

2063

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION (MERC)
COMPULSORY ARBITRATION**

IN THE MATTER OF:

CITY OF NEW BALTIMORE,

Employer,

- and -

THE POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

Arising pursuant to Act 312
Public Acts of 1969, as amended
Case No. D00 C-5048

Union,

ARBITRATION PANEL OPINION AND AWARD

APPEARANCES:

FOR THE COMPULSORY ARBITRATION PANEL

ALLEN J. KOVINSKY, Impartial Chairperson
MARC LEVISE, Employer Delegate
JAMES TIGNANELLI, Labor Organization Delegate

ADVOCATES:

FOR THE CITY OF NEW BALTIMORE:

TIMOTHY TOMLINSON, ESQUIRE
42850 Garfield, Suite 101
Clinton Township, Michigan 48036

ON BEHALF OF THE POLICE OFFICERS ASSOCIATION OF MICHIGAN

WILLIAM BIRDSEYE
27056 Joy Road
Redford, Michigan 48239-1949

I. ISSUES.

- a. Did the Employer and the Union enter into a Collective Bargaining Agreement which contained all of the provisions with respect to a new pension plan or in the alternative, did the Employer and Union reserve the right to continue to bargain over the pension plan and in particular, the multiplier?
- b. The City of New Baltimore maintains that the parties entered into a complete Collective Bargaining Agreement including all provisions with regard to the pension plan with the exception of the determination of a possible new administrator.
- c. The Police Officers Association of Michigan maintains that the parties entered into a new Collective Bargaining Agreement, but reserved the right to negotiate over the pension plan, including a new multiplier

II. EXHIBITS

- a. Joint Exhibit 1 – Collective Bargaining Agreement dated August 1, 2000, expiring on July 31, 2005.
- b. Joint Exhibit 2 – Collective Bargaining Agreement dated August 1, 1997, expiring on July 31, 2000.
- c. Joint Exhibit 3 – The Petition for Arbitration pursuant to the provisions of Act 312 of the Public Acts of 1969.
- d. Joint Exhibit 4 – Collective Bargaining Proposals dated July 26, 2000.
- e. Union Exhibit 1 – Municipal Employee Retirement System of Michigan Actuarial Valuations as of June 1, 2003.
- f. New Baltimore – Police Officers Association Contract Proposals dated July 10, 2000.
- g. City of New Baltimore/City of New Baltimore POA/POAM Contract Revision Proposals – Tentative Agreement, dated September 10, 2000.

III. FINAL OFFERS OF SETTLEMENT

- a. The City of New Baltimore, as a final offer of settlement, has proposed that the Collective Bargaining Agreement was a complete document and excludes any additional negotiations with respect to a pension multiplier for the term of the Collective Bargaining Agreement.
- b. The Police Officers Association of Michigan maintains as a final offer of settlement that it is entitled to negotiate for a new pension multiplier under the terms of the Collective Bargaining Agreement dated August 1, 2000, and expiring on July 31, 2005.

IV. FACTUAL BACKGROUND

- a. On or about February 10, 2005, the Police Officers Association of Michigan, on behalf of the members of its bargaining unit in the City of New Baltimore, filed a Petition with the Department of Labor and Economic Growth, Employment Relations Commission, seeking to arbitrate pursuant to the provisions of Act 312 of the Public Acts of 1969, an issue involving the pension multiplier under a Collective Bargaining Agreement, which became effective on or about August 1, 2000, and which terminated on or about July 31, 2005.
- b. On or about March 4, 2005, the City of New Baltimore, through its legal counsel, Timothy D. Tomlinson, filed an Objection to the filing of the Act 312 Arbitration. The Objection is based in part upon the provisions of Section 18.2 of the Collective Bargaining Agreement (Joint Exhibit 1). Section 18.2 provides:

“the parties agree to continue negotiations throughout the term of this Agreement regarding the pension benefit in an attempt to reach a mutual agreement to possibly enter into MERS for future benefits. This Article shall not be construed as a commitment to MERS.”
- c. In addition, a Letter of Understanding was entered into as part of the Collective Bargaining Agreement which provided:

“the issue of employee pension remains open for the duration of this contract. The parties agree to continue negotiations on the issue of pension.”
- d. It is the contention of the Employer that the purpose for the Letter of Understanding as well as Section 18.2 was specific for the purpose of

exploring the possibility of a pension being handled by MERS in lieu of the current Home Rule Pension System. The Employer maintains that it was only during mediation, subsequent to the filing of the Union Petition for Arbitration, that the Employer learned for the first time that the Union wished to negotiate regarding specific provisions of the pension plan (in particular the multiplier) as opposed to merely continuing negotiations for a change with respect to a new administrator. The Employer, in its objections, continued to indicate that that action by the Union was contrary to previous actions and statements made by the Union prior to mediation. The Employer maintains that all of the meetings that occurred prior to the filing of the Petition were merely to gain support to transfer the pension administration to the Michigan Employee Retirement System, as opposed to the current Home Rule Pension System. In support of that contention, the Employer maintained the copies of all records pertaining to the pension were supplied to the Union, a second meeting was held with representatives of MERS in July or August of 2003, and the City's pension investment advisor met with the City Administration in order to discuss the potential transfer of the assets to MERS along with representatives of the actuarial firm of Gabriel, Roeder, Smith and Company. Moreover, the Mayor of the City met with a representative of the actuarial firm in September of 2004 to discuss the feasibility of transferring the assets to MERS. In addition, the actuarial firm supplied a supplemental statement for the Mayor and the City which was received on

or about October 18, 2004, regarding the transfer of assets to MERS, and finally, on or about October 12, 2004, the POAM and MERS selectively invited employees of the City to a meeting in order to present a presentation by a MERS representative to the employees. However, that meeting was not attended by any representative of the City, since no invitation was put forth by the representatives of MERS and/or the Union.

- e. The City further pointed out in its objections to the Arbitration Petition that the sole focus from and after the signing of the Collective Bargaining Agreement with respect to the pension system was simply to convert the system from the Home Rule Administrator to a MERS Administrator, based upon the Union belief that it would be cheaper for the City and that the members would be able to qualify for a higher multiplier under MERS than they currently received under the Home Rule System.
- f. The Employer further maintained that no discussions prior to the filing of the Petition for Arbitration had ever taken place from and after the signing of the Collective Bargaining Agreement with respect to the pension multiplier and that the only discussions concerned the change over possibility to MERS.
- g. At the time of the pre-conference hearing, after an extensive discussion, the impartial chairperson determined that it would be in the best interest of the parties to bifurcate the proceedings. That is to say that the hearing which later took place on June 20, 2005, would only receive evidence and exhibits with regard to the procedural issue as to whether or not the parties

had entered into a Collective Bargaining Agreement which was complete in every respect with regard to the pension system, with the exception of the parties leaving open the possibility of changing the pension administrator as opposed to the Union contention that the pension provisions of the Collective Bargaining Agreement were left open for the purpose not only of negotiating with respect to a new administrator, but also with respect to one or more components of the pension, and in particular, for purposes of this hearing, the multiplier. It should be noted that the Union objected to the bifurcation of the hearing at the pre-hearing conference.

- h. At the arbitration hearing, the parties stipulated that all issues not contained in the Petition and Answer had been settled or waived by the parties. The parties stipulated that the procedural issue which will be determined in the course of this Opinion and Award, was a non-economic issue. The parties also stipulated that the Petition was filed in a timely manner, without waiving their respective arguments concerning the procedural issue of the correctness or incorrectness of arbitrating the pension multiplier. The parties did not stipulate to the issue of whether or not the panel had jurisdiction to decide the issue before it. Mr. Tomlinson, on behalf of the City, so stipulated, but Mr. Birdseye objected to the jurisdiction of the panel for the purpose of determining the procedural issue as opposed to simply determining the pension multiplier issue. The parties further stipulated that they waived any time limits with regard to a

decision and determination with regard to either the procedural or the substantive issue which were before the panel. In addition, the parties stipulated that if the procedural issue were resolved in favor of the Union position, a further hearing would be scheduled with regard to the substantive issue of the pension multiplier, but that there would be no retroactivity with regard to the pension multiplier if an increased multiplier were to be awarded to the Union. The parties also stipulated that since this was a procedural issue, their last best offers would be contained within either their post hearing briefs or their oral closing arguments. It should be noted that the parties did comply with that provision, both at the time of the oral arguments and in the case of the City of New Baltimore in its brief as well. The parties also stipulated that collective bargaining did in fact take place prior to mediation with regard to the issue or issues currently before the panel and that mediation was unsuccessful. The parties also appointed Mr. Jim Tignanelli as the Union Representative and Mr. Marc Levis as the City Representative to the Panel.

- i. In support of the City's position, Joseph Gragek testified that he is the Mayor for the City of New Baltimore, having first been elected in November of 1999. The position is full time, and he is considered to be the Chief Administrative Officer of the City and involved in the day-to-day affairs of the City.

- j. He was actively involved in the collective bargaining negotiations for the current Collective Bargaining Agreement. In addition to the Mayor, Mr. Marc Levis and Mr. Roy Kolberg (the City's Attorney) took part in the negotiations. The Mayor testified that Mr. Tignanelli and Mr. Ken Stevens, along possibly with Mr. Fred Riebel, represented the Union. The Mayor testified that there was minimal discussion for the 2000 – 2005 Collective Bargaining Agreement with respect to the pension plan. He further testified that there was no discussion whatsoever with regard to a multiplier with respect to an increase. The prior Collective Bargaining Agreement contained a 2% multiplier times years of service as does the current Collective Bargaining Agreement.
- k. The Mayor testified that the language of Section 18.2 had been contained in the prior Collective Bargaining Agreement, but as he recalled, it was a Letter of Understanding, rather than a specific paragraph of the Collective Bargaining Agreement.
- l. It should be noted that the Mayor was incorrect in his understanding of the pension language. The actual language of Section 18.2 of the 2000 Collective Bargaining Agreement was not contained in the 1997 Agreement (Joint Exhibit 2). However, the 1997 Agreement contained a Letter of Understanding which provides:
 - i) “the issue of employee pension remains open for the duration of this contract. The parties agree to continue negotiations on this issue of pension.”

- m. That Letter of Understanding is identical to the Letter of Understanding contained in the 2000 Collective Bargaining Agreement. Thus, it was agreed that Section 18.2 of the current Collective Bargaining Agreement would be considered new language, and was not contained in the prior Collective Bargaining Agreement. The Mayor testified that as far as he was concerned, the only issue which was left open with regard to the pension provisions of the current Collective Bargaining Agreement was the possibility of entering into the MERS pension plan rather than remaining with the current Home Rule System. The Mayor further testified that the Union never requested that any other provision of the pension portions of the Collective Bargaining Agreement remain open for further negotiations, and that as far as he was concerned, there were no other issues with regard to the pension to be discussed at any time during the Collective Bargaining Agreement, with the exception of the potential transfer of the assets to a new administrator. The Mayor further testified that the Union never brought in to the negotiations any comparables or any type of documentation pertaining to service time, employee contribution rates, or multipliers. The Mayor further testified that subsequent to the signing of the current Collective Bargaining Agreement, with the exception of a presentation from the MERS people with regard to a transfer of the assets to a new administrator, there had been no discussions with the Union regarding the individual provisions of the pension plan. Moreover, there had never been any investigation or discussion with

representatives from MERS with regard to a change in the pension multiplier.

- n. With regard to the Letter of Understanding in the current Collective Bargaining Agreement, the Mayor testified that in his opinion, it was a redundant statement that the Union asked to have included, but in his opinion, it was no different and did not cover anything more than Paragraph 18.2 of the Collective Bargaining Agreement covered. Thus, he testified that the Letter of Understanding only pertained to the issue of potential transfer of assets to MERS.
- o. On cross examination, the Mayor indicated that he was unaware, initially, of the language of Section 18.2 being introduced into the Collective Bargaining Agreement and thought that the language was as a result of an agreement reached between Mr. Levis, the City's attorney and representatives of the POAM. The Mayor further testified that he assumed that he had read the Letter of Understanding which was carried over from the 1997 contract to the 2000 Collective Bargaining Agreement before he signed it. The Mayor reiterated that during discussions with the actuaries, it was never his intention nor did he ever discuss a change of any of the provisions of the pension plan itself, with the exception of transferring the assets from the Home Rule System to MERS. In addition, no costing ever occurred with respect to the Home Rule System and any change in benefits. It should be noted that Union Exhibit 1, which is the Initial Actuarial Evaluation for the Municipal Employees Retirement System for

the City of New Baltimore, did in fact contain a number of potential benefits including a B-2 benefit, which is the equivalent of a 2% multiplier, as well as a B-3 benefit, which is the equivalent of 2.25% multiplier and a B-4 benefit, which is the equivalent of a 2.5% multiplier

- p. At some point in time the Mayor testified that the transfer to MERS was falling apart, and the Union then began speaking about changing the multiplier as a result of which the Mayor went to the actuary and indicated that apparently this was no longer just about a change to MERS, but the Union now wanted to change the multiplier as well. The actuary then indicated that that would totally change everything and the cost would increase since the original discussions were confined to the current level of benefits, rather than at increased level of benefits with respect to the potential transfer to MERS.
- q. The Mayor further, on cross examination, admitted that between 8 and 12 months prior to the hearing (June 20, 2005), the issue of a multiplier increase was discussed based upon the fact that the Union had come to a City Council meeting for the purpose of making a presentation with regard to a transfer from the Home Rule Plan to MERS. On redirect, the Mayor testified that the only time that the multiplier issue had come up for discussion was when a comparison of current benefits and staying with the Home Rule System was made with respect to the MERS system and the multiple proposals that MERS provided in the actuarial study, including 3 potential different pension multipliers.

- r. The Mayor further testified that the different multipliers were only discussed in the context of going to MERS as opposed to staying with the current system, and that would have been based upon potential savings transferring the Assets to MERS which might have allowed for a higher multiplier. But, insofar as he was concerned, the entire negotiations on behalf of the City were strictly with respect to the question of whether or not to transfer the assets to MERS, not whether or not the pension multiplier would be increased if the assets remained in the Home Rule System.
- s. In response to a question by the panel chairperson, the Mayor indicated that he did not know why it was necessary to have the additional Letter of Understanding signed in light of the fact that paragraph 18.2 clearly confined any re-opening or opening of the contract or continuation of discussions with respect to the transfer of assets from the Home Rule System to MERS. The Mayor claimed he honestly did not know why he would have signed the additional Letter of Understanding, but it was merely paperwork that was put in front of him, and he should have read it closer. Nevertheless, the whole issue only pertained to the transfer of assets to MERS.
- t. Mr. Marc Levisé, the Assistant to the Mayor, testified that he was intimately and directly involved in contract negotiations leading up to the 2000 Collective Bargaining Agreement. Mr. Levisé testified that there were no specific discussions that took place with regard to pension

improvements, and further, that the only discussions were with regard to Paragraph 18.2 and the Letter of Understanding.

- u. Mr. Levisé also testified with regard to City Exhibit 1 (a list of Union proposals for the 2000 Collective Bargaining Agreement) that the only Union demand with respect to pensions was as follows:

“the parties will sign a Letter of Understanding agreeing to continue negotiations regarding the pension benefit in an attempt to meet a mutual agreement to enter into MERS for future pension benefits”

- v. Mr. Levisé further testified that with respect to City Exhibit 2, which contained all of the contract revision proposals and tentative agreement as of September 10, 2000. The only provision contained within that agreement with regard to a pension was as follows:

“the parties will sign a Letter of Understanding agreeing to continue negotiations regarding the pension benefit in an attempt to reach a mutual agreement to possibly enter into MERS for future pension benefits. The agreement shall not be construed as a commitment to MERS.”

- w. Mr. Levisé further testified that it was his understanding that with respect to the Letter of Understanding it simply meant that the parties would continue to negotiate with the possibility of going to MERS for pension benefits, and that it did not, in his opinion, obligate the City to future negotiations with respect to one or more individual pension components. No discussions took place at the time of the negotiations for the 2000 Collective Bargaining Agreement with respect to pension components. Moreover, with the exception of the actuarial report prepared with respect to a potential transfer to MERS, the Union has never presented a proposal

for a higher pension multiplier either during the negotiations or subsequent to the negotiations after the Collective Bargaining Agreement was signed. Mr. Levis further testified that up until the time of the Petition for Arbitration, the Union had never requested an increase in the pension multiplier, nor had any discussions taken place with respect to that issue.

- x. James Tignanelli testified that he had been the lead negotiator for the Union with respect to the 2000-2005 Collective Bargaining Agreement. He testified that an agreement had been reached on all issues with the exception of retirement (pensions). He stated that the pension multiplier was lower than neighboring communities in and out of the County. He felt that discussions with respect to the multiplier had begun as far back as the 1997 Collective Bargaining Agreement. He felt that in order for the parties to feel comfortable with a change in the pension multiplier, it would be necessary to initially execute the agreement, but to continue to discuss pensions. Accordingly, the Letter of Understanding, which had existed in the 1997 agreement was re-executed for the 2000 agreement. With respect to the negotiations, the City provided the Union with the language of Section 18.2 prior to the execution of the 2000 Collective Bargaining Agreement. Mr. Tignanelli felt that Section 18.2 expanded further the provisions of the Letter of Understanding. He indicated that while someone might feel the language was redundant, it actually went into more detail by indicating that there would be a possibility to enter into MERS, but no commitment to do so had been obtained. He admitted that

the 1997 agreement did not contain a reference to MERS. However, he felt that the issue was to improve the benefit both in the prior contract, (which did not occur) or in the current Collective Bargaining Agreement and that the language was there because he was familiar with MERS in other communities and had traditionally contracted with them to give an actuarial valuation of a benefit level, which he proposed to the City of New Baltimore. However, he recognized that if the Police Unit proposed going to MERS, other units of the City would have to agree, otherwise there was little chance that the City would transfer the Police Department to MERS without the remaining departments and employees of the City making a similar transfer. Mr. Tignanelli distinguished Article 18.2 from the Letter of Understanding by stating that 18.2 referred to the transfer or potential transfer of assets to MERS, while the Letter of Understanding pertained to the individual pension benefits and components.

- y. He denied that the issue of a pension multiplier had not been discussed in negotiations. He felt that it had been discussed as a result of the pension actuarial valuations where the goal, insofar as the Union was concerned, was to show the City that they could provide an additional increased benefit, while costing the City less money than they were currently paying for a lesser benefit. The Union had specifically asked for valuations concerning increased multipliers, which is why they were contained in the actuarial valuation.

- z. After the valuation, according to Mr. Tignanelli, a meeting took place in which the various multiplier costs were identified and discussed with the City and the Union continued to argue that they deserved a better benefit as a result of reducing the cost to the City. He further testified that in mediation, the pension benefit, insofar as a multiplier was concerned, was discussed with the mediator. Mediation took place both in private meetings with the mediator and across the table with both parties being present. At that time the City claimed that this was the first in mediation that they had heard of a request to increase a multiplier, including all of the time preceding the mediation and the time spent negotiating the new collective bargaining agreement in 2000. Moreover, the Union position in mediation was for an increased multiplier regardless of whether or not the assets were transferred to MERS or remained in the Home Rule Plan.
- aa. On cross examination, Mr. Tignanelli maintained his position that the Union had in fact requested an increase in the multiplier during negotiations either leading up to the current Collective Bargaining Agreement or subsequent to the signing of the current Collective Bargaining Agreement by requesting pension actuarial valuations from MERS. He admitted that the Union never presented the City with any comparisons of comparable communities with respect to an increase in the pension multiplier. He further admitted that an increase in the pension multiplier was not presented in any written proposals to the City. Mr. Tignanelli admitted that in the Union proposal of July 10, 2000, there was

no indication under the pension article of the Union proposal regarding an increase in the multiplier or any other increases in the pension components. Moreover, he admitted that the City's proposal contained in City Exhibit 2 which was the tentative agreement of September 10, 2000, contained language which was virtually identical to the provisions of Article 18.2.

- bb. Mr. Tignanelli continued to claim that the issue of pension components was left open since the Union had not costed them out, thus until valuations were prepared, the Union would not had been in a position to discuss an increase in benefits. Mr. Tignanelli indicated that the City's response with respect to the Union position to obtain a valuation from MERS and transfer the assets from the Home Rule Plan was an indication of the City's interpretation of the Union original proposals and that it was his understanding that the City was going to continue to discuss the possible transfer of assets but no commitment to go to MERS had actually been made.
- cc. Mr. Tignanelli admitted that at mediation, the City appeared to be caught "off guard" when the Union raised the issue of an increase in the multiplier.
- dd. On redirect, Mr. Tignanelli testified that the original Union proposal, which did not contain a request for specific changes in any of the individual pension components, was submitted to the City in that fashion because the Union felt comfortable that it would be able to acquire the

cost for a variety of pension improvements through a MERS evaluation. He further testified that he felt that while the City would not commit to MERS, it was in fact agreeing to continue to negotiate regarding the pension improvements.

- ee. Mr. Tignanelli further testified that he felt that as negotiations progressed, the City was becoming more and more resistant to the idea of transferring from a Home Rule System to MERS. Further, the Union had no particular objection to maintaining the Home Rule System so long as they obtained an increase in the pension multiplier as opposed to transferring the assets to MERS.
- ff. On re-cross-examination, Mr. Tignanelli, stated that the MERS evaluation was an investigatory check which hopefully the City would look at in an open-minded manner. He further admitted that the Union could have negotiated an increase in the pension multiplier with the City without the issue of a transfer of the assets to MERS, and that the Union never presented any comparables to the City with respect to the issue of a pension multiplier.
- gg. In response to questions from the Chairperson, Mr. Tignanelli admitted that no proposals for an increase in the pension multiplier had been made in writing from the initial Union proposals in July of 2000 to the tentative agreement in September 2000, and beyond that to the execution of the 2000 Collective Bargaining Agreement. However, he claimed that orally, discussions with regard to an increase in pension benefits had taken place.

Mr. Tignanelli further admitted that while correspondence took place between the Mayor and himself beyond the September 2000 date of the tentative agreement, the actual correspondence would not have specifically related to an increase in the pension multiplier. The correspondence merely asked the Mayor to provide the Union with information so that it could obtain an actuarial valuation from MERS which to the Union's way of the thinking, would include pension improvements, including an increase in the multiplier.

- hh. Mr. Tomlinson, on behalf of the City, with respect to the MERS valuation, indicated that it was obviously in contemplation of Article 18.2 with respect to either retaining the Home Rule System or transferring assets to MERS and the fact that there are additional pension multipliers over and beyond the current multiplier does not mean that it was a subject of negotiation.
- ii. Kenneth Stevens, the President of the local POAM Association testified there were 16 full time officers in the bargaining unit and that he had been president since 1996. He is also a member of the Retirement Board as a representative of the police officers. He indicated that the 1997 contract had been submitted for arbitration but that the parties ultimately reached a settlement after the hearings had begun. Further, he testified that a valuation of the Home Rule System pension plan had occurred in 1999 and subsequently, that valuation was used for purposes of comparison with a MERS valuation. The MERS valuation took place in 1999 (prior to

the 2003 valuation) and Mr. Stevens testified that the Home Rule expense was extremely greater than the MERS plan. He testified that the current Collective Bargaining Agreement was negotiated in an expeditious manner, and that both the Union and the City agreed upon a five year term. However, no agreement was reached with respect to the pension issues. He further testified that the issue of pensions was left open based upon the fact that the parties would not have material available to discuss cost factors within the time frame that the parties determined would be appropriate for the settlement of the contract. Accordingly, all issues, but the pension issue, were agreed upon, and in his mind, the pension issue would be an issue which would be discussed in the future during the term of the Collective Bargaining Agreement. No commitment was made to an absolute switch to MERS, but Section 18.2 was placed in the Collective Bargaining Agreement which allowed the parties to continue to discuss the issue of the transfer of assets without a commitment on the part of the City to MERS. He further testified that discussions did take place for an increase or change in the multiplier. This was evidenced by the various multiple costs prepared in the valuation with three different multipliers. He also testified that the MERS valuations were done for the entire City employment roster since the City indicated that it did not want to maintain two separate plans. The report for all City employees included a change in the multiplier for the Police Department. In addition, during the same period of time, according to Mr. Stevens, the City requested an actuarial

valuation with regard to the Home Rule System. Mr. Stevens never saw a copy of that report, and further testified that the bill was not an obligation of the pension board since the City had requested the valuation rather than the pension board.

jj. On cross examination, Mr. Stevens indicated that he did not believe the City went to a great extent to determine whether or not it was more beneficial to transfer the asset to MERS, but that he would not be surprised if the City had expended in excess of \$8,400 for the valuation. Mr. Stevens further testified that ultimately it was up to the City's determination as to whether or not an agreement could be reached to transfer the assets to MERS. He further admitted that the issue of a pension multiplier was not specifically referred to in the 2000 Agreement with respect to continued negotiations, but stated that the phrase "pension issues" encompassed the multiplier as well as other components of the pension.

kk. It further appears, according to Mr. Stevens' testimony that a number of items did change between the 1997 and 2000 Agreements, including certain age requirements and years of service. Mr. Stevens admitted that during the 2000 contract negotiations, no presentation of specific changes with respect to the pension multiplier were made. He claimed that was based upon the fact that the parties did not have sufficient data to discuss a change. Mr. Stevens again reiterated that the two provisions referring to pensions in the Collective Bargaining Agreement and the Letter of

Understanding were designed to give the parties an opportunity to obtain sufficient information to discuss changes not only with respect to the transfer of assets, but also with respect to the individual components of the pension plan. No request for a valuation of the Home Rule System was made subsequent to the execution of the 2000 Collective Bargaining Agreement.

- ll. When asked why the Union did not provide a specific proposal for an increase in the multiplier, Mr. Stevens indicated that the situation was essentially the same as 1997, when similar language had been negotiated, and subsequent to the execution of the 1997 agreement, the City had been able to come up with a reasonable settlement with regard to changes in the pension components and retain the Home Rule System at the same time. The Union felt it did not want to limit the City to just one plan, and if the City could increase the pension multiplier within the Home Rule System, the Union was agreeable to retain that system as opposed to transferring the assets to MERS and obtaining an incremental increase in the pension multiplier within the MERS system. He again felt that no specific number could be given to the City prior to obtaining an actual valuation.
- mm. On re-cross examination, Mr. Stevens again admitted that no costs or valuations were done with regard to the Home Rule System only with respect to the MERS system. The reason for a lack of requests with respect to the Home Rule System was the knowledge that it would be

substantially higher than the MERS valuation, based upon prior experience from 1997 to 1999.

- nn. Mr. Stevens also testified that with respect to the components of final average compensation, changes had taken place subsequent to the signing of the 1997 agreement, but prior to the execution of the new 2000 Agreement. More than likely the change took effect in 1999.
- oo. Mr. Stevens also testified that with respect to the 1997 Agreement, an Act 312 arbitration took place with respect to the issue of pensions, after the actual agreement had been signed based upon the language in the Letter of Understanding, which the Union understood, allowed them to continue to pursue improvements in the pension after the execution of the Collective Bargaining Agreement. It should be noted that the so-called 1997 Agreement was retroactively effective to August 1, 1997, but was actually executed on May 23, 1998. It would appear that several of the changes in the plan did in fact take place after the execution date of the collective bargaining agreement.
- pp. On recross examination Mr. Stevens testified that in 1999 the Union had an evaluation which had been previously prepared by actuaries with regard to the MERS system. However, based upon the increase and the number of department personnel he felt that that evaluation would not accurately reflect the cost associated with an increase in the multiplier for the 2000 Collective Bargaining Agreement.

- qq. Upon the conclusion of Mr. Stevens' testimony, the parties stipulated that they would waive an executive session and upon the receipt of briefs from Mr. Tomlinson and Mr. Birdseye an opinion would be prepared.

V. POSITIONS OF THE PARTIES

A. The City of New Baltimore.

- aa. The City of New Baltimore relies upon the provisions of Article 18.2 which merely allude according to the City to the intent of the parties to continue negotiations with regard to transferring the assets of the Pension system to MERS without being construed as an absolute commitment to do so. As far as the City is concerned, the proposals of the Union dated July 10, 2000 and the tentative agreement dated September 10, 2000 established the issues discussed during the course of negotiations. No issue is set forth with respect to a Pension multiplier increase. The union never made a demand in writing with respect to an increase in the Pension multiplier. According to the City, both the Letter of Understanding in Section 18.2 specify related to the possibility of the transfer of assets from the home rule system to MERS and that it was never the intent of the City to enter into an agreement whereby the issue of Pensions and in particular the Pension multiplier would remain open for the duration of the contract. The City further points out that by significantly changing the calculation of final average compensation in Paragraph 18.1(c) of the Collective Bargaining Agreement an increase in Pension benefits took place for which no financial data had been presented by the Union nor the employer nor was any analysis made in order to determine the effects on the Pension system. The City believes that this fact and event is evidence that is contrary to the Union's position that the Pension multiplier could not be

discussed during the time that the Collective Bargaining Agreement was actually negotiated based upon insufficient documentation or a requirement that other actuarial data was needed. Moreover, according to the City, there was financial data available dealing with the Pension multiplier which had been obtained during the 1997-2000 term of the prior Collective Bargaining Agreement. The Union never made any written demand for an increase in the Pension multiplier nor did it negotiate toward an increase in the Pension multiplier until the date of mediation according to the City and this represents a contrary situation to the normal general practice of providing all issues in written form for discussion during contract negotiations. Numerous meetings took place with regard to the transfer of assets from the current system to MERS with as many as 6 individual meetings taking place between representatives of the City and the Union. The sole focus of those meetings was the transfer of assets to MERS without any indication from the Union that it wished to negotiate increases in one or more components of the system and specifically the Pension multiplier. The only discussions which took place with regard to an increase in the Pension multiplier were with respect to the evaluations which were provided with regard to changing the system to MERS. Thus, the Union is attempting to go through the back door to obtain a benefit which it could not obtain through the front door according to the City. The City never intended to change the multiplier or any other terms and conditions of the Pension other than those specifically negotiated such as

overtime being included in final average compensation. The only issue left open was the question of whether or not the transfer of the assets to MERS not to increase any specific component of the system. The City maintains that the contract is clear on its face and if not, the intent of the parties clears any ambiguities provided in City Exhibits 1 and 2 as well as joint Exhibit 4.

- bb. The City maintains a change in the Pension Administrator does not constitute a mandatory subject of bargaining as defined by statute or case law. However, the City concedes that Pension benefits are indeed mandatory bargaining subjects under the provisions of the Public Employee Relations Act. However, the City notes that as far as it is concerned, the Pension multiplier was not the issue that was left open but only the issue of the transfer of assets to a different administrator. The reopening clause according to the City does not pertain to actual benefits and components but rather only to the transfer of the assets if the City were agreeable. The City believes that the panel should in construing the Collective Bargaining Agreement give effect to the parties' intentions at the time they entered into the contract. If the contract does not contain any ambiguity there is no reason to construe the contract other than as written. Unambiguous language will be dispositive on the issue of the parties' intentions and the panel should not depart from the meaning of the contract.
- cc. If an ambiguity exists it should be construed against the drafter.

- dd. According to the City the contract is clear on its face with the only provision having been left open related to the discussion or future modification of a change in the administrator of the Plan. That was not a mandatory subject for bargaining. The City, based upon its research, concluded that it would not be in its best interest to transfer the assets from the home rule plan to MERS. Since, it never committed to a transfer to MERS, the City complied with its commitment in the Collective Bargaining Agreement.
- ee. If there is an ambiguity the City asked the panel to review the negotiations between the parties as well as the documents which were exchanged between the parties in order to obtain the intent of the parties. In particular, the Union never placed the Pension multiplier increase in writing insofar as its proposals or the tentative agreement are concerned. No intent of the parties can be found to change the Pension multiplier. Moreover, no comparables of surrounding communities were presented by the Union to the City, no written demands for an increase in the multiplier were made by the Union even though a significant change was made to the Pension benefit in Paragraph 18.1(c) dealing with the inclusion of overtime in final average compensation.

B. Position of the Union.

- aa. The Union failed to submit a brief and chose to refrain from oral arguments with respect to its position. Accordingly, it is up to the panel to determine the position of the Union which appears to be that the language

of the Collective Bargaining Agreement and in particular the language of the Letter of Understanding contained both in the 1997 Collective Bargaining Agreement and the 2000 Collective Bargaining Agreement reserved the right of the Union throughout the term of the Collective Bargaining Agreement to continue to negotiate with respect to Pension components. This would be particularly true as evidenced by the 1997 Collective Bargaining Agreement during which various data was obtained and the Union was able in 1999 during the term of that agreement to obtain additional benefits with respect to the Pension including a change in age and years of service.

- bb. The Union apparently believes that the Letter of Understanding coupled with the events which occurred during the 1997 Collective Bargaining Agreement clearly put the City on notice that the Union intended to obtain its right to negotiate over the Pension components during the term of the Collective Bargaining Agreement (2000-2005) even though it had not made any formal written demands upon the City for an increase in the Pension multiplier in either its initial proposals or in the tentative agreement (City Exhibit 1 and City Exhibit 2).
- cc. In addition, it would appear that the Union relies upon the fact that it did request through the City and through its own resources Pension evaluations from the actuaries which contained increases in the Pension multiplier as evidenced by Union Exhibit 1 which is the Actuarial Evaluation for a transfer of the assets to the MERS system concluding 3

different types of Pension multipliers (B-2, B-3 and B-4). Those multipliers would have indicated the level of a 2.0, 2.25 or 2.5 multiplier and a total annual cost to the employer ranging from \$469,920.00 for the B-2 multiplier to \$552,900.00 for the B-4 multiplier with certain other differences in the benefits.

- dd. In addition, the Union relies on the testimony of its witnesses that at some point in time, discussions did in fact take place subsequent to the execution of the 2000 Collective Bargaining Agreement with respect to an increase in the Pension multiplier.

VI. DECISION AND DISCUSSION

- a. This case represents a rather unusual issue since it is a procedural issue as opposed to a substantive issue, that being, whether or not the issue presented in the petition to the Michigan Employment Relations Commission (an increase in the Pension multiplier) may be properly arbitrated or in the alternative, whether or not the City and the Union had come to a full agreement on all issues in the Collective Bargaining Agreement with the exception of the transfer of the assets from the home rule system to the MERS system being left open as a subject of discussion without a commitment being made by the City to transfer the assets. It seems clear that the Union chose a rather unusual tack in order to attempt to obtain an increase in the Pension multiplier. Clearly its original proposal (City Exhibit 1) does not contain a specific proposal with regard to an increase in any Pension component including the Pension multiplier. The proposal simply indicates that the parties would sign a Letter of Understanding agreeing to continue negotiations regarding the Pension benefit in an attempt to reach a mutual agreement to enter into MERS for future Pension benefits. It does not indicate whether or not the future Pension benefits are to be obtained within the current Collective Bargaining Agreement or at some later time nor does it indicate whether or not in the absence of an agreement to enter into MERS those future Pension benefits could even be negotiated whether in the context of the current Collective Bargaining Agreement or at a future time. Moreover, it

does not define what it means by the Pension benefit in terms other than “an attempt to reach a mutual agreement to enter into MERS for future Pension benefits”.

- b. In response to that proposal, the City proposed to enter into a Letter of Understanding which would agree to continue negotiations regarding the Pension benefit in an attempt to reach an mutual agreement to possibly enter into MERS for future Pension benefits. But, the agreement would not be construed as a commitment to MERS. Clearly, the City in its proposal was attempting to limit its obligation to a discussion as to whether or not the assets of the home rule Pension should be or should not be transferred to MERS. Moreover, the term “for future Pension benefits” would clearly, according to the City’s proposal, be conditioned upon mutual agreement for entry into the MERS system. The City proposal contained in City Exhibit 2 became Article 18.2. Thus, one must determine whether the City in entering into the Letter of Understanding which provides that the issue of employee Pension remains open for the duration of the contract and further provides that the parties agree to continue negotiation on the issue of Pension was intended to modify the language of Paragraph 18.2. Clearly, the Letter of Understanding was carried over from the earlier Collective Bargaining Agreement which did not contain language similar to Paragraph 18.2 in the 2000 Collective Bargaining Agreement.

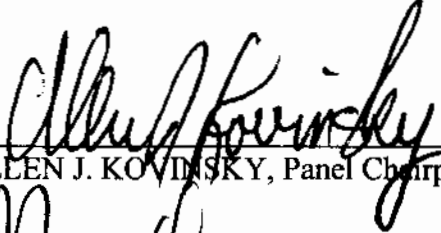
- c. Normally, parties and particularly unions make specific proposals for changes in wages, hours and conditions of employment. Normally, a union seeking a change in the pension multiplier would do so in its initial or subsequent proposals for a new Collective Bargaining Agreement. In this instance, the Union failed to do so apparently relying upon a past practice that occurred in the 1997 Collective Bargaining Agreement which contained a similar Letter of Understanding and which resulted in some changes to the Pension components after the Collective Bargaining Agreement had been executed.
- d. It is the finding of the Panel that the language contained in the Letter of Understanding clearly is dependent upon the provisions of Article 18.2. That is to say whether or not employee Pensions remain open for the duration of the contract and whether or not negotiations continue on the issue of Pensions is dependent upon whether or not a mutual agreement is reached for the transfer of funds into MERS. The City clearly proposed language to which the Union agreed that any changes which would take place would only occur with regard to an entry into the MERS system based upon the City's belief that if it agreed to a change to MERS it would only do so based upon obtaining lower costs which in turn would allow for increased benefits with respect to the various components which make up the Pension calculations. Since, at some point in time, the City determined that it would not be to its benefit to transfer the assets to MERS, the condition precedent to continue to negotiate changes in the

Pension system was not met. Accordingly, the City was under no obligation to enter into negotiations for additional Pension benefits from and after the date of execution of the Collective Bargaining Agreement in the absence of an agreement by the City to transfer the home rule system assets to MERS.

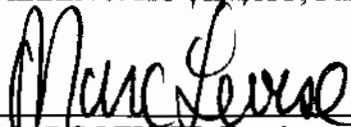
- e. Accordingly, it is the finding of the Panel that the Union did not have the right to petition the Michigan Employment Relations Commission for arbitration of the Pension multiplier issue since that issue had been definitively determined by the terms of the Collective Bargaining Agreement for the period of August 1, 2000 through July 31, 2005. It should be noted that since the agreement expired on July 31, 2005 the City and the Union are free to enter into negotiations for a new Collective Bargaining Agreement and in the absence of an agreement with respect to the components of the Pension plan the Union would be free to petition the Michigan Employment Relations Commission for compulsory arbitration under the provisions of Act 312 of the Public Acts of 1969 for an increase in the Pension multiplier and/or any other increases in wages, hours and conditions of employment for the period from and after August 1, 2005 to the date of the termination of a new Collective Bargaining Agreement.
- f. Accordingly, the Panel hereby denies by majority vote the position of the Union that it is entitled to arbitrate an increase in the pension multiplier

for the Collective Bargaining Agreement dated August 1, 2000 effective through July 31, 2005.

THE FOLLOWING AGREE:

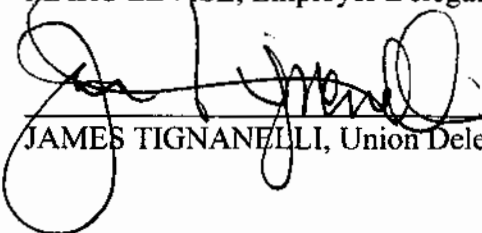


ALLEN J. KOVINSKY, Panel Chairperson



MARC LEVISE, Employer Delegate

THE FOLLOWING DISSENTS:



JAMES TIGNANELLI, Union Delegate