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In the Matter of Act 312 Arbitration
Between:

MERC Case No. G85-533

CITY OF HOLLAND

-and-

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL NO. 759

OPINION AND FINDINGS

Arbitration Panel

Samuel S. Shaw, Chairman
Michael A. Snapper, Designee for the City
Randall D. Fielstra, Designee for the Association

Appearances

For the City

Michael A. Snapper, Attorney

For the Association

Randall S. Fielstra, Attorney

Witnesses

Alan Sonnanstine
Jodi Syens
Robert Slenk

Fred Trethewey
Paul VanLoo
Larry Sandy

This arbitration arose pursuant to the State of Michigan's Compulsory Arbitration Act (Act 312, Public Acts of 1968, as Amended). As required by the Act, this arbitration was preceded by collective bargaining and mediation. However, as several issues remained unresolved, the matter was referred to the Michigan Employment Relations Commission, Department of Labor, to be heard by an arbitration panel as provided in Act 312.

The Commission appointed Arbitrator Samuel S. Shaw as the neutral member of the Panel and its Chairman; the City of Holland, (hereinafter referred to as the City) appointed Attorney Michael A. Snapper as its designee; and Local 759 of the International Association of Fire Fighters, (hereinafter referred to as the Association) appointed as its representative, Attorney Randall S. Fielstra.

Two meetings were held by the Panel, both in the City Hall in Holland, Michigan. The first was on January 6, 1987, at which time the rules of procedure to be followed were reviewed and established; the unresolved issues were discussed and defined as being either economic or non-economic; exhibits were identified and agreement reached on admissibility; and the witnesses for each Party were identified and agreed upon.

The second meeting, or formal Hearing, was held on January 29, 1987. Both Parties were represented by Counsel who were given full and ample opportunity to submit all pertinent documentary evidence and exhibits, and to examine and cross-examine witnesses. Some summary arguments in support of various points were presented; however, arguments in support of primary positions were reserved for post-hearing briefs.

All witnesses were duly sworn, and the proceedings recorded by Reporter and Notary Public Peggy S. Schmiling.

It was estimated the transcript of the proceedings would available by February 20, 1987; therefore, it was agreed the Parties would mail their last-best offers on the economic issues to the Chairman of the Panel by February 27, 1987, with the post-hearing Briefs to follow later. These Briefs were received by the Chairman on April 1, 1987, and the Hearing closed as of that date.

Background

The City of Holland is a municipal corporation located on the eastern shore of Lake Michigan, in the western mid-section of Michigan's lower peninsula. According to the 1982 census, the City's population was approximately 27,000, with the same additional number located in the surrounding, or greater Holland, area.

The City's Fire Department personnel are represented by Local 579 of the International Association of Fire Fighters (IAFF) with twenty-five members. The Association, or Bargaining Unit, is made up of four Captains, four Lieutenants, one Fire Inspector, and the balance classified as Fire Fighters. The Department is divided into two Platoons, or shifts, each of whom work a schedule of 24 hours on, 24 hours off, 24 hours on, and 72 hours off, and then repeats the schedule.

The duties and responsibilities of the Holland Fire Department are, with one exception, substantially the same as those performed by the majority of fire departments in similar cities throughout the State. This one exception is that Holland, being located on the shore of Lake Michigan, is subject to major water sport activity with the result that the responsibility for water rescue is carried by the Fire Department.

The prior Collective Bargaining Agreement was for a three year period, expiring on June 30, 1985, and as no agreement could be reached on a new contract, the unresolved issues were referred to binding arbitration in accordance with the State of Michigan's Act 312.

Discussion

Although not one of the initial issues, it was suggested at the Hearing that as the Agreement under discussion would expire by June 30, 1988, it would be in the interest of both Parties if they considered, for one time only and without precedent, extending this Agreement to four years, or to expire in 1989. Although no formal agreement was reached on this suggestion, the Parties indicated it should be given serious consideration. With that in mind, it was included by the Association as a specific recommendation in its post-hearing Brief.

However, in its Brief the City voiced strong objections to an extension even being considered, arguing it had never been done before and "a three year contract is standard in labor relations in general and among the comparable communities in particular."

A discussion of the City's position on this matter would serve no useful purpose, inasmuch as without agreement by both Parties it cannot be added to the issues considered. Under the statutory requirements, negotiation and mediation must precede arbitration. Because the Agreement's term was not included as an issue in the petition to MERC for arbitration, lacking mutual agreement it is barred from further consideration.

The issues that had been agreed to and were submitted were: 1. Wages, 2. Pension, 3. Retiree's Medical Insurance, 4. Dental Insurance, 5. Vacation SChedule, 6. Food Allowance, and 7. Paid Time Off for Association Officers on Official Business.

It was agreed the above seven issues should all be classified as economic, and as such subject to the criteria in Section 9 of Act 312, which for the record is as follows:

> "Sec. 9. Where there is no agreement between the parties, or where there is no agreement but the parties 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, as applicable:
>
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (d) Comparison of the wages, hours and conditions of

employment of other employees performing similar services and with other employees generally:
(i) In public employment in comparable communities.
(ii)In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living

(f) 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.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, 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 or otherwise between the parties, in the public service or in private employment."

Each of the foregoing issues is considered and discussed separately; however, not necessarily in the order presented.

DENTAL PLAN

In its final offer, the Association requested the City provide a dental plan "identical to the dental plan adopted by the City for non-Union employees and members of other Collective Bargaining Units within the City, said plan providing for the so-called 50-50-50 benefits. * * * *. The dental plan is to take effect 7/1/87."

In its final offer the City proposed to provide Dental Insurance as provided by Blue Cross/Blue Shield and known as

the "50-50-50 plan" with an $800 maximum benefit per year. As this is the identical package now provided the City's Police Department, and that requested by the Association, this issue must be considered resolved as proposed by the Association.

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, concurring
Michael A. Snapper, for the City

MEDICAL INSURANCE FOR RETIRING MEMBERS

It was an Association request that effective July 1, 1987, "a medical insurance plan be offered for future retirees, said plan to be identical to the existing plan for the police service, * * *."

The City proposed in its final offer to add retirees health insurance, a proposal that was taken from Article XI, Section 2 of the current FOP and City's labor agreement.

Therefore, as the Parties are in full agreement on this issue it is ruled resolved on the basis that the City will provide health insurance for retirees identical to that now provided the Police Department, and to be effective July 1, 1987.

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, concurring
Michael A. Snapper, for the City

Inasmuch as the above two issues were resolved by agreement of the Parties, the issues to be resolved by this arbitration are reduced to five, all economic.

In reaching an opinion, the criteria set forth in Section 9 of Act 312 was followed, with special attention to the comparable communities, particularly as to their location, their wages and benefits, and their department size, plus the wages and benefits of the other employee groups of the City of Holland.

Both Parties submitted a list of the communities in Michigan which they perceived to be comparable, and although the two lists were not identical, several communities were common to both. In addition, the City included a point-rating system designed to mathematically determine the degree of comparability of each community on its list as compared with the City of Holland.

I agree that a point-rating system, similar to that applied in job evaluation, would remove much of the element of judgement that is now required when considering the so-called "comparable" communities. However, irrespective of its advantage, I believe, if it is to be applied, it should be introduced at the hearing, so as to provide all concerned with an opportunity to voice any objections, ask questions, and for an understanding of the point formula and

the degree to which the values affect the end result. Therefore, inasmuch as in this particular case the system was not introduced until the filing of briefs, to avoid any suggestion the final determination was slanted or preconditioned, the point-rating element of the City's exhibit in question, was set aside.

The five disputed issues were reviewed separately, but not necessarily in the order in which they were presented.

FOOD ALLOWANCE

Previous labor agreement between the Parties have never provided for a food allowance, and it was the position of the City that none should be added at this time.

The Association, however, proposed that a new provision be added, providing for the following food allowance:

July 1, 1985	$200.00 per year
July 1, 1986	$200.00 per year
July 1, 1987	$300.00 per year

I do not deny, as the City argued, that a food allowance "is simply money wrapped in a different package. It is nothing more nor less than additional compensation * * *." However, it must also be recognized that owing to their work schedule, fire fighters are required to eat a substantial number of meals at their place of work,

a requirement, it is generally agreed, that adds to the family food budget.

A review of the prevailing practice in comparable communities indicates that the majority provides a food allowance to its fire fighters, and in a substantial number of cases, in an amount much greater than that being requested here by the Association. I am aware this is an initial request, and very probably the forerunner of future higher requests; nevertheless, considering the prevailing practice, and although it would increase any wage disparity between Holland and many of the "comparables", I do not find the Association's request for a food allowance to be revolutionary or unreasonable.

Therefore, for the reasons outlined above, it is my conclusion the Food Allowance, in the amounts requested by the Association, be included in the Agreement at issue.

Samuel S. Shaw

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, I dissent

Michael A. Snapper, for the City

TIME OFF FOR ASSOCIATION BUSINESS

Article V of the prior contract read as follows:

"Sec. 1. Up to three members of the Union may be absent from their regularly assigned work to attend outside union meetings at their own expense, if prior approval is obtained from the Fire Chief and arrangements have been made by members to cover their shifts by changing or swapping with other members of the Department.

Sec. 2. While on duty, employees of the bargaining unit may discuss union business as long as it does not interfere with the proper performance of their duties and the duties of other Firefighters, as determined by the Fire Chief or the Deputy."

The City proposed that no changes be made in the above language, or provision. However, the Association proposed the provision be changed to read as follows:

Sec. 1. General. Employees and their Union representatives shall have the right to join the Union, to engage in lawful concerted activities for the purpose of collective negotiating or bargaining or other mutual aid and protection, to express or communicate any view, grievance, complaint or opinion related to the conditions or compensation of public employment or their betterment, all free from any and all restraint, interference, coercion, discrimination or reprisal. The Union, at any time, may present grievances to the employer and have those grievances adjusted, if the adjustment or adjustments are not inconsistent with the terms of a collective bargaining contract or agreement then in effect.

Sec. 2. Released Time. The president of the Union and the bargaining Union and the bargaining committee shall be afforded reasonable time during working hours without loss of pay to fulfill their Union responsibilities. This shall include contract negotiations with the City, appearances before the City Commission, Civil Service Commission, and appropriate court of legal jurisdiction, processing of grievances, and the administration and enforcement of this agreement.

Delegates certified by the Union shall be granted leave with pay to attend the following meetings:

Michigan State Fire Fighters Biennial	2 Delegates
Firefighters District Meeting	2 Delegates
International Association of Firefighters Biennial Convention	2 Delegates

Paid leave granted to such delegates shall not exceed the lesser of either seven (7) calendar days or the official business dates of the convention or conference including reasonable travel time."

The subject matter covered in Section 1 of the above was not discussed during the Hearing, nor reviewed or argued in the Briefs. Moreover, I do not find it particularly relevant to the presented issue of paid time off for Association officers.

With respect to the time off question, despite the Association's claim, I am not persuaded that Association officers, at any level, have experienced difficulty in obtaining the necessary time-off to pursue grievances and/or handle official Association business. On the contrary, the only evidence offered was that the Association had never complained they were unable to properly carry out their responsibilities as Association representatives because they had been denied the necessary time-off during working hours.

In addition, a careful reading of the language in Section 2 could, I believe, ultimately lead to possible problems of interpretation and application. As it now stands, it is very general and lacking in specificity, plus being very broad in scope.

Furthermore, labor contracts in either the public or private sections rarely contain a provision that union delegates to a union convention will go at their employer's expense. In fact, of the comparable communities, a delegate time off provision was found

in only three instances out of a possible fifteen, and two of these were from contracts of relatively large municipalities with fire departments several times larger than those of the City of Holland.

Finally, none of the other four City employee groups currently under contract with the City have negotiated such a provision. Therefore, after considering all relevant factors, it is my conclusion that Sections 1 and 2, as proposed by the Association, should not be added to Article V of the Agreement.

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, concurring
Michael A. Snapper, for the City

VACATIONS

It was the City's proposal that no changes be made in the current vacation benefit schedule, arguing they were now identical with that negotiated with the Police Department, and compared favorably with the "average vacation benefits among comparable communities."

The Association, on the other hand, proposed the vacation provision be amended to provide the following vacation benefits "commencing with the physical year July 1, 1987, which conforms to that currently received by the collective bargaining unit of the Board of Public Works."

1	year service	3 duty days	1 week
1-7	years	5 duty days	2 weeks
7-17	years	7 duty days	3 weeks
17-24	years	10 duty days	4 weeks
24 or more	years	12 duty days	5 weeks

A full review of the submitted comparables indicates that due to variations in the formulas applied in computing vacation time, many do not lend themselves to a comparison with Holland. Furthermore, the submitted exhibits did not include any consideration of the private sector, a sector that should be included in the consideration.

I agree with the argument advanced by the Association that

its vacation proposal would not result in vacation benefits significantly more liberal than the average in the public sector. As to its comparison with the private sector, although there are some factors within the proposed schedule that are above, overall the package is not completely unreasonable.

In addition, although I appreciate it provides a slightly greater benefit schedule than that recently negotiated with the Police Department, its formula is not strange to the City, it having been recently granted to the bargaining unit employees of the Board of Public Works.

Therefore, for the above reasons it is my conclusion the vacation proposal submitted by the Association should be incorporated into the new agreement.

Samuel S. Shaw

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, I dissent

Michael A. Snapper, for the City

WAGES

The Association proposed the following wage increase:

July 1, 1985	5%
July 1, 1986	4%
July 1, 1987	3%

The City's final offer was:

July 1, 1985	4%
July 1, 1986	4%
July 1, 1987	3% to 6%, depending upon the rate of inflation (CPI-U) during the twelve month period from June 1, 1986 through May 30, 1987. If inflation is 3% or less, all wage levels will increase by 3%. If inflation is 6% or more, all wage levels will increase by 6%. If inflation is between 3% and 6%, all wage levels will increase by the actual rate of inflation, rounded off to the nearest one-tenth of one percent (0.1%).

To arrive at a resolution of this particular issue required relatively lengthy consideration, primarily because there appears to be very little difference between the Association's proposal and the City's final offer. If my calculations are correct, using the City's third year minimum figure of 3%, the difference between the two is only one per cent, and if the 6% maximum figure is used, the City's offer actually produces a little over 2% more than the Association's request.

According to my information, the estimates are that the CPI

is currently running at around 4%. It appears, therefore, that at this time the fire fighters would be slightly ahead under the City's offer.

I recognize that under Section 9 of Act 312 there are roughly nine factors that should be taken into consideration when evaluating and resolving economic issues. However, for the discussed reason, I do not feel a review of these factors in terms of the issue would serve any useful purpose, or change the obvious conclusion.

For the above reasons, it is my finding the offer proposed by the City should be accepted.

Samuel S. Shaw

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, concurring

Michael A. Snapper, for the City

PENSIONS

Probably the primary issue advanced by the Association at this negotiation was the matter of an addition to its pension plan.

The present Plan is known as a B-2 basic plan with a F-55 benefit, provided through the Michigan Municipal Employment Retirement System (MERS). This Plan is 100% funded and provides retirement benefits equal to two per cent of the employee's average yearly compension over his past five years, multiplied by years of service. The F-55 benefit allows retirement at age 55 with 25 year service with no reduction in benefits. The employee contributes 5% of his base pay to the plan and the City contributes the balance necessary to keep the Plan actuarily solvent.

It was the Association's "final offer" that:

"Effective July 1, 1987, the Union proposes the adoption of an E-2 Pension System in conjunction with the existing F-55 to continue through the life of the contract."

It was the City's final offer that the B-2 Plan, plus the F-55 be continued with no change.

The E-2 Plan as proposed by the Association would provide

all future retirees an increase in their pension of 2½% in the event the CPI increased by 2½% or more. If, in any one year, the CPI rose less than 2½%, the increase for that year would be limited to 1½%.

The question of how to maintain the purchasing power of a retiree's pension income has been the subject of debate for years, with much of the question centering around how the additional cost could be absorbed. This case is no exception.

I am not unmindful that it is a matter of record that the City's pension contribution has decreased substantially over the past ten years, and is estimated that in 1987-88 it will be down to 2.33% of payroll. I also agree, as contended by the Association, that insofar as the 1987-88 years in concerned, the City is in a good financial position, and perfectly capable of assuming the additional cost that would be generated by the E-2 Plan. However, a full evaluation of the Association's proposal cannot be considered complete with only an analysis of the immediate cost increase.

I appreciate that the City's reduced contribution to the pension is most attractive, and makes it difficult to view objectively the potential financial obligation of an E-2 plan.

According to the actuary from Gabriel, Roder, Smith and Company, who was introduced as a mutually acceptable expert witness, implementing an E-2 plan for the Holland Fire Department would cost an additional 3.74 per cent of the Department's payroll each year. This 3.74 per cent continues for a period of twenty-four years to cover the accrued liability. At that point the percentage is reduced to 1,98 per cent, a percentage that continues indefinitely. Moreover, this latter percentage covers normal costs and is based upon current experience; therefore, it is subject to change in such factors as any increase in the number of early retirements. In other words, the implementation of an E-2 plan is not a one-shot committment, but a committment for many years into the future. Therefore, I believe it would be more properly resolved across the bargaining table than by the fiat of a single voice.

Another factor that influenced my conclusion was the effect of the E-2 plan on the total economic package. Figuring the increase in vacation benefits, plus the addition of a food allowance, plus the wage increase, would amount to a total economic package of from 7%-9% for the third year of the Agreement. By any acceptable guideline, this is beyond the norm for either the private or public sectors, and beyond any settlement negotiated with the other organized employee groups in the City of Holland.

Finally, turning to the list of comparable communities, it is apparent that an escalator provision as an adjunct to a pension plan is the exception rather than the rule. In fact, of a possible sixteen communities, only three have any form of pension escalator.

In conclusion, I do not fault the reasoning that believes that in view of the substantial reduction in the City's pension contributions, particularly within the past five years, it is not unreasonable to request that the pension plan be adjusted to include a cost-of-living provision. However, as reasonable as this may seem, it ignores the fact that this was not actually a "premium" reduction per se, but a temporary "windfall" from accelerated credits that resulted from strong investment returns. As such, this premium level is dependent upon the investment market which in turn, is dependent upon the economy. Consequently it could change at any time and to base a future expenditure on it being constant,would not only be a gamble, but would be considered financially unwise.

Therefore, after carefully considering all the individual factors,plus the situation as a whole, and even though recognizing the Association's rationale, for the reasons outlined herein I am not persuaded the inclusion of an E-2 pension plan is justified at this time.

PENSIONS (Cont.)

Samuel S. Shaw

Samuel S. Shaw, Chairman

Randall D. Fielstra, for the IAFF

Michael A. Snapper, concurring

Michael A. Snapper, for the City

Grand Rapids, Michigan
July 8, 1987