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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY COMPULSORY ARBITRATION TRIBUNAL

In the matter of Statutory Arbitration Between:

CITY OF WARREN,

Employer,

Arising pursuant to Act 312,
PA 1969, as amended

-and-

MERC CASE NO.: D05 B-0126

WARREN POLICE OFFICERS ASSOCIATION,

Union.

PANEL'S FINAL OPINION AND AWARD

I. APPEARANCES

BEFORE THE COMPULSORY ARBITRATION PANEL

STANLEY DOBRY, Impartial Chairman
HOWARD L. SHIFMAN, Employer Delegate
PETER P. SUDNICK, Union Delegate

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Dated: November 12th 2007

II. INTRODUCTION

This Panel is created under the authority of the Michigan Employment Relations Commission (hereinafter MERC), pursuant to Act 312 of the Public Acts of 1969, as amended; MCLA 423.231 et seq.; MSA 17.455(31) et seq. That agency maintains a panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel. The chairman of this panel was duly appointed to this dispute by the Michigan Employment Relations Commission, and the proceeding is being conducted in conformity with their rules.

Act 312 proceedings in this matter were initiated by petition filed by the Warren Police Officers Association (“WPOA”). Subsequent to the filing of the petition, the parties were able to settle all disputed issues, except for wages in the last year of a four (4) year agreement commencing 7/1/05 and ending 6/30/09. In this regard, the parties are to be commended for their firm commitment to the negotiation process which enabled them to resolve nearly all of the disputed items contained in the original petition.

As indicated, the single issue to be determined by this Arbitration Panel is wages for the July 1, 2008 contract year. Moreover, the issue of wages for the 2008-2009 contract year was appreciably constricted by the last offers of settlement that were made part of the 2005-2009 Tentative Agreement. The wage provisions of that Tentative Agreement read as follows:

Wages:	7-1-05	0%
	7-1-06	0%
	7-1-07	3%
	7-1-08	To be determined by the panel.

In executing their collective bargaining agreement, the parties included the following stipulation:

The parties have agreed to submit the wages for this year of the collective bargaining agreement only to Act 312 Arbitration. The parties have stipulated to what their last and best offers will be in arbitration. The last and best offer of the City will be 2.25% and the last and best offer to the union will be 3%. No other issue will be submitted to Act 312 Arbitration.

Because the issue presented to the Panel is “economic”, the Panel must accept the last offer of settlement which, in the opinion of the Panel, more nearly complies with the factors contained in Section 9 of Act 312. Accordingly, the Panel must select either the City’s last offer of 2.25% or the Union’s last offer of 3.00%.

In order to expedite the process and avoid a prolonged hearing on the issue of external comparables, the parties, for this case *only*, stipulated that the following nine (9) communities and their unions were to be considered “comparable” by the Panel. As part of the stipulation, the parties agreed that this award will not have precedential value in terms of the selected communities in any future Act 312 proceeding, and that the expedited nature of this proceeding makes the case unique for comparative purposes generally, now and in the future:

1. City of Dearborn.
2. City of Dearborn Heights.
3. City of Livonia.
4. City of Roseville.
5. City of Royal Oak.
6. St. Clair Shores.
7. City of Southfield.
8. City of Sterling Heights.
9. City of Westland.

The approach taken by the parties allowed the hearing on the wage issue to be concluded in a single day, Wednesday, March 21, 2007. During the hearing, both parties submitted a myriad of exhibits and documents, including City budgets, Comprehensive Annual Financial Reports, CPI Data, retirement and actuarial information, health care descriptions and cost

information, and credit ratings as well as a variety of exhibits and charts to highlight and explain the data contained in the various documents. Additionally, the WPOA presented as a witness, Dr. Alan Reinstein, CPA and Professor of Accounting at Wayne State University, School of Business Administration, who testified from a prepared analytical report regarding the City's financial condition. Both parties made excellent presentations and provided the Panel with substantial evidence and argument in support of their last offers of settlement. The Panel Delegates and Impartial Chairperson met on Friday, October 26, 2007 to further discuss the totality of the evidence and testimony in order to arrive at a final opinion and award that more nearly complied with the Section 9 factors.

In this case, with only one (1) economic issue, it was the task of the Panel to determine whether, in light of all the statutory criteria, it is more reasonable to award 2.25% or 3% in the last year of the Agreement.

III. STATUTORY FRAMEWORK AND CRITERIA FOR DECISION

A. Purpose and Procedure.

The purpose of the Act is the peaceful and principled resolution of labor disputes in the public sector. To this end, the Act provides for “compulsory arbitration of labor disputes in municipal police and fire departments.” The general statement of statutory policy is enlightening. The statute is to be expressly liberally construed to achieve its legislative purpose. Found at Michigan Compiled Laws Annotated (MCLA) 423.231, and Michigan Statutes Annotated (MSA) 17.455(31), it states:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provision of this Act, providing for compulsory arbitration, shall be liberally construed.”

The law further defines policemen and firefighters [MCLA 423.232; MSA 17.455(32)]; establishes methods and times of initiating the proceedings [MCLA 423.233; MSA 17.455(33)]; provides for the selection of delegates [MCLA 423.234; MSA 17.455(34)]; and establishes the method for selection of the Arbitrator [MCLA 423.235; MSA 17.455(35)].

It also sets forth procedural timetables; has a provision for the acceptance of evidence; and allows that the panel may issue subpoenas and administer oaths. [MCLA 423.237; MSA 17.455(37)]. The dispute can be remanded for further collective bargaining. [MCLA 423.237a; MSA 17.455(37a)] [MCLA 423.239; MSA 17.455 (3a)]. Finally, the law provides for enforcement, judicial review, maintenance of conditions during the pendency of the proceedings. [MCLA 423.240-247; MSA 17.455(47)].

Finally, at or before the conclusion of the hearing, the panel is required to identify each issue as “economic” or “noneconomic”. In most instances, the classification is critical. The panel may adopt either party’s offer or its own position on a noneconomic issue. However, on an economic issue, as here, the “arbitration panel *shall* adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies” with the factors set forth in the statute. [MCLA 423.238; MSA 17.455(38)] [Emphasis added].

In other words, the panel must choose the more reasonable of the parties’ two offers. Therefore, in a very real sense, Act 312 proceedings, or at least particular issues, are not “won” by a party; they are “lost” by the party making unreasonable demands in light of the facts confronting them.

On contested issues, the panel must base its findings on the statutory criteria, to the extent they are applicable. There are ten. MCLA 423.239; MSA 17.455(39) states in relevant part:

“ . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services,

commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during 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-findings, arbitration or otherwise between the parties, in the public service or in private employment.”

IV. FACTUAL BACKGROUND

The following background facts are noted at the outset of this Opinion prior to discussion on the substantive issue.

1. The City’s Police Department is its law enforcement agency and provides approximately 280 full-time positions of which approximately 205 are included in the WPOA bargaining unit. The City also maintains an Emergency 911 System and Fire Department.

2. The City of Warren was incorporated as a home rule City in 1957. The City is governed by a strong Mayor, 9 member Council, Treasurer and City Clerk, all of whom are elected to a maximum of 3-4 year terms.

3. The City encompasses 34.5 square miles (22,080 acres) all of the southwestern section of Macomb County where it is adjacent to the City of Detroit. The City’s boundaries are Eight Mile Road on the south, Fourteen Mile Road on the north, Dequindre Road on the west and a parallel line running due north from the Gratiot - Eight Mile Road intersection on the east. With a population of 138,247 (2000 Census figure), the City of Warren remains the third largest city in the State of Michigan.

V. DISCUSSION

Collective bargaining is an outward manifestation of a statutorily-recognized relationship. These parties have been fortunate; their leaders and counselors have ‘kept their eye on the donut and not the hole.’ They have recognized and conducted themselves with an eye toward fostering that relationship for the good of their respective constituencies, and the good of the public.

Both the City and the Warren Police Officers Association dealt with this proceeding, and the modification of their contract, in the mature and sophisticated way that is to be expected of real professionals. As a personal note, the Impartial Chairperson was greatly aided by the quality of the representative’s advocacy and the wise counsel of both delegates, and especially their balanced input in the deliberation process.

That only one relatively minor dispute is left to be decided by the panel, particularly where the difference between them is relatively small, is a compliment to their efforts at the negotiation table and an example of how the Act 312 process works to engender reasonable demands.

Interestingly, both sides point to the City’s financial stability in a weak Michigan economy in support of their respective positions. According to the Union, the evidence shows that the City has the financial capacity to pay the extra 0.75% in the last year of the Agreement. The Union submits that it is a modest increase in view of the overall contract settlement that reflects no wage increases in year one and two, and cooperative efforts to reduce health care and pension costs. The Union further points to its role in encouraging citizens and council members to support an increase in the Police and Fire pension and health care millage and its previous support for the Police and Fire VEBA Trust to help pre-fund retiree health care costs. The Union

presented the testimony of Dr. Reinstein from Wayne State University to support their position regarding the City's financial health. Indeed, Dr. Reinstein commended the City for its excellent financial health in difficult economic times. He pointed out that many communities in Southeastern Michigan are facing long-term liabilities - - particularly with regard to health care and pension costs - - which will be difficult to resolve and that many of these communities, unlike the City of Warren, have decreasing fund balances.

For its part, the City pointed out that its financial health is a product of sound financial management and its success in establishing short and long term reform. It argues that it is in a stable position because it has executed competent and fiscally responsible strategies. Although its proposed wage increases have been moderate, WPOA members maintain their relative standing among the comparables with enviable wages and benefits. For example, the City, for the most part, did not demand major modifications to the health and retirement benefits available to active WPOA members.

According to the City, careful financial planning has allowed it to improve its present and long-term economic condition in tough economic times. It pointed out that it had downsized many of its non-essential operations, reduced its pension and retiree health care costs in the long-term and developed a financial plan to protect the citizens of the community in a way that maintains a high level of essential services for now and into the future. A cautious and modest approach to contract settlement is particularly necessary given the uncertainty of these financial times that could result in further reductions in revenue sharing and other City revenue sources.

The City also argued that internal comparability required a pay raise of only 2.25% because other City bargaining units agreed to this increase.

Although it is not entirely dispositive of the issue, the evidence demonstrates that the City has the sufficient ability to pay the increase proposed by the Union. While the City faces some potentially significant financial uncertainties, particularly in the area of liability for retiree health care, it has the financial capacity to meet the reasonable demand of the WPOA given the overall settlement arrived at between the parties. In particular, the evidence, *inter alia*, reflects the following: (1) the State did not cut revenue sharing in 2006 or 2007 and some of the previous decline was mitigated by increased property tax revenue; (2) although the City lost approximately 5 million in revenue sharing, the balance in Warren's Undesignated Funds increased about 60% from 16.8 million to 27.1 million. Throughout the period, it maintained good credit ratings for its bonds.

The myriad of exhibits and documents (a large box full) submitted by the parties show that the City's financial health is sound. The City administration is to be commended for making financial decisions which allowed it to weather the present storm which adversely affected many other Southeast Michigan communities, particularly those older suburbs that have not been able to deal with as effectively as the City of Warren.

As alluded to above, the fact that the City has made prudent financial decisions does not, by itself, warrant granting the Union's request in this case. In other words, the Act 312 process does not mandate that because the City of Warren has done a good job with its finances, the Union is automatically entitled to its wage demand.

There is evidence in this record, however, that the City had reached an agreement with its AFSCME bargaining unit that provided for a 3% raise if revenue sharing was not cut below levels that existed several years ago. If further cuts did occur, the parties agreed to a formula that

would reduce the 3% increase pro rata. If no cuts whatsoever occurred, the employees would receive the 3% increase. Depending on the size of the cuts, the 3% increase could have been reduced or eliminated altogether. As the State of Michigan attempted to balance its budget, AFSCME had second thoughts about the revenue sharing formula agreement. In the midst of the State's financial woes, AFSCME agreed to forego the risk and accept a set 2.25% increase.

What is significant for this Panel is that the City was prepared to offer a 3% increase if there were no further cuts in revenue sharing funds. Events to the date of this Award establish that the State Legislature has not cut revenue sharing. Moreover, it does not appear that there will be any proposals to cut revenue sharing through September 30, 2008.

Consequently, the City's bargaining positions was effectively an admission that it had the wherewithal to fund such an increase, if the worst case scenario did not play out. This would have otherwise been a closer case

However, the fact that the anticipated cuts in revenue sharing funds did not occur favors the Union's offer of 3% because it mirrors what the City was willing to provide in the absence of such cuts. It reflects, in essence, what the parties would have agreed to had they been fully aware of the circumstances during negotiations. The absence of revenue sharing cuts, in addition to the foregoing evidence pertaining to the stability of the City's financial condition, requires that the Union's position in this case be awarded by the Panel.

Parenthetically, the Panel points out that the decision in this case should not be viewed as a criticism of the decision by other unions in the City to accept a guaranteed 2.25%. Sometimes 'a bird in the hand is worth two in the bush.' In light of what has been occurring with revenue sharing funds over the years, their decision to lock in an increase is understandable.


The present conditions, however, justify a conclusion that the Union's offer more nearly complies with the Section 9 factors.

In light of the foregoing, particularly the evidence of the City's stable financial condition in an region that has otherwise been wounded by an economic downturn, the fact there has been no further cuts in revenue sharing funds, and, further, that the Union's offer best maintains the WPOA's status among the comparables, the Panel makes the following award as to wages for the 2008-2009 contract year:

2008-2009 - 3%

VI. CONCLUSION AND AWARD

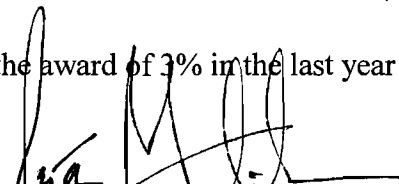
For all of the foregoing reasons, a majority of the Panel hereby awards the Union's final offer of settlement, adopts this statement as its complete award, and remands this matter to the parties for the drafting of a collective bargaining agreement in accordance with the determination set forth herein.



STANLEY T. DOBRY,
Impartial Chairman

Dated: November 12th 2007

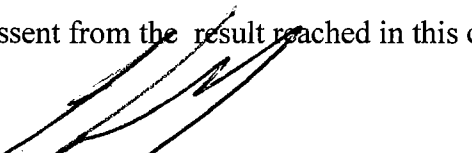
As the Union's delegate, I concur with the award of 3% in the last year of the contract.



PETER P. SUDNICK,
Union Delegate

Dated: November 12th 2007

As the City's Delegate, I respectfully dissent from the result reached in this case.



HOWARD L. SHIFMAN,
Employer Delegate

Dated: November 12th 2007