

2410

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration
Under Act 312 (Public Acts of 1969)

City of Sterling Heights,
Employer,

-And-

MERC Case No. D11 Gr-0911

Michigan Association of Police (Police Officers)
Union.

OPINION AND AWARD ON DURATION

Chairman of the Arbitration Panel:	Kenneth P. Frankland
City Delegate:	Dennis B. Dubay
Union Delegate:	Fred Timpner
Representing City:	Dennis B. Dubay
Representing Union:	Fred Timpner
Pre-Hearing Conference	February 21, 2012
Opinion and Award Issued:	April 18, 2012

STATEMENT OF THE CASE

The City of Sterling Heights (City), filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on November 21, 2011 as to the expired collective

bargaining agreement with the Michigan Association of Police – hereafter “Union” (The unit consists of all sworn officers under the rank of Sergeant). On February 15, 2012, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter. A pre-hearing conference was held on February 21, 2012, and a report was generated by the chair the same day. During the pre-hearing conference, the parties agreed to confer to narrow the issues and to submit Position Statements of unresolved issues by March 16, 2012. In the event that duration was not mutually agreed by March 16, the parties agreed to submit Briefs on that issue to the panel so that the parties could prepare exhibits and LBO's based upon the Panel's award regarding duration.

In fact the parties did not agree on duration of the contract and did submit Briefs on or before April 13, 2012 and this Opinion and Award ensues. As provided in Act 312, the panel consists of a delegate chosen by each party and an impartial chair appointed by MERC. The chair of the panel is Kenneth P. Frankland. At the pre-hearing the parties deferred naming delegates and the Panel Chair assumes, for purposes of this limited Award, that the delegate for the City is Mr. Dubay and the delegate for the Union is Mr. Timpner and the respective delegate concurs or dissents as the case may be in the Opinion drafted by the Chair.

As required by the Act, on economic issues, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9(1). The Union has denominated Duration as an economic issue but the City has not specifically denominated Duration one way or the other. However, the Panel infers that the City would also concur that Duration is economic because there are financial

implications for each separate year of the contract.

STANDARDS OF THE PANEL

Act 312 of 1969, MCL 423.231, as amended by Act 116 of 2011 specifically §9(1), contains nine factors upon which the panel is to base its opinion and award.

Those are:

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
 - (i) The financial impact on the community of any award made by the arbitration panel
 - (ii) The interests and welfare of the public
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government
 - (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer;
- (c) Stipulations of the parties;
- (d) Comparison of 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 employ-

ees generally in both of the following:

- (i) Public employment in comparable communities;
 - (ii) Private employment in comparable communities;
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question
- (f) The average consumer prices for goods and services commonly known as the cost of living;
- (g) 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;
- (h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- (i) Other factors that 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.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance if the determination is supported by competent, material, and substantial evidence.

Union's Position Statement

44.1 Duration. This Agreement shall be effective and shall remain in force and effective

to and including June 30, 2014.

44.2 Future Negotiations. The City and the Association agree that commencing not later than March 1, 2014, the parties will undertake negotiations for a new agreement for a succeeding period.

City's Position Statement

44.1 Duration. This Agreement shall be effective and shall remain in force and effective to and including June 30, 2013.

44.2 Future Negotiations. The City and the Association agree that commencing not later than March 1, 2013, the parties will undertake negotiations for a new agreement for a succeeding period.

DISCUSSION

The current contract started July 1, 2006 and expired June 30, 2011. Thus, the City wants a two year contract to start July 1, 2011 and expire June 30, 2013 while the Union wants the contract to start July 1, 2011 but extend to June 30, 2014.

City Position

The City argues that two years would be consistent with the expiration date of all internal comparables agreements with the exception of Supervisory Employees (UAW) and argues that the two most recently settled agreements are for two years. (See, Revised City Exhibit 1, UAW, Supervisory Employees July 1, 2012 – June 30, 2014; 41-A District Court July 1, 2011 – June 30, 2013.) Further, the City wants a two year

agreement because of poor financial conditions and the uncertainty of future revenues at the state and local levels. The City relies upon the affidavit of City Manager Walter Blessed that shows decreasing revenues from July 1, 2010 to present and use of Fund balance transfers to balance the recent budgets – in spite of reduced expenditures in the same time periods. They argue a two year contract would allow the parties to know the financial facts in 2013 and use the updated information, for better or for worse, to fashion the next agreement. The Panel chair has no reason to doubt the accuracy of the numbers presented for past years but is not comfortable with numbers relating to future years without the benefit of the Union position on future numbers.

Union Position

The bargaining history for this group supports a three year contract. There has never been a two year contract. Indeed, all internal agreements have been for three or more years. Only recently have there been any two year contracts in the City. The Union external comparables have three year agreements or more. In fact, in three agreed comparables all have at least three years - Farmington Hills has a three year contract, Warren four years and Troy five year's extended for two more years. No external comparable has a two year contract. The Union proposed three year contract makes labor relations sense. After this matter is concluded, there would be just a few months before negotiations would start if there is only two years. There needs to be a longer cooling off period before the parties resume negotiations. Without a longer contract, the parties could well end up in arbitration assuming the negotiations were unsuccessful.

Panel Rationale

There is considerable merit to both positions; however, the panel chair believes that the City position more closely conforms to the Section 9 factors than the Union position with the limited record available.

While the chair generally supports the Union view that three years is typically the norm for public sector collective bargaining agreements, this may be an atypical time in which to decide this issue as the City suggests. With the new amendments to Act 312, recent legislative enactments relative to health benefits and the adverse economic conditions relative to available revenue, this truly is not a normal environment.

Two new components in the Act 312 analysis, specific reference to internal comparables and the directive to give significance to ability to pay cast a very long shadow over 312 proceedings. In this case, the chair is reluctant to rely solely upon the City's argument on its financial condition as the rationale for two years as the Union has not had an opportunity to present evidence that it believes could affect the panel consideration of ability to pay.

But there is compelling information to support the two year proposal even if the panel finds the record not complete on the ability to pay concept. There is but one internal unit that has a contract beyond 2013. In fact, the two most recent internal contracts are for two years. The chair believes that in the context of duration, it is better to look at internal units than to look only at external units. It is better to compare what is happening with all other units within the City than to rely upon external comparables as the best barometer. The UAW Supervisory Employees have a July 2012 – June 2014 contract (two years) and 41-A District Court has July 2011 – June 2013, also two years.

The UAW contract is the only one that goes beyond 2013.

It is noted that other 312 eligible units (PCOA, POAM) have contracts expiring in 2012 and there is no information in this record whether negotiations are ongoing or whether those units are headed to arbitration. Keeping all 312 eligible units within reasonable expiration dates of each other can be desirable to avoid the whip-sawing effect of an earlier agreement/arbitration affecting other units. This argues in favor of a two year contract expiring in 2013 for this unit to avoid whip-sawing to the advantage or detriment of either party.

It is further noted that the Position Statements on other unresolved issues suggest the City wants significant reductions in current benefits re wages, health and pensions. The Union is proposing no step wage increase in the first two years but wanted a 2% increase in wages for all steps on the effective date of the Award and 3% increase effective 2013 in the event of a three year contract. Given these conflicting positions it is better to develop the entire record and to apply that record to a two year agreement that to wade into a third year without all relevant economic information that may tell a different story in 2014. While the City suggests uncertainty and infers adverse revenue in the future, that may not be the case as the rest of 2012 and all of 2013 unfolds. Frankly, it may also be in the Union's interests to have a better understanding of all the relevant economic factors as they may be in 2013 than exist now. There is obvious risk in just going with two years but on balance the chair believes that there is more risk and less certainty dealing with a third year of the new contract.

While a "cooling off" period is sometime desirable there does not appear on the record so far developed that there is a need for "cooling off". There is not a long time

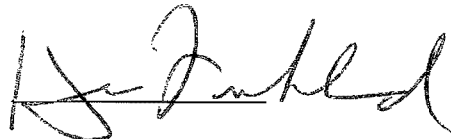
working under an expired contract. There does not appear to be undue delay that would raise angst. There is no evidence that the chair can detect of "hostility" between the parties other than would be expected as parties prepare for arbitration. In short, the conditions precedent that argue for a "cooling off" do not appear to be present here and a basis for accepting the Union rationale.

For the reasons stated above, the chair finds that the City Position more closely conforms to the Section 9 factors than the Union Position.

AWARD

The City Position for a two year contract as set forth above is adopted.

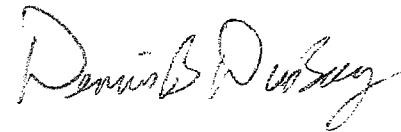
Dated: April 18, 2012



Kenneth P. Frankland
Chairperson

Dated: 4-23-12

Dennis B. Dubay
Delegate for the City



Concur

Dissent

~~Richard Heins~~

~~Fred Timpner~~

Delegate for the Union



Concur

Dissent

Dated: 5.1.12