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4/17/95
Arb.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
MANDATORY ARBITRATION

In the Matter of:	
CITY OF LATHRUP VILLAGE Employer,	Arising Pursuant to Public Act 312, Public Acts of 1969
-and-	as Amended
LATHRUP VILLAGE COMMAND OFFICERS, POLICE OFFICERS LABOR COUNCIL	MERC CASE NO. D93 A-0046

_____/

FOR THE ACT 312 ARBITRATION PANEL

RICHARD F. ALLEN, CHAIRMAN
JEFFREY MUELLER, EMPLOYER DELEGATE
RICHARD ZIEGLER, UNION DELEGATE

ATTORNEY APPEARANCES
JAMES H. MC CRORY, ESQ., FOR THE EMPLOYER
KENNETH W. ZATKOFF, ESQ., FOR THE UNION

Lathrup Village, City of

PRELIMINARY STATEMENT

This is a mandatory "interest arbitration" matter pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended, MCLA 423.231 et seq., MSA 17.455 (31) known as the Michigan Policemen's and Firemen's Compulsory Arbitration Act. It is the public policy of the State of Michigan that, where the right of policemen and firemen to strike is by law prohibited, such employees are afforded an alternate and binding procedure for the resolution of disputes concerning wages, hours and working conditions, namely compulsory arbitration.

The parties to this proceeding are the City of Lathrup Village (Employer) and the Police Officers Labor Council (Union), representing the Lathrup Village Command Officers. The most recent collective bargaining agreement between the parties became effective July 1, 1993 and terminates June 30, 1996. The bargaining unit consists of police sergeants and lieutenants employed by the City of Lathrup Village as of the date of this Award. At the Hearing the parties stipulated there are currently two officers employed in this bargaining unit. Following unsuccessful bargaining by the parties in this contract dispute, and mediation assistance, the Petition for Arbitration was timely filed with the Michigan Employment Relations Commission on May 16, 1994.

Pursuant to Public Act 312 of 1969, the Michigan Employment Relations Commission appointed Richard E. Allen to serve as the impartial arbitrator and chairperson of the Act 312 Arbitration Panel. The delegates selected by the parties are Jeffrey Mueller, Lathrup Village, delegate and Richard Ziegler, Police Officers Labor Council, delegate.

A Pre-Hearing Conference was held on September 27, 1994 at the offices of the City of Lathrup Village. The parties and their delegates agreed to and submitted in writing executed "Waiver of Time Limits" documents which assented to the extension of time limits for hearings and for the issuance of the Act 312 Arbitration Award. At the Pre-Hearing Conference, Mr. Ziegler, delegate for the Labor Organization, withdrew twelve of the fourteen issues stated in the Petition for Arbitration. Those twelve issues withdrawn were as follows:

1. Annual Sick Time Buy-Back 2. Sick Time Buy-Back on Retirement 3. Vacation Time 4. Personal Days 6. Life Insurance 7. Dental Insurance 8. Holidays 9. Call-Back Time 10. Compensation Time 11. Uniform Allowance 12. Wages and 14. Promotions.

The two remaining economic issues in dispute and subject to arbitration are item (5) Insurance Coverage (Coverage for Spouse on Retirement) and item (13) Pension (B-3 Rider and F-50 Rider).

The parties agreed to submit exact contract language regarding their respective Last Best Offers on the issue of the Pension Benefit, B-3 and F-50 Rider and insurance coverage for the retiree's spouse. At the Hearing, held on February 3, 1995, the parties submitted exhibits in support of their positions as to the comparables and financial ability of the Employer to grant the issues in dispute, along with copies of other communities newly settled collective bargaining agreements. The parties stipulated and granted the Chairperson the discretion to select which of the comparables would be considered as most appropriate and applicable to the issues in dispute.

The parties submitted Briefs and written Last Best Offers and the delegates and the chairperson met in an "executive session" on March 30, 1995. At the "executive session" the panel members discussed their Last Best Offers and Briefs in support of their respective positions.

APPLICABLE STATUTORY AUTHORITY

The most pertinent provisions of Act 312 of the Public Acts of 1969, as amended, provides that in Section 8 as to each economic issue, 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.

Section 9 of Act 312 provides as follows:

Section 9. Where there is no agreement between the parties, or where there is an 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 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 the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The Panel may determine which factors contained in Section 9 of the Act are the most important under the particular facts presented and it need not afford each fact equal weight. City of Detroit, 408 Mich 410; 294 N.W. 2nd 68,97 (1980). The court held in part:

"The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the statutory factors that consideration required by law. The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrator with an answer. It is the panel which must make the difficult decision of

determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all 'applicable' factors must be considered."

Both issues, Pension and Insurance, are economic in nature and require the panel to select one of the party's written Last Best Offer on each issue.

ISSUE 1. ARTICLE 28 - RETIREMENT

The Union is requesting that the pension multiplier be modified from the current MERS B-2 (2%) to MERS B-3 (2.25%) and the eligibility requirement be modified from age fifty-five (55) with twenty-five (25) years of service to age fifty (50) with twenty-five (25) years of service. The contract language to read as follows:

"Michigan Municipal Employees Retirement System benefits will be provided for all command officers with voluntary retirement permitted at age fifty (50) after twenty-five (25) years of service without reduction of pension benefits. Effective July 1, 1995 the employee shall receive MERS benefit plan B-3, with retirement at age fifty (50) provision continued."

UNION CONTENTIONS

The following is a summary of the Union's position and does not purport to be a complete statement of it's entire position.

The Panel should consider the improvement from the current MERS B-2 (2%) to MERS B-3 (2.25%) multiplier, and the only issue is the effective date of the benefit change. As stated in it's Last Best Offer, the Union has no objection to July 1, 1995 as the effective date of this benefit improvement.

The Union requests eligibility requirements for the purposes of retirement be modified from the current age 55 with 25 years of service to age 50 with 25 years of service. The city has proposed the same benefits, but only for a two months window in 1995. The Union suggested comparable communities, Franklin Village, Northville and Pleasant Ridge have eligibility requirements of age 50 with 25 years of service. The Employers computed annual contribution for these proposed improvements, B-3 pension with F-50/25 will be approximately $1,170 beginning October 1, 1995. This is $292.50 per quarter.

ISSUE 1 ARTICLE 28 - RETIREMENT

The City has proposed the pension multiplier be improved from the current MERS B-2 (2%) to MERS B-3 (2.25%) effective July 1, 1995 and a window for one employee to retire during a two months period. The contract language to provide as follows:

"28.1 The Michigan Municipal Employees Retirement System benefits provided Command Officers on June 30, 1993 (Plan B-2 with voluntary retirement at age 55 after 25 years of service without reduction of pension benefits) will be continued through June 30, 1995.

28.2 Effective July 1, 1995, the plan benefit will be improved to Plan B-3, for all Command Officers at no additional cost to the employee.

28.3 Voluntary retirement at age 55 after 25 years of service without reduction of pension benefits will be continued except as follows:

The City of Lathrup Village agrees to temporarily adopt benefit program F50/25 only for those Command Officers choosing to and eligible for retirement during a window period beginning July 1, 1995, and ending August 31, 1995. Effect (ive) September 1, 1995, this window period will be closed."

CITY EMPLOYER CONTENTIONS

The following is a summary of the Employer's position and does not purport to be a complete statement of it's entire position.

The City's Last Best Offer of the B-3 Pension Plan is in agreement with the Union's demand. The B-3 Pension Plan is consistent with the Lathrup Village Police Officers Pension Plan. The City has offered a window of two months for an eligible employee to retire at age 50 effective July 1, 1995 and ending August 31, 1995. The Command Officers will automatically receive the same percentage increase in wages and associated benefits that their fellow police officers received, namely the B-3 Pension Plan improvement. Providing the age 50 eligibility is an additional pension benefit which will increase the future fiscal demands on a City with a revenue base that will never exceed the rate of inflation or a maximum of 5%, whichever is lower as dictated by the provisions of Proposal A. The age 50 proposal will be an unreasonable additional cost on the City.

ISSUE 1 - ANALYSIS AND OPINION

The parties have submitted exhibits on comparable communities and financial ability to pay in support of their respective positions.

The Union contends comparability is of great importance. While Section 9 does not specify which factors establish one community as more comparable than another, factors such as population, SEV, budgets, department size, geographic proximity and identity of comparables historically used by the parties have traditionally been employed in determining comparability. The Union submits five communities are comparable to the City of Lathrup Village. Those communities are: Franklin, Northville, Pleasant Ridge, Utica and Wolverine Lake, and Southfield is a "secondary" community comparable to Lathrup Village because is "surrounds" Lathrup Village.

The City argues external comparables are not as important as the City's "in-house" comparables due to the "unique" nature of the City of Lathrup Village. The Employer points out in seeking comparable communities it had "a difficult time due to the unique characteristics of our City." Furthermore, the City argues "while comparability is only one of eight factors contained in Section 9 of the Act, statistical comparability had traditionally overshadowed such important factors as the communities ability to pay and in-house comparables." The Employer urges that "strict comparability is not achievable due to the unique characteristics of each community."

The Employer maintains that in-house comparables should be given the greatest weight, followed by Wolverine Lake, Walled Lake and South Lyon.

Both parties provided detailed figures pertaining to SEV in terms of residential and commercial values, population, geographic proximity, median household income, land area, tax revenues, crime statistics and the City budget compared to total general funds.

In essence, the "comparable communities" suggested by the City supported their position that the Pension Plan should not be changed to provide for retirement at age 50 and the Union's suggested "comparable communities" gave support for adopting age 50 for retirement.

As already noted, the Statute does not specifically define "comparability". The elements of "comparability" can be so numerous and diverse that the Statute grants considerable discretion to determine which, if any, communities are comparable, or any value at all, in adopting either the last best offer of the Union or the Employer. In fact comparisons are not automatic, dominant or absolute in selecting either of the parties offers of settlement.

Since precise comparisons among communities are difficult, it stands to reason that the Statute is only intended as a guideline that does not demand strict adherence to every factor specified in such Statute. In this case, the "comparability" evidence points in *both* directions; that is the communities suggested by the Union support age 50 for eligibility for retirement, and the communities suggested by the City support age 55 for eligibility for retirement. In essence the parties have neutralized each other's positions.

In this case, I conclude the comparability of communities is of minimum value in determining the merits of the appropriate age for retirement.

Actually "comparability" is similiar to the concept of the "prevailing practice" among similarly situated employers. The "prevailing practice" concept has been used by negotiators for many years in the collective bargaining process. In fact the standards specified in Section 9 of the Act are similar to the factors used by many negotiators of collective bargaining contracts. Since the parties have opted for Act 312 Arbitration, they have acknowledged they are at an impasse and have agreed to call upon an arbitrator to weigh the reasonableness of each parties position. They have entrusted the Arbitrator to determine which of the parties last offers is most reasonable. Obviously, this requires the Arbitrator to apply the the various factors specified in Section 9 of the Act, along with the concept of how would reasonable persons have settled the issues in dispute. The Arbitrator's ruling, in effect, indirectly adopts the collective bargaining agreement of "other" employers in a similar situation. The Act 312 Award is merely a substitute for successful bargaining if the parties had acted *like other employers similarly situated.* This is the essence of comparability of communities.

The parties have also raised the Section 9 factor pertaining to the Employer's financial ability to provide for the Pension Plan improvements proposed by the Union. This is an affirmative claim requiring the City to provide information as to it's present economic position and it's anticipated future revenues, which may be generated from taxing revenues and various budget adjustments. Some arbitrators have considered it appropriate to consider the conduct of the parties if they were faced with the economic consequences of a work stoppage. This can be an appropriate factor for consideration because Act 312 Arbitration is designed to be a substitute for a strike.

In this case, a review of all the exhibits submitted by the parties reveals the financial ability of the City is not so deficient as to preclude any improvements in the benefits requested by the Union. There is no evidence of layoffs due to financial problems of the City, or the installation of cost cutting measures to maintain City services. Generally, the revenues of the City seem to be sound and the amount of the Union's proposals are not so costly as to demand an excessive dollar expenditure by the City. The Pension Plan improvements amount to approximately $1,170 per year. The cost of providing a spouse of a future retiree with medical coverage is approximately $278 per month. Neither cost is prohibitive or beyond the future revenues of the City. There are two employees in the affected bargaining unit and the costs of future benefit improvements are controllable by City budgets. There is no convincing evidence a population decrease is eminent or predictable in the future. The value of property has not been in a significant decline. There is no persuasive evidence the City is suffering a decreasing tax base or that the City is unable to generate additional future revenues. The City does not have to create a large amount of dollars per month for the proposed benefit improvements. Certainly, the City's contention of having to grant *all the proposed* improvements could create an excessive demand on future revenues.

I conclude that the financial ability of the City is sufficient to provide for the Union's proposed Pension Plan improvement; however, based upon all the factors under Section 9 of the Statute, and other related circumstances, I conclude that the Last Best Offer of the City is more reasonable and fair as to the improvements in the Pension Plan. The City has offered, effective July 1, 1995, to improve the Pension Plan multiplier from 2% to 2.25 %. In addition the City is willing to provide a two month "window" for an eligible employee to retire at age 50. This is a reasonable and significant improvement in the Pension Plan and should be adopted into the Pension Plan. This improvement will not add any more financial demands, other than those already agreed to by the City in it's Last Best Offer. The comparables suggested by the parties neutralize one another; one group supports the age 50 and the other group supports maintaining the current age 55 eligibility for retirement. The financial burden to support the City's Last Best Offer is obviously acceptable to the City and it is not necessary to give this factor any further consideration.

AWARD

The Last Best Offer of the City is adopted and incorporated into Article 28 - Retirement, of the current collective bargaining agreement effective July 1, 1995.

4-17-95
Dated:

Richard E. Allen, Chairman

5-3-95
Dated:

Jeffrey Mueller, City Delegate

4-19-95
Dated:

Richard Ziegler, Union Delegate
(Dissent)

ISSUE 2. ARTICLE 17 - HEALTH CARE

The Union has proposed ARTICLE 17 - HEALTH CARE - Section 17.5 of the current collective bargaining agreement providing hospitalization coverage for retirees ONLY be modified to provide health care benefits for retiree and spouse. The contract language to read as follows:

17.5 "The City shall continue hospitalization coverage after retirement for Command Officers and their spouse. Non-duplication of benefits clause is in Article 35."

UNION CONTENTIONS

The following is a summary of the Union's position and does not purport to be a complete statement of it's entire position.

The Union contends all five of it's suggested comparable communities do provide health insurance coverage for active employees, and also provides for the same coverage for retirees and their spouse. The Union requests retirees receive the same benefits provided to the active employee. The monthly premium cost is not excessive and is "greatly outweighed by the need of retired officers on a fixed income."

ISSUE 2. ARTICLE 17 - HEALTH CARE

The City has proposed a continuation of hospitalization coverage after retirement for the retiree ONLY, but not for the spouse. The contract language to provide as follows:

17.5 "The City shall continue hospitalization coverage after retirement for Command Officers only. Non-duplication of benefits clause is in Article 35."

CITY EMPLOYER CONTENTIONS

The following is a summary of the Employer's position and does not purport to be a complete statement of it's entire position.

"If the retiree wants to provide their spouse with City-provided medical coverage, the retiree can pay the City for the increased cost. Having the ability to continue City-provided medical coverage at retiree expense is still a benefit to the employee. Without this option, the retiree would need independent coverage and not be able to take advantage of the City's group rate." The City's suggested comparables show other communities do not provide medical coverage for the retiree's spouse and in some communities the retiree is not provided coverage.

ISSUE 2 - ANALYSIS AND OPINION

The parties have submitted evidence on the various factors specified in Section 9 of the Statute, including exhibits on comparable communities, and the financial ability of the City in support of their respective positions.

As already discussed in the Analysis and opinion of Issue 1 of this Arbitration Award, the Union contends comparability is important. The Union submitted suggested comparable communities that do provide medical coverage for retiree and the spouse of the retiree. The City has countered with suggested comparable communities that do not offer medical coverage for the spouse of a retiree. Furthermore, the City has urged the Arbitrator to consider factors of "in-house" comparables and the financial ability of the City to pay for improved benefits.

As previously noted, Section 9 of the Act does not define comparability. The Statute provides the Arbitrator considerable discretion in evaluating the weight to be given to employee wages, hours and working conditions of other communities. The comparbles offered by either party are not absolutely controlling or dominant in the deliberations and ultimate decisions of the Act 312 Arbitrator in adopting the Last Best Offer of one of the parties. In determining the merits of granting or denying medical coverage, to the spouse of a retiree, I have given some weight to such comparables because each party has offered communities that support their respective positions. However, there is no one set of comparable communities that is more persuasive than the other, so in effect, the comparables do to some extent neutralize each other.

I do believe in this case, an important function of the Arbitrator is to evaluate the fairness of each party's Last Best Offer, based in part, upon what would reasonable parties have agreed to in a negotiating atmosphere that included the right to engage in a work stoppage. One must determine what reasonable person would have agreed to, if faced with the issue of medical coverage for the spouse of a retiree, in a situation of good faith collective bargaining that was subjected to the economic pressures of a strike? What would other employer's have agreed to in a similar situation, if they had sufficient revenues to grant the requested proposal from a union?

Since the issues in dispute have been reduced, the costs of providing medical coverage for the spouse of a retiree is approximately $278 per month, for future retirees, and this known cost may well lead a reasonable negotiator to grant the Union's request rather than face the consequences of a work stoppage. There is no persuasive evidence indicating there is an insufficient amount of revenue to provide for spousal medical coverage in this bargaining unit consisting of two persons. I conclude, the granting of spousal medical coverage will not be an excessive financial burden on the City of Lathrup Village.

I determine the financial ability of the City is sufficient to provide for the granting of medical coverage for the spouses of the two members of this bargaining unit when such employees do in fact retire.

Furthermore, based upon all the factors specified in Section 9 of the Act, and other relevant circumstances, it is fair and reasonable to grant the Union's Last Best Offer on Issue 2 - HEALTH CARE effective with the date of this Award. In choosing between the Last Best Offers of settlement, as mandated by Section 8 of the Act, the Panel believes that the Union's Last Best Offer more nearly and fairly complies with the applicable factors prescribed in Section 9 of the Act, along with other facts and circumstances presented by the exhibits and Briefs of the parties.

AWARD

The Last Best Offer of the Union is adopted and incorporated into Article 17 - HEALTH CARE of the collective bargaining agreement effective with the date of this Award.

4-17-95
Dated:

Richard E. Allen, Chairman

4-19-95
Dated:

Richard Ziegler
Richard Ziegler, Unon Delegate

5-3-95
Dated:

Jeffrey Mueller
Jeffrey Mueller, City Delegate
(Dissent)

CONCLUSION

The undersigned has attempted to consider the respective positions of each party. In the final analysis, each party must recognize the valid concerns of the other, and in a collective bargaining situation, adjust and compromise their positions if practical and economically feasible in an effort to arrive at a fair and reasonable settlement.

In deciding the merits of the Last Best Offers, I have considered all the relevant factors specified in Section 9 of the Act. As noted, comparability points in both directions pertaining to both issues (1) and (2); one group of communities does support the Union's position and another group of communities does support the City's position. Furthermore, I have concluded financial ability of the City does not preclude some improvements in the benefits proposed by the Union.

In this case, where comparability is neutralized and financial ability does not preclude some benefit improvement, I have given consideration to sub-section (h) of Section 9 of the Act in determining the fairness of a settlement of issues (1) and (2). "Such other factors", as stated in sub-section (h) does allow the arbitrator to consider the traditional circumstances that accompany a collective bargaining situation. Under sub-section (h), part of the determination of a fair settlement, may be based upon what would reasonable persons, acting in the capacity as a negotiator, have agreed to if confronted with a work stoppage by the Union, or a lock-out by the Employer. Obviously, the facts of each case will determine the weight to be given to sub-section (h).

In this case, based upon all the facts and circumstances, I have given some consideration to sub-section (h) in determining the merits of the Last Best Offers of the parties.

I have considered what would a reasonable person have agreed to if the parties had acted under the economic pressures found in the traditional collective bargaining situation. I believe this is a relevant factor to be considered, and have done so, in part, in arriving at my determination as to both issues (1) and (2).

2-17-95

Dated:

Richard E. Allen
Chairman