

5/22/91

Gordon Knight

In the matter of Act 312 arbitration between
Mt. Clemens
and
Mt. Clemens Police Officers Association

MERC Case No. D90 A-0021

The proceedings were held in accordance with the provisions of Act 312. A pre-hearing conference was held November 1, 1990 and hearings January 16 and February 5, 1991. The Employer was represented by Mr. Kenneth E. Scherer, Attorney and the Union by Mr. Kenneth W. Zatkoff, Attorney. Other members of the panel were Mr. Joseph Farr for the Employer and Mr. Richard Ziegler for the Union. A record of the proceedings was taken and transcribed by Mr. Philip Liburdi. Last best offers were submitted on February 21, 1991 and post-hearing briefs April 29, 1991. The parties waived time limits specified in Act 312. There is no challenge to the panels jurisdiction in the dispute.

Witnesses for the Employer

Joseph Farr
James Crawford
William Ringler
Bradley Garpczynski

For the Union

Nancy Ciccone
Robert Anderson

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Mt. Clemens, City of

Introduction

This Act 312 arbitration addresses and resolves two issues arising from a re-opener clause in the current contract. The issues are wages and health insurance. The panel's decisions will be retroactive to July 1, 1990 and run to June 30, 1991. Both issues are economic for purposes of the provisions of the Act.

STATUTORY AUTHORITY

Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Section 8 of Act 312 states in relation to economic disputes that:

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. The findings, opinions, and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9. (emphasis added)

Section 9 of Act 312 contains eight factors on which the arbitration panel shall base its opinions and orders. The factors are as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) A 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 within other communities generally:
 - (i) In public employment in comparable communities
 - (ii) In private employment in comparable communities
- (e) The average consumer prices of 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 presented during the pendency of arbitration proceedings.

- (h) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by competent, material and substantial evidence on the whole record. This is supported by the Michigan Supreme Court's decision in City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980).

In that case the Court commented on the importance of the various factors as follows:

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 in 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 insure 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 arbitrators 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 the case. Although, of course, all "applicable" factors must be considered. Id, p. 484.

Comparable Communities

The Employer agreed with the Union's choice of comparable communities in conjunction with the application of Section 9(d). The communities are:

Allen Park	Hazel Park
Chesterfield Township	Madison Heights
Clawson	Riverview
East Detroit	Southgate
Ferndale	Trenton
Garden City	Wayne
Harper Woods	

Neither party during the hearing or in its brief attempted to distinguish any of these communities as warranting greater or lesser weight in making comparisons.

The Union provided a set of statistical tables covering each of these communities with respect to such characteristics as:

Population (growth, density, composition)	
Land Area	S.E.V. per Capita
Department Composition	Crime Statistics
Officers per Square Mile	Taxes
Officers per Capita	Income
State Equalized Value	Housing

Issue: Wages

Union Proposal:	Effective July 1, 1990, 6.5% across the board salary increase.
Employer Proposal:	Effective July 1, 1990, 4.0% across the board salary increase.

Applying these percent increases to the current top Mt. Clemens patrolman annual rate of \$31,387 would mean a salary of \$32,642 using the City's 4% increase and a salary of \$33,427 using the Union's 6.5% increase.

A Union exhibit on annual base wages indicates that for 1989 Mt. Clemens wages ranked 13th of the 13 other comparable communities or \$2,107 below the average.

The Union notes that even the Employer's 1990 offer of 4% would still be \$870 less than the 1989 average salary for patrolmen in the comparable communities. (Actually according to the panel chair's arithmetic its \$852 - that is \$33,494 minus \$32,642.)

For those communities whose contracts extend into 1991 the average percent of increase is 4.3% over the preceding year. While the Union's proposal is somewhat higher it argues it's more consistent with the comparables and does more to maintain the relevant status of the Mt. Clemens' wages amongst them.

The Union also presented a table on the economic comparison of a ten-year patrolman in the various communities. It incorporates base wages, holidays, COLA, longevity, shift premium, gun allowance, clothing/cleaning allowance and educational incentives. In terms of totals, Mt. Clemens' officers rank 13th of the other 13 communities or \$1,742 below the average.

The Union argues that the Employer would have the panel believe that all non-police city employees with the exception of Dial-A-Ride personnel have agreed to a 4% increase. It notes that no evidence was submitted to show that the other groups of city employees suffered similar wage disparities with their counterparts elsewhere as do the patrolmen.

The Union also argues that the Employer's partial assumption of a pension contribution back in 1983 and 1984 should not be considered as something over and above the stated base pay. It should be disregarded as unrealistic and also there is no attempt by the Employer to relate it to possible similar factors in the comparable communities. The Union raises similar objections to the Employer's use of arbitrary amounts to establish the monetary benefit of its unlimited cleaning allowance. Hereto no attempt was made to identify similar benefits in other communities.

The Employer points out that it has a history and goal of pattern bargaining for the City's various union and non-union employees. All such groups have settled for 4% salary increases for the period in question - the same as the City is proposing here.

The Employer argues that the City's patrolmen enjoy 13 holidays a year whereas the average is only 11.6 in the other communities. Moreover the City has an unlimited uniform cleaning allowance for its officers.

Of particular significance to the City is the benefit the patrolmen have in terms of the reduction in their pension contribution which occurred some years ago. Specifically, in 1983 the required pension contribution was reduced .5% and in the following year it was further reduced 5% (from 7% to 2%). In both cases the City made up the difference. In 1984 the 5% reduction in pension contribution was accepted in lieu of a wage adjustment.

The Employer asserts that those pension contribution reductions increase take home pay and have the effect of a salary increase. If one brings the impact of this forward to 1990 with compounding and includes the City's 4% proposed increase one arrives at a figure of \$34,451. The City holds that this figure more accurately reflects the level of the patrolmen's compensation as a result of the City's proposed increase.

The Employer then takes this figure of \$34,451 and compares it to the salaries in the comparable communities. The average 1990 salary for communities with 1990 data is \$34,847. The City's figure of \$34,451, which incorporates its 4% proposal, ranks 8th and is competi-

tive in terms of the average.

Also regarding the reduction in pension contribution, Mr. Garpczynski, the City's independent auditor, testified that the savings accruing to the officers up to the current time had it been invested would amount to \$15,235. Mr. Garpczynski also presented an analysis of how the City's pension plan compares to those in the comparable communities. Three criteria were used - number of years used to calculate pension value, the lump sum payment, and the benefit calculation formula. The City ranks second, first, and second respectively.

In considering its ability to pay the Employer points to certain characteristics that put it at a disadvantage compared to the other communities such as a below average per capita income, lower S.E.V. per capita, low median household income, higher tax rate than most as a higher percent of the population below the poverty line.

The Employer argues that if all relevant factors are considered its increase proposal is reasonable and puts the City officers salaries in 8th place out of the comparable communities on which 1990 data is available.

Discussion

In assessing the current position of the City's police officers salaries there is no dispute regarding the comparisons where base wages are used nor the choice of the communities for comparison purposes. The Employer's argument essentially is that this represents a misleading picture. In this regard it stresses Section 9(f) which refers to the use of total compensation as one of the decision criteria to be considered.

The Employer argues that comparisons using base wages are misleading on two counts, the principal factor being the City's pick up in 1983 and 1984 of a significant portion of the officer's pension contribution. This in effect increased the officers take-home pay and is equivalent to a salary increase.

In other words the Employer appears to argue that police officers salary in Mt. Clemens can't be compared to those in other communities without considering this particular benefit amongst other items. To put it differently, a \$30,00 annual police officer's salary in Mt. Clemens would be superior to a \$30,000 annual salary in one of the comparison communities by virtue of this factor - all other benefits being equal. Or the Mt. Clemens officer get more to take home out of his \$30,000 - once again other benefits being the same.

It's clear that factoring this item into a comparison of salaries weighs heavily in the conclusions to be reached. It does make a difference in take home pay given identical base salaries and other benefits.

The major difficulty with the Employer's argument here is the monetary impact of the pension contribution reduction is presented in

isolation. Even were it to be included, there are no data from any of the other 13 communities regarding how their pension contributions have changed over the years which would permit valid comparisons. Consequently it is simply not proper to inflate the City's salary figure by this factor and compare it with the figures from other communities without including the impact of the same factor on their figures.

Because of this serious deficiency the impact of the pension contribution reduction must be disregarded. Mr. Garpczynski's survey of the retirement benefit plans of the other communities shows Mt. Clemens has a superior plan but is of no help in remedying this deficiency.

A further concern expressed by the Employer in comparing compensation, particularly total compensation, involved clothing compensation and cleaning allowance. These two items are lumped together in the Union's exhibit on the economic comparisons for a ten-year patrolman. The Employer's focus here is that it provides an unlimited cleaning allowance. In cross-examination the Employer's witness was unable to state which of the comparable communities was on a quarter-master system. The Employer in its own economic comparison for ten-year patrolmen included a figure of \$500 for cleaning. It took this figure from the highest cleaning allowance in the comparable communities. The witness was unable to furnish any figures to indicate what the actual costs of this benefit were.

Regarding the Employer's exhibit on this matter, it is noted that six of the comparable communities lump the clothing and cleaning allowance together. Clawson and Wayne make clear in their contracts that cleaning is included in the lump sum. The figure given for Riverview is incorrect. According to their contract \$450 is provided for clothing and another \$450 for cleaning not \$500 for both as listed. The other three - Garden City, Harper Woods, and Madison Heights indicate a figure for a Uniform Allowance without any reference to cleaning. To conclude that cleaning is included is speculative and the nature of the testimony on this matter does not clarify the situation.

One is forced to conclude that there is an insufficient basis for the City's inclusion of \$500 for this benefit but also a related deficiency in showing that an identical or similar benefit is absent in several other communities.

In summary, in both these instances, the pension contribution deduction and the unlimited cleaning allowance, there is no parallel data for the other communities. Consequently it is impossible to use it for comparative purposes and thus must be disregarded.

The Employer stresses its historical interest in pattern bargaining for all City employees. The Employer's witness indicated in testimony that the police and fire-fighters set the pattern. At a later point he said, "Firefighters were the first ones. Three years ago it was the police officers. This time it was the fire-fighters, they took a four percent wage adjustment for each of two years." This

quotation makes clear that the wage pattern is not a static element but one that is subject to change typically with the police or fire-fighters taking the lead.

The Employer in its brief makes extensive reference to various City characteristics such as tax rates, income per capita, S.E.V. per capita, etc. which would seem directed to the issue of ability to pay. However, at no time in the hearings was there any testimony that cast doubt on the City's financial health. Certainly the community's ability to pay is one of the decision criteria in the Act (Section 9(c)) and must be considered. However no specific evidence directly reflecting the City's financial fragility was presented.

The discussion to this point has dealt with the two points raised by the Employer in objection to the Union's base wage comparison data and the economic comparison for ten-year patrolmen. These points have been disregarded principally because of inadequate comparative data.

For those communities on which 1990 base wage data is available the average annual salary for patrol officers is \$34,847. The City's offer of 4% would result in a figure of \$32,642 or \$2,205 below the average. Mt. Clemens salaries would then rank 9th of the ten other communities.

The Union's offer of 6.5% would generate an annual salary of \$33,427 or \$1,420 below the average. It would still rank 9th of the ten other communities.

The difference between the City's proposal and the Union's is \$785.

There are two obvious ways to make wage comparisons - on the basis of comparing dollars or percent increases. These considerations in the situation here are related to internal equity, that is retaining the 4% pattern, as to be contrasted with external equity namely comparisons with the dollars paid elsewhere in comparable communities.

There is no one best method equally appropriate for all situations. One has to be sympathetic to a consistent wage pattern within a municipality in the interest of workforce harmony and cooperation. And yet one must also be sensitive to the wages paid for similar jobs requiring similar skills and abilities in nearby municipalities.

In this case the depressed ranking of the City's wage for police officers is more persuasive than the desirability of retaining an established wage pattern. To put it differently, the inequity in failing to take more affirmative action in improving the relative wage level of the patrolmen is greater than any temporary disquiet occasioned by breaking the pattern.

Further with respect to the issue of the internal equity, there was no evidence indicating the wage levels of the other City groups relative to their counterparts in other communities. In other words there is no indication whether they suffer an equal disparity (or greater or less) than do the police officers.

The foregoing reasoning leads inexorably to a preference for the Union's proposal as being better designed to improve the depressed relative wage status of the City's police officers compared to their counterparts in other communities. It bears repeating these communities that were the yardsticks of comparison were agreed to by the Employer.

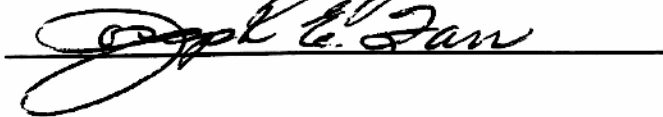
The panel is being sensitive at this particular time period when many citizens are experiencing unemployment and layoffs, as to how the conclusions reached here may be perceived. In response it must be said that given the process and the decision criteria mandated by statute the conclusions are reasonable and based on the evidence and testimony presented.

Decision: The Union proposal of 6.5% across-the-board salary increase effective 7/1/90 be adopted.

Concur:



Opposed:



Issue: Health Insurance

Employer Proposal: Revised language as follows.
The changes are ^{indicated} ~~selected~~ in capital letters.

ARTICLE XVI
INSURANCE

SECTION 1. Medical and Hospital Insurance

- A. Each member of Bargaining Unit will be entitled to health insurance coverage (delete the words, as follows:).

The insurance coverage options shall include Blue Cross or a Health Maintenance Organization Plan and shall be at the member's choice.

- B. Blue Cross shall include the following riders:

Comprehensive Hospital, Semi-Private Riders; D4 5NM, SA MVF-1 riders, IMb, ML, OB, FC, SD-1; Master Medical BC BS '65 Opt., Opt. 5; \$2.00 co-pay prescription rider; D.C.C.R. Rider (Option to add or pay for coverage) until fifteen (15) days from the 312 arbitration award for the 1990/91 contract.

WITHIN FIFTEEN (15) DAYS AFTER THE 312 ARBITRATION AWARD FOR THE 1990/91 CONTRACT, EACH EMPLOYEE WILL SELECT EITHER THE ABOVE BLUE CROSS COVERAGE WITH THE DEDUCTIBLE DRI 275/550 RIDER OR THE PPO OPTION OR THE PPO/POV OPTION INCREASING THE DEDUCTIBLE FOR PRESCRIPTION DRUGS FROM \$2.00 TO \$5.00.

- C. ADD: . . . THE CITY SHALL HAVE SOLE DISCRETION TO DETERMINE THE TYPE OF HEALTH INSURANCE, THE CARRIER AND BENEFITS FOR ANY EMPLOYEE HIRED ON OR AFTER JULY 1, 1990. AN EMPLOYEE HIRED AFTER JULY 1, 1990 SHALL NOT HAVE THE RIGHT TO EXERCISE ANY OPTIONS REGARDING HEALTH INSURANCE. THE TERM HEALTH INSURANCE AS USED HEREIN SHALL INCLUDE, BUT NOT BE LIMITED TO, OPTICAL, DENTAL AND/OR ANY OTHER INSURANCE BENEFITS RELATING TO THE TREATMENT OF ANY MENTAL OR PHYSICAL INFIRMITY OF AN EMPLOYEE. THE HEALTH CARRIERS CAN ONLY BE CHANGED BY THE CITY ONCE EACH CALENDAR YEAR WITHOUT THE EMPLOYEE'S PRIOR CONSENT.

Coverage under this section shall be extended to widows/widowers, and any children under 18 years of age of an employee who dies as a result of a personal injury or disease arising solely and exclusively out of and in the performance of duty in the employ of the City. Such coverage shall terminate upon: remarriage or death of widow/widower; upon adoption, marriage, attainment of age 18 years, or death of any children, whichever first occurs.

- D. Employees covered by this agreement who elect not to take a health insurance plan will receive an annual sum of \$1,500 to be paid at the end of each calendar year that said employee elects not to have health insurance. This sum will be pro-rated on a monthly basis for any portion of a calendar year that an employee maintains health insurance.

If married members of the same family work for the City, only one spouse will be entitled to any form of health insurance. In addition, neither spouse will be entitled to the annual \$1,500 option in lieu of health insurance as long as the married couple both work for the City of Mount Clemens. In addition, only one spouse will be entitled to any form of health insurance if both married members of the same family work for the City.

Any employee covered by this compensation option will not be allowed to resume health insurance with the City except during the open enrollment period or at some future time when his/her insurance coverage is terminated elsewhere, which will allow the employee to resume coverage with the City the month following his/her completion of a health application and transfer form. Furthermore, only employees who have health insurance elsewhere will be eligible for this plan. The employee must show proof of health insurance elsewhere prior to qualifying for this plan and agree to sign the City's insurance waiver form.

The employee will not hold the City liable for any health insurance claims.

SECTION 2. Medical & Hospital Insurance for Retirees

UPON RETIREMENT, THE CITY SHALL FURNISH GROUP COVERAGE FOR ELIGIBLE FULL-TIME RETIREES AND SPOUSES AS IDENTIFIED IN SECTION 1 B OR A HEALTH MAINTENANCE ORGANIZATION OPTION, OR AN ANNUAL FEE IN LIEU OF HEALTH INSURANCE IN THE AMOUNT OF \$1,500. THE BLUE CROSS/BLUE SHIELD OPTION FOR ELIGIBLE EMPLOYEES WILL NOT INCLUDE THE IMB, OB RIDERS.

Upon reaching age 65 the coverage above will automatically reduce to the Blue Cross/Blue Shield "65 Plan". If coverage is afforded by other employment, the above coverage will be suspended until the other coverage has ceased. Coverage will be extended only as long as the retiree or spouse is collecting a retirement income from the City of Mount Clemens.

As used in Section 2 above, the term "spouse" means the person to whom a retiree was married at the time employment last terminated.

Union Proposal: Status quo.

The Employer presented evidence showing that since 1986, Blue Cross/Blue Shield premiums have almost doubled (93%). The Employer's proposal is a measure that attempts to curb the further anticipated cost increases.

The savings for each of the three options are significant. Taking the family premium as an example the annual savings over the current plan for the DRI 275/550 option are \$732, for the PPO/POV option \$888 and for the PPO option \$900.

In general terms, the DRI 275/550 option increases the deductibles but places no limitation on health care provider. The PPO option makes no changes in coverage but the subscriber is required to select care givers from the PPO network. The PPO/POV option is a variant of the PPO option. In this option after the 150/300 deductible is satisfied certain services receive 100% coverage as contrasted with the 80/20 arrangement. These services are home, office, and outpatient visits performed by a physician, well-baby care up to one years old, immunizations up to six years old, allergy testing and medical emergency treatment. A final element is that those electing not to take health insurance will receive \$1,500 per year - increased from \$1,000.

The Union points out the possibility in the DRI 275/550 option that a person can incur significant added cost if an illness carried from one calendar year to the next. Reciprocity was also pointed out as a problem. Both these problems were acknowledged in the Union's cross-examination of Blue Cross/Blue Shield expert, Mr. Crawford.

The Union also stresses the absence of any evidence from comparable communities. Its own survey shows only one community with a DRI option. The Union argues that under the PPO plan there would be a 15% penalty for using non-PPO services. A survey of the patrolmen indicated that only 5 were able to locate their doctors in the directory.

Discussion:

The escalating costs for health care are commonly known and well documented here. Not surprisingly the options made available here attempt to control costs through a combination of requiring more of the subscriber and controls by the insurance provider over the care-givers.

The Employer provided no data indicating the nature of health care coverage for patrolmen in other communities. According to data from a Union survey there is very little evidence for the use of similar options in the comparable communities.

There is evidence however of internal comparables. There are seven employee groups within the City that either have the same insurance options or where the City is empowered to select the health carrier for new employees. It seems clear that the emerging pattern for health care insurance in the City is what is being proposed here.

It seems clear that the setting of wage rates is qualitatively different from setting fringe benefits particularly for health insurance. Wages normally are related to the skills, training, and responsibilities involved and jobs are paid differently on the basis of these factors. Whereas it is unreasonable to arrive at different levels of fringe benefits like health insurance using the same factors. This leads to the observation that it is reasonable to look to external equity when wages are the focus but to internal equity at least as regards health insurance. All other things being equal the health insurance needs of a Court Clerk are not appreciably different from those of a patrolman.

In short there is good reason to support the emerging health insurance pattern in other City employee groups and adopt the Employer's proposal.

The support for this choice can be found particularly in Section 9(h) in the Act.

It should be observed in passing that the costs savings the Employer projects for the new health insurance options approximate the amount the Union's wage proposal exceeds that of the Employer.

Decision: The Employer's proposal be adopted.

Concur:

David E. San

Opposed:

Richard Ziegler

While all the decision criteria in Section 9 were not covered explicitly in the foregoing report all were considered.

Except to the issue submitted to the panel and addressed in this document the parties stipulate that no dispute exists as to any or all of the terms and conditions of their collective bargaining agreement for the term July 1, 1990 to June 30, 1991.

Gordon F. Knight
Gordon F. Knight,
Panel Chairman

May 22, 1991