9/1/87 AKB

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF GARDEN CITY

-and-

Act 312 Case
No. D85 D-1449

GARDEN CITY FIREFIGHTERS
ASSOCIATION, LOCAL 1911,
INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS

ARBITRATION PANEL

Chairman: Paul E. Glendon, Arbitrator
City Delegate: Richard J. Fritz, Attorney
Union Delegate: Frank Felts, Deputy Chief

ISSUE

Union proposal for increased pension benefits in lieu of wage increases offered by City.

CHRONOLOGY

Act 312 Petition filed: November 18, 1986
Chairman appointed: January 7, 1987
Pre-hearing conference: February 2, 1987
Remanded for further negotiation until: March 16, 1987
Arbitration hearings: May 12 and 29, 1987
Last offers and briefs filed: August 3, 1987
Panel executive meeting: September 1, 1987

APPEARANCES

For the Union: Jay W. Tower, Attorney
Levin, Levin, Garvett & Dill
For the City: Ronald E. Mack, Attorney
Berry, Hopson, Francis, Mack & Seifman

AWARD

The panel adopts the City's last offer of settlement: three percent (3%) wage increase effective July 1, 1985; additional wage increase of five percent (5%) for the period from July 1, 1986 through September 30, 1987.

Garden City (Arb.)

BACKGROUND

The parties' last agreement covered the period from July 1, 1983 through June 30, 1985. In negotiations for a successor agreement, they eventually settled all issues but one. The unresolved issue, which the parties agree is economic, had two sides.

On one side it was wages. The City proposed the same wage increases it had offered other City bargaining units: a three percent increase for all bargaining unit employees for the first year, commencing July 1, 1985; for the second year, another three percent, plus an additional one percent conditioned upon Union acceptance of a health insurance rider and another one percent if the new agreement extended through September 30, 1987, making a total package of eight percent during the final fifteen months of a proposed 27-month contract.

The other side of the issue was pension benefits. The Union accepted both the Blue Cross rider and the contract extension, and accepted the economic commitment embodied in the City's wage increase proposals. However, it proposed to forgo the wage increases in favor of increased pension benefits. Specifically, the Union proposed to increase the benefit rate from 2% of final average compensation to 2.5% for the first twenty-five years of service, and from 1% to 2% for service in excess of twenty-five years. It also proposed to increase disability retirement benefits to 2/3 of final average compensation until age sixty-five, at which time the disabled firefighter would receive normal retirement benefits, counting his years on disability retirement as credited service. The Union also proposed two other pension changes: allowing firefighters to purchase years of service for time spent on military leave and to retire after twenty years of service with a benefit level of 40% (2% for each year of service) of final average compensation.

The City rejected the Union's proposal and held fast to its wage offer, which eventually was accepted by four other city bargaining units. According to Union president Kenneth Hines, City negotiators merely said they did not want to increase the firefighters' pension benefits because that would lead to similar demands from other bargaining units. Otherwise, Hines said, they gave no reasons -- economic or otherwise -- for rejecting the pension demands, to which the Union also held fast.

Continuing negotiations, including mediation sessions in April and September 1986, failed to resolve this deadlock. On November 18, 1986, the Union filed a Petition

for Arbitration under P. A. 312 of 1969, as amended (MCLA 423.231 et seq). The petition identified the "unresolved issues in dispute" as follows: "The City has offered an 8% wage increase. In lieu of the wage increase, the Association seeks an increase in retirement benefits of a substantially equal cost to the City." That is the issue before this panel, which was constituted after the chairman's appointment on January 7, 1987.

The parties have stipulated that all other issues for an agreement for the period from July 1, 1985 through September 30, 1987 have been resolved. By further stipulation they waived all Act 312 time limits, both statutory and administrative. However, in accordance with Section 8 of the Act, the panel's findings, opinion and order are being issued within thirty days after the conclusion of the hearing, as defined by the parties' submission of last offers and briefs, which the chairman received on August 3, 1987.

At the hearings, the Union's evidence focused primarily on the cost of the competing proposals. President Hines testified that the real cost of the City's proposed eight percent increase was approximately ten percent, including its indirect effect on six other fire department budget categories: holiday pay, overtime and callback, holiday premium, social security, workers compensation, and sick pay. Based on the City's evidence of purported "Firefighter Employee Costs" for an employee with ten years of service and a family, the Union contends the actual cost of an eight percent wage increase effective July 1, 1986 would be 10.34%, excluding overtime and holiday premiums. Adding those two items, the Union says the eight percent package actually would increase the City's costs, as compared to the end of the last agreement, by 10.73%. The Union suggests it may be even more -- 11.02% -- if the indirect effect on pension benefits also is taken into account. In either event, the Union insists the City's proposed wage increases exceed the cost of the pension proposals embodied in its last offer.

That offer represents a substantial reduction from the Union's original position. Now it proposes only three changes in pension benefits: to increase the benefit formula to 2.5% of final average compensation per year for the first twenty-five years of service and 1.5% for all service beyond twenty-five years, such formula to apply to normal, duty disability, nonduty disability and deferred retirements; and to provide an annual benefit equal to 2/3 of final average compensation for members retiring prior to normal voluntary retirement age on duty disability, until they become

eligible for normal retirement, as to which all years on duty disability retirement shall be counted as years of service. The Union proposes that these changes take effect July 1, 1986, with neither wage increases nor pension benefit increases during the first year of the contract, and asserts that their annual cost represents an increase of only 9.7% over benefit levels in effect as of June 30, 1985. It also seeks a "me too" clause which will assure the firefighters of equal treatment, in the form of a pay increase, if any other City bargaining unit receives improved pension benefits "in exchange for less than 8% of their pay."

During negotiations, Gabriel, Roeder, Smith & Company, the firm which performs annual actuarial valuations for the City's Employees Retirement System, provided the parties with actuarial valuations for the costs of pension benefit modifications then proposed by the Union. It based them on the same data used in its June 30, 1985 annual valuation. The firm's reports showed that increasing the benefit formula to 2.5% of final average compensation times the first 25 years of service and 2% times years of service in excess of 25, and providing 2/3 of average final compensation to duty disability retirees until normal retirement age, would increase "Total Computed City Contributions" by 11.7%. The Union's expert witness, consulting actuary Charles F. Monroe, testified that such valuation was correct given the assumptions on which it was based. However, he disputed one of those assumptions.

One of the components of Gabriel, Roeder's valuation was a contribution for accrued unfunded liability attributable to years of service accumulated by present members of the retirement system before the effective date of the proposed benefit increases. According to both Monroe and Norman Jones, president of Gabriel, Roeder, Smith & Company, it is normal practice to amortize such a liability over an extended period. The Gabriel, Roeder valuation used a 23-year amortization period, that being the number of years left in the amortization period established when the plan originally took effect. In Monroe's opinion, that was unreasonable. He testified that a more reasonable amortization period would be thirty to forty years, and that adopting a thirty-year amortization would reduce the contribution increase from 11.7% to 10.7%. He also testified that if the formula were increased to only 1.5% of final average compensation for years of service in excess of twenty-five, also assuming a thirty-year amortization period for unfunded accrued liabilities, the contribution increase would drop to 9.7%.

Jones did not dispute the accuracy of Monroe's calculations under those changed assumptions, nor did he claim that thirty years was an unreasonably long amortization period for the unfunded accrued liabilities. However, he testified that twenty-three years was equally reasonable. In Jones's opinion, anything in the range of twenty to forty years would be reasonable, although an amortization period substantially shorter than twenty years would not be, and would lead to unjustifiably high annual contributions for unfunded accrued liabilties. He also explained that the City's current pension contributions were substantially lower as a percentage of payroll than they had been several years earlier, as a result of changed assumptions regarding investment returns and salary increases.

The City presented other evidence concerning the level of benefits firefighters can anticipate under the current benefit formula, which is specified in the City Charter and Retirement Ordinance. It presented three documents, also prepared by Gabriel, Roeder, Smith & Company, purporting to illustrate the benefits which would be received over the next twenty years by a fifty-five year old firefighter retiring in 1987 with thirty years of service and final average compensation of $25,000. Those documents show that even under the current formula such a retiree's retirement income, including Social Security, would replace more than 100% of his "indexed after tax working pay" for several of those twenty years, and that the "replacement ratio" would go as high as 119.9% if the benefit formula were increased from 2%-1% to 2.5%-2%.

The Union contends that its proposal clearly is less costly than the City's. It urges the panel to adopt that proposal rather than impose wage increases which will cost the City more, both short- and long-term, and are contrary to the firefighters' strong preferences. The Union emphasizes that trading fringe benefits for current compensation increases is part of the parties' bargaining history. (Hines testified that the City "has told us that you can have the different benefits that we are asking for, but it is going to come out of the increase that we are giving you." However, he identified no specific agreements the parties had made in this regard.) The Union notes that the annual cost of the proposed pension formula improvements will decline substantially after the amortization of unfunded accrued liabilities, but characterizes the cost of wage increases as perpetual.

Regarding the adequacy of firefighter pensions under current or increased benefit formulas, the Union suggests

the inflation and wage increase assumptions underlying the City's evidence are unreasonable. It argues that with a more realistic assumption of five percent annual inflation the replacement ratios will drop well below 100% if its last offer is adopted. However, the Union says that is not really the issue.

In its brief, the Union poses the central question as follows: "Where there is no increased cost to the Employer, can the members of a bargaining unit collectively decide to in effect defer income to a period they believe they will have a greater need, or must they be treated as incompetents with the City acting in loco parentis?" The Union answers with this assertion: "As a matter of policy, it does not, and should not matter to the City how the Firefighters spend their compensation."

The City contends that its proposal for wage increases must be adopted because it will assure "internal equity" among the various City bargaining units, and because the Union presented no evidence demonstrating support for the proposed pension improvements under the statutory factors enumerated in Section 9 of Act 312. The City emphasizes that the benefit formula the Union seeks to change was adopted by vote of the citizens of Garden City. It concedes that the Union has the right to seek pension improvements under the Public Employment Relations Act, but insists that under the circumstances of this case the Union's proposals are unwarranted, inequitable and unsupported by competent evidence.

The City opposes the Union's request for a "me too" clause on two grounds: first, because it exceeds the scope of the sole issue presented to this panel for decision; second, because such a clause is unnecessary given contract settlements already in effect for other City bargaining units for the same 27-month period.

The other arguments in the City's brief are addressed primarily to alleged cost disparities between the parties' proposals, assuming that the Union's final offer would duplicate its initial position. Those arguments are moot, in light of the more modest demands embodied in the Union's last offer of settlement. Therefore they need not and will not be summarized.

DISCUSSION AND FINDINGS

An Act 312 panel does not have a broad mandate to dispense justice, make policy, or right wrongs. Its purposes and authority are carefully defined and strictly

circumscribed by statute. Section 8 of Act 312 (MCLA 423.238) makes it explicitly clear that on economic issues "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." Court decisions repeatedly and pointedly have reaffirmed the central importance of the statutory factors, and have made it abundantly clear that an Act 312 panel must base its determinations on those specific standards.

The only matter before this panel is an economic issue, so the panel's deliberations have been and its findings and order must be guided by those statutory factors. Unfortunately, however, the Union presented virtually no evidence with any bearing on those factors. The crux of the Union's case, so pithily summarized in its brief, is simply that as long as there is no added cost to the Employer the employees should have the right to decide how they "spend their compensation." That position has absolutely no support in Act 312, so it cannot be a proper rationale for the panel to apply in choosing between the parties' last offers. Instead, the panel must apply the factors enumerated in Section 9 (MCLA 423.239) to the evidence of record as best it can, then choose the offer which "more nearly complies with the applicable factors."

Factor (a) is "(t)he lawful authority of the employer." The current pension benefit formula for Garden City firefighters, and other City employees, is mandated by the City Charter and related provisions of the City's Retirement Ordinance. Therefore the continuation of that formula clearly is within the City's "lawful authority." As the City recognizes, however, pension benefits are a proper subject of bargaining under the Public Employment Relations Act, so granting the Union's demands for pension improvements would not exceed the City's lawful authority. Accordingly, it must be found that factor (a) favors neither party in this case.

Factor (b) is "(s)tipulations of the parties." The parties having entered into no stipulations bearing directly on the merits of this dispute, this factor is not applicable.

Factor (c) is "(t)he interests and welfare of the public and the financial ability of the unit of government to meet those costs." Ability to pay is not an issue here, so that aspect of factor (c) is not applicable. Neither is the public welfare. However, the "interests... of the public" may be said to be reflected and embodied in the City

Charter, which was adopted by vote of the Garden City citizenry. As noted above, the Charter prescribes the 2%-1% pension benefit formula. To that extent, therefore, factor (c) is applicable, and it must be found that the City's position more nearly complies with the interests of the public as reflected in the City Charter.

Factor (d) calls for comparison of employee wages, hours and conditions of employment with those "of other employees performing similar services and with other employees generally" in public and private employment "in comparable communities." In this case, the parties were to submit their lists of proposed comparable communities, if any, by a date certain prior to the first hearing. Neither party did so. At the hearing, the Union took the position that this factor did not apply. The City indicated a desire to submit comparables at the hearing, but was not permitted to do so because of its failure to present such information prior to the hearing in accordance with the chairman's directive. Therefore, the panel having received no evidence bearing upon factor (d), it must be found that it does not apply in this case.

Factor (e) is the "cost of living," about which neither party introduced evidence or argument. Accordingly, it is found that factor (e) does not apply in this case either.

Factor (f) is the employees' "overall compensation." Although neither party has addressed this question directly in the statutory context, the City argues generally that the firefighters have been adequately compensated, and will continue to be with the wage increases it proposes, and specifically that their pension benefits also are adequate as shown by projected "replacement ratios" related to their current earnings. The Union does not suggest that either the firefighters' overall compensation or their pension benefits are inadequate. To the contrary, it proposes that they should receive less current compensation, and no additional compensation of any kind during the first twelve months of this 27-month contract, and its argument regarding the pension benefits is not one of adequacy or necessity, but freedom of choice. As the party proposing to change the status quo, the Union has the burden of establishing a statutory case for the changes it demands. It clearly has not done so with respect to factor (f), with which the City's position must be found to to be more closely in compliance.

Factor (g) covers changes in the circumstances referred to in factors (a) through (f) "during the pendency

of the arbitration proceedings." Neither party presented evidence or argument in this regard, so it must be found that this factor does not apply.

Factor (h) covers other factors "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 and otherwise between the parties, in the public service or in private employment." This factor strongly favors the City's position. The relevant consideration here is the relationship between the firefighters and other City bargaining units. The City emphasizes that four other bargaining units have accepted the wage increase package it has offered the firefighters, and that the 2%-1% pension benefit formula applies to all City employees, as required by charter and ordinance.

In addition to its general interest in uniformity of economic settlement among the various City bargaining units, the City advances a more specific argument in this regard. Deputy treasurer Patricia Noel, who supervises the City's accounting department and also has contract negotiation and related personnel duties, testified without contradiction that there has been a tradition of economic parity between the firefighters' and police patrol units. She acknowledged some minor disparities in life insurance coverage, but said there have been no exceptions to parity in the major areas of wages and pension benefits. The police patrol unit, represented by the Fraternal Order of Police, accepted a contract for the same 27-month period with the wage increases offered by the City and no change in the pension benefits prescribed by the City Charter. The City argues persuasively that continuing parity requires this panel to adopt the same terms for this bargaining unit.

For its part, the Union emphasizes that the police command unit has received the disability retirement benefit it seeks for firefighters, although no other unit has. However, it does not contend that the firefighters are guaranteed parity with the police command unit. The "other factor" it relies on, virtually to the exclusion of everything else, is the freedom of choice argument, for which it claims some precedent in prior bargaining regarding contract benefits which the firefighters "purchased" at the expense of current wage increases. The evidence of alleged prior bargains in this regard is vague and unpersuasive. But even if the panel were to accept unquestioningly president Hines's broad assertions, they do not prove it has been normal or traditional, in this bargaining unit or

anywhere else, for the employer to cede to employees a broad right to decide for themselves how to "spend their compensation" as between wages and pension benefits.

One additional factor deserves mention. The City has a legitimate interest not only in the immediate costs of a contract settlement, but in its future economic ramifications. The evidence shows that City contributions to the employee retirement system recently decreased significantly, as a percentage of payroll, because the system's board of trustees adopted revised assumptions primarily related to the fund's extremely favorable investment returns over the past few years. There is no guarantee the fund's investment performance will continue to be that strong. If investment returns drop below the level of current assumptions, the City's pension costs -- and therefore the cost of the pension improvements demanded by the Union in this case -- will rise. The cost of a wage increase is subject to no such uncertainty.

As for the actual current cost of the pension improvements the Union seeks -- the subject to which most of the evidence was directed -- the panel need not make a definitive finding. The chairman accepts witness Jones's expert opinion that either a 30- or 23-year amortization period for unfunded accrued liabilities would be reasonable. Given the limited scope of the Union's last offer, however, it appears that even with a 23-year amortization period the cost of those benefits from July 1, 1986 through September 30, 1987 would be approximately the same as the cost, including indirect increases in other budget categories, of the 8% wage increase offered by the City for that period. To that extent, the chairman also accepts the Union's assertion that the issue before the panel is not one of current cost, but of principle.

However, the principle upon which the Union stakes its claim is without statutory foundation. Therefore the panel must find that the City's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312, and must adopt that offer.

ORDER

The arbitration panel hereby adopts the City's last offer of settlement on the sole economic issue before it, and orders that all members of the bargaining unit shall receive a three percent (3%) wage increase effective July 1, 1985, and an additional wage increase of five percent (5%) effective July 1, 1986. In all other respects, the parties'

Agreement for the period from July 1, 1985 through September 30, 1987 shall be as previously agreed to by the parties and set forth in the document(s) appended hereto as Exhibit A, which is incorporated herein by reference.

Dated: September 1, 1987

Paul E. Glendon, Chairman

Frank Felts (Dissenting)
Union Delegate

Richard J. Fritz
City Delegate