevance of core status or Township *vis-à-vis* City. Its position is little more than assertion of the importance of the distinctions, with little else."

We arrive, then, at a set of seven comparable communities: the six stipulated cities – Battle Creek, Bay City, Jackson, Monroe, Muskegon, and Pt. Huron – plus Meridian Township. Is this an adequate number for Act 312 purposes? There does not seem to be any general consensus as to an optimum or minimum number. In past cases the City's own comparability expert has advanced as few as five (for East Lansing) and as many as eight (for Owosso and Roseville). The Employer also has cited (for other reasons) awards in Saginaw (with seven comparables) and Jackson (with ten), and of course the Kotch panel identified ten comparables. The chairman of this panel used seven comparables in a 2003 award for Huron Township and eight in a 1999 opinion involving Mt. Clemens.

We have no reason to think that useful comparisons cannot be drawn from our group of seven communities.

Midland's financial condition

As Arbitrator Kotch put it: "in economic terms, Midland is simply *not* like other 40,000-population communities in the state of Michigan." In 2003 the taxable value of property within the city was $2.393 billion, which works out to a stunning $57,427 per resident. Midland is also more self-sufficient financially than the comparable communities in that its state-shared revenue, which is at the yearly mercy of the governor and state legislature, accounts for a smaller proportion of the City's total income (12.6% versus an average of 30% for the comparables). Even the scaling-back effect of Proposal A on the state equalized valuation (a 10.45% reduction) has been more benign in Midland than in the seven comparable communities.

It is true that the three major industrial taxpayers in Midland, who together represent half the City's taxable value, have mounted legal challenges to their assessments for 1997 to the present. Projecting a worst-case tax refund liability of $61 million through 2003, the City in 1997 began to levy a special "tax appeal" millage of roughly 2 mills each year so as to create a contingency reserve fund amounting to eighty percent of the potential liability to Dow and Dow Corning and sixty percent of the Midland Cogeneration Venture liability. By 2003 the fund had reached $37 million. The City Council at the outset had pledged to return any unspent balance in the tax appeal fund in the form of future millage reductions.

In a decision seen as a partial victory for the City, the state tax tribunal ordered repayment to MCV of $11.5 million for the first four tax years in contention.[4] Following this initial MCV decision, the City found itself with more money in the reserve fund than was required for the case and, as promised, returned $12 million to the taxpayers in 2004-05 through a reduction in the special millage from 2.13 to 0.68 mills.

More recently Dow Corning settled its dispute for $1.9 million and an eleven percent reduction in the taxable value of its facilities. Because the reserve fund had already accumulated $7.2 million for the Dow Corning litigation, the $5.3 million surplus will be returned to citizens via a millage reduction in the 2005-06 budget. As for the Dow Chemical tax appeal, the case is approaching if it has not already gone to hearing.

While the City's worst fears have not materialized, the tax appeals have been immensely expensive, and the ongoing legal and other associated costs of defense are being borne by the general operating budget, not the special reserve fund.

Despite these troubling events, the recently released financial statement for 2003-04 shows a general fund balance of 16%, though the report notes that this was "mainly due to additional property taxes" intended for the tax appeal fund. In testimony the auditor, Bruce Berend, described Midland as being in better – or less

[4] The litigation as to the subsequent tax years is in abeyance pending appeals and cross-appeals to the courts.

worse – condition than most other municipalities in these hard times. And indeed that is demonstrably the case. Midland seems largely unscathed by the downturn in the state's economy. As noted by the City Manager and the Director of Fiscal Services in their joint preface to the last annual financial report: "The City's July 2003 unemployment rate of 4.0 percent compares favorably to the state's average rate of 7.4 percent and the national average of 6.2 percent. The employed labor force of 21,875 represents an increase of approximately 2.5 percent from the previous year." Thus their upbeat assessment: "The City enjoys a favorable economic environment, and local indicators point to continued stability and growth."

The following points are incontrovertible: (1) Midland benefits from an enviable, indeed extraordinary, tax base even allowing for a lowering of the assessments of the big three property owners. (2) Midland levies property taxes far below its legal limits. The City charter permits an operating millage of 18 mills ($18 per $1,000 of taxable value), reduced by the Headlee Amendment to 17.87; yet the actual operating millage levy is barely half that figure. Moreover, state law empowers cities to impose an additional 2 mills for police and fire pension funding, though that authority has never needed to be exercised. It may be true that the City's tax rate looks high to its rural neighbors in Midland county, but in the wider context of the Act 312 comparable communities, it is much below its seven counterparts (which average 15 mills) and similarly below the three "core cities" that the Employer claimed as comparables (the Adrian/Holland/Mt. Pleasant

average tax rate is 16 mills). (3) Midland's prosperous residents require and expect high quality city services and amenities.

Point #3 is consonant with Point #1 but obviously in tension with Point #2. The City's finance director testified that city council is restrained from raising property taxes by political pressure from constituents as well as a concern about losing industrial and other taxpayers to communities, in Michigan or out of state, with even friendlier tax rates. It is not for this panel to counsel the City on ways to pay for reasonable and defensible labor contracts. But certainly nothing in the testimony presented to us indicates that tax increases are inescapable if we do not embrace each of the City's bargaining proposals. On the contrary, it says something about the fiscal health of the Employer that it has already seen fit to enter into collective bargaining agreements with the other five employee units for at least three of the four years at issue in this arbitration, committing itself to annual wage increases averaging three percent. The only issue before the panel that raises a specter of budget-busting is the matter of runaway health insurance premiums, a subject that will be addressed elsewhere in this opinion.

ISSUE #1: DURATION

Article 19, sec. 2

Union's final offer: 4 year term – July 1, 2002 through June 30, 2006

City's final offer: 3 year term –July 1, 2002 through June 30, 2005

Discussion

If the award is limited to three years, it will no sooner be issued than the parties will be back at the bargaining table to negotiate a successor agreement. That was the same situation in which the parties found themselves three years ago. The 1999-2002 contract was the product of an Act 312 proceeding that, due to the panel chairman's ill health, did not yield the award for almost a year after the hearings concluded. In addition, the predecessor 1996-1999 contract was slow to settle. It too was headed for arbitration, but the death of a key player left the Union's case in disarray and led to a negotiated agreement. As a consequence there has not been a timely fire fighter contract in place for the better part of a decade. The panel agrees with the Union that fire fighters deserve a respite from the climate of conflict and uncertainty. Securing at least an interval of labor peace would surely be a boost to employee morale.

Since contract duration is one of the issues included in the Union's petition for arbitration, it is to be determined by the panel though application of the various factors set out in Section 9 of Act 312. It is true, as the Employer points out, that there has been a pattern of at least four successive Midland fire fighter contracts of three years' length. But longer durations are by no means unknown in Midland. In fact, of the other five bargaining units in city government only Police Command and MMEA are currently under three year agreements. The Supervisors (MMSEA) had a forty-five month agreement that was extended for another two

years. Police Patrol had a five year agreement that expired in July 2004 and have recently concluded a new five year agreement extending into mid-2009. And the Steelworkers are in the final year of a six year agreement. Even among the communities cited by the Employer as comparables, there are several fire fighter contracts that exceed three years

In the Union's opening statement at the start of these proceedings, Mr. Helveston characterized the City's opposition to a four year award as an attempt to punish the Union for "not rolling over" on the City's unrelated demand for the same employee and retiree health care contributions provided for in the police and other bargaining units. (Tr. 17). Mr. DuBay's opening statement for the Employer was unapologetic: "[W]e are adamantly opposed to a four-year contract because they [the Union] are right, we are going to continue down this road until this unit is in line with everybody else in this city [with respect to health insurance contribution]." (Tr. 45).

Unlike the City, the panel sees no interdependence between the issue of the length of the agreement and that of health premium contribution. After all, the latter issue is before this panel by virtue of the Employer's counter-petition for arbitration. If it has sufficient merit, the City's position will prevail in this proceeding. We are past the stage of leveraging concessions from the other side.

The Union's proposal for a four year contract term is endorsed by the panel.

ISSUE #2: WAGES [UNION ISSUE #1]

Article 11, sec. 1. Compensation Plan Appendix. Wages Appendix

Union's final offer. Across the board increases as follows:

July 1, 2002 – 3.0%

July 1, 2003 – 3.5%

July 1, 2004 – 3.0%

July 1, 2005 – 3.5%

City's final offer. 2.5% across the board raises each year.

Discussion

The previous panel awarded the wage increases offered by the Employer: 3.5%, 3%, and 3% in 1999, 2000, and 2001, rejecting the Union's requested 4% for each year. That brought the base wage of a five-year fire fighter to $44,742 for the final year of the arbitrated contract – which is just about the average for the seven comparables in 2001-02 ($44,512).

The Union's current proposal translates to base wages of $46,084 (2002), $47,697 (2003), $49,128 (2004), and $50,848 (2005). The City's offer works out to $45,861, $47,007, $48,182, and $49,387. Either wage package will keep Midland fire fighters in the middle on the pack with respect to the comparable communities. According to the last available wage information, Midland trails

Port Huron, Monroe, and Battle Creek but is ahead of Meridian Township, Bay City, Jackson, and Muskegon.

None of the comparables is conspicuously deviant. There is only a five to six percent spread between the highest and lowest paying cities. The average fire fighter wage for the first two years at issue is $45,750 and $46,990. Wage settlements in five of the comparables for the third year (04-05) average $47,933, while comparison data for the out-year (05-06) is more fragmentary, with only two reported contract settlements.

When we consider total net cash compensation -- adding to base wages such items as longevity payments, holiday pay, and food and uniform allowances, but subtracting employee contributions toward pension and health insurance – Midland fire fighters are behind Port Huron and Monroe but ahead of their other counterparts.

Since both final offers leave Midland's relative position unchanged, the Employer emphasizes the cost factor. It calculates that the Union's wage package is $195,000 more expensive than the City's, taking into account not simply the difference in proposed base rates but also the associated increases in longevity, holiday pay, overtime pay, plus Medicare and workers' compensation costs.

In our judgment, however, the overriding consideration is the City's pattern of wage settlements with its five other bargaining units, the so-called "internal comparables." Those units have contracts providing for an average annual wage increase of 3% in 2002, 2003, and 2004. For those three years the aggregate 9.5%

sought by the fire fighters is much closer to the other units' 9% than is the Employer's offer of 7.5%. As to the fourth year, internal comparisons cannot be made because only the POAM police patrol unit thus far has a contract covering 2005-06. (It grants a 2.5% wage increase for veteran officers and 3.5% for those hired after 1997.) If we look at the nine year period 1996 though 2004, we find that the Union's wage proposal brings the fire fighters unit into close alignment with the cumulative wage improvements of the sister bargaining units – 25.5% for fire fighters, an average of 26.7% for the other units – whereas the City's offer places the fire fighters farther behind (23% as against 26.7%).

It will be noted that the proposals of both parties exceed the corresponding increases in the cost of living as measured by the CPI: 1.6% (2002), 2.3% (2003), 2.7% (2004). On the other hand, the pay raises in the last two fire fighter contracts barely covered the CPI changes during the six year period (16 percent in aggregate pay increases versus 15.2% rise in cost of living).

Although the Union's last offer generates more in real wages, it is significantly offset by the change in health insurance cost-sharing awarded by this panel (Issues #4 and 5). The Kotch panel also took note of the connection between the wage and insurance issues, writing that "[i]n light of the panel's decision with respect to health care [favorable to the Union], adoption of the City's [wage] proposal would strike a better balance in terms of the contract as a whole." We can say the same in reverse.

The panel awards wage increases in accordance with the Union's last offer.

ISSUE #3: RANK DIFFERENTIAL [UNION ISSUE #2]

Article 11, sec. 1

Union's final offer

Add language providing for these "rank differentials" in wages:

For Fire Truck Operators (FTO): Increase base wage (as improved by the across-the-board increases awarded by the panel) by an additional $1,500 on July 1, 2005. The adjustment is to be implemented prior to the computation of the across-the-board increase for 2005-2006.

For Fire Lieutenant: Increase base wage (as improved by the across-the-board increases awarded by the panel) by an additional $2,000 on July 1, 2005. The adjustment is to be implemented prior to the computation of the computation of the across-the-board increase for 2005-2006.

Employer's final offer

Status quo as to Fire Truck Operator (no new rank differential adjustment).

Increase Fire Lieutenant base wage (as improved by the across-the-board increases) by $750 on July 1, 2004, and by another $750 on July 1, 2005. Both adjustments precede the computation of the across-the board increases for 2004 and 2005.

Discussion

Previous agreements do not refer to rank differential in so many words but do, of course, prescribe a hierarchy of base wages for the various job classifications

in the bargaining unit. The last time a specific decision was made to lengthen the pay spread between ranks was in 1994, when an extra $100 was added to FTO and $200 to Lieutenant by the 1993-1996 contract. In July 2001 the base pay for a fifth step fire fighter was $44,742, for FTO $46,249, and for Lieutenant $48,647.

FTO is a promotional position for fire fighters with at least two years of service, but a fire fighter possessing the prescribed qualifications can test for direct promotion to lieutenant without first becoming an FTO; and of course an FTO can also move up to lieutenant rank through a competitive process. Of the forty three members in the bargaining unit, nine are FTOs and nine are lieutenants.[5]

The official job description for FTO states:

> Under the supervision of a Lieutenant or any superior officer, incumbent drives and operates Department fire engine or pumps and hook and ladder truck or any other fire department equipment during an assigned 24 hour shift. Incumbent is also responsible for the maintenance and operating condition of this equipment.

The Union's proposal adds $1,500 to the base rate for FTO at the start of the fourth year and applies the general wage increase to that figure, bringing FTO wages for 2005-06 to $54,113. The rationale for this special boost is founded on the percentage difference between FTO (or its equivalent under another title) and fire fighter in three comparable communities which, like Midland, differentiate between the two ranks. In Jackson, drivers earn 8.5% more than fire fighters. In Bay City the engineer position pays a 3.7% premium. In Monroe, drivers have the

[5] Other ranks (some of them vacant) are fire inspector, fire marshal, fire training officer (40 hours), battalion chief, and deputy chiefs (40 and 56 hours).

rank of sergeant and receive 8% more in wages. The Union's proposed adjustment would produce, as of 2005-06, a 6.8% rank differential for FTOs *vis-à-vis* fire fighters, which is about the average of the three cited comparables.

The Employer counters that the majority of comparables assign driving duties to the fire fighter job classification rather than establishing a separate, higher paying position for engine drivers. Midland's FTOs are already better paid than fire fighters with driving duties in Battle Creek, Meridian Township, Muskegon, and Port Huron (and also earn more than those classified as engineer-drivers in Bay City). They are behind only their counterparts in Monroe and Jackson.

Mindful that the burden of persuasion is on the party seeking to change the contract, the panel concurs with the Employer. Since there is no consensus in the fire fighting community that the responsibility of driving fire engines and operating pumpers should be differentiated for salary purposes from the work of fellow fire fighters, Midland is more than adequately compensating the nine FTOs. Moreover, keeping the status quo means that every across the board wage increase serves marginally to widen the rank differentials. By virtue of the wage improvements approved by this panel, the spread between FTO and fire fighters will grow from 3.4% in the final year of the expired contract to 3.7% in the final year of the new agreement.

As for the rank differential for Lieutenant, it is apparent that the Employer concedes the necessity for a salary adjustment over and above the unit-wide improvement factor. Emerging from the last contract, lieutenants were paid 8.7%

more than fire fighters, while the average differential in the comparable communities was approximately 10% and the average lieutenant salary in the comparables was $1,100 higher than Midland's.

The Union's $2,000 adjustment would elevate Midland lieutenants to a rank differential in relation to fire fighter of 12.8% in the last year of the new contract. The Employer's two-installment $1,500 adjustment brings the differential to 11.8%. Either proposal, then, redresses the anomalous wage level of lieutenants under the prior contract. The choice between the two final offers has already been made with the panel's rejection of a special adjustment for FTOs. The proposed change for FTOs is an integral part of the Union's final offer. Since it cannot be severed from the portion that addresses the situation of lieutenants and since the Employer's last offer deals exclusively with lieutenants and grants them an equitable adjustment in base pay, the panel adopts the Employer's position on this issue.

ISSUE #4: HEALTH INSURANCE – ACTIVE EMPLOYEES [CITY ISSUE #1]

Article 9, sec. 1(A)

City's final offer

As of award date, change each employee's contribution to 15% of the premium for the health insurance plan and coverage (single, two person, family) in which he or she is enrolled.

As of date of award or as soon thereafter as possible, offer employees enrollment annually in one of these health care plans:

A. BC/BS Traditional Plan with a $3 prescription co-pay.

B. BC/BS Traditional Plan with a $10/$20 prescription co-pay and BC/BS Dental Plan 1

C. BC/BS Community Blue PPO Option 1, CB-MA 20% with a $10/$20 prescription co-pay and BC/BS Dental Plan 1 and Blue Vision VSP Plan with coverage 12/12/12, BVFL.

Union's final offer

As of date of award, each employee enrolled in a City health care plan will contribute 3% of his or her base wage.

Within thirty days of the award or as soon thereafter as possible, employees will be offered enrollment annually in one of the three health care plans specified in the City's final offer.

Discussion

Health care cost sharing is clearly the most contentious issue in this case, as it was in the previous arbitration – "the 'Jewel in the Crown'" as the Kotch panel dubbed it.

A review of past fire fighters agreements is essential to an understanding of the current dispute. Historically the City absorbed the entire cost of the health

insurance plan for fire fighters – a traditional Blue Cross Blue Shield medical and hospitalization plan with prescription drug coverage but without dental or vision. In the 1993-1996 agreement, the City continued to shoulder financial responsibility for the plan. By a mid-term contract amendment the parties agreed to institute a $5 per pay contribution by active employees starting on July 1, 1995, for the purpose of pre-funding future retiree health care costs (a subject that will be explored further in the next section of this award).

The successor 1996-1999 CBA for the first time placed a cap on the Employer's premium contribution. For 1997-98 the City's per employee limit was $5,265 and for 1998-99 $5,500. In the event the actual premium came in at a higher figure, employees were required to make up the difference out of their own pockets, or, alternatively, the Union would have to agree to scale back the health plan so as to hold the cost to the capped level. As it happened, the 1997 premium did not exceed the Employer's share, but the next year it outgrew the $5,500 cap, in consequence of which the fire fighters, for the first time, incurred a pay check deduction for health coverage.[6]

The 1996-1999 contract also continued the $5 per pay retiree health pre-funding deduction, but confined the obligation to current employees, i.e., those hired before March 1, 1997. Post-1997 hires were not subject to the pre-funding deduction but their own eventual retiree benefit was cut in half; instead of receiving fully paid health care, this cohort of fire fighters became responsible for

[6] It amounted to almost $1,300 for the year.

half the cost of health insurance when they retired. While the Union made these concessions on health care, on another front the 1996-1999 contract settlement produced a notable gain for the employees – improved pensions through a change in the pension multiplier from 2.525% of FAC to 2.7%.

By the end of the 1996-1999 contract term, the cost of the traditional Blue Cross plan was continuing its skyward trajectory. The City proposed to the Kotch panel to keep the employer's cap in place with yearly adjustments for the relatively modest upticks in the medical care expenditure category of the CPI. That translated to a new cap of $5,698 for the first year of the arbitrated agreement (99-00) and $5,903 for the second (00-01). The City also offered a menu of Blue Cross plans which included a PPO option with dental and vision coverage.

For its part, the Union proposed to stay with the existing traditional plan but sought to limit the employees' contribution for above-the-cap premium increases to 2% of their base wage. That, of course, could mean that the employer's "cap" did not in fact exhaust its liability, for if health premiums outran the cap plus the employee contribution, the excess cost would have to be borne by the City. This indeed proved to be the case during the course of the protracted Act 312 process. In 1999 the Blue Cross rate jumped 14.5%, in 2000 by 30.8%, and in 2001 by 20.2%.

The Kotch panel rejected the City's proposal mainly on the basis of comparisons with other communities. All but one of the external comparables provided fully subsidized health insurance, and in the one city which did have

premium sharing, the employee contribution was (in the panel's words) "a pittance compared to a contribution made by Midland's fire fighters." The Kotch panel made it plain that it was not enamored of the Union counter-proposal either. But correctly defining the task under Act 312 as "selecting the less 'unfair' proposal," it adopted the Union offer with the wistful comment that "were the Solomonic wisdom of the panel to be given free rein, a different proposal might well emerge."

In the interval between submission of final offers and issuance of the Kotch award, the City settled a new five year contract with the patrol officers (POAM) for 1999 to 2004. In that contract the police officers agreed to assume 15% of the health insurance premium while the employer paid 85%. The City instituted the same formula for its unrepresented personnel and went on to negotiate the 15% employee health deduction with the other bargaining units: police command, supervisory, MMEA, and Steelworkers.

The Fire Fighters proposal in the current proceeding would raise the employee's health care contribution, to be sure, but it remains wage-based rather than premium-based and does not come close to matching the pace at which the price of health insurance has been rising. The cost of the traditional Blue Cross plan jumped by double digits for the first three years of the next contract term, i.e., 22% in 2002, 16.4% in 2003, and 13.9% in 2004. The cost of family coverage in 2004 was about $15,400. A 3-percent-of-wages contribution by a firefighter in 2005-06 works out to $1,500 – or less than ten percent of the 2004 insurance premium. By contrast, a Midland police officer in 2004 paid $2,200 toward health

insurance, or the equivalent of 4.2% of base wages. And employees in lower paying jobs in the other Midland bargaining units are contributing upward of 6% of their wages for health coverage.

The Fire Fighters justify their proposal with the same external comparability argument that prevailed with the Kotch panel. Of the seven communities we now deem comparable to Midland, three provide (as of 2003-04) 100% employer-paid health insurance. In the four cities that exact an employee contribution, the fire fighters' share ranges from $130 in Battle Creek to $676 in Bay City. Viewed through the prism of these comparables, a 2%-of-wages contribution by Midland fire fighters ($983 in 2004-05) seems high, to say nothing of a 3% wage deduction ($1,500) in 2005-06.

But the choice in this case is not a replay of the last arbitration. The most objectionable feature of the City's proposal to the Kotch panel and of the 1996-199 arrangement that the City was hoping to perpetuate was that it effectively froze the employer's health care expenditure and left the fire fighters to suffer the escalating rate increases. When one considers that traditional Blue Cross doubled in price between 1999 and 2003, the City's proposal soon would have had the employees paying almost half the full premium.

That is not what the City is proposing now. Its final offer calls for sharing the pain of higher premiums through an 85/15 allocation. It is the Union's proposal that retains a static cap for one party (the employees) and leaves the other party (the City) with open-ended financial exposure. Mr. Kotch was right to

characterize both of the competing offers in 2001 as unfair and the job of the panel as choosing the less noxious one.

The City has since changed course and indeed has already persuaded its other collective bargaining partners – including two that have access to Act 312 arbitration – that the 85/15 cost sharing formula is both necessary and equitable. That consensus is more persuasive to the panel than the contracts of fire fighters in other communities. The Supreme Court has said that Section 9 of Act 312 confides to every panel "the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case." *City of Detroit v. DPOA*, 408 Mich. 410, 484 (1980). On the issue of health insurance we recognize the powerful centripetal force of "internal comparables." We have been shown no compelling reason why 43 fire fighters should continue to contribute far less for their health care benefit than 334 other fulltime employees of Midland.

Another change embodied in the Employer's last offer also appeals to the panel. With the introduction of a choice of plans, a fire fighter can lower his premium sharing cost by electing higher prescription co-pays in the traditional plan (Option B) or an even less expensive PPO plan (Option C). Further, by choosing either of the new alternatives rather than staying with the existing top-of-the-line plan (Option A), an employee can obtain dental coverage and (under Option C) a vision plan as well – benefits not previously available to fire fighters. While the Union's offer calls for the same new alternative plans, it does not link the

employee's wage-based contribution to the specific plan chosen and therefore provides no financial incentive to select the less or least expensive option.

The situation of workers "in private employment in comparable communities," another Section 9 factor, is also worth considering. One need look no farther than the three large companies in Midland, whose unionized employees pay between 15 and 25 percent of their health insurance premium. This is simply illustrative of a national pattern, one which is not sparing governmental employees. The cost of health insurance is the preeminent concern (and pension costs a close second) in both the private and public sectors, and the pressure is intensifying on all employers to require more cost-sharing by workers. The day cannot be far off when the external comparables on which the Union's argument depends, being even less able than Midland to absorb repeated premium hikes in the double digits, will become more insistent with their fire fighters about sharing more of the pain. Midland is not so much out of step with Battle Creek, Bay City, Jackson, et al., as it is one bargaining cycle ahead of them.

We note, finally, that since the changeover proposed by the City is not retroactive, the fire fighters will have had the advantage of smaller health deductions for all but the last year of the four year agreement, in combination with the higher wage increases awarded in this proceeding.

The panel adopts the City's last offer with respect to health care insurance.

ISSUE #5: RETIREE HEALTH INSURANCE [CITY ISSUE #2]

Article 9, sec. 1(F)

City's final offer

Reduce City's health contribution to 50% for retirees who were hired after 7/1/05 and for spouse and dependents.

Employees hired after 7/1/05 will not be required to contribute to the Pre-Funding Retirement Insurance Care Fund.

For pre-7/1/05 employees, lower retiree age to 46 (from current 50) for receiving fully paid individual health coverage.

The changes take effect on July 1, 2005.

Union's final offer: Retain status quo

Discussion

As mentioned in the preceding section, the parties in 1997 made changes in their CBA with respect to the retirement health benefits of new hires. For fire fighters joining the department after March 1, 1997, the City would pay only 50% of the health insurance premium during retirement for the employee, spouse, and dependents. That contrasted to the 100% benefit at age 50 for retired fire fighters

who were hired before 3/1/97. (Younger retirees received a 60% employer contribution until the full benefit age of 50.)

In the Kotch arbitration the Union made a portmanteau proposal for changes in the health care article (denominated as Union Issue 5A and 5B). The key element was the 2%-of-wages contribution by active employees for their current health insurance – the subject of the preceding section of this opinion. Combined with that proposal, however, was the Union's request to eliminate the two-tiered retiree health benefit based on hiring date. The Kotch panel did not deal with the latter subject as a separate issue. Rather its adoption of the Union's version of premium sharing by active employees produced, in tandem, a return to the pre-1997 retiree health provision. Curiously, the panel chose to address one other aspect of the Union's consolidated proposal as a stand-alone issue, namely, the request to lower the full benefit age for retirees from 50 to 46. As to this, the Kotch award concluded that the Union failed to meet its "burden of demonstrating a persuasive reason for change" and accepted the status quo position advocated by the City.

Now it is the Employer's turn to seek revisions in the retiree health provision as recast by the Kotch award. It asks for a return to 50% retiree health benefits for new hires, drawing the dividing line at a hiring date of July 1, 2005 instead of the former 3/1/97, thereby keeping all current fire fighters in the full benefit tier. Ironically enough, the City's offer includes a lowering of the full benefit age to 46 for that group – the same change that the Union contended for,

unsuccessfully, in the prior arbitration.[7] Because the Union opposes a return to two-tiered benefits, it asks that the retiree health provision be left as it is.

The arguments on this issue are similar to the arguments relating to active employee health insurance. The Union cites the comparable communities, all but one of which provide full paid health benefits to their retirees and none of which has created a lesser set of benefits for newly hired fire fighters. Conversely, the City emphasizes that its five other bargaining units all have voluntarily agreed to half benefits in retirement for post-3/1/97 employees, just as the Fire Fighters had once agreed.[8] For the same reasons this panel considered "internal comparables" more probative than the "externals" on the issue of cost-sharing of health premiums by active employees, we also believe that fire fighters' retirement health benefits should be aligned with the other Midland units. In the interest of preserving its ability to pay for retiree health insurance, and at the price of concessions on other issues, the City has persuaded all its employee unions – even the fire fighters in 1997 – that it needed cost-sharing by at least some future retirees.

It is true that the City's proposal does not produce financial relief for at least twenty five years, when the next generation of fire fighters will be ready to retire. It is imaginable that by that time, if not sooner, the nation's health care system will be transformed in ways that make employment-based private insurance unnecessary or less important. For these reasons the Union's "sufficient unto the

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[7] This is not a spontaneously magnanimous gesture on the Employer's part. It is intended to bring the fire fighter retiree benefit in line with police, who qualify for full health insurance at age 46.

[8] Non-union Midland employees hired after 3/1/97 will still receive 100% retiree health care but they get no employer-paid coverage for spouses and dependents, as do the organized employees.

day" answer to the City is not surprising. But it is the fiduciary duty of those who control the public purse to worry about long-term as well as immediate costs. If the gathering health care crisis is eventually overcome in Washington, there will be ample opportunity to revisit Article 9 of the labor contract. In the here and now, prudence dictates that measures be taken to avoid compounding an already hard-to-manage obligation.

It deserves repeating: incumbent members of the fire department, including those who were hired after 3/1/97, are held harmless by a restoration of two-tiered retiree health benefits. While we are not insensitive to the Union's concern about a possible decline in esprit de corps when new employees cannot look forward to the same retirement benefits as their senior co-workers, there is no indication that this has become an actual problem in the Midland police force or the other city departments. The tiering of contract benefits is a regrettable but often inescapable reality in the contemporary work place.

The panel adopts the City's final offer on this issue.

ISSUE #6: PENSION COLA [UNION ISSUE #5]
Article 10, sec. 1

Union's final offer

For employees retiring on or after 7/1/05, add 5% to the pension benefit after five years and another adjustment equal to the original 5% every five years thereafter.

City's final offer

For employees retiring after 1/1/04 with twenty-five years of service, add 5% to the pension benefit after five years and another adjustment equal to the original 5% after 10, 15, and 20 years. The quinquennial increases apply to the spouse's 60% survivor benefit.

Discussion

COLA adjustment is simply one of many factors that, taken together, establish the true value of a retirement plan. Other variables include underlying wage rates, age and service requirements, how FAC is computed, the pension multiplier, whether and how large an employee pension contribution is exacted, whether the worker also has Social Security coverage. Not surprisingly, then, the external comparables which this panel has identified do not impressively advance or retard either party's position. It is possible to point out components that are more beneficial or are less advantageous to employees than Midland's, but in the end, all that can usefully be said is that three of the seven comparable communities have no pension escalator and four do.

The Union made a similar proposal to the Kotch panel. At that time the Employer opposed it without presenting a counter-offer. The arbitration panel considered the COLA issue together with the Union's proposal to raise the pension multiplier from 2.7% to 2.8%, It rejected both changes because Midland already

"stands essentially at the median" vis-à-vis the comparables and because the once bounteous pension reserves were rapidly eroding in a bearish stock market.

What has changed since the Kotch award is the police patrol contract. In the midst of the present arbitration, the City negotiated a new 2004-2009 agreement with POAM that grants police officers the same pension adjustments that have been in the police command (POLC) contract since 1990. This leaves fire fighters as the only Midland employees without some form of pension COLA.[9]

The City thinks Police and Fire should be on "an equal playing field with respect to their benefits packages." It therefore considers itself duty-bound to offer the identical pension escalator provision to the fire fighters. (It could hardly do otherwise, since the "equal playing field" principle is at the heart of the Employer's health insurance cost-sharing demands.)

The question no longer is whether fire fighter retirees should receive periodic adjustments in their pensions. The question is which of the two versions of COLA adjustment should be instituted. The practical differences between the proposals are minor. Pursuant to the Union's offer, the 5% increment would be added every five years throughout retirement, whereas the Employer's offer calls for a total of four adjustments – at 5, 10, 15, and 20 years. The Union's proposal does not contain a years-of-service threshold to qualify for the COLA increments; the City's requires twenty five years of service. The Union's version applies to post-7/1/05 retirements; the City's to post-1/1/04.

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[9] Other city employees are in the MERS retirement system and receive 2.5% annual pension upgrades.

The Employer postulates the case of a fire fighter, hired at age 21, who retires after twenty three years of service at age 44 and who has the good fortune to survive into his mid-eighties. According to the Union offer, that precocious-turned-venerable employee will receive eight pension increases during his long retirement, elevating the original pension by 40%. Of course, the average age at hire in the Midland fire department is 29, and only two of the current incumbents started at age 21. That fact should assuage the Employer's concern. But equally, the Union should recognize that the actual demographics of the work force make the difference between four 5-year pension adjustments and an unlimited number of 5-year adjustments a moot point for most retirees[10].

Since no need has been demonstrated for a marginally different benefit for fire fighters than the COLA adjustment already granted to police officers and commanders, the panel adopts the City's final offer.

ISSUE #7: PENSION MULTIPLIER [CITY ISSUE #3]

Article 10, sec. 1

City's final offer

Effective 7/1/02, lower pension multiplier to 2.525% for the first 25 years of service. Retain 1% multiplier for service beyond 25 years.

[10] The Union's proposal to the Kotch panel, like the City's present offer, provided only for 5, 10, 15, and 20 year COLA adjustments.

Union's final offer: Status quo (2.7% multiplier)

Discussion

It will be remembered that among the changes wrought by the 1996-1999 settlement, the pension multiplier, formerly 2.525%, was raised to 2.7%, and the 1.5% non-duty pension multiplier was upped to 2%. In the Employer's view, these pension improvements were trade-offs for the concessions the Union made on health insurance cost sharing by active employees and a new tier of future retirees. The City's complaint is that the bargain made in 1997 became "unbundled" in the Kotch arbitration when the Union won a much reduced employee health contribution and regained full health benefits for all retirees regardless of hiring date.

Believing that turnabout is fair play, the Employer wants to rescind the 1997 quid pro quo pension improvements. To this the Union responds: "Every negotiated contract is, in some manner, 'unwinding' a previous agreement. It is the nature of bargaining."

Certainly compromises reached at the bargaining table do not foreclose future bargainers from trying to enlarge on a partial gain or to reverse an earlier give-back. The outcome of such efforts depends on the normal tug and haul of the new negotiation – or its Act 312 surrogate, interest arbitration – not on any collective bargaining rule of eternal repose. .

This means that the Union was perfectly free in the Kotch arbitration to "unwind" part of the previous contract, and the City is equally at liberty to do the same now. Of course the Employer did not know at the time final offers were submitted to our panel that it would prevail on its insurance issues. That success eliminates tit-for-tat as a reason for scaling back pension benefits. But since the City also makes other arguments unrelated to the unbundling of prior compromises, the panel evaluates the Employer's proposal, as it does all offers, using the statutory criteria and recognizing that the City as the moving party must justify the change.

The fire fighters' current 2.7% multiplier is fractionally higher than the average of comparable communities (2.64%) and is exceeded only by Battle Creek's 3% and Meridian Township's 2.75%. The requested rollback would still leave Midland fire fighters ahead of their peers in Bay City, Jackson, and Port Huron (all at 2.5%). And, as the City points out, other elements of Midland's pension provisions are superior to the comparables. A Midland fire fighter can retire with 23 years of service irrespective of age; the comparables either have a minimum age (typically 50) or require from 25 to 28 years of service. Also, in five of the comparables the total retirement benefit produced by multiplier times years of service is capped, but not in Midland. Further, Midland's FAC includes sick leave payout. Only Jackson also does this, though vacation pay is excluded in Jackson but counted in Midland.

Even if the synergistic effect of all the pension provisions makes the Midland retirement benefit as good or possibly even better than the other cities, the proposed cutback would save the City only $43,000 according to the actuary, Mark Buis. He also testified that in his experience working with other municipalities, he has never encountered a plan in which the pension multiplier has been reduced.

The internal comparisons are not helpful to the Employer, either. Any comparison to the non-public safety units is truly a matter of apples and oranges. Those employees are in a different retirement system (MERS). Their pension multiplier is 2.5%, but it applies to all years of service, not just the first 25 (though there is an overall 80% cap). The apposite comparison is to the fire fighters' colleagues in the police force. Police and fire belong to the same Act 345 pension system. Although their bargaining cycles do not always coincide, there appears to be an historical equivalence in the pension computation formula. When improvements are made for fire fighters, they are replicated in the contracts of police patrol and commanders, and vice versa. After the fire fighters' pension multiplier was raised to 2.7% in 1997, the next FOAM and POLC contracts imported the same change. And the fact that the latest five-year patrol agreement, which was concluded during the course of this arbitration, leaves the 2.7% multiplier unchanged is a good indication that the City does not think it is being profligate.

Based on both external and internal comparisons, the City has not convinced us of the wisdom or need to return to the pre-1997 pension multiplier. The panel adopts the Union's proposal for status quo.

ISSUE #8: NON-DUTY PENSION MULTIPLIER [CITY ISSUE #4]

Article 10, sec. 1

City's final offer

Effective 7/1/02, lower the non-duty pension multiplier to 1.5% per year of service through age 55.

Union's final offer: Status quo (2% multiplier).

Discussion

The 1997 bargaining history of the non-duty pension multiplier is the same as that of the general pension multiplier. The City's proposal seeks to reverse the improvement made in that year and to return to a 1.5% multiplier. As has already been said, this panel's adoption of the Employer's health care revisions removes the reciprocal unbundling motive.

With the exception of Battle Creek's 1.5% multiplier, all the comparable communities have a multiplier of 2.5%.[11] This suggests that if any change is justified in the Midland contract, it is the opposite direction. In terms of fiscal impact, a return to a 1.5% multiplier would produce a de minimis saving for the City -- $1,068 or 0.04% of fire fighter payroll.

Internally, the non-duty disability multiplier is 2.5% for general city employees. For police command it is 2%, but for unexplained reasons the multiplier remains at 1.5% in the patrol contract. Given this discrepancy, complete parity for all the Act 345 members is not achievable, whether the City's offer to the fire fighters is adopted or rejected. On the whole, it seems more equitable to keep the fire fighters at 2% and leave it to patrol officers at their next negotiating opportunity to ask for equalization with their commanders and the fire fighters.

The panel adopts the Union's final offer: status quo.

ISSUE #9: EMPLOYEE PENSION CONTRIBUTION [CITY ISSUE #5]
Article 10, sec. 1

City's final offer

Effective 7/1/02, raise the employee pension contribution to 8% while retaining the separate 1% contribution to retiree health care pre-funding.

[11] In Muskegon it is 2.6%.

Union's final offer: Status quo (7% pension contribution plus 1% retiree health).

Discussion

The employee pension contribution is fixed by the labor agreement, whereas the City's contribution fluctuates from year to year, based on actuarial factors and the investment performance of the retirement fund. In 1991 the employee contribution was lowered from 9% to 8% and it remained at 8% through the 1996-1999 CBA. In the Kotch arbitration, an integral part of the Union's proposal concerning health premiums called for dropping the pension contribution to 7% while instituting a new 1% employee contribution for pre-funding of retiree health care. Adopted by the panel, these changes took effect July 1, 2001. Meanwhile the police patrol agreement, negotiated before the fire fighters' award came down, left the employee contribution at 8%. It has stayed the same in the new 2004-2009 POAM settlement. Likewise the past and current contribution rate for police command is also 8%.

The present proposal by the Employer, in common with the other pension changes it advocates, seeks to achieve a version of pre-Kotch equilibrium:

> Although the Kotch Panel took away the City's side of the 1996-1999 contract bargain (active employee and retiree health insurance provisions, the Union retained its side (increased pension multipliers for normal and disability retirements). The Union now takes the position in this proceeding that it should retain these benefits. If that is the outcome, then the City submits that unit members should be required to pay at least part of the cost through a 1% additional pension contribution. [Employer's Brief, p. 99]

From any standpoint, however, the City's proposal is unwarranted. First, our award gives the City the cost-sharing formula it wants for health premiums, allocating the burdens of rising rates less one-sidedly.

Second, an increase in the employee retirement contribution is not necessary to preserve the solvency of the pension fund. The last actuarial valuation available to the panel (bearing the date 12/31/03) pronounced the police and fire pension system "in sound financial condition in accordance with actuarial principles of level percent-of-payroll funding," and in fact the system was still overfunded (i.e., above 100%) at that time. Thanks mainly to a rising stock market the Employer enjoyed a long respite from the 20+ percent pension contributions it had been making for two decades before the late 1990s. In 1999 its contribution was only 2.8%. No City contribution was made in 2000 and 2001, and just 3.4% was required in 2002. Only now are the actuaries advising a return to the former levels of employer subsidization.[12] Singling out the fire fighters for an additional 1% does not appreciably mitigate the recommended employer contributions, not in the near term at any rate.

Third, the external comparables do not support the Employer. The average fire fighter's pension contribution in the other communities is 6.4% and only Bay City is as high as 8%.

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[12] 16.3% in 2003, 16.9% in 2004, 23.5% in 2005.

Fourth, to require Midland fire fighters to contribute 9% of their pay[13] when their compatriots in the police department are contributing 8% is to disregard the tradition of parallelism of police and fire pension arrangements and is at odds with the City's own "equal playing field" precept.

There is, we realize, a nominal difference between an 8% contribution to pension (police and command) and a 7% pension contribution along with a 1% contribution earmarked for retiree health costs (fire fighters). But there is no actual pocketbook difference to the police and fire employees and no financial difference to the City. The redirection of 1% from the pension fund to the health care fund was an idea devised by the Union in its effort to make its 2001 health care revisions salable to the Kotch panel. But under our award. Fire fighters will be making the same health insurance payments as police and will also have to submit, as have the police, to lesser retiree health benefits for new employees. Logically there no longer is a case for fire-fighter-only assistance in pre-funding of retiree health benefits, and the fire pension contribution should return to 8% sans any health pre-funding spinoff.

Logic, sadly, is not permitted to override the last-offer procedure in an Act 312 arbitration. Since neither party's final offer asks that the health pre-funding assessment be rolled back into the pension contribution, we accept as preferable and adopt the Union's proposal of status quo.

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[13] 8% toward pension and 1% for retiree health pre-funding.

ISSUE #10: SICK LEAVE PAYOUT [UNION ISSUE #6]

Article 6, sec. 3

Union's final offer

As of 7/1/05, increase sick leave payout upon retirement, death, or total job-related disability to 100% of accrued time, to a maximum of 60 days (480 hours) for forty hour employees and 90 days (2,160 hours) for fifty-six hour employees.

City's offer

Status quo: 50% of accrued sick leave to a maximum of 60 days for forty hour employees and 45 days for fifty-six hour employees.

Discussion

When by good fortune employees do not need to use sick leave or use it sparingly, there is a saving to the employer in terms of avoiding or reducing the resort to costly overtime. In recognition of that saving, labor agreements often grant some form of cash payment for unused sick days when the employee retires.

Currently a forty hour employee is allotted 12 days (96 hours) of paid sick time each year, and a fifty-six hour employee receives 8 days (192 hours) annually. Unused sick leave can be retained and accumulated without limitation but cannot be exchanged for cash during the employee's working career. At retirement or upon death or total work-related disability, the contract provides for a cash payout

of half the employee's sick bank up to a maximum of 480 hours (60 days) for a forty hour employee and up to 1,080 hours (45 days) for a fifty six hour employee. The Union proposes in effect to double the cash-out rate for both categories of employees and in the case of fifty-six hour fire fighters to double the number of eligible hours as well.

The current payout for forty hour employees in the fire department – a small minority of the bargaining unit – is the same as for police officers. Police commanders, on the other hand, can cash out their sick days up to the higher limit of 640 hours. The same 50%/640 hours formula is found in the MMEA and Steelworkers agreements and is also applied to unrepresented city employees.[14] Based on internal comparisons, a case can be made for equalizing the payout provisions for forty hour fire employees -- as well as police patrol – with other Midland employees. That would mean increasing payout-eligible sick time to 640 hours. The Union's proposal does not do this. It leaves the maximum number of reimbursable hours at 480 but eliminates the 50% reduction factor. That means a clerk or sanitation worker with a sick bank of 480 hours can only cash out half those hours at retirement, but a forty hour fire fighter with the same sick bank would be paid for all 480 hours.

In any case, the Union's proposal for forty hour employees is inextricably tied to the suggested changes for the fifty-six hour fire fighters and if that latter part

[14] MMSEA does not have paid sick leave but supervisors can receive up to 26 weeks of short term disability at full pay.

of the proposal is unacceptable, the proposal as a whole should not be adopted. The fifty-six hour group comprises most members of the bargaining unit, and for this category the apt comparison is to their brethren in the comparable communities. The comparability data shows that the norm is a 50% cash-out rate[15] Although there are wide variances in the maximum cashable hours, Midland's 1,080 hour ceiling is slightly below the average.

If the Union's instant proposal were adopted – full payment for all unused sick leave to a limit of 2,160 hours – the benefit would surpass all the other communities. What is more, in the other comparables (with the single exception of Jackson) the cash-out of sick leave has no pension consequences. But Midland counts sick leave payouts as part of the employee's FAC. A fire fighter who retired after July 1, 2005, with 2,160 hours of accrued sick leave not only would receive a lump sum payment of almost $38,000[16] but would realize a sizable improvement of his retirement benefit. The Union has not convinced the panel that the "gift that keeps giving" needs to be doubled.

We adopt the City's proposal to continue the status quo.

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[15] It is 100% only in Jackson, with a maximum of 720 hours. In Meridian Township the rate is 25% with a limit of 278 hours.

[16] Based on the $17.4615 hourly wage resulting from this award.

ORDER

The final offers adopted by the panel are set forth in the foregoing Opinion. As to each award, only the delegate whose position prevailed joins with the chairman. The Union Delegate, Gregory A. Weisbarth, dissents from those portions of the decision in which the City's proposal was adopted. The City Delegate, Joseph W. Fremont, dissents from those portions of the decision adopting the Union's proposal.

Maurice Kelman

Maurice Kelman, Panel Chairman

Gregory A. Weisbarth, Union Delegate

Joseph W. Fremont

Joseph W. Fremont, City Delegate

Dated: May 27, 2005