

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION

IN THE MATTER OF ARBITRATION BETWEEN:

THE CITY OF MONROE,
Employer

CASE NO: D95-A0112

- and -

HENRY J. SEFCOVIC, CHAIRPERSON

RICHARD S. LYBIK, EMPLOYER
DELEGATE,

MONROE POLICE COMMAND OFFICERS
ASSOCIATION,

RICHARD ZIEGLER, UNION
DELEGATE.

POLICE OFFICERS LABOR COUNCIL,

ACT 312 ARBITRATION PANEL'S OPINION AND AWARD

Appearances:

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I. INTRODUCTION

On June 22, 1995, after reaching an impasse in contract negotiations with the City of Monroe, (hereinafter referred to as the "City"), the Police Officers Labor Council (hereinafter referred to as the "Union" or "the Command Officers"), filed a petition for arbitration with the Michigan Employment Relations Commission (MERC), pursuant to Act 312, PA of 1969 as amended, M.C.L.A. Section 423.231, et seq. The parties' last collective bargaining agreement was in effect from July 1, 1992 to June 30, 1995. Under the terms of the contract there was an economic "reopener" for the last year of the contract, (July 1, 1994 through June 30, 1995). When the parties were unable to reach an agreement, the Union filed the Petition for Arbitration on June 22, 1995. The petition is stated to be for "the economic reopener for fiscal year 1994-1995".

The Union submitted two issues:

"Economic Reopener for Fiscal 1994-1995

I. Union's Issue:

A. Holiday Pay:

1. Union Position:
Restructure to reflect firefighters compensation package 156, Hours strait time paid once annually.
2. Employer Position: Status Quo.

B. Seniority Bonus:

1. Union Position: City to pay the Union members the same as given patrol. 2.5% added to base salary.
2. Employer's Position: No bonus payment.

The City submitted one issue

II. Employer Issue:

A. Step-up pay.

1. Employer Position:
Deletion of current step-up provision in contract.
2. Union Position:
Status Quo.

On August 18, 1995, Henry J. Sefcovic was appointed chairperson of the arbitration panel. The City designated as its delegate to the arbitration panel personnel director Joseph S. Lybik. The Union designated Richard Ziegler as its delegate to the Arbitration Panel. By letter dated September 27, 1995, the chairman set the date of October 23, 1995 for the pre-arbitration conference in this matter. The pre-arbitration conference was then adjourned to November 27, 1995, by the chairperson. At the pre-arbitration conference on November 27, 1995, the parties tentatively scheduled a hearing in this matter for March 8 and March 13, 1996. By letter dated February 1, 1996, then City attorney, Paul Townsend, Jr. advised the chairperson of the panel that:

".... the parties then agreed that they prefer to have this proceeding heard after receipt of an award in the pending grievance which will effect two of the issues in this case. That grievance is not scheduled for hearing until March 14, 1996".

Accordingly, the chairperson was asked to submit potential hearing dates in these proceedings for June or July of 1996. In fact, as set forth below the grievance arbitration hearing was conducted with respect to the Unions grievance demanding that the additional

2.5% payment granted to certain members of the Patrol Unit be extended to members of this unit based upon a "salary differential" provision. The grievance arbitration award granting the Union's grievance was issued by arbitrator Opperswall on April 17, 1996. By a letter dated May 30, 1996, the Arbitrator confirmed that the dates of hearing in this matter for October 23, 1996 and October 26, 1996.

A formal hearing was conducted on October 23, 1996. There were two post hearing executive sessions of the panel. One held on February 10, 1997 and a second was scheduled for April 9, 1997.

II. HOLIDAY PAY

A. Last Offers:

The employers last best offer is to maintain the status quo which is to retain the current contract language and add no additional contract provisions on this issue for the period of July 1, 1994 to June 30, 1995. The Union's last best offer of settlement for holiday pay is to substitute the current contract language article 6, Section 5 Holiday Pay for article five Section 2 of the City of Monroe and the Monroe Firefighters Association contract for the period of July 1, 1993 to June 30, 1995.

Section five of Article six of the current Command Officers contract provides as follows:

- " A) The following days shall be recognized and observed as paid holidays:

New Year's Day
Martin Luther King Day (See Section E below)
President's Day
Good Friday
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Mayor's Day (the day following Thanksgiving)
Christmas Eve
Christmas Day
New Year's Eve

- B) Eligible employees provided they otherwise qualify, shall receive eight (8) hours strait time pay for each of the holidays listed above.
- C) Employees shall be eligible for holiday pay if they work both their last scheduled work day prior to the holiday and their next scheduled work day following the holiday unless they have an excused absence.
- D) Employees required to work on a holiday will receive one and one-half (1-1/2) times their regular rate of pay for all hours worked on the holiday. In addition to Section B above.
- E) In addition to the above holidays, the employees of this unit will receive Martin Luther King Day as a holiday as long as the holiday is formally recognized by the Mayor and City Council."

Section two of article five of the Firefighter's contract provides as follows:

"Section 2: Holidays: A). Employees of the Firefighting and Maintenance Divisions shall receive in addition to wages provided for in Article IV, one hundred and fifty six (156) hours annually at each employees forty (40) hour rate at the time of the holiday. In the event that the City of Monroe officially recognizes any additional holiday, the members covered will be paid an additional 12 hours for each official holiday observed by the City:

New Year's Day
Martin Luther King Day
President's Day (Lincoln's Birthday)
Good Friday
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving day
Mayor's Day (day following Thanksgiving)
Christmas Eve Day
Christmas Day
New Year's Eve Day

Employees must work the first scheduled day after the holiday and the last scheduled day prior to the holiday.

B). The Fire Inspection Division shall receive the above mentioned holiday periods off.

C). Holiday pay for the Contract year shall be paid once each year within thirty (30) days after June 30th of the year".

The effect of the unions request is that the command officers would receive 156 hours of salary paid once annually as opposed to the current situation in which they would receive some amount of pay less than 156 hours paid in their normal weekly pay.

B. Discussion:

It is the charge of the Arbitration Panel to select one last offer or the other based upon the applicable factors under Section nine of the Act, MCLA 423.239.

a. The Lawful Authority of the Employer:

The Statute in Section 9(a) requires the Arbitration Panel consider, where applicable, the lawful authority of the employer.

b. Stipulations:

Section 9 (b) of the Statute requires the Arbitration Panel to consider the stipulations with respect to the matters in dispute. The

parties made a number of stipulations throughout the course of the arbitration proceeding. These are noted where applicable.

c. Interest and Welfare of the Public:

Section 9(c) of the Statute requires the Arbitration Panel to consider the interest and welfare of the public. As the Arbitration Panel considers the issue of holiday pay in these proceedings, it must consider the impact, interest and welfare of the public. It is clear that the employer must abide by The Fair Labor Standards Act and others acts that require payment to these officers when they work holidays. It is further noted that because the police department must be open 365 days a year that certain officers are required to work on holidays. Other things being equal, the interest and welfare of the public would be best served if the Command Officers of the police department were paid for these holidays in a manner which would lead to their satisfaction at a cost not unreasonable to the City.

d. The Financial Ability of the City Government

Under Section 9 (c) of the Statute, the Arbitration Panel is also to consider the financial ability of the municipality while the City does not claim to be "impoverished", there is on the other hand, no claim or evidence that the City has any greater ability to pay than other comparable communities. By and large, the City is currently paying holiday pay and this Union request is substantially a restructuring of the current payment. To the City's advantage, it will be able to hold employees pay for up to nearly a year and receive the interest on it. On the negative side from the City's point of view, the Command Officers are requesting an additional 28 hours of holiday pay. Again, this 28 hours per year is based on a number of assumptions but, 28 hours would be a reasonable assumption as to the increased cost to the City.

e. Comparable Communities:

Section 9 (d) of 312 mandates the Arbitration Panel basis its decision on comparable wages, hours and working conditions of the City's Police Command

Officers with employees performing similar services in comparable communities. The parties have stipulated to a set of twelve comparable communities which are: Adrin, Allen Park, Garden City, Harper Woods, Lincoln Park, Mt. Clemens, Romulus, Southgate, Trenton, Wayne, Wyandotte and Ypsilanti. Section (d) of the Statute reads as follows 'comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions and employment of other employees performing similar services and with other employees generally: in public employment in comparable communities and; private employment in comparable communities.

When the arbitration Panel compares the holiday pay of the Command Officers in the City of Monroe with the Command Officers in the comparable cities, it finds a) it is difficult to compare these because of each city's system but, even as difficult as this may appear the City of Monroe appears to be at or near the top in this area.

When one reads the Statute, clearly a comparable community to the City of Monroe is the City of Monroe. There is a very strong correlation between what is awarded the police department and the fire department in the city. This was brought out by every witness who testified including the City of Monroe's personnel manager who indicated there was an attempt to try to replicate what was happening in one unit to another.

f. Consumer Prices:

Section 9 (e) of Act 312 specifically calls for consideration by the panel of the average consumer prices for goods and services commonly known as the cost of living as is demonstrated in the record. The Consumer Price Index while relevant to many economic issues is somewhat not relevant to the issue of how or when holiday pay is paid. The fact that this issue calls for a one percent pay increase would indicate that it is less than the Consumer Price Index for the time period presented in the findings would indicate that such a proposal as a modest increase would be called for.

g. Overall Compensation:

The Statute in Section 9 (f) requires the Arbitration Panel to consider the overall compensation of the unit employees. In request to holiday pay, the overall compensation of these Command Officers is already at least adequate and this factor would weight against the granting of the compensation, the increase as requested by the Union.

h. Changes in the Underlying Circumstances:

The Statute in Section 9 (g) requires the Arbitration Panel to consider changes in the underlying circumstances. These will be noted where applicable.

i. Other Relevant Factors:

The Statute in Section 9 (h) allows the arbitration Panel to consider other relevant factors. No other relevant factors appear to be terribly relevant to the Fact Finders.

In conclusion, when one considers Section 9 of the Act and the various factors set out before the two most persuasive factors to the impartial arbitrator are (a) these employees have received a 3% per year wage increase, which when considering comparable communities and cost of living and all the other various factors, is been "ballpark", plus, it received a 2% increase per a grievance arbitration award and would weigh against any further increases. On the other hand, the weighing for the Union's request is the long history of comparability between the firefighters command officers and the police department's command officers. It appears that the command officers have made this item a priority and it appears that the fire department command officers receive it.

C. Decision:

Final last offer for holiday pay of the Union is accepted and the final last offer for holiday pay for the employer is rejected.

III. SENIORITY BONUS:

A. Last Offers:

The employers last best offer is to maintain the status quo of the existing contract. The Union's final last offer is a 2.5% seniority bonus increase. The Union is requesting a 2.5% seniority bonus for senior Sergeants who have four years in rank. This 2.5% increase would be of their base salary and for Senior Lieutenants also with four years in rank and would also be a 2.5% increase of their base pay.

B. Discussion:

a. The Lawful Authority of the Employer:

The Statute in Section 9(a) requires the Arbitration Panel to consider where applicable, the lawful authority of the employer. In relation to

seniority pay, the lawful authority of the employer does not appear to be applicable.

b. Stipulation:

Section 9 (b) of the Statute requires the Arbitration Panel to consider the parties, stipulations with respect to the matter under dispute. The parties made a number of stipulations throughout the course of the arbitration proceedings and these are noted where applicable. There appears to be no stipulations as to whether this 2.5% seniority bonus should be granted or not.

c. Interest and Welfare of the Public:

Section 9 (c) of the Statute requires the Arbitration Panel to consider the interest and welfare of the public. It would appear that this factor mitigates against a 2.5% seniority bonus for the Command Officers and that the interest and welfare of the public would not be served by a 2.5% increase since the rather substantial costs would not bring about any appreciable benefit to the public of the City of Monroe since the Command Officers in this unit appear to be adequately compensated.

d. The Financial Ability of the City Government:

Under Section 9 (c) of the Statute, the Arbitration Panel is to consider the financial ability of the Municipality. While the City does not claim to be impoverished, there is on the other hand, no claim or evidence that the City has any greater ability to pay than other comparable communities. The unit members have already received an increase during July 1, 1993 through July 30, 1995, the contract terms. These improvements were in line with or exceeded the settlements reached with other City bargaining units exceeded the rise in the C.P.I. and placed the Command Officers in a very competitive position in comparison with the comparable communities.

e. Comparable Communities:

Section 9 (d) of Act 312 mandates that the Arbitration Panel base its decision upon comparable wages, hours and working conditions as City Command Police Officers with employees performing similar

services in comparable communities for purposes of this arbitration, the parties stipulated to a set of twelve comparable communities. When viewing this unit with the comparable communities as stipulated to by the parties, the additional 2.5% seniority bonus would appear to be in line. The other communities, the City of Monroe Command Unit would appear to be underpaid when it comes to longevity pay with the comparable communities.

f. Other Employees in the City of Monroe:

Section 9 (d) of the Act calls for a comparison of the employees involved in this arbitration proceedings with employees performing similar services as well as other employees generally. As set forth above, there are presently six bargaining units and one other group of unrepresented employees in the City. The Union's request for a seniority bonus would put them ahead of most other units in the city and this factor mitigates against the granting of such a proposal.

g. Consumer Prices:

Section 9 (e) of the Act 312 specifically calls for consideration by the panel of the average consumer prices for goods and services commonly known as the cost of living has demonstrated in the record the wage increases received by members of this unit has exceeded the cost of living. This factor weighs against the granting of seniority bonuses and it is probably the factor that weighs most heavily against the granting of this proposal.

h. Overall Compensation:

The Statute in Section 9(f) requires the Arbitration Panel to consider the overall compensation of the unit employees. Exhibit M-20 shows the members of this unit received a 3% salary increase effective July 1, 1992, a 3% increase effective July 1, 1993, a 3% increase effective July 1, 1994, a 2.5% salary increase effective January 1, 1995 and by virtue of Act 312 Arbitration, and this group will receive a 3% reduction in employees pension contribution effective July 1, 1995. Members of this unit have received a substantial improvement during the three year term of this contract and therefore appear to have their overall compensation set at an adequate level.

i. Changes in the Underlying Circumstances:

The Statute in Section 9 (g) require the Arbitration Panel to consider changes and the underlying circumstances. In this case, this Act 312 Arbitration was delayed to allow the parties to grievance arbitrate a 2.5% seniority increase the was received by the Patrol Officers. This was

granted prior to this arbitration hearing in ways against this 2.5% seniority increase that is now requested by the Union.

j. Other Relevant Factors:

The Statute in Section 9 (k) allows the Arbitration Panel to consider other relevant factors. There appears to be no other monumental other relevant factors to be considered here.

In conclusion, there appear to be two main factors set out in the statute that weigh very heavily against the granting of this seniority bonus. They are:

1. It was granted by the grievance arbitrator during the pendency of this arbitration.
2. The Union, during the three year term of this contract, received salary increases of approximately 14.5% when the cost of living increases during this period of time were substantially less than that.

C. Decision:

The final last offer for seniority bonus of the City is accepted and the final last offer for seniority bonus of the Union is rejected.

IV. STEP UP PAY

A. Last Offer:

The employers last offer in regards to step-up pay is that the current provisions in Article five Section Six of the contract be deleted. The Union's last offer in regards to step-up pay is that the current language of Article five, Section six, remain unchanged. The current contract language in essence, states that whenever a sergeant is assigned to fill a vacancy in the

position of Shift Commander, he shall receive a premium of five (5) percent of his regular salary rate for all time worked by him on such assignment.

B. Discussion:

a. The Lawful Authority of the Employer:

The Statute in Section 9 (a) requires that the Arbitration Panel consider, where applicable, the lawful authority of the employer. The lawful authority of the employer does not appear to be applicable to this issue.

b. Stipulations:

Section 9 (b) of the Statute requires the Arbitration Panel to consider the parties stipulations with respect to the matters under dispute. The parties made a number of stipulations throughout the course of the arbitration proceedings but, none of these appeared to be particularly applicable to the outcome of this issue.

c. Interest and Welfare of the Public:

Section 9 (c) of the Statute requires that the Arbitration Panel consider the interest and welfare of the public. The public while it is true must pay the bills also must bear the consequences of disgruntle employees. It is the impartial Arbitrator's opinion that the interest and welfare of the public do not particularly weight pro or con on this issue as heavily as other issues.

d. The Financial Ability of the City Government:

Under Section 9 (c) of the Statute, the Arbitration Panel is also to consider the financial ability of the municipality. The City in this case does not claim to be impoverished, but it does not appear to have any greater ability to pay than the other comparable communities.

e. Comparable Communities:

Section 9 (d) of Act 312 mandates that the Arbitration Panel base its decision upon a comparison of wages, hours and working conditions of the City's Command Officers with employees performing similar services in comparable communities. The Sergeants are the main beneficiary of step-up pay. When the total economic package is taken into account, Sergeants are ranked ninth out of the thirteen comparable. On the other hand, the record shows that out of all the comparable, only four communities, Garden City, Harper Woods, Southgate and Trenton provide step-up pay on the first day. The other eight comparable have a waiting period ranging from five days to forty five days. Overall, when the impartial arbitrator compares comparable communities, he is of the opinion that Section 9 (d) weighs in favor of granting the Union's request to not eliminate step-up pay.

f. Consumer Prices:

Section 9 (e) of Act 312 specifically calls for the Arbitration Panel to consider the average consumer prices for goods and services commonly known as the cost of living. This factor weighs against retaining step-up pay since the employees raises over the three year period of this contract have exceeded the Consumer Price Index.

g. Overall Compensation:

The Statute in Section 9 (f) requires the Arbitration Panel to consider the overall compensation of the unit employees again, as restated earlier, Sergeants are the main beneficiary of step-up pay and they appear to be low as compared with other comparable communities. Therefore, this factor would weigh in favor of granting.

h. Changes in the Underlying Circumstances:

The Statute in Section 9 (g) requires the Arbitration Panel to consider changes in the underlying circumstances. In this case a seniority bonus of the Patrol Officers was taken to a grievance arbitration process and was granted to the Command Officers via a pass through clause. This arbitration took place while the 312 Arbitration was underway, i.e. after the initial pre-trial but before the rendering of the award. The grievance

arbitrator noted: "I recognize that the results of this case is somewhat inequitable". For one thing, the Patrol Unit gave up some step-up pay in return for a 2.5% increase for corporals. The impact of this decision can be shown, can and should be taken into account during the parties current negotiations and Act 312 proceedings. That is to say that the other units gave up step-up pay in return for getting the 2.5% seniority bonus. the effect of his arbitration was to give the 2.5% increase without having any necessary set-off.

i. Other Relevant Factors:

The Statute in Section 9 (k) allows the Arbitration Panel to consider other relevant factors. The contract in another provision provides for a second type of step-up pay when a sergeant fills a position on a more permanent basis. this occurs when there is no lieutenant for an extended period of time. It appears that the current step-up pay system has worked well over the last twenty years. It also appears to the Impartial Arbitrator that this system has kept the system honest, i.e. maintaining a proper staffing level of Command Officers to maintain officers moral and efficient operation of the department by stopping the city from not appointing Command Officers when it may be necessary because of fiscal restraints.

In conclusion, in viewing the nine factors set out in Section 9, three factors appear to the impartial Arbitrator to be most persuasive. They are: (1) the comparable communities placing the sergeants at a relatively low position as compared to their comparable sergeants in overall compensation certainly weighs in favor of the granting of this position, (2) The Arbitrator's ruling indicating that it is his beliefs that there should be some set-off for the 2.5% wage increase as was the case in other units and (3) the fact that the Officers of this unit have done well as far as wage increases compared to cost of living spread out over the three years of this contract.

C. Decision:

The final last offer for Step-up pay of the City is accepted
and the final last offer for Step-up pay of the Union is rejected.

Dated: June 11, 1997
~~April 1997~~

Henry J. Seftovic
HENRY J. SEFTOVIC,
Impartial Arbitrator

STATE OF MICHIGAN
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ASSOCIATION,

RICHARD ZIEGLER, UNION
DELEGATE.

POLICE OFFICERS LABOR COUNCIL,

ACT 312 ARBITRATION AWARD

This panel member concurs for the Seniority Bonus and
Step-up Pay of the Command Officers for the fiscal year of 1994
- 1995, and dissents to the rest of the decision.

Dated: June 11, 1997
~~April~~, 1997

Joseph S. Lybik
JOSEPH S. LYBIK
City Representative

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DELEGATE.

POLICE OFFICERS LABOR COUNCIL,

ACT 312 ARBITRATION AWARD

This panel members concurs for the Holiday Pay of the
Command Officers for the fiscal year of 1994 - 1995, and dissents
to the rest of the decision.

Dated: July 14, 1997


RICHARD ZIEGLER
Union Representative

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