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In the Matter of Statutory Interest Arbitration between:

CITY OF PONTIAC,

Employer

-and-

IAFF LOCAL 376, PONTIAC FIRE FIGHTERS UNION,

Union.

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MERC Case No. D04 G-1121

PRE-HEARING DECISION

REGARDING MANDATORY SUBJECTS OF BARGAINING

Before

Benjamin A. Kerner, Panel Chair

Appearances:

For the Employer:	Dennis B. DuBay Keller Thoma, P.C.
For the Union:	Gordon A. Gregory and Emilie D. Rothgery Gregory, Moore, Jeakle, Heinen & Brooks

Dated: August 1, 2008

BACKGROUND.

The Union initiated these proceedings with a petition to the Michigan Employment Relations Commission under Act 312, MCL 423.231 et. seq., dated March 2, 2007. The parties thereafter exchanged formal position statements. The Employer then objected to certain issues raised by the Union in its position statements as being outside the scope of mandatory subjects of bargaining. The Employer's first objection is to Union proposal #12, sentences 1, 2, and 3. Proposal #12 says:

> Effective 7/1/2006: Personnel will transport all patients requiring emergency care to the appropriate medical facility. Patient transport will be the responsibility of four (4) rescue units in service per day. Minimum manning shall increase by one (1) to appropriately staff this additional rescue unit. Employees assigned to rescue companies shall receive an additional ten percent (10%) of their hourly rate for that day per hour worked. Members will be paid this differential after accrual of five (5) duty days as a member of a rescue company. Employees participating in the Paramedic program will receive a $2,500 bonus for each renewal of their State of Michigan Paramedic license (renewed on a 36 month basis). This bonus will be paid within thirty (30) days following the date of renewal. Such bonus will be calculated in Final Average Salary for pension purposes.

The Union also proposed is its proposal #13 as follows:

> Effective with the ratification of this agreement all new hires shall hold certification as Fire Fighter I, Fire Fighter II, Basic EMT, and EMT Paramedic prior to employment....

The Employer's objection is that hiring standards are not mandatory subjects of bargaining. The parties submitted pre-hearing briefs related to the Employer's objections.

Furthermore, on July 24, 2008, the Union withdrew the first 3 sentences of Union proposal #12, which the Employer found to be objectionable. It should be noted that the remaining portion of Union proposal #12, beginning with the sentence, "Employees assigned to rescue companies shall receive..." clearly concerns wages, and was not the subject of any Employer objection.

CONTENTIONS OF THE PARTIES.

The parties agree that certain standards governing this dispute are settled. For instance, it is agreed that the authority of an Act 312 panel extends to deciding mandatory bargaining subjects, and does not extend to deciding permissive subjects. *See* Jackson Fire Fighters Ass'n. Local 1306 IAFF, AFL-CIO v. City of Jackson (on remand), 227 Mich App 520; 575 NW2d 823 (1998). It is also agreed that the subjects of the nature, size and scope of the services provided by a public employer are matters left to the discretion of the public employer, and are not subject to bargaining.

However, at the same time, the case law supports the proposition that certain otherwise-permissive subjects of bargaining may have such a direct and significant impact on wages, hours, or working conditions of the members of the bargaining unit as to be considered mandatory subjects of bargaining.

Proposal #12:

Here, as recited above, the Union's withdrawal of its proposal as to the first 3 sentences in its original proposal operates to make moot the Employer's objections, which are all confined to these first three sentences. Thus, the proposal as amended by the Union will stand as one issue for decision by the Act 312 Panel.

Proposal #13:

In regard to the pre-employment requirements of its proposal #13, the Union says that MERC has determined that a public employer must bargain where the pre-employment requirements can be shown to have a significant impact on bargaining unit members. Woodhaven Sch. Dist., 3 MPER ¶ 21057.

The Employer rejoins that the case of City of Detroit v. Detroit Police Officers Ass'n., 1971 MERC Lab Op 237 stands for the proposition that PERA does not countenance bargaining on the initial conditions of employment: "We read 'other terms and conditions of employment' as those items which affect employees after they have become employees." 1971 MERC Lab Op at 249. [This case was affirmed as to other issues (residency requirement and retirement plans) in Detroit Police Officers Ass'n. v. City of Detroit, 391 Mich 44; 214 NW2d 803 (1974). As to recruiting requirements, however, the Michigan Supreme Court said at Footnote 9, "We accept MERC's decision that the City is not required to bargain over recruiting requirements as the law of this case. The general issue of recruiting requirements is not before us on this appeal." 391 Mich at 59.]

DISCUSSION AND CONCLUSIONS.

A matter that is within the rubric of the "nature, size and scope of the services to be provided" is within management's control and is not a mandatory subject of bargaining.

The Union's proposal in Proposal #13 that new hires have certain certifications is certainly within the framework of initial conditions of hire, for which the case law ex-

presses the view that in general management has control of these initial conditions of hire. However, exception may be made where the initial conditions of hire can be shown to "vitally affect the terms and conditions of employment of the active members [of the bargaining unit]." West Ottawa Education Ass'n. v. West Ottawa Public Sch. Bd. Of Ed., 126 Mich App 306, 330; 337 NW2d 533, 546 (1983). The West Ottawa case concerned the possibility of bargaining for initial conditions of hire for new hires who were exclusively retired members of the bargaining unit. However, the logic of the case would apply to new hires, generally. Thus, if there is an evidentiary showing that the initial conditions of hire "vitally affect" the working conditions of members of the bargaining unit, then the subject of initial conditions of hire may be considered a mandatory subject.

The Union's claim cannot be tested in the abstract, but must be the subject of proof in the present case. Some factual development is warranted. Thus, proposal #13 is retained as a Union proposal in these proceedings, subject to proof that such pre-hire certifications "vitally affect" the terms and conditions of employment of members of the bargaining unit.

ORDER

The Employer's request to strike portions of Union proposal #12 is moot in view of the Union's amendment of its proposal.

The Employer's request to strike Union proposal #13 is denied, subject to the Union's showing that it vitally affects the terms and conditions of employment of the members of the bargaining unit.

Benjamin A. Kerner
Panel Chair

Rick Luxon
Union Delegate

Larry Marshall
Employer Delegate

Dated: August 1, 2008