

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF NORTON SHORES

CASE NO. L12 A-0047 (COMMAND)

-and-

CASE NO. L12 A-0048 (POLICE OFFICERS)

POLICE OFFICERS LABOR COUNCIL

ACT 312 OPINION AND AWARD

APPEARANCES:

ADVOCATES: RONALD A. BULTJE, ATTORNEY
THOMAS R. ZULCH, ATTORNEY

PANEL MEMBERS: RONALD A. BULTJE, ATTORNEY
THOMAS R. ZULCH, ATTORNEY

PETITION DATED: COMMAND UNIT - JULY 25, 2012
POLICE OFFICER UNIT - JULY 24, 2012

CASE HEARD: JANUARY 29, 2013

AWARD DATE: APRIL 30, 2013

AWARD

1. RETIREE INSURANCE: THE UNION LBO IS ADOPTED.
2. RETIREMENT: THE EMPLOER LBO IS ADOPTED.

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INTRODUCTION

The City of Norton Shores (City/Employer) and the Police Officers Labor Council (Union/Council) are Parties to Collective Bargaining Agreements (CBA) – July 1, 2009 to June 30, 2012 for the Police Officers (Patrol Unit) and the Sergeants and Corporals (Command Unit).

The Union filed Petitions for Act 312 Arbitration for the Patrol Unit on July 24, 2012 and on July 25, 2012 for the Command Unit. The Patrol Unit Petition enumerates 10 Union Issues and 20 Employer Issues. The Petition for the Command Unit enumerates 10 Union Issues and 19 Employer Issues.

The Employer and the Union agreed to consolidate the Patrol Unit and Command Unit cases. A Hearing was held on January 29, 2013. At the Hearing, the Parties agreed that two Issues remained unresolved – Retiree Health Insurance and Pension. Both of the above Issues are economic.

Act 312 of 1965, MCL 423.231 *et seq.*, is “an Act to provide for compulsory arbitration of labor disputes in municipal police and fire departments ...”. Section 8 states the following relative to Economic Issues:

“As to each economic issue, the arbitration panel shall adopt the last offer of settlement which in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in

Section 9.”

Section 9 of the Act, as currently amended, specifies the following:

“(1) If the parties have no collective bargaining agreement or the parties have an agreement and 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:

- (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, 2011 PA, 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 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 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 while the arbitration proceedings are pending.
 - (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.”

ABILITY TO PAY

The City has not raised its ability to pay as an issue, but it contends the pay and benefits it provides to the Bargaining Unit (B/U) employees herein are competitive with the Comparables. It objects to the Union demand which it contends would exceed the level of benefits provided by the Comparables. Although the City electorate passed a 10 year, two mill public safety millage, of which .75 mill has been levied, it is stressed that the City has an unfunded actuarial accrued liability for its MERS defined benefit plan of \$13,606,060.00 and an actuarial liability for other post-employment benefits (*i.e.*, retiree health insurance) of \$38,406,428.00.

The Union asserts: “The City of Norton Shores has weathered the difficult Michigan

economy” It quotes the following from the City Financial Statement for the year ending June 30, 2012:

“As of the end of the current fiscal year, the City’s governmental funds reported combined ending fund balances of \$9,671,931 an increase of \$1,117,564 from the prior year.

The general fund is the chief operating fund of the City. At the end of the current fiscal year, total fund balance was 2,245,595 an increase of \$585,102. As a measure of the general fund’s liquidity, it may be useful to compare unassigned fund balance to total fund expenditures. Unassigned fund balance totaled \$1,922,896 or 20% of total general fund expenditures.”

The Union contends: “This shows the City’s finances are trending in an upward and positive manner.” The new Public Safety millage is also noted in support of its view that the City finances are in a favorable condition.. Finally, the Union points out that it has already agreed to significant concessions during negotiations relative to the new CBA.

COMPARABLES:

The City and the Union agree that the following are comparable communities in both cases:

- City of Grandville
- City of Holland
- City of Kentwood
- City of Muskegon
- City of Walker

ISSUES:

At the Hearing, the Parties identified the following Issues which remain in dispute:

PATROL AND COMMAND UNITS

RETIREE INSURANCE - ARTICLE XXVII, SECTION 7

Current Contractual Language (Command Unit)

Retiree Insurance Any full-time employee who retires under MERS shall be eligible for hospitalization insurance coverage for employee and spouse at the time of the employee's retirement effective January 1, 1992, and eligible dependents effective July 1, 1997. Effective January 1, 1995 the prescription drug card will be considered a part of the hospitalization plan.

Upon becoming eligible for Medicare, the Employer's coverage shall be limited to a Medicare supplement program for the employee and effective January 1, 1992 for the spouse. Retired employees and spouses wishing to retain the HMO optional coverage until Medicare may do so, subject to HMO availability.

Effective July 1, 1997, employees who retire after July 1, 1997 may continue dental and vision insurance coverage equal to that of a full-time employee (including eligible dependents, if elected), at the expense of the employee, until age 65, subject to availability by the insurance carrier. Retired employees shall, in a timely manner, deposit with the Employer's finance director (or the finance director's designee) such monies as are necessary to cover the retiree's portion of the cost of such insurance. The retired employees failure to do so shall terminate the retired employees (and any dependents) further participation in the program.

(The current contractual language for the Patrol Unit is basically the same except for some effective dates.)

Employer Proposed Modifications:

The Employer proposes no change for current employees. It proposes to eliminate coverage at retirement for new employees. In the alternative, the City will contribute on a monthly basis, \$15 x years of service to a maximum of \$450 per month toward the health insurance costs at the time of retirement.

Union Proposed Modifications:

The Union proposes current employees maintain retiree health care with spousal coverage both paid for by the Employer. New hires will have retiree health care paid for by the Employer and the option to purchase spousal coverage at the retiree's expense.

With reference to Internal Comparables, the City states it has made the same proposal to

its Teamsters B/U and will make the same to the Firefighters B/U when the CBA expires on June 30, 2013.

The Parties have agreed to health insurance changes which will result in significant savings to the City. The annual health insurance savings for the B/U employees amount to: Single \$2,254; Couple \$5,410 and Family \$6,763. Some of those savings will be shared with the B/Us in the form of wage increases – 2% in 2012; 2.25% in 2013 and 2.25% in 2014. The wage increases offset the increased insurance deductibles and out-of-pocket costs associated with the new health insurance.

With reference to the External Comparables, the data reveals that the City Economic Compensation for an 8 Year Patrolman and a 15 Year Sergeant ranks 4th for the date of July 1, 2012. When the Cities of Walker – highest– and Muskegon – lowest – are removed, the employees herein are basically in line with the remaining Comparable Cities. In regard to retiree health insurance, all of the Comparables except Muskegon provide retiree health insurance for new hires. All of the Comparables have premium co-pays significantly above the amount in Norton Shores.

The Union has agreed to health insurance changes which will result in significant savings to the City. For the new hires the Union seeks coverage only for the retiree. The Panel is persuaded that the Union Last Best Offer (LBO) should be adopted. The Panel finds merit in the Union's contention that "Most police officers cannot safely perform their physical duties until they reach Medicare coverage." The impact of the agreed changes and those dictated by legislative enactment should be assessed during the remainder of this CBA – June 30, 2015 – before elimination of retiree health insurance is deemed a necessary measure.

The Union LBO is adopted.

RETIREMENT – (ARTICLE XXI, SECTION 1)

Current Contractual Language (Command and Patrol Units)

The Employer will continue the Benefit Program B-2 including the 55-F waiver as provided for in the Michigan Municipal Employee's Retirement System Act, Act No. 135, Public Acts of 1945, as amended for all eligible employees who retire subsequent to July 1, 1989, but prior to June 30, 1991. The amount contributed by the employee pursuant to the above Act will be paid by the Employer.

Effective July 1, 1991, the Employer will provide the F50-25 waiver for employees who retire subsequent to January 1, 1995.

Effective July 1, 1998, the Employer will provide the FAC-3 benefit for employees who retire subsequent to July 1, 1998.

Effective July 1, 2001, the Employer will provide the Benefit Program B-4 for employees who retire subsequent to July 1, 2001.

Effective July 1, 2009 employees hired prior to this date will contribute 1% of their salary to the MERS pension plan. Employees hired after this date will contribute 2% of their salary to the MERS pension plan.

Employer Proposed Modifications:

The Employer proposes to increase the employee pension contribution as follows for all employees:

Pension – Employees currently have a Defined Benefit (DB) plan through MERS with a 2.5% multiplier, FAC 3, 50/25 and 10 year vesting. Police supervisory employees contribute 1% if hired before July 1, 2009 and 2% if hired after July 1, 2009. The City proposes to increase the employee contribution by .5% for each year of the new collective bargaining agreement.

In addition, for employees hired after July 1, 2012, the City proposes the implementation of a reduced benefit from the DB plan specifically with a 2.25% multiplier, an F55-25 waiver, FAC-5 and 10 year vesting. The City proposes that employee contribution for those hired after July 1, 2012 would begin at 3% and increase .5% in both the second and third years of the

collective bargaining agreement (to 3.5% and 4% respectively). The City implemented this reduced benefit and increased contribution tier for non-union employees in 2010.

Union Proposed Modifications:

The Union proposes no reduction in multiplier, years of service and FAC for new hires. The employee contribution shall be increased by the following scale with no retroactivity.

<u>Hired Before July 09</u>	<u>Hired After July 09</u>
2012 - 1.5% (2.5% total)	2012 - 1.5% (3.5% total)
2013 - 0.5% (3.0% total)	2013 - 0.5% (4.0% total)
2014 - 0.5% (3.5% total)	2014 - 0.5% (4.5% total)

This, again, is an entitlement issue regarding new hires. The City seeks a reduction in the multiplier – 2.5% to 2.25% – and a greater pension contribution from those hired after July 1, 2012 – 3.0%; 3.5% on 7/1/13 and 4.0% 7/1/14.

All of the External Comparables have a 2.5% multiplier except Kentwood – 2.6%– and Muskegon – 3.0%. The employee contribution in Kentwood is 6.5% and in Muskegon 6.0% for the Supervisory and Patrol Units. All of the Comparables, except Holland, have implemented a Defined Contribution Pension Plan for “new hires” – Grandville 7/1/93; Kentwood 7/1/00; Walker 7/1/05; and Muskegon 7/1/06. The City of Holland has a Defined Benefit Plan but it is not a Social Security participant and it has a contribution amount of 5.58%.

Insofar as Internal Comparables are concerned, the City says it has made the same proposal to the Teamsters Unit and will make the same to the Firefighters when their CBA expires on June 30, 2013.

The Union is adamantly opposed to a two tier pension benefit. The City points to the fact that, with the exception of Holland, all of the Comparables have a two tier pension entitlement system. The City also emphasizes that it is not seeking to remove new hires from a Defined

Benefit Pension Plan.

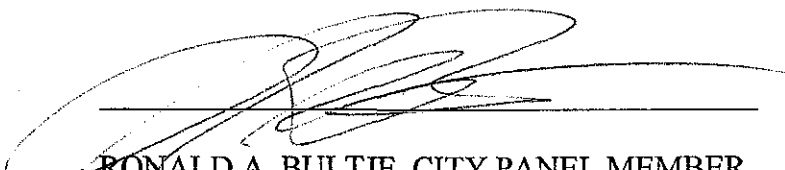
The unusual aspect of this Issue is the Union proposal to maintain the existing multiplier, but increase the contribution rate for all B/U employees at a rate higher than the City LBO.

Despite the union's willingness to accept a higher employee contribution amount toward retirement in order to retain an identical Plan for all employees, the Panel cannot overlook the fact that all of the Comparables except Holland have moved to a Defined Contribution Plan. Participation in a Defined Benefit Plan provides the employee with a known benefit amount at retirement. Holland has a Defined Benefit Plan, however, it is noted that it does not participate in the Social Security System. While it is true the Employer Proposal will provide new hires less in retirement benefits than current employees, it remains a fact that the new hires will continue to have the benefit of a Defined Benefit Plan and Social Security benefits.

The Employer LBO is adopted.

AWARD

1. RETIREE INSURANCE: THE UNION LBO IS ADOPTED. *City dissents. RAB*
2. RETIREMENT; THE EMPLOYER LBO IS ADOPTED. *Union Dissents T3*



RONALD A. BULTJE, CITY PANEL MEMBER



THOMAS R. ZULCH, UNION PANEL MEMBER



JOSEPH P' GIROLAMO, PANEL CHAIRPERSON,

MAY 15, 2013
Dated: April ~~15~~, 2013