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| In re arbitration between<br><br>City of Garden City, Michigan,<br><br>and<br><br>Garden City Patrol Officers, FOP. | Compulsory Arbitration Under Act 312, Public Acts of the State of Michigan, 1969, as amended by Act 127, Public Acts of 1972, [MCLA 423.238; MSA 17.455 (30) ].<br><br>MERC Case No. D83-E-1563.<br>OPINION AND ORDER OF ARBITRATION PANEL |

Garden City / City of

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Before the arbitration panel in these proceedings is the one issue at which the parties are at impasse in their negotiations for a renewal of their expired collective bargaining agreement. All other issues arising out of or discussed by the parties in their negotiations are acknowledged by them to have been settled in those negotiations or in the informal phase of these proceedings, during which informal phase some nineteen non-economic and three economic issues were settled.

All of the parties' evidentiary exhibits, the panel chairman's copy of the stenographic record and the parties' post-hearing briefs are attached to the copy of this opinion and order which is filed with the Michigan Employment Relations Commission. There are seventeen City exhibits, two Union exhibits and two joint exhibits; one of the joint exhibits is the expired collective bargaining agreement the renegotiation of which led to the impasse here resolved.

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Scott, John W

## ISSUE

The issue in these proceedings is whether the City shall pay to the police officers who comprise the subject bargaining unit a four percent wage increase from July 1, 1982 to December 31, 1982.

## LAST BEST OFFERS OF THE PARTIES

The language immediately following the names of the parties, below in this section, is quoted verbatim from the post-hearing brief of the party designated. The post hearing briefs of the City and the Patrol Unit are attached to this document as Exhibits AA and BB, respectively.

The Patrol Unit.

Effective:
1. July 1, 1982 - 4% added to each salary slot from July 1, 1981 rates
2. July 1, 1983 - 4% added to each salary slot from July 1, 1982 rates
3. July 1, 1984 - 4% added to each salary slot from July 1, 1983 rates

Garden City.

The City offers a four (4%) percent increase in wages effective January 1, 1983.

The City offers a four (4%) percent increase in wages in the second year of the contract, effective July 1, 1983.

The City offers a four (4%) percent increase in wages in the third year of the contract, effective July 1, 1984.

## OPINION

There is just one issue in this case and it is the one stated in this document.

It is necessary to emphasize that point because the parties, for whatever reasons, have attempted to be ambivalent about the issue. The City's post-hearing brief speaks of two issues: one of them the effective date of the agreement subject to these proceedings, and the other "duration" of the agreement. The Union, in some of its hearing testimony, asserts that it had on the table a package proposal the parts of which depend on an effective date of July 1, 1982, being agreed upon or assigned to any new agreement. Some of the Union's hearing testimony also denies that it had negotiated for a three year agreement in the negotiations which resulted in this case. Both parties speak in their post-hearing briefs, as they spoke throughout their case presentations, of "retroactivity".

Joint Exhibit 2, in its section entitled Economic Issues, read with the parts of the stenographic record applicable to it, makes clear that during the negotiations which preceded this case the Union knew full well that it was negotiating for a three year labor agreement. Joint Exhibit 2 was presented to the Union's membership for its consideration during the negotiations and it delineates the same wage demand, years and all, contained in the Union's last best offer, set forth above. In fact, the language of the last best offer and the language of the subject section of Joint Exhibit 2 are identical. Nothing in that language indicates that the offer is anything but a unified offer, and nothing in the evidence presented at the hearing successfully contradicts that conclusion.

OPINION, (cont'd.)

Similarly, there appears to be no relevance whatever to the City's post-hearing brief assertion that there are two issues in these proceedings. And, as with the Union, any contrary intimation by the City is contradicted by its post-hearing brief statement of its last best offer, quoted above.

Retroactivity can be an ambiguous term. It has no place in this case. There is, for example, no issue in this case of how far back in time the four percent increase the parties have agreed shall be effective on July 1, 1983, shall extend. That increase is preceded by another, and different, four percent increase which, regardless of its effective date, gives the July 1, 1983, increase a set of base rates different from those in effect previous to July 1, 1983. Retroactivity is not involved in this case. What is involved is the date on which a new agreement is to be effective.

A part of the Union's argument for a July 1, 1982 effective date is that an Act 312 panel is empowered by the statute to grant retroactivity. Doubtless that is true. But the argument says no more than that the panel is empowedered to hear and determine an Act 312 case in all of its aspects. The mere possession of power by a tribunal is always distinct from the obligation of that tribunal to act upon evidence which must justify the exercise of the power. An invocation of power by one party in proceedings of this kind is no more persuasive than a parallel and opposite invocation by the other party. And here no party denies that a four percent wage increase should precede July 1, 1983; the question before this panel is whether the increase should commence on one of the two dates fixed in the last best offers of the parties.

OPINION, (cont'd.)

Union Exhibit 1 and the testimony attendant to it in this case are unpersuasive that the Union's July 1, 1982 effective date ought to be ordered by the panel. In this case the effective date for a new collective bargaining agreement is squarely in issue, and in these proceedings that date is the sole issue.

Union Exhibit 1 indicates that some other parties either agreed upon the effective dates for their agreements in their negotiations, or that some of them had an effective date settled upon them through arbitration. Nor does any of that evidence make clear the basis upon which the parties arrived at or argued for one effective date or another in the cases cited in Union Exhibit 1. In the case of the City of Inkster the dispute settled in Act 312 arbitration regarding the year 1983 - 1984 was not retroactivity. It was whether that year, reckoned from July 1, 1983, should produce the Union's demanded five percent increase or the City's offered three percent increase in the wages of Inkster's patrol unit.

And that makes peculiarly relevant the panel's earlier remarks about retroactivity. Here the Union uses the term only in the sense that it may be applied to any settlement that includes a time period predating the eventual settlement of an agreement. From that perspective the Union argues that the mere recitation of comparable units which settled their agreements after those agreements expired is relevant to the question of an effective date for this case and this agreement. But that does not follow. The fact that a settlement is made by agreement or in arbitration and that its effective date is an earlier date than the date upon which the agreement or arbitration order is made is irrelevant except to show that a settlement was made. And the fact that settlements are made is of no relevance whatever in isolation from disputed matter which made up the substance

OPINION, (cont'd.)

of the settlements. The Union's retroactivity evidence, including Union Exhibit 1, is insufficient to support its position that the effective date for which it contends should be granted by the panel in this case. Nor are these remarks intended to create a will-o-the-wisp which ought to be pursued in future cases. Even in situations like the instant case, where the dispute about the effective date is really a dispute about costs of settlement, the effective date of the agreement cannot meaningfully be separated from the economic issue which attends it. To take Inkster for example again: the parties did not disagree about the date upon which a 1982-1983 wage increase should be effective, even though that date had passed when they signed the arbitration award which settled their case. In fact, they had agreed upon a date. What they had in dispute was the amount of the wage increase to be paid upon their agreed date. In the Garden City case the parties have agreed upon the amount of an increase to be paid during the disputed period which predates July 1, 1983; they disagree only about the effective date.

Finally in the matter of mere "retroactivity" the Union entered its Exhibit 2. Union Exhibit 2 is an excerpt from an Act 312 award in which the panel's chairman declared, "In the Chairman's view, it is not possible to fix responsibility for the parties' failure to reach a negotiated settlement. Notwithstanding the added cost to the Village, as a matter of equity the officers should not suffer a financial penalty for this failure." This panel cannot take cognizance of the Union's Exhibit 2. This panel has before it no evidence to indicate why the terms "failure" and "responsibility" were used in the quoted language. It is not necessarily a failure, but perhaps an adherence to duty, that prevents a settlement on a particular date. Blame, in the sense of "responsibility" is not involved where good faith adherence to positions results in protracted negotiations. And if

OPINION, (cont'd.)

failure and fault are involved "equity" cannot possibly be served without a fixing of fault. Standing by itself, Union Exhibit 2 is probative of nothing in this case.

The Union undoubtedly suffers from the disadvantage of having had to take up the negotiations which resulted in this Act 312 case after another and different union, which began the negotiations, departed the scene. But, with all of that, the Union has not been able to make its case that mere retroactivity, in the sense in which it has used the term in this case, is an issue which can rationally be settled by reference to the effective dates of comparable labor agreements and the relationship between those effective dates and the dates upon which the agreements involved were signed. Almost certainly no one could make that case.

The fact is that the Union has not shown a four percent wage increase to be inappropriate, in terms of the requirements of Act 312, for the period here in dispute - the period from July, 1982 to January, 1983. That is the really relevant matter, and not merely that some other parties settled one thing or another for a period which predated their settlements.

The Union also argues that it has been victimized by the settlements the City of Garden City made with others of its bargaining units relative to the period here in dispute and relative to the patrol unit's negotiations here at issue. That is a compelling argument, but in this case it is so largely because it appeals to the emotions. It is a fact that the City signed what the parties to these proceedings have called "me too" agreements with other bargaining units during recent negotiations with them.

OPINION, (cont'd.)

City Exhibit 16, at page 38, sets out the "me too" agreement the City made with its police command officers, represented by a different union than the patrol officers who are the subject of this case. The panel understands that agreement to be identical with its fellows. It reads:

> "The City of Garden City and the I.B.T. #129 (Command), mutually agree that if any other bargaining units in the City of Garden City receive higher increases in wages and/or retroactive pay than offered and accepted by I.B.T. #129, such differences in wages and/or retroactivity shall automatically be granted to I.B.T. #129 (Command) on the same basis as received by other or another bargaining unit(s)."

It is not for this panel to interpret the quoted language. It appears to mean what the parties before this panel treated it as meaning; that any wages granted to the patrol unit for the period predating January 1, 1983, would automatically be paid to other units who had negotiated "me too" clauses with the City. Presumably if the patrol unit surrendered its vacation or pension plan in return for such wages other units would do the same.

The patrol unit's representatives feel that the "me too" clauses make the patrol unit a pawn in labor agreement negotiations between the City and other unions; negotiations which do not even involve the patrol unit. Those representatives feel that the City has made of the patrol unit an unwilling spearhead in all of its labor agreement negotiations. And the Chairman of this panel is sympathetic to the patrol unit's feeling that it is the victim of economic pressure created by the City in a situation where the patrol unit cannot strike because it is a police unit. But a dispassionate analysis shows that while the feeling of the patrol unit is genuine it is not soundly based in this case.

OPINION, (cont'd.)

To begin with, the City's case theory in defense against the patrol unit's demand for its date is based upon ability to pay. The City could have created the same defense by giving its other bargaining units whatever they demanded, thereby creating the same basis for its ability to pay defense it is presently employing and relying on the same inability of the patrol unit to strike the City. Instead of doing that it seems to have seen to it that monies were available for all of its bargaining units.

Beyond that, the argument that the patrol unit was somehow victimized by the "me too" agreements ignores the important facts that the other units received no wages for the period of time here in dispute and that, presumably, members and representatives of those other units were aware that the police cannot legally strike the City. While at first blush it may appear that other units sought a free ride on the coat tails of the patrol unit it is as easy to conclude that the other units assumed a risk and negotiated away their own ability to negotiate further for wages covering the period prior to January 1, 1983. In that state of affairs the arguments for and against the idea that the patrol unit was victimized by the "me too" clauses are of no more than equal weight; they are at equipoise. That is particularly noteworthy in this case where neither party put in evidence anything about the ability of any of the other units which signed "me too" clauses to strike the City legally. It is known to the panel that at least one of the other "me too" units is not a police or fire unit.

Finally, the City's argument in its defense of its position is an ability to pay argument. And ability to pay is only one of the statutory factors to be weighed by the panel. Nothing in either the law or the Prophets says the panel cannot bankrupt

the City if it thinks it ought to do that. But the Union has a case on the question of the City's ability to pay its demanded four percent increase during the period in contest, and that Union position requires comment here and first. It does not rebut the City's case or even shift to the City a burden in addition to the one the statute imposed upon the City to begin with.

While it seeks to attack the City's position on the question of the City's ability to pay on the basis of the City's evidence, the Union brings to the panel none of its own evidence on the point. Union Exhibits 1 and 2 are not such evidence. Those exhibits, as has been observed above, support only the Union's claim that in all of the instances cited in them a chronological pattern of settlements extending to an earlier date than the settlement-event emerges, and that it should control this case. The claim is irrelevant and the record does not bear out the fact of retroactivity in even the limited sense in which the Union has employed the term in this case. There is simply no evidence that retroactivity per se was an issue in all of the cases cited by the Union. And in none of the cases it cites does the Union supply evidence about the quantum propriety of the settlements involved: no evidence is supplied about the costs of those settlements or, in the case of wages - the matter before this panel, the percentages or wage bases involved in the Union's exhibits. In short, the Union does not prove that for the period July 1, 1982 to January 1, 1983 it is entitled to a four percent wage increase on any of the statutory bases outlined in Act 312.

This is not a case in which the City, during its negotiations, refused or failed to make an offer to the Union in the matter of the economic issue which is the sole one here in dispute; nor has the Union refused or failed to make an offer of settlement to the City.

OPINION, (cont'd.)

But it is also not a case in which this panel is free to romp all over the landscape of its imagination in order to produce a settlement between the parties.

The panel is bound by Act 312 to apply that statute's prescriptions to the offers of the parties, and, in this case where there is but one issue, to select just one of those positions or offers as the final settlement of the parties' dispute; a settlement to be imposed on both parties by a majority subscription of the panel. It must be so. In this case there is no other latitude.

Certainly this is a case where comparison of the last best offers of the parties with the negotiated situations of the City's non-patrol-unit bargaining unit employees whose negotiations have been settled cannot support the Union's last best offer. The record in this case shows that the great bulk of those other bargaining unit employees has already accepted the settlement date the City has before this panel. And since the monies the City must pay to all of its employees must be so paid, and not paid to employees of other employers in either the public or private sectors, and since those monies come out of the City's revenues, it ought to be obvious that in this case comparability of the patrol unit with employees of this City's other bargaining unit employees outweighs any other comparability. That is not a statement of immutable principle capable of application in all cases. But it applies squarely in this case where the City's defense is ability to pay; ability necessarily based upon the City's obligation to pay all of its employees. It has already been observed in this opinion's discussion of "me-too" clauses that it is reasonable to conclude that in its negotiations with its other bargaining units the City attempted to reserve funds for settlement of this dispute. On the entire record that conclusion is

OPINION, (cont'd.)

the one to be drawn as more reasonabley drawn than its opposite. Internal comparability may not always transcend comparability with other employees, employers and sectors. But in this case it does.

The Union's rock-bottom and essential argument for its last best offer is that to grant it would not leave the City flat-broke; not really in receivership or bankrupt or without a dollar to its name. Nothing in the law commands that the City put itself in any of those positions or analogous ones in order to accomplish a settlement its employees will accept. The testimony of the City's Deputy Treasurer and of its City Manager, together with the evidentiary exhibits which accompany that testimony make it clear that to grant the Union's demand, with its "me-too" implications, will impose great hardship on the City; including risk to its financial reputation, realignment of its funds and the distinct possibility of resort to its resident taxpayers for increased millage. The latter recourse to the one remaining available mill coming at a time of high unemployment in a municipality where the evidence shows diminishing population and scant non-residential tax base. Garden City has almost no industrial or manufacturing tax base; on the commercial side a K-Mart store is a notable facility. Its population is small.

Here the parties' last best offers are largely complementary. To repeat for emphasis, the City has made an offer for a wage increase. Most of it is not in dispute. The City argues that cost-of-living movement as demonstrated in the undisputed evidence justifies no greater wage increase. Nor can the panel find that it does. Nor does the Union claim otherwise. It could hardly do so sucessfully, especially in view of its own statement of its own last best offer. There simply is no evidence that the City's last offer is not the best one here at issue.

OPINION, (cont'd.)

And, to state the matter positively, the preponderance of evidence on the entire record supports the City's case and not the Union's case. A critical part of the City's ability to pay case theory is that its fiscal difficulties - the ones relevant to this case - were occasioned by non-delivery to it of state revenue sharing funds; funds due from the State of Michigan. As late as the post-hearing executive session of this panel, held with the parties' representatives at the Garden City City Hall on August 9, 1984, those revenue sharing funds had not been delivered and they were not in prospect.

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ORDER OF THE PANEL

The four-percent wage increase here at issue shall be paid from the effective date for which the City of Garden City contended: January 1, 1983.

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Thomas Relich
Police Delegate

August 24, 1984
(date)

John W. Scott
Chairman

August 20, 1984
(date)

Richard Fritz
City Delegate

August 6, 1984
(date)