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In the matter of the Act 312 arbitration between)
City of Muskegon)
and)
Command Officers Assoc'n of Mich.)

MERC Case No. G95-B-4017

The arbitration was authorized by the provisions of Act 312, Public Acts of 1969 as amended. The Employer was represented by Mr. John Schrier, Attorney, and the Union by Mr. William Birdseye, Union Advocate.

The arbitration panel consisted of the undersigned, Gordon Knight, Chair, John Schrier, Employer delegate and James DeVries, Union delegate.

A pre-hearing conference was held on January 15, 1996 in the Employer's offices. A hearing was conducted on September 5, 1996, likewise in the Employer's offices. Last best offers were submitted September 20, 1996 and supporting briefs November 15, 1996. An Executive Session of the panel was held December 20, 1996.

The hearing proceedings were recorded and transcribed by Ms. Trisha M. Cramer, CSR. The parties waived the time limits specified in the Act.

Witnesses for the Employer
Timothy Paul
Edward Griffin

Witnesses for the Union
Robert Hiles
Daniel Stout
James DeVries

Background

At the hearing, the parties agreed that the outstanding issues were as stated in Mr. Schrier's letter to the Chair of February 6, 1996. All other issues were either withdrawn or are covered by tentative agreements.

Wages

Pension - final average compensation

Pension - increase the multiplier

Providing full medical coverage for retirees

Residency

Health Insurance: co-pay

Health Insurance: eliminate retiree prescription coverage.

There was agreement that all the above issues, except residency, were economic. There also was agreement on a three-year term for the contract.

The Employer proposed as comparable communities Holland, Muskegon County, Muskegon Heights, and Norton Shores. The Union proposed these, also, but added Grand Rapids, Kent County, Ottawa County, and Wyoming.

The Union argued that its expanded list of comparables are all part of the Grand Rapids Consolidated Statistical Area and make up the local labor market.

The Employer offers such data as median household income, taxable values per capita, relative tax effort, and bond ratings

to support its choice of contiguous communities and reject the more affluent communities selected by the Union.

"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."

General Background and Conditions

There was no evidence introduced concerning "the financial ability of the unit of government" to meet the costs associated with the proposals. No information was presented related to the wages, hours and conditions of employment in the private sector. No data was covered on the cost of living, other than an abbreviated newspaper article covering one month in selected West Michigan communities. Further, no data was introduced regarding total overall compensation. All other decision factors outlined in Section 8 above were considered in arriving at the conclusions.

Issues

Wages

Employer Proposal

Effective	1/1/95	4.25%	increase
"	1/1/96	4.0 %	"
"	1/1/97	4.0 %	"

Union Proposal

Effective	1/1/95	3.0 %	increase
	7/1/95	3.0 %	"
	1/1/96	3.0 %	"
	7/1/96	2.0 %	"
	1/1/97	3.0 %	"
	7/1/97	2.0 %	"

The parties differ not only in the percentage increases but also in how they present their proposals in briefs. The Employer approaches the issue principally by comparing their wage increases with the percentage increases granted in the comparables over the period of the contract to the extent such data is available in the out-years.

From this perspective, only one of the expanded list of comparables incorporates an increase in excess of 3.25%, namely Holland at 3.5% for 1995. The Employer indicates that while its proposal here is identical to that extended the police patrol in a 312 proceeding, the firefighters received a 3.5% increase in 1995 and the Union, representing DPW workers, received 2.25 (1995), 2% (1996), and 2% (1997).

The Employer notes that there is no precedent for a split year proposal involving two increases in a year such as the Union proposes. It has not been done before for command officers nor for any other organized unit.

The Employer argues that the cost-of-living in Muskegon is lower than nearby communities and doesn't support the Union's more generous proposal. This is based on a newspaper article cited earlier.

The Employer uses data offered by the Union which departs from using classifications as a basis of comparison but instead attempts to use equivalent responsibilities. In this connection, it notes that for January 1, 1994, the salary for a shift

commander (Lieutenant) in Muskegon ranks sixth amongst the expanded list of comparables, virtually at the median, whereas using the City's comparables, it ranks third and 5.6% above the average.

While the Union's stress on comparable jobs as contrasted with classifications is not devoid of merit, the reliance on organization charts alone for this purpose is inadequate. The use of detailed job descriptions is also needed as a minimum.

The pay increases granted the patrol officers by an Act 312 proceeding were 4.25% (1/1/95), 4% (1/1/96), and 4% (1/1/97) over the same years as being examined here.

For these reasons, the Employer asserts that the Union's proposal should be rejected; in contrast, the City's proposal, based on both external and internal comparables, should be accepted.

The Union's reasoning to support its wage proposal focuses principally on the impact of the two proposals on the differential between the command officers and the average of the Union's expanded list of comparables. It uses the sergeant's wages for illustration purposes. This classification incorporates the bulk of the persons in the bargaining unit.

At the beginning of the third and final year of the contract, and assuming the four comparables whose contracts had expired (not five as the Union's brief states) gave no increases in 1997, the Employer's proposal would place the sergeant's wages \$743 (not \$642 as the Union states) below the average of the comparables.

The Union states that the Employer's offer of 4.25% in the first year places sergeants' salaries \$1694 below the comparables average at the first of the year and \$2897 by the end of the year. By contrast, the Union's proposal places the sergeants \$2175 below at the first of the year and within \$2188 by the end of the year.

The Union argues that its split proposal "mitigates the payment of new monies at annual intervals. This strategy allows salaries to move closer to the average of comparables but keeps the cost down for the employer." It further asserts "the Union's proposal better closes the gap between the wages paid to Muskegon County command officers and the average salaries paid to the comparable command officers." (It is reasonable to assume the Union meant City of Muskegon, not Muskegon County here.)

Attention is turned to the Union's observations regarding comparisons at the beginning of the third and final year of the contract with the assumption that the four expired contracts (Holland, Muskegon County, Muskegon Heights, and Ottawa County) gave no increases for 1997. As stated earlier, the Employer's proposal would place the sergeant's pay \$743 below the comparables average. The Union's similar figure would be \$47 over the average.

If this exercise is undertaken using the Employer's comparables, the Employer's proposal is \$1962 over its comparables average of \$41,480 and the Union's proposal \$2751 over.

Another avenue for examining this matter is the historical ranking of the Employer's salaries and the impact on the ranking

during the term of the contract for each proposal. Although the numbers in each proposal differ, the impact on the ranking is minimal.

Another way to compare the two proposals is to compare the salaries at year-end 1994 and year-end 1997; that is, over the term of the contract. Using this method, the percent increase for the Employer's proposal is 12.8% and 17.1% for the Union's proposal - a 4.5% difference.

There are three comparables for which data is available over that span. Muskegon Heights shows a 10.1% increase. Norton ~~shows~~ ^{shows} 5.6% and Wyoming 18.6%.

There are five comparables for which increase data is available over a two-year span. Grand Rapids (6.2%), Kent County (8.6%), Muskegon County (6.1%), Ottawa County (3.5%) and Holland (3%).

The Employer's proposal represents an annual increase of 4.2% (12.6 divided by 3) and the Union's proposal 5.7%. Applying the same procedure to the above, one finds only one comparable that shows an annual increase over either the Employer's or the Union's.

This information also must be compared to the salary increases extended the Employer's internal comparables. The

three-year span figure for the patrol officers is 12.6% (identical to the Employer's proposal here) and/or the DPW workers 6.25%. Data for the firefighters is only available for one year at 3.5%.

It is particularly from this perspective, namely comparing patterns of percent increases and considering the internal comparables, that the Employer's proposal appears more reasonable.

The Employer's proposal is also more reasonable when set alongside the comparables average. As covered earlier, it is modestly lower (\$743) compared to the average of the more affluent comparables and \$1962 over the average of the other comparables common to both, whereas, the Union's proposal is \$2751 over.

Using percentage increases as contrasted with differentials from the average of comparables are approaches that are constantly in tension in proceedings of this nature. Neither approach is acknowledged to be superior across situations. A serious attempt has been made here to consider both.

Year one:

Decision: Employer Proposal

Concur *[Signature]*

Dissent

Gordon F. Knight

Year two: Employer Proposal

Concur *[Signature]*

Dissent

Gordon F. Knight

Year three: Employer Proposal

Concur *[Signature]*

Dissent

Gordon F. Knight

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Decision: Employer Proposal

Concur _____

Dissent LS

Year two: Employer Proposal

Concur _____

Dissent LS

Year three: Employer Proposal

Concur _____

Dissent LS

Pension - final average compensation

Employer proposal: Status quo. Overtime not included
in calculation of final average
compensation

Union proposal: Effective 1/1/97, overtime earnings
included in calculation of final
average compensation.

Discussion:

It is noted that all four of the Employer's comparables
include overtime in their FAC calculation and seven of the
Union's expanded list of comparables do.

In the face of this considerable consensus from both lists
of comparables, the Union's proposal is preferred.

Decision: The Union's proposal.

Concur

Dissent

Gordon F. Knutson
[Signature]

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include overtime in their FAC calculation and seven of the
Union's expanded list of comparables do.

In the face of this considerable consensus from both lists
of comparables, the Union's proposal is preferred.

Decision: The Union's proposal.

Concur ①

Dissent _____

MERC Case No. G95-B-4017

Pension - Increase the multiplier

Employer proposal: Current language with the following addition:

Effective as soon as the Act 312 Arbitration Award is issued in Case No. G95 B 4017, the City agrees to match employee contributions to the Internal Revenue Code Section 457 (Deferred Compensation) retirement plan on a \$1 for \$1 basis to a maximum of \$500 per employee per year.

Union proposal: Add language to the contract

Effective January 1, 1997, the multiplier shall be increased to two and four-tenths percent (2.4%) for all years of service.

Among the City's four comparables, only one, Muskegon Heights at 2.5%, has a multiplier equal to or greater than 2.4%. The other three are all equal at 2.25%, lower than the current contract 2.3%.

Among the additional comparables, only one, Grand Rapids at 2.5%, has a multiplier equal to or greater than 2.4%. The other three are Holland, Kent County and Ottawa County at 2.25%, and Wyoming at 2.2%.

This issue of the multiplier cannot be considered in isolation, because there are a number of other factors that relate to an employee's earnings at retirement. One of these is whether the employee draws social security by virtue of their police employment. It is noted that of the three comparables whose command officers do not draw social security, two have multipliers of 2.5% and one of 2.25%.

Regarding social security, it warrants consideration that command officers can reach the required length of employment to become eligible for social security through other employment. Additionally, to become eligible for social security involves payroll deductions.

Another factor is the payment of a cost-of-living adjustment. Seven of the eight expanded comparables pay some type of adjustment. Several are one-time payments independent of the CPI, some are related to the increase in the CPI and one, Grand Rapids, is similar to that in Muskegon, in that it is linked to the investment results of the pension funds.

It should also be noted that the patrol officers have a multiplier of 2.3%, the firefighters 2.0%, and the other two

City unions under 2.0%. The latter are covered by social security.

During the hearing, testimony was introduced indicating that only one employee in the bargaining unit would be eligible for retirement in the term of the contract.

The Union provided documentation showing a comparison between a command officer and a non-uniform Muskegon employee in terms of percentage of income replacement. Using the Union's figures, the non-uniform City employee with a multiplier of 1.9% drawing a pension and social security with related cost-of-living increases, exceeds the command officer significantly in terms of income replacement percentage in advanced years.

It bears mentioning that this tabulation does not incorporate the employee's social security deductions, the employer's "13th paycheck" annually based on the pension funds investment returns, nor differences in percentage pension contributions.

Despite the complexities of the variables surrounding this issue, the Union has failed to make a sufficiently compelling case in the face of the equivocal data from the external comparables, the current multiplier for police patrol and firefighters and the minimal impact in terms of the numbers of personnel affected.

Decision: Employer Proposal

Concur 

Dissent 

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Despite the complexities of the variables surrounding this issue, the Union has failed to make a sufficiently compelling case in the face of the equivocal data from the external comparables, the current multiplier for police patrol and firefighters and the minimal impact in terms of the numbers of personnel affected.

Decision: Employer Proposal

Concur _____

Dissent *S*

Providing full medical coverage for retirees

Employer proposal: Status quo

Union proposal: (Add language to contract)

Effective 1/10/97) the Employer's obligation to provide health insurance for future retirees and dependents shall not cease at attainment of age 65 by the retiree. However, the Employer shall not be obligated to duplicate any health coverage for any individual who is eligible for Medicare benefits.

While the provisions covering medical insurance vary considerably amongst the comparables, there is no community in the City's or Union's comparables that provides full medical insurance coverage for retirees and their dependents, as the Union proposes.

Decision: Employer proposal (status quo)

Concur

Dissent

Providing full medical coverage for retirees

Employer proposal: Status quo

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While the provisions covering medical insurance vary considerably amongst the comparables, there is no community in the City's or Union's comparables that provides full medical insurance coverage for retirees and their dependents, as the Union proposes.

Decision: Employer proposal (status quo)

Concur _____

Dissent _____

Residency

Employer proposal: Status quo

Union proposal: Effective the date of award:

The parties acknowledge that there are standards and conditions of employment which are not affected by or recorded in this Agreement. The City and the Union intend and agree to maintain those standards and conditions during the duration of this agreement.

The Union acknowledges the City's commitment to the concept of residency. All persons who were in the police department prior to August 1, 1986 shall be exempt from maintaining a residence within the city of Muskegon.

Discussion

One of the four City's comparables has a residency requirement, namely Muskegon Heights. The latter requires residency for new hires and certain further restrictions for current Command Officers.

Only one of the expanded list of comparables, namely Ottawa County, has a residency requirement.

Despite the clear pattern amongst the comparables, certain other factors must be considered. The residency requirement is

consistent across the City's bargaining units as well as non-represented employees. Such requirement has been affirmed in recent Act 312 awards. The Union's proposed change has an impact on only a very small number of current members of the bargaining unit.

The strong consistent pattern in the applications of this requirement to all City employees is persuasive.

Decision: Employer proposal

Concur

Dissent

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Health Insurance: co-pay

Employer proposal: (Added language). Effective January 1, 1997, the City will pay the full cost of the traditional hospitalization insurance. The employee may elect to receive coverage by the HMO with any charge exceeding the traditional hospitalization charge paid by the employee but not to exceed \$20 per month.

Union proposal: status quo

Discussion

The police patrol and firefighters union have no co-pay. The other City unions do.

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Concur _____

Dissent _____

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Union proposal: status quo

Discussion

The police patrol and firefighters union have no co-pay. The other City unions do.

Three of the City's four comparables have no co-pay provision and six of eight of the Union's expanded comparables provide full coverage with no co-pay.

Despite its modest cost and only when an HMO is selected, the clear prevailing pattern is full coverage.

Decision: Union Proposal

Concur

Dissent

Harden F. K. Jr.

[Signature]

Health Insurance: eliminate retiree prescription coverage

Employer proposal: Revise Section 23.5 to read as follows:

"The City shall maintain a prescription drug plan with a drug rider providing for a \$2.00 co-pay for generic drugs, and a \$5.00 co-pay for brand name drugs, unless the brand name drug is cheaper than the generic drug. This drug rider shall be maintained for and on behalf of the employees within this bargaining unit and their dependents. This provision shall not be applicable to any retirees or their dependents who retired in advance of December 31, 1985.

(a) All persons who retire on or after January 1, 1986 and before January 1, 1988 have the option of paying for the prescription drug plan for and on behalf of themselves and their dependents by paying to the Employer, in advance, on a quarterly basis, a sum or sums equal to the premiums for said prescription drug plan paid by the Employer. This option shall be open to retirees who retire after January 1, 1986 only and shall be effective only upon prepayment of the premiums as provided above.

(b) Effective January 1, 1988, the City shall maintain a prescription drug plan with a \$2.00 drug rider, if available, (Physicians Health Plan presently has a co-pay requirement of \$3.00) for and on behalf of employees and their spouses within this bargaining unit who retire after January 1, 1986 and before January 1, 1997. This coverage shall terminate upon the death of the retiree and the retiree's spouse.

(c) Effective January 1, 1997, the City shall not maintain a prescription drug plan for and on behalf of employees and their spouses within this bargaining unit who retire after January 1, 1997.

Union Proposal: Status quo

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(c) Effective January 1, 1997, the City shall not maintain a prescription drug plan for and on behalf of employees and their spouses within this bargaining unit who retire after January 1, 1997.

Union Proposal: Status quo

Two of the four City's comparables have full prescription

coverage. The other two have a co-pay feature. None eliminate prescription coverage.

All of the expanded list of comparables except one have either full coverage or co-pay feature.

The patrol officers and firefighters have prescription coverage for retirees. The other two City unions do not.

The clear pattern of the comparables is either of full coverage or co-pay. The only exception is Ottawa County and the City's two non-uniformed unions.

Decision: Union proposal

Concur

Dissent

Gordon F. Knight

[Signature]

The parties stipulate that decisions on the issues covered here, together with the tentative agreements reached between the parties constitute a complete collective bargaining agreement for a term of three (3) years and unless specifically mentioned to the contrary is effective January 1, 1995.

The panel Chair expresses deep appreciation to his fellow panelists for their helpfulness in the deliberations leading to these decisions.

Gordon F. Knight
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January 10, 1997

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Decision: Union proposal

Concur *[Signature]*

Dissent

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