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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CITY OF ADRIAN

and

MERC Case No. L99 G-8015

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

Panel of Arbitrators

Thomas L. Gravelle, Chairperson
Frederick B. Schwarze, City Delegate
Thomas Griffin, Union Delegate

DENNIS B. DUBAY, ESQ.
For the City

WILLIAM BIRDSEYE
For the Union

FINDINGS, OPINION AND AWARD

SEPTEMBER 6, 2001 - JUNE 30, 2002
COLLECTIVE BARGAINING AGREEMENT

Dated: February 5, 2002

INTRODUCTION

A pre-hearing conference was held on December 5, 2000. Hearings were convened in Adrian, Michigan on June 26 and September 6, 2001. Briefs were received by December 1, 2001. The arbitration panel met in conference on February 5, 2002 in Detroit, Michigan.

The parties have resolved all issues for this contract except the issues before the Panel. At the hearing, there were three issues in dispute. One has been withdrawn. Therefore, two issues remain.

The two outstanding issues are economic. Under the law, the Panel is required to accept the last offer of settlement made by one or the other party for each economic issue. In deciding which offers to accept, the Panel has considered the applicable factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order on the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.

(c) The interest 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 in 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.

CONTRACTUAL STIPULATIONS

The parties have stipulated that the new collective bargaining agreement will consist of the following:

(a) The preceding collective bargaining (October 17, 1996 to July 1, 1999) between the City of Adrian and AFSCME Michigan Council 25 and its Local 2933 (Jt. Ex. 1);

(b) as amended by the Stipulated Interim Award dated September 6, 2001 (Jt. Ex. 2); and

(c) the Arbitration Panel's award on the two pension issues before the Arbitration Panel.

The Stipulated Interim Award provides that the new collective bargaining agreement will run from "the date of this interim award" (i.e., September 6, 2001), to and including June 30, 2002.

Of the two outstanding issues before the Arbitration Panel, the Union has made a final offer to increase the pension multiplier to 3% with a 3.3% increase in patrol officer contributions; and the City has made a final offer to reduce vacation pay from final average compensation (FAC) from a maximum of 60 days to 20 days.

These two issues are addressed below.

UNION ISSUE: PENSION MULTIPLIER

Union's Final Offer: The Union proposes to amend Article XXII to increase the pension multiplier from 2.5% to 3.00% and to increase each employee's pension contribution by 3.33% effective October 1, 2001, by adding the following new language to Article XXII, Section A:

Effective October 1, 2001, the Employer will improve the multiplier to 3.0% for all years of service. The employee contribution shall be increased by 3.33%.

Pension-multiplier to be effective October 1, 2001.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

In support of its final offer to increase the pension multiplier from 2.5% to 3% and to increase employee pension contributions by an additional 3.3% of their compensation, the Union makes the following arguments: First, in looking at internal comparables, the City's civilian employees are covered for old age retirement by the Social Security Act as well as by their pensions with the City. However, the police employees earn no credit for Social Security retirement benefits in their employment with the City. Therefore, the Union's proposal will help to rectify this imbalance. Second, the Union's proposal is revenue neutral for the City because an actuarial analysis shows that the employees' increased pension contributions of 3.3% of compensation will cover the increased cost of the retirement benefit by reason of the increase in the multiplier. Third, the

City's arguments that if the final offer were adopted the City would be prejudiced are without merit.

In opposing the Union's final offer the City makes the following arguments: First, the fact that the City's civilian employees are covered for old age retirement by the Social Security Act as well as by their pensions with the City is a red herring. Second, the impact of the Union's proposal cannot be said to be revenue neutral. Third, a 3% multiplier is not justified by the factors set forth in Section 9 of Act 312.

As this is an economic issue, the Panel must choose one or the other final offer. The City's offer has more merit.

It is true that the City's patrol officers do not earn any credit for Social Security retirement benefits by reason of their employment as patrol officers with the City. (This is also true for the City's police command officers and fire fighters, as well as all police officers in the comparable communities.) It is also true that the City's civilian employees do earn credit for Social Security retirement benefits by reason of their employment with the City.

This difference is at least partially addressed by the more generous terms of the patrol officers' pension plan in comparison to the pension plans for the City's civilian employees. (a) The patrol officers are eligible to retire with a full pension at age 55 with a minimum of 25 years of service, whereas the general City employees are not eligible to retire until age 60; (b) the patrol officers have a current multiplier of 2.5%,

whereas the general City employees have a multiplier of 2%; (c) the patrol officers have an RS-50 benefit which allows them to designate a surviving spouse as a 50% pension beneficiary without any reduction in the patrol officers' pensions, whereas the general City employees do not have this benefit; (d) the patrol officers' post-retirement pensions increase by as much as 2.5% per year by reason of a post-retirement escalator, whereas general City employees do not have this post-retirement escalator; and (e) the patrol officers' final average compensation (FAC) is based on the highest compensation in 3 out of 5 years, whereas the Steelworkers FAC is based on the highest compensation in 5 out of 10 years.

Social Security claimants are entitled to "full coverage" at age 65 or beyond provided they have earned wages in 40 calendar quarters (i.e., 10 years). Social Security retirement benefits also can be claimed beginning at age 62 at a permanently reduced level. For the purpose of Social Security retirement eligibility, covered wages earned in excess of 10 years are irrelevant. Assuming that an Adrian patrol officer retired at age 55 with 25 years of service and had no social security earnings from other employment, he or she would become eligible for full social security retirement coverage at age 65 by working in 40 calendar quarters (10 years) after retiring from the City. If the City police retiree had some outside covered employment prior to retiring from the City, the wages earned could be included in attaining the 40 quarter eligibility

threshold. On this point, City Administrator George A. Brown provided anecdotal evidence that "[o]ur police officers and fire fighters that I talk to usually concede that they are able to pick up Social Security benefits with other employment." (Tr. p. 114). Common sense dictates that this must be true with respect to some (if not all) police retirees.

In addition, for many years the City has offered a defined contribution plan at the employees' option (ICMA). This allows police officers (and other City employees) to make tax deferred contributions to the plan during their employment with the City (to a maximum of the greater of \$8,500 per year or 25% of compensation).

For the above reasons, the fact that the City's patrol officers do not earn Social Security credit by reason of their employment with the City is insufficient in itself to justify an increase in their pension multiplier.

The next question is whether the proposed increase is revenue neutral. In support, the Union relies on an actuarial study showing that by increasing the patrol officers' pension contributions from 6% of their compensation to 9.3% of their compensation, the cost of the proposed multiplier increase would be paid by the patrol officers themselves.

Putting aside the one-time \$6,000 cost to the City for increasing the multiplier as a "non-conforming plan," the patrol officers' pension contribution would again be a mandatory subject of bargaining when the parties' collective bargaining

agreement expires a few months from now, on June 30, 2002, whereas there is a Constitutional question as to whether the increased multiplier would be subject to reduction. A section 9 factor is "the lawful authority of the employer."

To use an extreme example for the purpose of illustration only, if a union and a public employer agreed to eliminate a defined benefit pension plan in return for a huge wage increase, would an employee within days of retirement have a meritorious Constitutional claim? Article 9, Section 24 of the Michigan Constitution of 1963 states:

Sec. 24. Public pension plans and retirement systems, obligation

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

The Michigan Court of Appeals has interpreted "accrued financial benefits" to mean the granting of a pension right. Seitz v Retirement System, 189 Mich App 445, 456 (1991) ("the state may not reduce the pension benefit of any state employee or official, or local employee or official, once a pension right has been granted").

As a result, while the Union's proposal may be revenue neutral in the short run, i.e., until June 30, 2002, it cannot be said that it will remain so. On this point, the 3.3% increase in patrol officer contributions reflects only a current

actuarial analysis. It does not account for vagaries in the future value of the pension fund's investments, or in the parties' future negotiations.

For these reasons, the Union's proposal must stand or fall based on the section 9 factors in Act 312.

As discussed above, the patrol officers' current pension plan compares favorably with general City employee pension plans. In addition, under the factor of "overall compensation," in their new collective bargaining agreement the parties already have agreed to a 12.6% raise over three years and a +20% increase in pension benefits by the end of the third year.¹ The overall compensation of the City's patrol officers compares favorably with the overall compensation of the general City employees.

As to external comparables (a factor not relied on by the Union), the record shows that among the City's 9 comparable communities (which constitute a reasonable grouping),² the City's patrol officers rank third in overall compensation and about \$1,000 above the average. As to pensions, the City's patrol officer pension plan compares favorably with the City's external comparable communities: The City's base pension benefit ranks second highest; 6 of the 9 comparable communities do not

¹ The +20% increase in pension benefits is based on projections derived from a current average FAC of \$48,000, the 12.6% wage increase by the end of 3 years, and the addition the RS-50 surviving spouse benefit.

² The 9 City comparable communities are the following cities: Alma, Alpena, Cadillac, Coldwater, Hastings, Mt. Pleasant, Owosso, Sturgis, and Traverse City.

have a pension escalator; and only one comparable community provides a surviving spouse pension benefit without any reduction of the retiree's benefit (RS-50).

In the short run, the Union's final offer would not adversely effect the City's "financial ability," but (as explained above) it could have an adverse effect down the road.

The consumer price index and comparable employment in the private sector are minor factors in the present case: The agreed upon wage increases, addition of the RS-50 rider for pensions, and the 2.5% post-retirement pension escalator (which the City testified is always paid) compare favorably with increases in the CPI and (without any evidence to the contrary) with comparable private sector compensation.

The City argues that rejecting the Union's final offer will promote "the interest and welfare of the public" in stable labor relations among the City's police officers and will not have an adverse effect on "the continuity and stability of employment." The public welfare argument is that a 9.3% pension contribution would place the City at a competitive disadvantage in recruiting new patrol officers in light of competing police departments not having such a contribution; would retard interest in promotions to the City's command police unit (which has a 2.5% multiplier); and would lead to requests by the command officers for a 3% multiplier in their negotiations with the City. This argument has some merit. In addition, retaining the current 2.5%

multiplier would not appear to interfere with "the continuity and stability of [City] employment."

No material changes in the underlying circumstances have been presented. (The retirement of the Union president was anticipated.)

For all the above reasons, the Panel adopts the City's final offer on this issue.

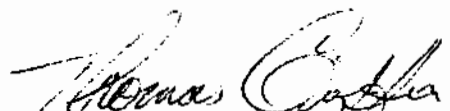
Dated: February 5, 2002


Thomas L. Gravelle, Chairman

Dated: February 5th, 2002


Frederick B. Schwarze, City Del.
Concurs

Dated: February 5, 2002


Thomas Griffin, Union Del.
Dissents

CITY ISSUE: VACATION DAYS IN FAC

City's Final Offer: The City proposes to reduce the amount of vacation payout to be included in final average compensation (FAC) to a maximum of 20 days (i.e., 160 hours), effective the date of the Act 312 Award, by adding the following new paragraph to Article XXII, Section A:

Effective the date of this Award, only the first twenty (20) days (i.e., 160 hours) of unused vacation paid-off under Article XX, Section 1, shall be included in an employee's final average compensation.

Union's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

Currently, retiring patrol officers are permitted to include in their final average compensation (FAC) twice their maximum annual allowable unused vacation days (i.e., 40 days) plus their vacation allowance for their final year (i.e., 20 days). This is a total of 60 vacation days.

As this is an economic issue, the Panel must choose one or the other final offer. The Union's offer has more merit.

In support of its final offer to reduce the number of unused vacation days to be included in final average compensation to a maximum of 20 days, the City makes the following argument: The City's last offer will eliminate a windfall and will align it with the 22.16 average number of vacation days allowed in the City's 9 comparable external communities.

In reviewing this issue, among the 6 of the 9 comparable communities which include vacation days in FAC, the average maximum vacation days is 43 1/3 days. This is midway between the parties' final offers.

As to internal comparables, no exhibit was offered showing the maximum vacation days included in FAC.

In addition, by reason of Article 9, Section 24 of the Michigan Constitution (discussed above) a question arises as to "the lawful authority of the employer" for the City's final offer to reduce an accrued component of the pension formula for existing employees.

As to the remaining factors under section 9 of Act 312, the findings regarding the Union's final offer on the pension multiplier may be referred to. They are consistent with retaining the status quo for the number of vacation days included in FAC.

For these reasons, the Panel adopts the Union's final offer on this issue.

Dated: February 5, 2002

TL Gravelle
Thomas L. Gravelle, Chairman

Dated: February 5, 2002

Thomas Griffin
Thomas Griffin, Union Del.
Concurs

Dated: February 5th, 2002

Frederick B. Schwarze
Frederick B. Schwarze, City Del.
Dissents