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

IN THE MATTER OF THE ACT 312
ARBITRATION BETWEEN:

COUNTY OF ALLEGAN,
Public Employer,

Arbitrator William P. Borushko
MERC Case No. L05 G-7001

-and-

POLICE OFFICERS LABOR COUNCIL
Labor Organization,
/

ACT 312 ARBITRATION AWARD

Appearances:

For the Employer:

Peter H. Peterson
250 Monroe Avenue NW
Suite 800
Grand Rapids, MI 49501

For the POLC:

Thomas R. Zulch
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Troy, MI 48083

Panel Members:

Peter H. Peterson
For the Employer

Fred LaMaire
For the POLC

INTRODUCTION

The petition for arbitration in this case was filed on December 7, 2005. The undersigned was designated by the Michigan Employment Relations Commission to arbitrate the matter on February 2, 2006. There have been two interim awards issued in this proceeding. On June 15, 2006 the "Interim Award on Comparable Communities" was issued. After two hearing dates and several executive sessions another interim award was issued at the request of the parties, which covered all issues except for the single issue which is the subject of this final award. That interim award, issued on April 5, 2007, was a stipulated award arrived at by the parties after the aforementioned sessions. Both of the interim awards are attached hereto and incorporated into this final document. At the conclusion of these sessions, this arbitrator afforded to each party the opportunity to submit a revised Last Best Offer, which they have done, and that is the subject of this award.

For purposes of brevity, there will be no recitation of the normal inclusions in an Act 312 arbitration award. As indicated in both interim awards, I am satisfied that the requirements set forth in the applicable statutes have been met, and that this award reflects careful consideration of those requirements. I am also satisfied that this award is fully supported by the evidence submitted on the record.

Briefly, the comparable communities in this case are:

Barry County	Van Buren County
Eaton County	Lenawee County

Kalamazoo County Grand Traverse County

Ottawa County

Of course, the rationale for determining these comparables is set forth in the attached "Interim Award on Comparable Communities".

THE ISSUE

After all of the above-mentioned hearing dates and executive sessions, there remains one issue to be decided. That is the issue of whether or not the Employer should be able to implement a defined contribution pension plan for new hires during the course of this agreement. The positions of the parties are:

The Employer: Effective April 30, 2007, the Employer shall have the right to adopt a defined contribution pension plan for bargaining unit employees. If such a plan is adopted, all employees hired on or after the effective date of the plan shall be subject to the defined contribution pension plan and not the defined benefit pension plan applicable to existing employees. If permitted by MERS without additional payment by the Employer given the funding level of be defined benefit pension plan, existing employees shall have the one-time option to switch permanently to the defined contribution pension plan. The Employer shall make a fixed contribution equal to 7.0% of an eligible employee's gross wages toward the defined contribution pension plan. Eligible employees shall be permitted to contribute up to an additional 5.0% of gross wages. If an eligible employee chooses to contribute such additional amount, the Employer will make a matching contribution of up to 5.0%. There shall be a maximum

Employer contribution in any plan year of 12.0%. Contribution rates will occur in whole percentage amounts only (i.e. 0%, 1%, 2%, etc.). The plan shall have graduated vesting under which full vesting will occur after six years of service with the Employer.

If the Employer decides to exercise the above right to adopt a defined contribution pension plan, it will notify the Union in writing of its decision at the least 45 days prior to the plan becoming effective. The Union shall then have the right to choose, in lieu of the above defined contribution pension plan, modification of the defined benefit pension plan to provide the following MERS benefit package for employees hired on or after the effective date of the modification: C-2(B-1), V-10, FAC-5, F-55(25), 4.91% member contribution, all prior years of County service. The Union's right to make this choice shall be contingent upon the following prerequisites: 1) that the Union advises the Employer in writing of this choice within 30 days of the Employer notice described above; and
2) that the described modification to the defined benefit pension plan is permitted by MERS without additional payment by the Employer given the funding level of the defined benefit pension plan.

The POLC: No defined contribution benefit pension plan.

DISCUSSION

The Employer's Last Best Offer in this arbitration presents a relatively unique set of conditions. In the offer, the Employer seeks, of course, to secure the right to implement a defined contribution benefit plan for all new hires in this bargaining unit. That in and of itself is a rather ordinary proposal in these times of cost reduction efforts. What is unique about the proposal is

that the Employer has also included an alternative in which it proposes that the POLC will have the option of keeping the defined contribution benefit plan as proposed by the Employer, or accepting a modified defined benefit plan, also as proposed by the Employer. It is well-established that the parties have considerable leeway in the development of their last best offers. However ,it is also established that the offer must be supported by the evidence submitted during the preceding. This is the first instance in the entire set of negotiations that the Employer has proposed this alternative. I believe this raises significant issues with respect to adoption or rejection of the Employer's offer. Yet, when the proposal is analyzed, it is also quite clear that the significant issue remains, and always has been, the question of the Employer's right to implement a defined contribution benefit plan. The alternative obviously has no significance if the original issue is not accepted by the panel. Therefore, I will first address the issue of the defined contribution pension plan itself, and will subsequently take up the question of the alternative offer.

The Employer gives a number of reasons for its proposal to change from a defined benefit to a defined contribution plan. It points out that the County has suffered a significant loss of revenue sharing money from the State of Michigan, in the amount of approximately $2 million per year. During the last five years, pension payments, expressed as a percentage of payroll have gone from 10.1% to 17.9% of payroll, and there has also been a 98% increase in health care costs over the same five-year period. The Employer also points out that the funding level for the current plan has declined from a 58% funding level to the current 53% funding level. The POLC is quick to respond that the overall average pension contributions in the last 15 years was less than 12% per year. It also points out the cost of the pension benefits currently enjoyed by the unit would

normally cost less than 9% of payroll, but that the larger amount currently required as contributions by MERS is a direct result of a large amount of unfunded accrued liability. The POLC argues, with some justification, that the employees cannot be held responsible for the large amount of unfunded liability. But can the Employer be held solely responsible for this increase in the funding requirement for the defined benefit plan?

Where does unfunded accrued liability come from? To a large extent it comes from the cost of the improved benefit levels that are granted to covered employees. Virtually all benefits are granted with recognition of all prior years of service. If benefits were granted prospectively, the POLC's argument and numbers would be accurate. But that is not the fashion in which proposals are made. When a benefit is increased retroactively, anyone in the unit with significant service has not had sufficient funds placed in the account to cover the new, higher benefit for those prior service years. When an actuarial valuation is obtained, that cost is reflected as a lump sum which could be placed in the account by the employer, or a percentage of payroll amount which reflects a thirty year amortization. That allows employers to fund these benefits over time, rather than place large lump sums in the accounts. That is obviously to the employees' advantage, since most employers would balk at placing significant amounts of funds in the accounts. This allows employees the opportunity to enjoy significantly larger benefit levels, at a more affordable cost to the employer.And so the answer to the question is that both are to blame for these high unfunded liabilities.

Another argument that the Employer makes for the adoption of its offer is that virtually all of the other units in the County have a similar defined contribution pension plan now in place. In fact,

in its brief, the Employer points out that the proposed benefit planned for in this group is substantially better than that which is in place for all other County employees. The Employer contribution, with employee matching contributions, would equal a maximum of 12% of payroll. This is in comparison to the existing unit contributions from the Employer of 6%. The Road Command unit, covered in a separate MERC petition, has entered into a stipulated award with the undersigned arbitrator which does not contain a defined contribution pension plan. At present it is the sole unit under current agreement which does not contain such a plan. The argument for its omission is that the Road Command unit is a unit generally comprised of senior department employees who have in fact come up through the ranks. Therefore employees who are new hires in the road deputy unit advance and become members of the command unit, they will bring with them a defined contribution plan. While the POLC may not agree with such reasoning, it does at least provide some understanding as to the exclusion of that particular unit.

The POLC argues that the County has not presented supporting reasons for its demand for the defined contribution plan. While there was no direct testimony presented with respect to to the need for such a defined contribution plan, there can be no question that there was ample testimony with respect to the budget, as set forth above. There was also testimony regarding the fact that the other units were in fact covered by defined contribution plans. Finally, in the executive sessions there was significant exchange between the parties regarding this issue. The Employer cites as support facts and figures which are derived from the various exhibits placed in evidence during the hearing. Budget materials, the most recent MERS actuarial valuation, and the comparable community contracts are all clearly a part of the record in this case. I find that

there was in fact sufficient material evidence placed on the record on this issue to warrant consideration by the panel.

One of the factors that must be considered by any panel when rendering its decision is comparison to communities which are deemed comparable. There are three comparable counties who currently have a defined contribution pension plan for their employees. They are Grand Traverse County, Kalamazoo County, and Lenawee County. Ottawa County, Barry County, and Eaton County all have defined benefit pension plans. Van Buren County is the most unique of the comparables, because it has recently gone from a defined contribution plan to a defined benefit plan. That is of course the opposite direction from which employers normally wish to proceed. As pointed out in the Employer's brief, during the executive session, I contacted the Van Buren County Administrator. Quite frankly, this was the first occurrence that I had observed in which an employer had proceeded in the opposite direction. The Administrator confirmed that the County had recently offered a new defined benefit plan, the parameters of which are very similar to the alternative offer which the Employer has made in this case. The Administrator indicated that the switch back to a defined benefit plan provides a limited benefit and confines the employer contribution to a maximum of 7%. This would limit the employer's exposure under this plan, which is of course the reason most employers seek to establish a defined contribution pension plan. We have then three employers with defined contribution benefit plans and four employers from the comparable list with defined benefit pension plans. We must also look at the last remaining comparable, which is other employee groups with the same employer. That clearly shows, with the single exception of the command unit, support for the Employer's position. Review of the comparables does not provide a clear sense of direction

the panel to consider. In fact when we consider the external comparables one hand and the internal comparables on the other, we appear to be relatively even.

Returning to the arguments both for and against a defined contribution plan, I find significant merit in the Employer's assertions regarding the increased cost. Both the significant rise in the defined benefit cost, and the health care increases, place substantial burden on a diminishing amount of available funds. I am very mindful of the union's argument regarding the relatively low average cost of the benefit when viewed historically. However historical averages are just that, averages. The primary concern of the panel has to be the impact of today's costs on the budget. When I look at the increase in pension cost over the last five years, I see an almost 8% rise which the Employer must contribute. That means that every year in addition to whatever wage increases are provided to the employees, the Employer must also contribute 1.6% in additional monies to the pension plan. Also, the phenomenal rise in health care costs places significant burden on any employer. In this instance, those costs have increased almost 20% per year. If one equates that increase to a per hour cost, one is likely to find a 2-3% per hour increase, or more, relative to health care. 3.5% hourly cost increases, not including general wage increases, deserve our attention.

The POLC raises legitimate questions with respect to the implementation of any defined contribution benefit plan. If one is adopted, various changes are made to the funding requirements of existing plans, which result in accelerated payments. That may place additional burdens on the Employer. I believe these issues can and should be raised. It is also why the issue in this arbitration is whether the Employer shall have the right to implement a defined

contribution pension in the future, and not the actual implementation itself. There are many additional factors that must be considered before that decision is made, and the POLC will have the opportunity to raise those questions, and others, if the Employer elects to implement the plan

It is the award of the panel that the Employer's offer regarding a defined contribution pension plan for new hires be accepted.

THE ALTERNATIVE

As I indicated previously, I believe the Employer's inclusion of the alternative proposal of a limited defined benefit plan raises significant questions. It is quite clear that an arbitration panel is required to consider any offers submitted by either party, even if submitted for the first time at the hearing. I am not certain as to the requirement of the panel to consider a Last Best Offer which has never been discussed throughout the negotiations, or the arbitration.

An argument that the Employer makes in support of its offer is that the alternative of a reduced defined benefit plan gives the POLC an agreed upon substitute, if it feels so strongly against the defined contribution plan. The POLC counters that this is a proposal which has in fact never been discussed, and is not supported by the evidence on the record.

I have several concerns with respect to this alternative proposal. The first is that I am not comfortable with a proposal which has never been discussed at all. Although the arbitrator possesses considerable authority in these proceedings, I am not certain that it extends this far.

There is no question that the parties should possess considerable leeway in developing their Last Best Offers. However does that leeway extend into unexplored territory such as this? Second, I believe that the alternative is an area which needs more discussion. It is possible, though perhaps unlikely, that agreement could be reached on this issue with additional discussion. There are a number of questions that the POLC has raised with respect to the viability of a defined contribution pension plan. In the time between notification to the union and a plan being implemented, those questions should be raised. Also during that period there should be discussion between the parties as to other ways in which the Employer might conserve funds. It is quite possible that another alternative may be more desirable to the unit employees. How do we know that since no discussion has taken place regarding this alternative? If the goal of Act 312 arbitration is to arrive at a solution that, given the opportunity and circumstances, the parties would have arrived at themselves, then I question whether I should take away that opportunity.

One of the POLC's arguments against the adoption of this proposal is that there is not any evidence on the record as to warrant its adoption. Upon review, I believe I have to agree. The only reference to anything similar is that which is uncovered in the Van Buren agreement. As I indicated previously this is the first instance I have noted where an employer has agreed to go from a defined contribution plan to a defined benefit plan. It is possible that more than one instance has occurred.

It seems to me this alternative needs more discussion. I am being asked to substitute my judgment in place of future negotiations concerning what might be best for the employees in the event the Employer desires to adopt a defined contribution pension plan. I believe the employees

should have an opportunity to more adequately discuss the alternative. I also recognize that by not accepting this proposal I may have precluded the offer of any alternative in the event of a defined contribution plan's adoption. I am more comfortable with that conclusion that I am with adoption of the proposed alternative.

I concur with the POLC position that sufficient evidence does not exist on the record for adoption of the Employer's alternative offer of a reduced defined benefit pension plan. It is the award of the panel that the Employer's proposal on this issue is not accepted.

Issued on this 30th day of April, 2007.

4/30/07

William P. Borushko Date
Panel Chairperson

For the Employer: Concurring with the right to adopt a defined contribution pension plan for new hires, and dissenting with the rejection of the alternative defined benefit plan.

5-7-07

Peter H. Peterson Date

For the POLC: Dissenting with respect to the right to adopt a defined contribution pension plan for new hires and concurring with the rejection of the alternative defined benefit plan.

Fred LaMaire 5/8/07

Fred LaMaire Date