

2175

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION UNDER  
ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

CASE NO. L05 K-3012

BETWEEN  
THE CITY OF BAY CITY  
- and -  
THE POLICE OFFICERS LABOR COUNCIL

---

OPINION AND AWARD

DATE OF ACT 312 PETITION:	December 13, 2005
DATE PANEL CHAIR APPOINTED:	January 13, 2006
DATE OF PRE-HEARING CONFERENCE:	July 13, 2006
DATE OF HEARING:	October 18, 2006
DATE LAST, BEST OFFERS EXCHANGED:	December 1, 2006
DATE BRIEFS FILED:	January 23, 2007
DATE RECORD CLOSED:	January 26, 2007

ARBITRATION PANEL:

Richard N. Block, Neutral Chair  
William Borushko, City Delegate  
Chester Kulesza, Union Delegate

APPEARANCES:

For the Police Officers Labor Council  
Thomas Zulch, Attorney, Law Offices of John A. Lyons

For the City of Bay City  
Dennis DuBay, Attorney, Keller Thoma

2175

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION UNDER  
ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

CASE NO. L05 K-3012

BETWEEN  
THE CITY OF BAY CITY

- and -

THE POLICE OFFICERS LABOR COUNCIL

---

OPINION AND AWARD

DATE OF ACT 312 PETITION:	December 13, 2005
DATE PANEL CHAIR APPOINTED:	January 13, 2006
DATE OF PRE-HEARING CONFERENCE:	July 13, 2006
DATE OF HEARING:	October 18, 2006
DATE LAST, BEST OFFERS EXCHANGED:	December 1, 2006
DATE BRIEFS FILED:	January 23, 2007
DATE RECORD CLOSED:	January 26, 2007

ARBITRATION PANEL:

Richard N. Block, Neutral Chair  
William Borushko, City Delegate  
Chester Kulesza, Union Delegate

APPEARANCES:

For the Police Officers Labor Council  
Thomas Zulch, Attorney, Law Offices of John A. Lyons

For the City of Bay City  
Dennis DuBay, Attorney, Keller Thoma

## **BACKGROUND**

The most recent collective bargaining negotiations between the City of Bay City (hereinafter the City) and the Police Officers Labor Council (hereinafter the Union) for the lieutenants and sergeants unit resulted in a collective bargaining agreement that was effective on July 1, 2005, and expires on June 30, 2009 (City Ex. 1; Un. Ex. 2). During those negotiations, however, the parties were unable to agree on the issue of generic service time. The parties decided to put the agreement into effect but to submit the issue of generic service time to Act 312 arbitration. The Union, on December 13, 2005, filed a petition with the Michigan Employment Relations Commission pursuant to Act 312, Public Acts of 1969, as amended, requesting arbitration under that law. On January 13, 2006, the Commission appointed Richard N. Block as the neutral chair of the arbitration panel.

A pre-hearing conference was held via conference call on July 13, 2006. A hearing was held in Bay City, Michigan, on October 18, 2006. Both parties were permitted to call witnesses; to directly examine their witnesses; to cross-examine witnesses called by the other party; to offer documentary evidence in support of their respective positions; and to offer objections to evidence offered by the other party. Last, best offers were exchanged on December 1, 2006. Post-hearing briefs were exchanged, and the record was closed, on January 26, 2007.

## **STATUTORY FACTORS**

With respect to the factors that must be considered by the panel, Section 9, Act 312, Public Acts of 1969, as amended, provides in relevant part:

[T]he arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the City.
- (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.

Neither party has contended that factors a, b, e, f, or g are relevant to these proceedings. Accordingly, in the circumstances of this case, the applicable factors to be considered by the panel, depending on the issue, are c, d, and h.

### **COMPARABLES**

The City has proposed the following cities as comparable to Bay City, within the meaning of Act 312: Jackson; Muskegon; and Port Huron (City Ex. 6, Tr. 62). The Union has proposed as comparable to Bay City, within the meaning of Act 312, Jackson, Muskegon, and Port Huron, plus Midland and Saginaw (City Ex. 7).

## ISSUE

### PURCHASE OF GENERIC SERVICE TIME

#### Last, Best Offer of the Union

#### PURCHASE OF GENERIC SERVICE TIME (New Section 9.6)

An employee may retire after twenty-five (25) years of service regardless of age. The employee may purchase up to five (5) years of credited service time at the actuarially determined rate at no cost to the City. The eligible employee's pension is calculated using the same method of calculation as described in subsection 9:1(a) above.

An employee purchasing service time and electing to leave prior to reaching his actual twenty-five (25) year service date shall pay the cost of participation in the retiree health insurance. Upon reaching the twenty-five (25) year anniversary date, the Employer shall be responsible for health insurance costs based upon the collective bargaining agreement at the time of the employee's actual retirement date.

#### Last, Best Offer of the City

The City proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

#### Position of the Union

The Union contends that the City did not object to the proposal during negotiations except for the question of who will pay for the retiree health insurance during the period of time between retirement and the contractual retirement service anniversary of 25 years. City Attorney Dennis DuBay indicated this in the following statement: "The city will not agree to it. The retiree health insurance piece of it was the major stumbling block and we indicated that to the Union all along." The Union notes that its last, best offer (stated below) now addresses this City objection.

The Union points out that its LBO allows the employee to purchase up to five years of pension credit at the actuarially determined rate at no cost to the City. If the

employee leaves prior to the recognized 25-year service date for retirement, the employee will be responsible for the purchase of retiree health insurance. This confirms a zero cost for the city.

The Union points out that its LBO results in no financial burden for the City. The Union supports this with an example: when a 20-year command officer at top pay is eliminated a lower ranking officer, starting at a lower rate of pay, can fill his position, saving the City the money.

For these reasons, the Union requests that its LBO be accepted.

#### Position of the City

The City observes that the previous contract defined retirement eligibility at age 55 with 10 years of service *or* 28 years of service at any age, with a pension multiplier set at 2.5% for each year of service. The contract also provided for a retirement eligibility standard of 25 years of service regardless of age, with a multiplier of 2.8% for each year of service along with the purchase of up to two years of credited service time. As testified by Acting Chief Christopher Rupp, however, an option to purchase up to two years of generic service time was eliminated in the current contract. The City points out that the parties' current contract provides for a retirement eligibility standard of age 55 with 10 years of service (with a 2.5% multiplier) or 25 years regardless of age (2.8% multiplier). There is no provision that allows for the purchase of generic service time.

Furthermore, the City notes that on July 10, 2006, the Voluntary Exit Incentive (VEI) program was made available to eligible POLC bargaining unit members who retired prior to August 31, 2006. The VEI program gave three options to employees: (1) up to 15 months of service credit; (2) \$5,000 in base pay for pension calculation

purposes; and (3) the ability to purchase up to five years of service credit. The purpose of offering the program, as stated by City Manager Robert Belleman, was to eliminate positions through attrition rather than layoffs.

The City points out that although Union witness Sergeant Tom Pletzke testified that in past years a number of City employees were allowed to purchase generic time under then-existing agreements between the City and the Union, these provisions have now been negotiated out of the Act 312-eligible units' contracts. Furthermore, the City is negotiating with non-312 eligible Units to eliminate such agreements. Sergeant Pletzke testified that Police Officer David Harris, then a member of the FOP, was allowed to purchase three years of generic service time and receive healthcare. The City points out that it took almost two years after the contract "expired" to reach a settlement on the new contract because during that time the parties were either in negotiations or impasse procedures. Officer Harris left two days prior to the ratification of the new contract; thus, the City allowed him to retire under the previous provision.

The City argues that the Union's proposal is unclear as to whether the proviso includes the full cost of providing retiree health insurance. Unless no cost to the City means absolutely no cost to the City (including retiree health insurance), the City cannot consider the Union's proposal.

The City argues that the Panel's award must be both based upon and supported by substantial evidence with respect to statutory factors. Failure of the Union to carry the burden of proof with respect to Section 9 standards for decisions mandates that the Union's proposition be rejected.

First, the City argues that the cost of the Union's final offer is unwarranted. The City argues that the existing contract provides for retiree health insurance for the retiree and spouse for employees who have retired from the bargaining unit with 25 years of credited service. If an employee is hired at age 23 and works 25 years, he or she is eligible to retire at age 48 with lifetime health insurance for both the officer and the officer's spouse. If an employee retires at age 48 and lives 30 more years (to age 78) the cost is \$1,993,410. For each of the 25 years of the employee's service, the City accrues \$79,736 of future retiree health insurance liability ( $\$1,993,410/25$  years). Under the Union's proposal, the City would have the same accrued liability (\$1,993,410), but if five years of generic service time are purchased, the cost of the annual accrual would increase from \$79,736 each year worked to \$99,671 ( $\$1,993,410/20$  years of personal service). This is an increase of 25% to the annual cost of the benefit ( $\$99,671 - \$79,736 = \$19,935/\$79,736 = 25\%$ ). This 25% increase remains constant even if it is assumed that the City will provide retiree health insurance for only 25 years. It also remains constant if it is assumed that the current annual cost of \$11,668 does not increase over the next 30 years.

The City provides a second perspective on this. There are four employees who must work 25 years to cover 100 years of needed service. This results in a total retiree health insurance liability of \$7,973,640 ( $\$1,993,410 \times 4$  employees). Under the Union's proposal, there could be five employees working 20 years each to meet the 100 service years needed. This would result in a 20.13% increase in accrued liability to cover the same 100 years of required service. Thus, the City argues that its financial problems,



which are exacerbated by underfunded pensions and retiree health insurance costs, require that the Union's LBO be rejected.

The City's argues that its position is further supported by the parties' bargaining history and by a comparison of the pension plans for the comparable communities. Furthermore, the City argues that none of their other Act 312 eligible units have the benefit proposed by the Union and that the City is currently negotiating the elimination of the benefit for non-Act 312 units.

For all the above reasons, the City requests that its LBO be accepted.

## **DISCUSSION**

This section will analyze the parties' respective LBOs based on the relevant statutory factors.

### Statutory Factor: Ability to Pay

By amending its LBO to require that the employee pay the additional health insurance premium, the Union implicitly recognizes that the City's financial condition makes it necessary that this LBO impose no additional costs on the City. Thus, the Union argues that its LBO is a zero-cost proposal because the employee buys the additional five years of service and will pay the additional health insurance costs. The City, for its part, contends that Union's LBO is not a zero-cost proposal to the City because the City must amortize its post-25 year health care costs for employees retiring after 20 years over 20 years of service rather than over 25 years of service, resulting in a 25% annual increase in the amount that must be set aside to cover the 20-year retiree's health care costs.

The record establishes that the City maintains a trust fund to pay for retiree health insurance (Tr. 76-77). The City contends that the shorter amortization period associated

with a career that is less than 25 years will increase its annual payments to the trust fund. The City also contends that its payments to the trust fund will be increased because it will need more employees that it would otherwise need because of the shorter service times associated with the early retirements. Based on these contentions, both of which do not appear implausible on their face, it is possible that Union did not take into account all additional costs to the City associated with its revised LBO. The City's calculations raise questions as to whether the Union's LBO is truly a zero-cost proposal to the City. If it is not a zero-cost proposal, the cost to the City cannot be determined based on the record.

The differences between the Union's initial proposal, pursuant to which the employee did not pay the additional health insurance cost, and the revised LBO, pursuant to which the employee would pay the additional health insurance costs, are sufficiently great that the evidence on the record does not permit a determination of the cost of the Union's revised LBO.

Based on the foregoing, a majority of the panel concludes that the record on the statutory factor of ability to pay is inconclusive. The Union contends that its proposal is a zero-cost proposal while the City has raised at least a plausible refutation of that contention. Accordingly, a majority of the panel concludes that the statutory factor of ability to pay does not support either the Union's LBO or the City's LBO.

Statutory Factor: Internal Comparability

The other Act 312-eligible units in the City are the internal bargaining units that are most comparable to the lieutenants and sergeants unit. The record establishes that the Fraternal Order of Police (FOP) unit (officers), the Teamsters Local 214 unit (deputy chiefs), and the firefighters unit, the other Act 312-eligible bargaining units, do not

currently enjoy the benefit proposed by the Union in its LBO, although at least the FOP unit had this benefit through January 5, 2003 (City Ex. 44, 54; Tr. 153-56).

The record does establish that the non-Act 312 eligible units enjoy this benefit. Although the City witnesses testified at the hearing that the City was attempting to negotiate with the non-Act 312 eligible units to remove this benefit (City Exs. 30, 54; Tr. 114-15), this benefit had not been removed as of the date of the hearing. Therefore, it must be presumed that the non-Act 312 eligible employees continue to enjoy the right to purchase generic service time.

Based on the foregoing, it must be concluded that the statutory factor of internal comparability slightly favors the City's LBO because the two bargaining units most comparable to the lieutenants and sergeants unit, the officers unit and the deputy chiefs unit, do not enjoy the benefit proposed in the Union's LBO.

#### Statutory Factor: External Comparability

The parties agree that Jackson, Muskegon, and Port Huron are comparable to Bay City for the purposes of these proceedings. The record establishes that of the three agreed-upon comparables, one, Muskegon, permits employees in the lieutenants and sergeants unit to purchase generic service time (City. Ex. 52).

The Union has proposed that Midland and Saginaw are also comparable to Bay City for the purposes of these proceedings. Neither of these two cities permits employees in the lieutenants and sergeants unit to purchase generic service time (City Ex. 52).

Based on the foregoing, it must be concluded that the statutory factor of external comparability supports the City's LBO. Only one of the three agreed-upon comparables

and neither of the Union's comparables permit employees in the lieutenants and sergeants unit to purchase generic service time. Thus, the record does not establish that the right to purchase generic service time is such a common benefit enjoyed by lieutenants and sergeants in the comparable cities that the lieutenants and sergeants in Bay City would be considered disadvantaged vis-à-vis their peers if they did not enjoy this benefit.

"Other" Statutory Factor: Bargaining History

The record establishes that this unit had the right to purchase up to two years of generic service time pursuant under the 1999-2001 collective bargaining agreement (City Ex. 31; Tr. 153). This right was excluded from subsequent agreements (Tr. 153). Thus, the most recent bargaining history for this bargaining unit supports the City's LBO.

"Other" Statutory Factor: Fairness and Equity

Although not addressed in its brief, the evidence offered by the Union also suggested that the Union is of the view that its LBO is justified because other members of the police department have received this benefit. The record establishes, however, that on those occasions when employees were permitted to purchase generic service time, it was pursuant to the provisions of a collective bargaining agreement or a supplemental agreement early retirement agreement agreed upon by the parties in effect at the time of retirement (City Ex. 29; Tr. 112, 154). Thus, the "other" statutory factor of fairness and equity does not support the Union's LBO.

**CONCLUSION**

Based on the foregoing, a majority of the panel concludes that the City's LBO on the purchase of generic service time is more consistent with the statutory factors than the Union's LBO.

**AWARD**

The City's LBO on the purchase of generic service time is accepted. The Union's LBO on the purchase of generic service time is not accepted.

May 11, 2007



Richard N. Block  
Panel Chair

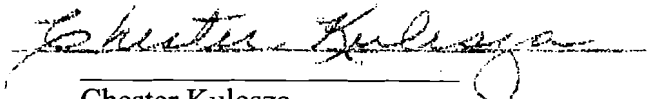
May 11, 2007



William Borushko  
City Delegate

DISSENT

May 11, 2007



Chester Kulesza  
Union Delegate