

State of Michigan
Department of Licensing and Regulatory Affairs
Bureau of Employment Relations

In the Matter of Statutory Arbitration between:

CITY OF TAYLOR,
Employer-Respondent,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,
Union-Petitioner.

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

MERC Case No. D14 H-0724

FINDINGS, OPINION, AND ORDER.

Before a Panel consisting of:
Benjamin A. Kerner, Impartial Chair
Gary Pushee, Union Delegate
John Clark, Employer Delegate

Appearances:

For the Respondent: John Clark
Giarmarco, Mullins & Horton

For the Petitioner: Kevin Loftis / John T. Barr

Also present on behalf of Respondent: Jason Couture, Sheila Gorski- Schulte,
Doug Bohrer;

Also present for the Petitioner: John T. Barr, Jerry Cole, and Steven Schwein.

Dated: December 17 , 2015

Background.

The parties are signatories to a collective bargaining agreement effective by its terms July 1, 2008, through September 30, 2015. In accordance with the agreement, the parties re-opened the item of general wages to be paid for the period October 1, 2014 through September 30, 2015.

When agreement on the terms of a wage re-opener was not forthcoming, the Union filed its Petition for Act 312 arbitration on June 2, 2015. The parties cooperated in the setting and holding of a preliminary hearing on the matter of comparable communities, the result of that preliminary hearing being that the communities of Dearborn, Dearborn Heights, St. Clair Shores, Westland, and Southfield were deemed to be comparable to the City of Taylor for the purpose of this proceeding.

In addition, the parties have had "one last crack" at voluntary settlement by way of the Impartial Arbitrator's remand for bargaining dated October 27, 2015. The use of mediation at the subsequent mediation session was unavailing.

The Act calls for a binding resolution of the issue in dispute, either the Petitioner's last best offer or the Respondent's last best offer. The offers are:

1.0% increase of base pay for time period October 1, 2014 to September 30, 2015. (Respondent-City's offer)

2.0% increase of base pay for time period October 1, 2014 to September 30, 2015. (Petitioner-Union's offer)

These offers are to be evaluated in light of the following statutory factors and the record made at hearing in this case on October 21, 2015.

Statutory Factors. MCL 423.239.

Section 9(1)(a) The financial ability of the unit of government to pay [including],....

- (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....
- (iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

Section 9(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.

Section 9(1)(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... (i) Public employment in comparable communities....

Section 9(1)(e)--Comparison of the wages, hours, and conditions employment of other employees of the unit of government outside of the bargaining unit in question.

Section 9(1)(f)—The average consumer prices for goods and services commonly known as the cost of living.

Section 9(1)(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.

The evidence.

Ability to Pay [Section 9(1)(a)].

Related to the financial ability of the unit of government to pay, the Employer showed that the unassigned fund balance for the F.Y. ending June 30, 2013 was -\$2.3 M. (negative \$2.3 M.). [E'er. Exh. 9] Thereafter, the City entered into a deficit elimination plan with the Michigan Department of Treasury, requiring it to eliminate deficit within 5 years. [Couture testimony, Tr. 112]

The Employer showed further that the unassigned fund balance for the F.Y. ending June 30, 2014 was \$389,000. In that year the City borrowed \$7.5 M. from the Water & Sewer Fund to achieve the positive results it did achieve. The unassigned fund balance was 1.2% of the operating expenditures. [E'er. Exh. 10]

The Employer further showed that the unassigned fund balance (unaudited) for the F.Y. ending June 30, 2015 was \$1.2M. [Couture testimony, Tr. 128]. The unassigned fund balance was 3.4% of operating expenditures.[E'er. Exh. 11]

Comparable communities [Section 9(1)(d)(i)].

The Union notes that the following communities were nominated in the expired CBA as comparable communities: Dearborn, Dearborn Heights, Canton, Livonia, Westland, and Southfield. These communities were used in the 2005-08 contract; and were enunciated as the comparables in the 2008-15 contract (at Article 24.3, achieved after an Act 312 hearing). These communities, says the Union, were satisfactory over the last 10 years of bargaining and Act 312 determination and should be satisfactory for the present contract re-opener.

The Employer took the position that populations and taxable valuations change, and a more suitable designation of external comparables would include the following communities: Dearborn Heights, St. Clair Shores, Redford Township, and Roseville, but not the others (except for Dearborn Heights) included on the Union's list.

At preliminary proceedings, the parties had an ample opportunity to defend their lists of comparables, and the Act 312 Panel ruled that the following communities, on the basis of population and taxable valuation would be considered comparable for the purposes of this hearing: Dearborn, Dearborn Heights, Southfield, St. Clair Shores and Westland.

The evidence shows (with respect to this last listing of comparable communities) that Taylor had no increase in base wages whereas the comparables experienced a 4.04% increase over a six year time period. [U. Exh. 3]. Taylor fell from 3rd of six communities in the group to 5th out of the six communities in the group (during the time period 7-1-08 to 7-1-14). [U. Exh. 3].

Other Employees of the Unit of Government [Section 9(1)(e)]

Further in regard to comparable internal employees, the Union presented evidence that individual employees in the Human Resources Department experienced a 6.7% wage gain in January 2015; and that one employee of the 23rd District Court achieved a 10% wage gain in the same period, whereas the average raise for court employees was 3.0%.

.Also among the City's employees, AFSCME Local 1128 received a 1.0% increase on July 1, 2015 for the next year. And, AFSCME Local 1917 also received a 1.0% wage increase on July 1, 2015. These increases overlap (by 3 months) with the time period we are concerned with.

Average Consumer Price Index [Section 9(1)(f)]

The Union presented evidence that the rate of inflation, modified by the Proposal A Headlee Amendment was 2.2% averaged over the preceding 8 years, for a total gain in CPI of 17.6%. In the same time period, employees of this bargaining unit have received no raises in base pay.

The Views of the Parties.

The Employer takes the position that the near-financial insolvency experienced by the City in 2013 and the razor-thin positive balance for 2014, followed by the very modest fund balance of \$1.2M in 2015 indicates that the City is not yet financially healthy.

The City pointed out that its auditing firm, Plante Moran, through the efforts of Mr. Bohrer, suggests that a healthy unassigned fund balance of 15-30% is recommended. [Bohrer testimony, Tr. 149-150]. The Government Finance Officers Association says that a healthy unassigned fund balance would be 17% or better. Here, we have in the best of the last three years a fund balance of 3.4% of operating expenditures. There is room for improvement. If additional money were

allocated to union salaries, the prospect for achieving a healthy fund balance would grow only dimmer.

The Employer also points to the internal comparables of Other City Employees. There have been no wage increases during the period at issue in the Fire Fighting unit, in the Police Command Unit, or in other City unions with two exceptions: AFSCME Local 1128 received a 1.0% increase on July 1, 2015 for the next year. And, AFSCME Local 1917 also received a 1.0% wage increase on July 1, 2015.

In the Employer's view no other factors are nearly as crucial as these two factors. Indeed, based on the first factor, alone, says the Employer, and considering the mandatory language of Act 312, Section 9(2) the arbitration panel "shall give the financial ability of the unit of government" if the inability to pay is supported by competent, material and substantial evidence, the "most significance."

The Union points out that one component of the operational expenses incurred by the City every year is the operation and maintenance of 2 City-owned golf courses. In 2013, the City incurred a loss of \$534,000 for the operation of the golf courses. [E'er. Exh. 9, page 20]. In 2014, the City incurred a loss of \$629,000 for the operation of the golf courses. [E'er. Exh. 10, page 20]. In 2015, the unaudited figures show that there will be a profit. [E'er. Exh. 11 page 13]. This money could and should be devoted to employee salaries, says the Union, and in particular the salaries of those who maintain public safety. That is the core "business" of any municipality.

Further, the Union shows that police officers on overtime basis, obtained for calendar year 2014 \$2.6 M in tickets written on traffic detail. Some of this is devoted to the operation of the court system. However, even figuring the overtime pay of the police officers overall for 2014 (of \$1.2 M) that leaves a benefit to the City of \$1.390 M. (The portion allocated to the court system has evidently not been subtracted.) [Cole testimony, Tr.161-2] Some or all of this should be devoted to salaries and benefits of police officers, says the Union.

Analysis.

The Chair is of the opinion that Section 9(1)(a) and Section 9(2) are dispositive of this case. It is clear that there is competent, material and substantial evidence to show that the unassigned fund balance of recent years as a percentage of the total operating expenditures of the City is very thin, and merits the efforts taken by the City to improve that fund balance. Indeed, the City must improve that fund balance if it is not to fall into a deficit situation in the coming years. The situation today could properly be characterized as an inability to pay requested wage increases.

Secondly, the Chair is of the opinion that the wages paid to comparable City employees [Section 1(e)] indicates that the 1% wage increase offered by the City here is in line with the only other increases granted, to the AFSCME constituency.

Thirdly, the factor of the wages and benefits paid to police officers in comparable communities [Section 9(1)(d)(i)] has been considered, and given some weight, but it is not definitive in view of the evidence in support of Section 9(1)(a).

The factor of Section 9(1)(f) consumer price index has also been considered, and given some weight, but it is not definitive in view of the evidence in support of Section 9(1)(a).

The following sections have not been considered, because of lack of evidence or lack of materiality to the issue before this panel:

--Section 9(1)(b)--the lawful authority of the Employer

--Section 9(1)(c) Stipulations of the parties,

--Section 9(1)(d)(ii) comparison of employees in private employment in comparable communities.

--Section 9(1)(g)--Overall compensation of employees in the unit, and

--Section 9(1)(h) Changes in the foregoing circumstances.

Some comment is appropriate regarding the Union's arguments. The sale of the City-owned golf courses would, in fact, free up operating cash devoted to its maintenance. However, the decision to maintain it has already been made, and this Panel cannot unmake that decision.

In regard to the cash brought in by police officers' writing tickets, that is a substantial benefit to the City. It is not against the law for a department of city government to generate income, even substantial income as the Union's figures show. But, once again, the allocation of that cash—whatever amount that ends up being, after an offset for court operations—is a matter the City has decided

how to allocate. It does not follow that the benefit gotten for the City should be allocated to the police department or to officer wages. Rather, if wage increases are justified for the police officers, based on Act 312 factors, then the officers should receive such increases.

Conclusions of the Panel.

The Panel, having considered the evidence in view of the Act 312 factors applicable to this proceeding, finds that competent, material and substantial evidence tends to favor the City's last best offer. Accordingly, the Panel awards a 1.0% increase to the police officers of the Union's bargaining unit for the time period October 1, 2014 through September 30, 2015.

ORDER

The Respondent-City of Taylor shall pay to police officers in the Union's bargaining unit the wage increase of 1.0% for the time period October 1, 2014 through September 30, 2015.

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Benjamin A. Kerner, Impartial Chair

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John Clark, Employer Delegate, Concurring

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Gary Pushee, Union Delegate, Dissenting

December 17, 2015