

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

IN THE MATTER OF THE ACT
312 ARBITRATION BETWEEN

Harper Woods, City of,

And

Case No. D 07-I 1351

Harper Woods Fire Fighters Association (HWFFA)
Local 1178

ACT 312 ARBITRATION AWARD

Donald R. Burkholder
Panel Chair & Arbitrator

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DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

For the Employer:

For the Union:

ADVOCATES

J. Russell LaBarge, Jr.
24825 Little Mack, Ste. 209
St. Clair Shores, MI 48080

Alison L. Paton
Suite 1805, Ford Building
615 Griswold Street
Detroit, MI 48226

DELEGATES

James Leidlein, Manager
City of Harper Woods

Patrick Rollison, President
Harper Woods Fire Fighters Association

STATUTORY AUTHORITY

MICHIGAN EMPLOYMENT RELATIONS COMMISSION [MERC]

Section 8 of Act 312 requires that, in relation to economic issues, “an arbitration panel shall adopt the last best offer of settlement which... more nearly complies with the applicable factors described in Section 9” of Act 312. Section 9 contains the eight factors that the arbitration panel must consider as applicable.

Section 9 of Act 312 provides for the following:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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 price for goods and services, commonly known as 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 hearing;
- 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.

Section 10 of Act 312 provides that the decision of the Arbitration Panel must be supported by “competent, material and substantial evidence on the whole record.” This has been supported by the Michigan Supreme Court’s decision in *City of Detroit v. Detroit Police Officers Association*, 408 Mich 410 (1980). The decision shows that the legislature evinced no intention in Act 312 that each factor of Section 9 is to be accorded with equal rate. Rather, they provide a compulsory checklist to insure that arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9.

INTRODUCTION

This was originally a five issue case dealing with the following issues, as set forth in the Union’s petition of June 15, 2008 for Act 312 Arbitration:

1. Duration
2. Public Safety – cross training
3. Use of employees from other municipalities and/or private companies to perform bargaining unit work.
4. Use of non-unit City employees to perform bargaining unit work.
5. Wage issues.
6. Life insurance

The parties stipulated on September 29, 2009, following a court order that the Employer could not establish a merged police and fire public safety unit, that the duration would be January 1, 2007 through June 30, 2010. They also agreed to withdraw issues 2), 3), and 4), public safety cross training, for the fire fighters, use of employees from other municipalities or private firms, and use of non-unit employees to perform bargaining unit work. Thus the remaining issues at that point were wages and life insurance. The insurance issue was settled through ongoing negotiations. Thus the only issue for this arbitration is wages.

ANALYSIS

Although at first glance a relatively uncomplicated, straightforward one issue dispute, this proceeding must be understood in the context of an emotional political power struggle between the City Council and the Fire Fighters and their allies over the City's intention to consolidate police and fire services into a public safety unit. Such a struggle is not an unusual occurrence when a municipality proposes a functional consolidation. As previously noted, a section of the Harper Woods City charter explicitly forbids merger of police and fire services, and a court ruling in June 2009 upheld the plaintiff or Union position that such a combination was in violation of the charter. The controversy included an abortive attempt by a former Harper Woods fire fighter to recall the Mayor and two Council members who supported significant pay raises for the City's police officers.

The Police and their leadership cooperated with the City in agreeing to paramedic training for police employees; their reward, at least in part for this cooperation, was relatively substantial wage increases, effectively amounting to seven (7) percent for a five year period beginning January 1, 2009, with a verbal commitment by the police union to consider a contract reopener.

In view of the struggle having been terminated for all practical purposes by the Court's interpretation of the City Charter order, an examination of actions exacerbating this controversy is in order. A portion of the Agreement between the City Council and the Harper Woods COAM and POAM on September 15, 2008, followed an across-the board increase of five (5) percent in the base wage for each year of the five year contract "...regardless of whether or not they have received additional training and licensure as a Fire Fighter." In addition to the five (5) percent across-the-board, the City Council and the two unions agreed to the following: "All sworn employees in the Command Union and Patrol Officers Union will receive a five percent Professional Standards Maintenance Premium [PSMP] of their base pay. This premium is in recognition of the specialized training members must possess and is in lieu of any premiums for cross-training or shift premiums now in place. The PSMP will be included in Final Annual Compensation as outlined in the contracts." Taking into account that the five (5) percent PSMP is in recognition of specialized training and is in lieu of premiums for cross training or shift premiums, in addition to the five (5) per cent across the board, it approximates a seven percent across the board wage increase. The Agreement provided that both the command and patrol

officers “will receive training as licensed fire fighters in the State of Michigan as the needs of the City dictate.” Further, “The parties recognize that the intent of this agreement is a phased implementation of Public Safety and that the eventual intent of the City Council is to have a fully integrated ‘Public Safety Department’ through attrition.” Thus it is clear that, as the HWFFA asserts, the intent is to eliminate the Harper Woods Fire Department, and to do so as soon as possible, apparently disregarding advice from the Police Chief that any plan for consolidation of the two services must be developed and applied very carefully.

With this tumultuous and ongoing background, the only remaining issue in this arbitration is base wages for fire fighters employed by the City of Harper Woods (“City”) for the years 2007, 2008, 2009, and the first half of 2010. This context, especially the distinct difference in the wage offer to the HWFF unit and the wages agreed to for Police, is important inasmuch as it appears to have contributed to significantly extreme positions in the last best offers, particularly on the part of the Employer. The City basically approached but did not specify inability to pay, asserting that HWFFA wages significantly exceeded those of the comparables, and that services provided were less than those of the comparables. Union’s position was that its members have been and continue to be under-rewarded or under-compensated and overworked in view of the both internal and external comparables. The external comparables are Ferndale, Hazel Park, Mt. Clemens, Trenton, and Wayne.

A Hearing was held on November 24, 2009; the parties submitted their Last Best Offers to the Chairperson on Friday, December 11, 2009. The City’s Last Best Offer is as follows:

Base Wages	
EMPLOYER	
2007	0% w/v/\$1,500 bonus payment
2008	2% paid retroactively
2009	2% paid retroactively
2010 (thru 6/30/10)	0%

UNION

- 2007 3%, fully retroactive to 1/1/07 for all persons currently (as of 12/11/09) employed in the IAFF bargaining unit, with the retroactive amounts to be paid in full no later than 60 days after issuance of the Award.
- 2008 2.5%, fully retroactive to 1/1/08 for all persons currently (as of 12/11/09) employed in the IAFF bargaining unit, with the retroactive amounts to be paid in full no later than 60 days after issuance of the Award.
- 2009 2.5%, fully retroactive to 1/1/09 for all persons currently (as of 12/11/09) employed in the IAFF bargaining unit, with the retroactive amounts to be paid in full no later than 60 days after issuance of the Award.
- 1/1- 6/30/10: 3%, fully retroactive to 1/1/10 for all persons currently (as of 12/11/09) employed in the IAFF bargaining unit, with the retroactive amounts to be paid in full no later than 60 days after issuance of the Award.

Subsections (c) and (d) of Section 8 of Act 312 respectively specify ability to pay and the public interest and welfare, and comparability with salary, benefits, and working conditions with similar units in other municipalities agreed to by the parties as comparable. In addition, subsection (g) and (h) factors, i.e., changes during the pendency of the Arbitration hearing, and other factors not confined to the foregoing, are crucial to comprehending the root causes of this dispute

The City's major funding concerns were decreasing general fund balances, a decreasing pension fund balance, and the self insurance fund. Under questioning, the Employer agreed that excess pension funding in the years 1998 through 2002 was used as a credit off-set, which appears to be at least a partial reason for the pension fund's funding of less than

100 percent at present. As with any investments during the more recent stock market drops, the pension fund and investments suffered. A self insurance fund was also taken from and then returned to the general fund during these years, probably a prudent action at the time, but one which must be acknowledged and given some weight in dealing with perceptions of the City's current financial situation.

One significant measure of ability to pay, perhaps the most significant measure, is the level of the general fund balance. Moody's on Municipals states a fund balance of five (5) percent of the budget is generally deemed prudent. "A smaller fund balance may be justified by a long-term trend of annual budget surplus, while a larger balance may be warranted, particularly if budget revenue and expenses are economically sensitive or otherwise not easily forecasted." Research by the Government Finance Officers Association (GFOA) indicates that a ten (10) percent fund balance is in a general sense considered good practice. Both recommendations recognize that the levels suggested are just that, recommendations to be applied in the context of the municipality's particular real-world situation. It is noteworthy that the Employer's objective has been to maintain a twenty (20) percent fund balance, which is an understandable ideal in view of the 2010 economy, the pressing financial demands, and increasingly limited resources. At the same time, the recommendations noted above were made by individuals within organizations recognized to have expertise in the area of municipal budgeting, and therefore must be given significant weight. The Harper Woods General Fund balance at the end of fiscal 2008 was approximately 14 percent.

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Among the various indications that the Employer was determined to establish a public safety organization was consistent and significant reduction between 2003 and 2008 in the percentage of the City budget designated for the Harper Woods Fire Department, resulting in reduced manpower and the lack of a fire inspector for the last five years. During those same years there were consistent and significant increases in the percentage of the City budget designated for the police unit. This combination of facts lends credence to the Union assertion that

In view of these undeniable facts, it is not hyperbole to state that the City is literally trying to 'starve out' its Fire Department employees, with the ultimate motivation being to drive these members out of the Fire Department so that the City can more easily proceed with its cross-trained public safety plan – a plan which has been stopped of late only because of the Wayne County Circuit Court ruling (now on appeal) that the City's public safety plan violates the City Charter.

Nothing in the record substantiates Employer allegations that members of the HWFF were overpaid and underworked when compared to the comparables. Indeed, the amount of work expected of each fire fighter has increased because of reduced manning. Full-time staffing in Harper Woods relative to population is the lowest of all the comparables. Fire fighters, due to the nature of their work, are expected to sleep in the fire house, make provisions for their meals, keep the facilities and equipment clean and in good repair, and similar activity, actions and/or time spent which the Employer questioned through its introduction of selected duty logs. The Employer ultimately admitted under questioning that the HWFF employees had no more time off than fire fighters in the comparables. Their fire runs were in response to the same variety of calls that any such unit would

deal with, including structure fires, dumpster fires, automobiles, false alarms, and even a telephone pole. All HWFF members except one are not only qualified fire fighters but licensed as Advanced Life Support (ALS) providers, and the non-ALS individual is an Emergency Medical Technician.

Of particular note in this proceeding is the willingness of the Employer to reward its police unit so generously, signing the police agreement five days after a complaint, or formal litigation, had been initiated by the Union. The Professional Standards Maintenance Premium's (PSMP) inclusion in Final Annual Compensation for all members of the Command Union and the Patrol Officers Union is a significant indication of the degree of Employer budgetary concerns in its headlong rush to finance and initiate cross-training for its police employees. This goal was in the face of the logical, high probability that the Court would uphold the plain language of the City Charter, which indeed was the outcome. Thus the City committed substantial financial support for a public safety organization which may not come to fruition for the foreseeable future, if at all. This is an example of the application of the definition of politics: the system by which goods, values and services are authoritatively, in this case funding, are allocated. The benefits to be derived from this particular allocation of funds are likely to be minimal for the foreseeable future, in view of the Court's ruling. The Union asserts correctly that numerous 312 arbitrators have held that a municipality should not be permitted to treat the economic benefits of its employees as having lesser priority than other municipal concerns, and in effect, expect its employees to subsidize the municipality, and in this case subsidize their own demise as a fire unit.

Both parties were well represented. The Arbitrator appreciates the helpfulness and the professional demeanor of the participants.

The panel has applied Section 9 of Act 312, specifically subsections (c), (d), (f) and (h).
The other subsections of Section 9 do not apply. The panel awards the Union position on wages for 2007, 2008, 2009, and the first six months of 2010.

Concurring: *P. Rollison* 6-16-10
Patrick Rollison Union Delegate Date

Dissenting: *James Leidlein* 6-16-10
James Leidlein Employer Delegate Date

Donald R. Burkholder 6-16-10
Donald R. Burkholder, Chairman Date