2272

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS

IN THE MATTER OF ARBITRATION ARISING PURSUANT TO ACT 312 PUBLIC ACTS OF 1969 AS AMENDED BETWEEN

CITY OF KENTWOOD (Employer)
-And-
POLICE OFFICERS LABOR COUNCIL (Union)

________________________________/

MERC Case No. LO C 9008

FINDINGS OF FACT, OPINION AND ORDERS

APPEARANCES	A. Robert Stevenson, Impartial Chairperson Lisa Sonego, Employer Delegate Mike Woronko, Union Delegate
FOR THE UNION	Brenda Canfield Attorney for the Union 667 East Big Beaver Road Suite 205 Troy, Michigan 48083
FOR THE EMPLOYER	Kevin Krause Jeffrey Gray Jr. Law Weathers & Richardson P.C. 333 Bridge Street, N. W. Suite 800 Grand Rapids. Michigan 49504

INTRODUCTION

As previously indicated, this proceeding is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. This petition was initially filed by the Union September 22, 2008. I was appointed as the impartial arbitrator and chair of the arbitration panel. A prehearing conference by telephone was conducted on February 11, 2009 at 10:00 am and a hearing was scheduled for May 6-7, 2009. However, it was later rescheduled by agreement of the parties to June 18-19, 2009. It should be noted that the parties waived all regulatory and statutory time limits.

The City and the Union reached tentative agreements on many issues, and those agreements are found in the City's Answer to this Act 312 Petition, dated February 20, 2009 (Union Ex 1).

The parties also agreed on February 27, 2009 to the comparable communities to be used in the arbitration. The external communities include Muskegon, Holland and Wyoming as primary, and Walker, East Grand Rapids, and Grandville as secondary comparables.

The parties Last Best Offers of Settlement were exchanged on July 27, 2009.

STATUTORY SUMMARY

Section 9 outlines a set of factors upon which the panel shall base its findings, opinions and orders. Those factors read as follows:

(a) The lawful authority of the employer

(b) Stipulations of the parties

(c) The interest and welfare of the public and 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 general
   (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 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

This statute also provides that a majority decision of the panel, if supported by competent, material, and substantial evidence on the whole record will be final and binding. As to economic issues, the arbitration panel must adopt the Last Offer of Settlement which in its opinion more nearly complies with the applicable factors prescribed in Section 9.

Section 10 of the Statute establishes, inter alia, that increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period or periods in dispute.

ISSUES

The outstanding issues which will be resolved by this arbitration are as follows:

1. Wages

2. Retiree Health Employee Contribution (settled)

3. Retirement Defined Benefit

4. Health Insurance Acting Employee

BACKGROUND

The City of Kentwood is located in Kent County and, according to the 2000 census, has a population of 45,255 and covers 22 square miles (Employer EX 12-13). Its population is slightly larger than Muskegon and Holland at 40,105 and 35,048 respectively, and is less than the population of Wyoming at 69,368 (Employer Ex 13). Police Chief, Richard Mattice, testified that the City has 4 bargaining units, one a police sergeants group of 11 employees represented by the POLC, a firefighters unit , a General Employee Association that includes public works employees and this unit of 56 patrol officers (Transcript p 8-9). He also testified that the patrol has 36 officer positions assigned working a four day, ten-hour shift schedule with six sergeants assigned to patrol (Tr. p 16).

The Police Officers Labor Council, representing City of Kentwood sworn police officers and detectives (excluding the Chief, Supervisors, clerical employees and all other employee) are parties to a collective bargaining agreement that expired on June 30, 2008. As of this date the parties have reached agreement on the issue of Retiree Health Care/Employee Contribution leaving three issues to be resolved by this arbitration.

HEARING

The parties held a hearing before this Panel on June 18 and 19, 2009 at the Kentwood Police Headquarters, Kentwood, MI. At the hearing on June 18, 2009, the Employer presented the City's current financial position. The City's Finance Director, Thomas Chase testified that historically the City's financial position has been strong, however, this is the first time in his 16 years that the 2009 budget was adopted drawing money of the fund balance (Tr. p 48). He testified as to revenue limitations the City faces (Tr. p 19-21). He also testified to the City's cost cutting measures, eliminating vacancies and reducing staffing levels, wage freezes, etc. (Tr. pp. 12, 26, 62, 63, 64). Police Chief Richard Mattice further testified as to the cost cutting within the police department including the elimination of the Motorcycle Patrol, discontinuing the wellness program, changing the in-service training model and eliminating the DARE program (Tr. p 20).

The City has projected as of April 10, 2009, a budget shortfall for 2009 of approximately $800,000. The shortfall is expected to be significantly larger, $2.25 million, in the 2010 fiscal year. This projection shows a complete depletion of the general found by 2011 fiscal year with a deficit of $1.7 million (Employer Ex. 21-22). The Union acknowledges that the City as a matter of sound financial management is limited to offering an amount that falls somewhere within its budgetary restrictions (Union Brief p 9).

The Union's position does not dispute that Kentwood, like all Michigan Cities, has constraints on its ability to raise funds; however, they question whether it is a material impediment to paying its patrol officers a wage that is in line with the market value for such services (Union Brief p 5).

<u>WAGES-APPENDIX A</u>

Union

Treating each year as a separate sub-issue:

A. Effective 7/1/08 2.5% for all bargaining unit members
B. Effective 7/1/09 2.5% for all bargaining unit members
C. Effective 7/1/10 2.5% for all bargaining unit members
D. Full retroactivity of the listed wage improvement

Employer

2% wage increases for each year of the contract, retroactive to July 1, 2008 if the Panel adopts retroactivity on health care premium sharing

The Employer's position is the City's last best offer on wages reflects the wage agreements with internal comparable employees in 2007 and 2008 and it also makes the City competitive with respect to external comparable communities(Employer Brief p 22). This is especially true as to the Police Sergeant's bargaining unit . According to Police Chief Mattice, the police sergeants contract tends to parallel the police officers contract and they settled for 2% yearly increases across the board in 2008 (Tr. pp 4, 41, Employer Brief pp 3, 22).

The fire fighters and Kentwood General Employees Association contracts were negotiated in 2006 at rates somewhat below what the Union is requesting even though economic conditions have since degraded (Tr. p 42, Employer Brief p 23). According to Tom Chase, Financial Director, all exempt employees and City officials have suspended merit pay and all have taken a wage freeze (Tr. p 63).

With respect to external comparable communities, the City currently ranks third out of the four primary comparables (Employer Ex.67). In Muskegon under the City's proposal, City patrol officers would earn more. In Holland the patrol officers received approximately only a 1% pay increase in 2009 and 2010 and no longevity pay (Employer Ex p 68). The employer argues that in Wyoming the working conditions are more difficult because the department is more under staffed and the population is 1 ½ half times larger than Kentwood (Employer Brief p 25). Also the large increase in wages in Wyoming was a trade of for changed benefits (Employer Brief p 26). As to secondary comparables, the City's last best offer is higher than East Grand Rapid's top wage for 2009 and 2010, higher than Grandville's top a trade of for changed benefits (Employer Brief p 26). As to secondary comparables, the City's last best offer is higher than East Grand Rapid's top wage for 2009 and 2010, higher than Grandville's top wage for all contract years, slightly less than Walker's top wage for all contract years and less than Grand Rapids' top wage (Employer Ex 67). It is noted that Grand Rapids is urban rather than suburban and the crime rate there is significantly greater than in Kentwood (Employer Ex. 13).

In conclusion, the Employers' position is that the City currently provides its officers with a comprehensive wage and fringe benefit package that is the envy of private and public sector employees in this economy. The employer states that the City's wage and benefit package also compares well with the wage and benefit packages provided to patrol officers in comparable municipalities (Employer Brief p 31).

The Union position is that the modest increase proposed by the Union of 2.5% would be de minimus as percentage of the total City budget and thus is a reasonable offer of settlement (Union Brief p 11). Union President Berry testified that current overtime payments could be reallocated or eliminated to help cover the increased cost of the Unions wage proposal (Tr. II at p 70). For the life of the contract in Union Ex. 7(c) the difference between the proposals for annual base wages would be \$280, \$573 and \$878 respectively (Union Ex. P 7c). Nancy Ciccone, Staff for the Police Officers Labor Council, testified on behalf of the Union. She stated that Kentwood in terms of percentage increase in wages was third at the first year of the old contract out of all 8 comparables for 2004, 2005, and 2006 and then they lost a little bit of ground, dropping in 2007 to 6th out of the 8 comparables (Tr.II p 6). In the first year of the new contract she states that even under the Employer proposal of 2% or the Union proposal of 2.5% it would leave the patrol officers at 6th out of the 8 comparables (Tr. Vol. 2 p 11). The Union argues that its proposal is necessary to insure that the City pays a fair market value for its services (Union Brief p 12).

the 2% increase offered by the Employer is reasonable under the circumstances. While Kentwood wage comparables are low they cannot be said to be uncompetitive when the compensation package is considered as a whole. Using the primary comparables and the reasons employer has stated above to each of those individual comparatives, the increase offered by the employer is not uncompetitive.

After carefully analyzing the evidence and all the factors in Section 9 of the Statute, the Employer's Last Best Offer should be adopted.

AWARD

The panel orders that the Employer's Last Best Offer be adopted: i.e. Appendix A to the current CBA to have wage increases of 2% effective July 1, 2008, 2% effective July 1, 2009 and 2% effectively July 1, 2010 with retroactivity if the Union agrees to retroactivity on the City's requested increase in premium share.

8/31/09

A. Robert Stevenson
Chairperson

Union Delegate

Employer Delegate

AWARD

The panel orders that the Employer's Last Best Offer be adopted: i.e. Appendix A to the current CBA to have wage increases of 2% effective July 1, 2008, 2% effective July 1, 2009 and 2% effectively July 1, 2010 with retroactivity if the Union agrees to retroactivity on the City's requested increase in premium share.

8/31/09

A. Robert Stevenson
Chairperson

Union Delegate

9.4.09

Employer Delegate

AWARD

The panel orders that the Employer's Last Best Offer be adopted: i.e. Appendix A to the current CBA to have wage increases of 2% effective July 1, 2008, 2% effective July 1, 2009 and 2% effectively July 1, 2010 with retroactivity if the Union agrees to retroactivity on the City's requested increase in premium share.

8/31/09

A. Robert Stevenson
Chairperson

Dissent 9-4-09

Union Delegate

Employer Delegate

RETIREMENT/DEFINED BENEFIT PLAN - SECTION 14.1(a)

Union

Increase the multiplier to 2.7% and increase the employee contribution to 6.0% effective July 1, 2008

Employer

Increase the defined benefit plan multiplier to 2.6% effective July 1, 2008, with employee contribution of 6% effective July 1, 2008

The Employer notes that the City's yearly pension contribution is going up nearly $400,000 without any increase in the multiplier(Employer Brief p 3). Eric Cerling, pension actuary, testified that the current multiplier of 2 .5% will generate after 30 years of service a replacement benefit of 75% of pay which is a very good replacement (Tr. P 188). The employer's position is that even without factoring in the Union's demand for a .2% increase in the multiplier, or the City's offer of a .1% increase in the multiplier, the City's pension contribution is going up drastically (Employer Brief p 35). The employer feels there is no reason to exacerbate the City's financial problems by imposing an additional .1% demanded by the Union (Employer Brief p 35).

As to internal comparables, the Employer cites the fact that the Sergeant Unit agreed to a 2.6% multiplier in 2008, as well as the City's general employees (Employer Brief p 36). As to the fire-fighters, they have a 2.7% multiplier. However, they have agreed to a higher employee contribution (now 7%), a much higher health-care premium share obligation and lower wage increases than the POLC is demanding. In addition, they settled their contract in 2007 under different economic conditions (City

Ex. 3 at 14.1).

As to external comparables, Kentwood would have a greater multiplier than Holland at 2.6% (Tr. 191). Muskegon has the highest pension multiplier at 3.0% but it has the lowest wages among the primary comparables but does not participate in Social Security (Tr. 192). With Social Security at 2.5% Kentwood would be more like 3.5% total (Tr. P 192). Wyoming has a 2.7% multiplier, obtained in 2007 And which, according to the employer, may not have been granted into today's economic conditions (Employer Brief p 36-37).

The Union's position is that because only a couple of Patrol Officers are nearing retirement within the next few years, the increased pension multiplier will not cause a significant cost burden on the City during the life of the Contract (Union Brief p 14). The Union also cites the fact that the defined benefit plan is currently funded at 95%, well above the necessary level (Tr. II 201-214). The Union argues that the Unions proposal of an additional .1% would have a very minimal financial impact.

The City's proposed increase of 2.6% is in line with internal comparables and a majority of external comparables and under the City's present economic condition would be reasonable.

After carefully analyzing the evidence and all of the factors in Section 9 of the Statute, the Employer's Last Best offer should be adopted.

AWARD

The panel orders that the Employer's Last Offer of Settlement be adopted: i.e. that is Section 14.1(a) - Defined Benefit Plan Option is revised to allow an increase in the defined benefit plan multiplier to 2.6% effective July 1, 2008 with employee contribution of 6% effective July 1,2008.

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Dissent 9-4-09

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HEALTH INSURANCE-ACTIVE EMPLOYEES- SECTION 12.2

Union

$25 per pay period effective July 1, 2008; $30.00 per pay period effective July 1, 2009; and $35 per pay period effective July 1, 2010

Employer

$35 per pay period effective July 1, 2008; $45 per pay period effective July 1, 2009; and $55 per pay period effective July 1, 2010

The parties have stipulated that increases in premium share shall be paid to the City on a retroactive basis (Employer Brief p 39).

The Union's position is that the City has the ability to cover the increasing cost of healthcare over the life of this contract (Union Brief p 16). They argue that the Union has proposed modest increases in benefits across the board and therefore its last best offer of increasing premium sharing by a lesser amount is the more reasonable of the last best offers.

The Employer's position is that the City faces increased insurance premiums expenses at a time when it can least afford to pay them (Employer Brief p 39). Julie Sessions, a benefit consultant, testified that premium increases are between 9 and 12 percent annually if plan design changes are not made (Tr. 119). The Employer states that the plan design changes cannot be made during the term of the contract and assuming a yearly cost increase the City's offer amount to less than 10% of 2008 and 2009, and less than 11 percent of the premium cost for 2010 (Employer Brief p. 40-41). The City's proposal does not reach a 10% premium sharing until 2010 at which time under the Union proposal the premium share would be less than 5% (Tr. 149).

The Employer argues that significant weight should be given to the fact that comparable units within the City, including the Sergeants and fire-fighters, have already agreed to the same or greater premium share obligations (Employer Brief p 41).

According to the employer the City's premium share offer is more employee-friendly than the primary comparables in this case. Wyoming requires a 10% premium share up to 2% of wages (Employer Ex. 58). While the premium share at Holland is lower than the City's final offer, those lower numbers reflect a more expensive health plan for employees(Tr. 149-150). Because Holland's plan only provides coverage at 90%, and also provides a deductible, the premium share required of Holland patrol group would be less (Tr. 149-150). Employer also argues the same situation applies to Muskegon who has a watered down health plan and their cost share represents a greater cost share that what is being proposed by Kentwood (Tr. 150, Employer Brief p 42).

The Union stresses that only the agreed upon comparable communities are relevant to these proceedings, and not any generalized statistics on health care (Union Brief p. 15). The Union feels the Employer's proposal is a dramatic increase over current premium share payments and a smaller premium share is more reasonable. In addition the Union argues that the City has the ability to cover the increasing cost of healthcare over the life of this contract (Union Brief p 16).

Although other units in the City are covered by Priority Health, the Union Vice President Sean DeGrove solicited a bid from Blue Cross Network for substantially similar coverage at a lower cost (Tr. II p 164-168). The Employer however, states that they negotiated with Blue Care Network but did not in the end get a better quote than Priority Health (Employer Brief p 9).

It is suggested by the Union that City would be doing itself and its employees a disservice if it failed to adequately inquire as to all possible plans for future bargaining (Union Brief p 16).

The City's proposed premium share is in the 10% range in 2010 while the Union's proposal is in the 5% range. Therefore, the Union's proposal is too great a disparity to be reasonable given the increased cost of health care. From the evidence presented, especially the internal comparable agreeing to a the same or greater premium share, I find the Employer's proposal more acceptable in relation to the increased cost associated with healthcare.

After carefully analyzing the evidence and all of the factors in section 9 of the Statute, the Employer's Last Best Offer should be adopted.

AWARD

The panel orders that the Employer's Last Best Offer of settlement be adopted: i.e. the premium share in Section 12.2 - Payment of Health insurance costs shall be $35 per pay period effective July 1, 2008; $45 per pay period effective July 1, 2009; and $55 per pay period effective July 2010.

Both parties have agreed that the premium share should be applied retroactively to July 1, 2008 through the end of the contract.

8/31/09

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9-4-09

Employer Delegate

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Dissent 9-4-09

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