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Lansing, City of

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969 ARBITRATION

In the Matter of the Arbitration
Between:

CITY OF LANSING

- and -

LANSING FIRE FIGHTERS ASSOCIATION
LOCAL 421, I.A.F.F., AFL-CIO

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12/4/75

ARBITRATION PANEL'S FINDING OF
FACTS AND OPINION AND ORDER

APPEARANCES:

For the City of Lansing:
James L. Stokes and
Henry L. Guikema
Attorneys

For Lansing Fire Fighters Association:
Ronald R. Helveston
Attorney

The Collective Bargaining Agreement between the City of Lansing (City) and Local 421, International Association of Fire Fighters, AFL-CIO (Union) expired during 1974. During subsequent negotiations leading to a new contract, the City did not bargain concerning a change in the pension system because that system was set forth in Chapter 16 of the City's Charter.

On June 6, 1974, the Union filed charges with the Michigan Employment Relations Commission (MERC) alleging that the City was guilty of an unfair labor practice in refusing to bargain over a revision of the pension system. Via a June 12, 1974 letter, the Union withdrew said charges without prejudice. It was agreed that the parties would proceed with bargaining over the remaining

Raimell, George T. Jr.

issues in dispute between the City and the Union.

On June 30, 1974, binding arbitration was commenced pursuant to Act 312 of the Public Acts of 1969. On March 10, 1975, the Arbitration Panel's Finding of Fact and Opinion and Order were entered. Said Opinion states at page 17:

> "The parties were in dispute as to the Pension Plans. By agreement with the parties, the panel with all members joining has sent the issue back to the parties for negotiations with the option of the parties to seek the panel's assistance, if they so choose at a future time. The unanimous order will so reflect this understanding."

Subsequent to the entry of the Arbitration Panel's Orders, the City did not bargain on the issue of pensions.

It is the City's position that the pension issue is in exactly the same position as it was when the Union filed its unfair labor practice charge with MERC, which it thereafter withdrew without prejudice. Consequently, the City argues that the present posture of the pension dispute requires that a claim by the Union alleging a refusal to bargain must be heard by MERC rather than by this Arbitration Panel.

There are two issues before this Panel. One is substantive, dealing with the issue of whether or not the City is required to bargain on the issue of pensions when same are detailed in its Charter. The second issue is procedural, namely, whether or not this Panel has jurisdiction to order contractual terms as to a pension program if, in fact, the underlying failure of the City to bargain concerning same constitutes an unfair labor practice charge subject to jurisdiction of the Michigan Employment Relations Commission.

In formulating this opinion, the Chairman is deviating from the usual procedure of handling procedural matters first and then proceeding to the substantive issue. The reason why the Chairman chooses this somewhat unorthodox approach is so as to set the entire discussion in its proper context.

Pursuant to Act No. 379, Michigan Public Acts of 1965, M.S.A. 17.455(1) et. seq, sometimes known as the Public Employment Relations Act (PERA) and in particular, Section 15 thereof, public employers in Michigan are required to bargin collectively with their employees and "confer in good faith with respect to wages, hours and other terms and conditions of employment". (M.S.A. ¶17.455 (15). Similar phraseology is used in Section 8(d) of the National Labor Relations Act as amended in setting forth the duty of private sector employers to bargain collectively.

Both the Michigan Supreme Court and federal authorities have held that pension plans are a condition of employment. In Detroit Police Officers Association v. City of Detroit, 391 Mich. 44 (1974), the Michigan Supreme Court stated at pages 63 and 64:

> "To briefly answer the City's argument that retirement provisions are not a mandatory subject of bargaining, we cite the leading Federal case of Inland Steel Co. v. NLRB 77 NLRB 1;21 LRRM 1310, enforced 170 F.2d 247 (CA 7, 1948), cert den, 336 US 960 (1949), which has firmly established that pension and retirement provisions are mandatory subjects of bargaining under the NLRA. We see no reason to deviate from this well-reasoned and long-established Federal precedent in interpreting PERA. As we have discussed above, the scope of bargaining under PERA is patterned after that found under the NLRA. Consequently, we deem that the Legislature intended the courts to view the Federal labor case law as persuasive precedent." (Emphasis added)

Also see Mt. Clemens Fire Fighters Union, Local 838, IAFF v. City of Mt. Clemens, 58 Mich. App. 635 (1975). Thus, pension provisions are mandatory subjects of collective bargaining.

Nevertheless, the City contends that its City Charter contains a detailed pension plan for fire fighters and that Section 5(e) of the Home Rule Cities Act provides that charter amendments must be approved by the voters. Consequently, the City reaons that it is absolved of its duty to bargain over the pension plan because it cannot change the pension plan absent a vote of the citizens of Lansing.

The City's argument is without merit. The Michigan Supreme Court rejected the identical argument in Detroit Police Officers Association v. City of Detroit, supra. In that case, the City of Detroit contended that its duty to bargain over the pension plan was limited because the details of the retirement plan for police

officers and fire fighters plan was contained in the City Charter which, pursuant to the Home Rule Cities Act, could only be amended by voter approval. However, the Court reconciled the PERA with the Home Rules Cities Act, explaining at pages 66 and 67:

> "Retirement plans are a "permissible charter provision"" adoptable under the broad grant of authority found in MCLA 117.4(i) and 117.4(j); MSA 5.2082 and 5.2083 of the home rule cities act. Nowhere in the home rule cities act is there a requirement that the charter contain more than a general grant and outline of authority to a city government to implement and maintain a retirement plan. When the City placed the complete detail of its police retirement plan into the City Charter it went beyond the requirement of state law as set forth in the home rule cities act.
>
> The distinction between incorporating the general outline of the retirement plan and incorporating the total detail of such a plan into the City Charter controls our present analysis. The home rule cities act, a state law, requires only that the charter grant to the city government the authority to institute and maintain a retirement plan. The substantive details of a retirement plan, such as those now a part of the Detroit City Charter, are contractual and charter provisions only and do not rise to the stature of a state law requirement as the City would have us hold. Accordingly, since the substantive details of the retirement plan may be classified only as contractual or charter provisions, they are subject to the duty to bargain found in PERA—a state law. Such an outcome comports with MCLA 117.36; MSA 5.2116 of the home rule cities act which states:
>
> 'No provision of any city charter shall conflict with or contravene the provisions of any general law of the state.' "

Thus, the two independent legislative acts are consistent with one another. The Home Rule Cities Act does not require voter approval of the substantive terms of pension plans, and therefore, does not conflict with the duty to bargain provided in PERA.

The holding in Detroit Police Officers Association as to pensions is another in a series of decisions by the Michigan Supreme Court confirming the legislature's intention as expressed in the Public Employment Relations Act of establishing a public policy in Michigan of fostering collective bargaining and of not allowing previously passed legislation to be interpreted as interfering with this subsequent legislative intention. See Regents of the University of Michigan v. Employment Relations Commission, 389 Mich 96 (1973); Wayne County Civil Service Commission v. Board of Supervisors, 384 Mich 363 (1971).

The City would have this Arbitration Panel believe that the instant case is distinguishable from the Detroit Police Officers Association decision. It maintains that the basis of the Court's decision was that the Detroit electorate had already approved a new charter permitting amendment of the retirement provisions by the Common Council of the City of Detroit rather than by voter approval. Reasoning from this premise, the City argues that since its City Charter still contains a detailed pension plan which can only be amended by voter approval, and said vote has never been taken, the Home Rule Cities Act limits its duty to bargain under PERA as to a pension plan.

The City, though, fails to recognize that the Detroit Police Officers Association decision arose under Detroit's old Charter which provided for amendment by voter approval. Admittedly, by the time the case reached the Michigan Supreme Court, Detroit was operating under a new City Charter, and, in dicta, the Supreme Court noted this revision with approval, 391 Mich. 44 at 69-70. However, the Court emphasized the fact that the inclusion of the substantive details of the pension plan under the earlier City Charter were not required by state law, and, therefore, even under the old Charter, the City had the duty to bargain under PERA.

It is clear that the duty to bargain over pension plans takes precedence over any provisions in the City Charter, and the majority of this Arbitration Panel so holds. The City is required to bargain over prospective changes in the fire fighters' pension plans.

Turning to the procedural issue, it is noted that Section 10 and Section 16 of the Public Employment Relations Act, Act 336 of the Public Acts of 1947 (PERA), provides in part as follows:

> "Section 10. It shall be unlawful for a public employer or an officer or agent of a public employer:
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> * * *
>
> (e) To refuse to bargain collectively with the representatives of its public employees, subject to the provisions of Section 11 ...
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> * * *
>
> Section 16. Violation of the provisions of Section 10 shall be deemed to be unfair labor practices remediable by the Labor Mediation Board [Michigan Employment Relations Commission] ....". (M.S.A. 17.454 (10)(16)

There is no question that MERC has authority to determine whether or not pension plans are a mandatory subject of bargaining and whether the failure of the City to bargain as to a pension plan constituted an unfair labor practice, notwithstanding the inclusion of a detailed pension plan in the City Charter. However, to acknowledge that MERC has said authority does not necessarily preclude an Act 312 arbitration panel from jurisdiction over pension issues.

Specifically, as to Act 312, this was the point made by Mr. Justice Levin in Dearborn Fire Fighters v. City of Dearborn, 394 Mich. 229 (1975). Though Justice Levin wrote in favor of the

unconstitutionality of Act 312, because of a two-two split of the Court, the constitutionality of the Act was upheld as this was the ruling of the Michigan Court of Appeals. 42 Mich App. 51 (1974). Nevertheless, as to the point here, Justice Levin, and there was no critical comment by any of his colleagues concerning the point, stated at 394 Mich. 229, 242 as follows:

> "Because we give our ruling on the constitutionality of the act prospective effect only, we consider the city's other challenges to the validity of the orders. We find that the arbitration panels proceeded in accordance with the provisions of the act. Their orders, accordingly, will be enforced.
>
> The absence of the city's delegates from the arbitration panels did not deprive the panels of subject matter jurisdiction.
>
> The act provides: 'the employees or employer may initiate binding arbitration proceedings'. 'Upon their [the city's and the union's delegates] failure to agree upon and appoint the arbitrator * * * either of them may request the chairman of the state labor mediation board to appoint the arbitrator'.
>
> It is apparent that once either party requests arbitration, 'the other party's participation is compulsory, and arbitration necessarily follows'.
>
> The city would require a union confronted with a recalcitrant public employer to seek a court order to compel the employer to submit to arbitration. This additional step would encourage dilatory practices and would be at odds with the act's policy of providing 'an alternate, expeditious, effective and binding procedure for the resolution of disputes'. "

It may be that the failure of the City of Dearborn to participate in the arbitration hearing could be construed as a failure to bargain collectively under Section 15 of PERA. It would follow that the Michigan Employment Relations Commission would be a forum to test this point. However, as he pointed out in the above language, Justice Levin did not suggest that such a possible failure to bargain would deprive the Act 312 of Panel of jurisdiction.

There is no other precise authority on this particular point because of the newness of Act 312. However, the views expressed by Justice Levin have been long followed guidelines in grievance arbitrations in the private sector where employers were subject to the jurisdiction of the National Labor Relations Board and the application of the National Labor Relations Act.

In Houdaille Industries, Inc., 35 LA 455 (1960), Arbitrator Milton H. Schmidt held that when no Labor Board proceedings are pending, the arbitrator was not precluded from taking jurisdiction despite the fact that an unfair labor charge may have been involved. Arbitrator Schmidt explains his decision at page 457:

> " The problem of arbitrability of disputes under a collective bargaining agreement when the matter in dispute involves a question of unfair labor practice under the federal law has still not been definitively settled by court decision. There is some conflict in the court and Labor Board decisions dealing with this question.
>
> However, the more recent cases in the United States courts adopt the view that the jurisdiction of the N.L.R.B. is not exclusive. That is to say, although a matter which is within the arbitration area under a collective bargaining agreement may also be an unfair labor practice cognizable under the Act, the arbitrator is not ousted of jurisdiction to hear

and decide the case. Of course, an arbitration decision does not affect the power of the Board to act, and if a Board decision should be contrary to the arbitrator's award, the Board decision prevails. It may be, then, that arbitrator's determination will be of little value, if the matter should subsequently be taken to the Board. But such a course cannot and should not be anticipated, and indeed, the award may be accepted by all interested parties without further proceedings. Recent decisions of the U.S. Courts support this view.

See: Machinists Association v. Cameron Ironworks, 257 F.2d 467, 30 LA 814 (5th Cir. Cert. denied 358 U.S. 880). United Steelworkers v. New Park Mining Co., 273 F.2d 352, 45 LRRM 2158 (10th Cir).

See also: Local 1055 etc. v. Gulf Power Co., 175 F.Supp. 315, 44 LRRM 2992 (A.S. Dist-Florida); Textile Workers UTW v. Textile Workers TWUA, 258 F.2d 753, 30 LA 1009 (7th Cir.). Ryan Aeronautical Co. v. UAW, Local 506, 179 Fed. Supp. 1, 33 LA 649. "

In Burgmaster Corp., 46 LA 746 (1965), Arbitrator Melvin Lennard held that the arbitrator had jurisdiction over the union's grievance, despite a pending petition filed with the National Labor Relations Board. At pages 747 and 748 of his opinion, Arbitrator Lennard considers the favorable attitude of the United States Supreme Court toward concurrent jurisdiction of cases involving unfair labor practices:

" For many years arbitrators and, I think, many other participants in the resolution of industrial relations conflicts (including many NLRB people) had been uncertain about the delineation of authority between arbitrators and the Board, respecting otherwise arbitrable grievances which were arguably also unfair labor practices or "representation" matters. Much of the uncertainty—although not all of it—has been cleared away by the United States Supreme Court and by inferior courts. . . . .

(In) Carey v. Westinghouse, 375 US 261, 55 LRRM 2042 (1964) the union filed a grievance asserting that some employees in the engineering laboratory, who were represented by another union, were performing production and maintenance work. The company refused to arbitrate on the

> sounded the death knell of the theory of exclusive NLRB jurisdiction in cases arising under Section 301 of the Labor Management Relations Act."

Indeed, where a dispute involves both statutory issues under the NLRA and interpretation issues under the collective agreement, dual jurisdiction exists in the NLRB and the arbitrator. This dual jurisdiction has been summarized by former NLRB member Gerald A. Brown in "The National Labor Policy, the NLRB, and Arbitration", Developments in American and Foreign Arbitration, 83, 84 The Bureau of National Affairs, Inc. (1968) as follows:

> "(1) the availability of arbitration does not preclude Board exercise of jurisdiction over unfair labor practices, (2) the availability of a Board remedy does not bar arbitration, and (3) the Board has discretion to refuse to exercise its jurisdiction when in its judgment federal policy would best be served by leaving the parties to contract remedies."

Mr. Brown's third point made in the above quotation refers to the National Labor Relations Board's so-called arbitration deferral doctrine wherein the Board defers to the arbitration process even though it may have jurisdiction. The doctrine first began to take form in Spielberg Manufacturing Co., 36 LRRM 1152 (1955) wherein the Board declared that where an arbitration award settles issues also involving unfair labor practice charges before it, the Board will defer to the award. In Collyer Insulated Wire Co., 77 LRRM 1931 (1971), the Board expanded the deferral doctrine by

announcing that it would defer to arbitration where the conduct complained of involved both an alleged breach of the National Labor Relations Act as well as the collective bargaining agreement. In National Radio Co., 80 LRRM 1718 (1972), the Board, again, re-defined the deferral doctrine to include questions of an employer's alleged discriminatory conduct that violates the National Labor Relations Act.

Only recently, the United States Court of Appeals for the Second Circuit has confirmed the right of the Board to adopt an arbitration deferral doctrine. Machinists v. National Labor Relations Board, 90 LRRM 2922 (2nd Cir. 1975).

Though the above analysis indicating that arbitrators have assumed jurisdiction even though the subject matter may be subject to the National Labor Relations Act, and that the National Labor Relations Board has adopted an arbitration deferral doctrine, involves Federal law, it is now established that in interpreting the Public Employment Relations Act one looks to the Federal labor law in the absence of controlling Michigan labor law. See Mt. Clemens Fire Fighters Union, Local 838, IAFF v. City of Mt. Clemens, 58 Mich App. 635, 645 (1975).

Even if one concludes that the concept of concurrent arbitration-MERC jurisdiction and the arbitration deferral doctrine are valid in Michigan based upon the above Federal law, it, no doubt, could be argued that the above analysis is based on grievance arbitration and not on interest arbitration. Therefore, the argument may be that the analysis is not apropos here.

There is one basic flaw in such an argument. The rationale behind concurrent arbitration jurisdiction and the deferral doctrine in grievance arbitration is that arbitration is a recognized expedient method of settling contract disputes. The same rationale would apply to interest arbitration under Act 312. The whole rationale and policy behond Act 312 is to resolve interest disputes expeditiously. Thus, there is no reason to conclude that the basic principle supporting arbitration should be any different between grievance arbitration and interest arbitration.

As Mr. Justice Levin stated in Dearborn Fire Fighters v. City of Dearborn, 394 Mich 229, 242 (1975) to suggest that a City of a Union could frustrate the settlement procedures of Act 312 by not participating or not preparing a last best offer would do violence to the statutory scheme of settling fire fighter and police disputes in Michigan. The clear dictate of Mr. Justice Levin's reasoning, as previously discussed herein at page 8, is not to give judicial sanction to such attempts at frustration. This is a sound labor position when one recognizes that Act 312 is designed to avoid a breakdown in public services by providing an orderly method of resolving labor disputes.

By adopting the position it has here, the City must be prepared to recognize the possibility that an order may be issued by the Panel on the question of pension irrespective of whether or not the Michigan Employment Relations Commissions entertains an unfair labor practice on the point for the concept of concurrent jurisdiction would not prevent the Panel from acting pursuant to Act 312. It is also very possible the Michigan Employment Relations Commission may adopt in this area an arbitration deferral doctrine which would

certainly undermine the already weak foundation of the arguments advanced by the City here.

For these reasons, the Panel believes it has jurisdiction and will proceed with the hearing as designated on December 18, 1975 concerning the issue of pension provisions in the parties' contract.

Section 8(a) of Act 312 M.S.A. 17.455[37(a)]gives the Panel the authority to order the parties back to the bargaining table for the purposes of collective bargaining on issues before the Panel. The Order will reflect that the parties shall be ordered back to the bargaining table until the hearing date of December 18, 1975 for the purposes of bargaining as to pension issues.

Member Gary Thomas of the Panel agrees with the Chairman's opinion and authorizes the Chairman to so state. Daniel J. Bodwin disagrees and hereby authorizes the Chairman to state his dissent.

ORDER

The parties are hereby ordered to return to the bargaining table from the date of this opinion up to December 18, 1975 to bargain on the issue of pensions. The parties are to appear at 10:00 a.m. in the City of Lansing before the Panel on December 18, 1975

for the purposes of further proceedings under Act 312, including presenting their last best offers as to the pension issue here.

George T. Roumell, Jr.
Chairman

Gary L. Thomas
Member

Daniel J. Bodwin
Dissenting

Dated: December 9th, 1975

DISSENTING OPINION OF
DANIEL J. BODWIN

Section 10 and Section 16 of the Public Employment Relations Act, Act 336 of the Public Acts of 1947 (PERA), provides in part as follows:

> Section 10. It shall be unlawful for a public employer or an officer or agent of a public employer:
>
> * * * *
>
> (e) To refuse to bargain collectively with the representatives of its public employees, subject to the provisions of Section 11 . . . .
>
> Section 16. Violation of the provisions of Section 10 shall be deemed to be unfair labor practices remediable by the Labor Mediation Board [Michigan Employment Relations Commission] . . . . (Emphasis added)

The City has not bargained over the pension question and the Union has consistently claimed that this refusal is improper. The Michigan Employment Relations Commission has been given specific statutory authority to resolve questions of this type.

The Michigan Supreme Court, in Police Officers' Association v Detroit, 391 Mich 44 (1974), a case relied upon by the Union, stated at Page 56 and 57:

> The enforcement mechanism of the labor statutes result from the filing by one party of an "unfair labor practices" charge against

> the other party. In the context of bargaining an unfair labor practice charge might, for example, allege that a party will not meet in good faith to bargain or that a party refuses to discuss a mandatory subject of bargaining, or, as the DPOA charged herein, that the City has taken unwarranted unilateral action . . . . The result sought by the legislature in providing this enforcement machinery is to return the parties to the bargaining table to resolve their differences.

The Union, while clinging to its claim that the City has refused to bargain, seeks to bypass the statutory scheme for resolving disputes of the type involved in this case. The Union seeks to equate a bargaining impasse with a refusal to bargain and thus substitute the Arbitration Panel for the MERC.

The Union has cited the June, 1975 Michigan Supreme Court Decision in Dearborn Fire Fighters v Dearborn, 394 Mich 229 (1975) for the proposition that the Arbitration Panel should resolve its claim that the City is wrongfully refusing to bargain. In that case the four Supreme Court Justices who heard the case were divided evenly on the constitutionality of the Act and, therefore, upheld the lower Court opinion. The factual situation in Dearborn, supra, was distinctly different from the present situation. In Dearborn, supra, the parties had negotiated to to impasse before a dispute arose as to the constitutionality of statutory arbitration. All of the issues involved had been fully

negotiated by the parties and were in a posture permitting arbitration. The City of Dearborn in that case simply didn't name a panel member and the process stalled at the point of arbitration and not at the point of negotiation. Unlike the present case, therefore, the parties in Dearborn, supra, had negotiated to impasse and no refusal to bargain charges were made.

If the Union were to prevail in its position in this case, the Labor Mediation Board would, in all cases involving an alleged refusal to bargain, be divested of its statutory authority. Rather than following the statutorily prescribed path, parties could simply follow the path suggested by the Union and proceed alone to arbitration or ask the arbitrator to hear the merits of a "refusal to bargain" charge.

Act 312 was not designed to accomplish this task or to assume the responsibilities of the Board. The Act was intended to provide a method of resolving bargaining impasse after bargaining between the parties. In the Dearborn, supra, case Justice Coleman stated in her separate Opinion at Pages 280 and 281:

> The arbitrator, acting as an adjunct to the PERA bargaining process, is not at liberty to impose his own solutions or to go beyond the boundaries established by the parties' bargaining positions. The arbitrator's singular duty is to fashion a workable solution for the dispute in keeping with the limits set by the parties and the dynamics of a particular bargaining situation.

This statement of the purpose of arbitration makes it clear that the Arbitration Panel was never intended to replace the MERC in resolving a dispute arising from an alleged refusal to bargain. Accordingly, the Arbitration Panel should not make a determination of the validity of the City's position in this matter but should defer to the statutorily authorized Board.

Furthermore, the pension system for the Lansing Fire Fighters is set out in Chapter 16 of the Charter of the City of Lansing. That Charter can be amended only by the vote of the electorate. Charter of the City of Lansing, Section 17.7.

Amendment of the Charter by an official of the City, after collective bargaining or otherwise and without first obtaining the favorable vote of the electorate, would constitute a misdemeanor. Section 17.8 of the Charter states:

> Any person found guilty of an Act constituting a violation of this Charter may be punished by a fine not exceeding $500 or by imprisonment for not to exceed ninety days, or both, in the discretion of the Court.

Amendment to the Charter provisions without an election, therefore, would be contrary to the Charter and would constitute a misdemeanor.

The Union relies on the Detroit, supra, case in asserting that the City is free to abandon the Charter. That case is distinguishable from the present situation. In the Detroit supra, case the Court was faced with a retirement system the

substantive details of which had already been removed from the Detroit City Charter by the vote of the people. The Court found that the Charter provisions incorporating a retirement plan are permissible but not required under the Home-Rule Act (MCLA 117.1, et seq.). Consequently, when balanced against the statutory duty to bargain under the PERA, the Charter will fail. In that case, however, the Charter had been amended by the electorate and the Court based its decision in part upon the act of the electorate in amending the Charter. The Court stated at Pages 69 and 70:

> Under today's holding and the mandate of the City's voters as expressed in Article 11 of the new City Charter, the City will be required to bargain over prospective changes in the Police Retirement and Pension Plan." (Emphasis added)

In the present case, the details of the Retirement Plan remain in the Charter. Even though the details of the Pension system may have originally been placed in the Charter under the "permissive" provisions of the Home-Rule Act, the City is now faced with Section 5(e) of the Home-Rule Act, MCLA 117.5(e), which provides in part:

> Section 5. No city shall have power: . . . (e) To adopt a charter or any amendment thereto, unless approved by a majority of the electors voting thereon . . . .

The case is distinguishable from the Detroit, supra, case, therefore, in that there is, presently in effect, a charter provision which cannot, by statute, be amended by the City without a vote of the electorate.

This distinction was noted by Justice Levin in his Opinion in the Dearborn, supra, case when he stated at page 244:

> This Court recently held that the home-rule powers of the common council of the City of Detroit to adopt a residency requirement and a retirement plan are subject to the City's obligation as a public employer under the Public Employment Relations Act and that both residency and retirement benefits are mandatory subjects of bargaining under the PERA. (Emphasis added)

In the present case the pension provisions were not adopted by the Council but by the electorate and the City is prohibited by Statute from amending. In the Detroit, supra, case the electorate had already voted to permit amendment of the retirement provisions by the Council.

Thus, the City cannot bargain with respect to the amendment of the pension system set forth in the Charter of the City of Lansing, for only the electorate can amend the Pension Plan as it is set forth in the Charter.

For the above reasons this Panel does not have jurisdiction in this matter at this time and, therefore, I dissent from the Opinion and the Order herein and would dismiss the matter.

D. J. Bodwin

Daniel J. Bodwin

December 12, 1975