

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

9/2/87
ARB

In the Matter of the Arbitration
between:

CITY OF MUSKEGON

and

TEAMSTERS STATE, COUNTY and
MUNICIPAL WORKERS, LOCAL 214

MERC Act 312
Case No. G85 H-867

OPINION AND AWARD OF
ARBITRATION PANEL

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

Appearances:

For the City:

Michael M. Knowlton, Esq.

For the Union:

Howard L. Shifman, Esq.

Panel Members:

Raymond A. Shemke, Chairman
Michael M. Knowlton, for the City
Howard L. Shifman, for the Union

The Petition for Arbitration in this case was filed on December 20, 1985 by Teamsters State, County and Municipal Workers, Local 214 (Union) which represents the patrolmen and detectives of the Police Department of the City of Muskegon (City). A pre-hearing conference was held, and subsequently the Panel Chairman was notified that the parties had reached agreement on a contract. Still later the parties notified the Panel Chairman that they had agreed on all terms of the contract except for one section of the insurance provisions. Inasmuch as the parties were clearly at impasse, a hearing was scheduled for and held on June 15, 1987, in a conference room at the offices of the City Manager in Muskegon, Michigan.

Muskegon, City of (Arb.)

POLICE

The parties have agreed that the only issue before the Panel is an economic issue subject to the last offer provision of Act 312. They have agreed further that only such factors set forth in Section 9 of the Act as to which evidence was offered at the hearing should be considered in arriving at the Decision and Award in this case.

THE ISSUE

The issue concerns the type of prescription drug rider to be included within the health insurance coverage which should be available to employees represented by the Union and their dependents.

The Union's proposal (Joint Exhibit #2) is as follows:

"The City shall maintain, as agreed upon, 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 the employees within this bargaining unit and their dependents as implemented on September 14, 1983. This provision shall not be applicable to any retirees or their dependents who retired in advance of 12/31/85. All persons who retire on or after January 1, 1986 shall:

(a) 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 within this bargaining unit who retire after January 1, 1986 and their spouses. This coverage shall terminate upon the death of the retiree and the retiree's spouse."

The City's proposal (Joint Exhibit # 3) reads as follows:

"The City will continue the prescription drug plan to those who retire after January 1, 1988 and their spouses until the retiree attains age sixty-five."

To clarify the difference between the proposal of the Union and that of the City, the parties agreed on the record that Appendix D on page 47 of their contract (Joint Exhibit #1) accurately describes the issue. This Appendix states that the Union's proposal is for a "a prescription drug rider similar to that provided to the FOP/Command Officers." It states that the City's proposal was for "a prescription drug rider similar to that provided to the IAFF Local No. 370 - Firefighters."

The Union's proposal in this matter is identical, word for word, with Section 23.5 set forth on pages 34 and 35 of the Agreement between the City and the FOP/Command Officers (Union Exhibit #3).

The City's proposal, so far as it relates to the issue in this case, is contained in Article XVI, Sections 2 and 4 of the 1984, 1985, 1986 Agreement between the City and Local #370 Muskegon Fire Fighters Association, AFL-CIO. (Union Exhibit #4), also known as IAFF Local No. 370 - Firefighters. Essentially, these sections provide that employees who retire after January 1, 1975 will receive the prescription drug benefits until they attain age sixty-five (65). As thus stated, it appears that the significant difference between the two proposals is that the City would extend prescription drug coverage only to retirees, and only until they reach age 65; whereas the Union asks for these benefits for retirees and their dependents to continue until the death of the retiree and the retiree's spouse, however, the City's proposal (Joint Exhibit #3) adds coverage for spouses.

ARGUMENTS OF THE PARTIES

For the City

While the City did not claim an inability to pay, it did base most of its position on the cost of the Union's demand. It stated that because of the increased cost it refused to agree to the Command Officers' demand until the latter agreed to a reduction from 4% to 3½% in its pay increase for 1988. Its one year of experience with the benefit won by the Fire Fighters union in a prior Act 312 arbitration has supported its fear that the actual cost of the provision demanded by the Union in the instant case would be considerably greater than what was estimated by professional consultants who made a study of the matter at the request of the City and recommended that the prescription drug benefit not be provided at this time (City Exhibits #2 and #3). The City also pointed out that the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly referred to as COBRA, which became law in April, 1986, gives additional post-retirement benefits to employees and their dependents the cost of which cannot be calculated exactly because in various circumstances employers will be required to continue health coverages where they would not heretofore have been so required.

Not only have costs gone up, and are expected to keep rising, but the City is also losing \$1,000,000 per year in federal funds which it had been receiving and which had usually been allocated to public safety. With revenues declining, and costs increasing in all areas, the City maintains that the more benefits are

granted to the police officers, the more it will have to cut back on other services.

The City points out that the Union is not entirely without prescription drug benefits. These expenses are covered, subject to deductibles and co-payments, by the City's major medical coverage. The City feels that, all-in-all, the Union will receive adequate benefits by getting the same prescription drug benefits as are presently enjoyed by the Fire Fighters.

For the Union

The Union contends that the problem involved in this situation is primarily the effect on the morale of the Police Officers if they are unable to obtain the same benefits as those enjoyed by the Command Officers. It does not dispute the City's allegation that costs are rising while revenues are falling; but it does argue that, especially since the City is self-insured for major medical and prescription drug coverage, the additional cost is very minor.

Countering the City's argument that the Command Officers received the prescription drug benefit because they gave up part of the pay increase they would otherwise have received; the Union states that in negotiations they gave up an outstanding grievance for overtime pay. It does not, however claim that the giving up of the grievance was a quid pro quo specifically for the prescription drug rider.

It is the Union's position that if what the City gives to another unit of public safety employees should be taken into account

in the decision as to what the police officers should receive, that unit should be the Command Officers, employees who were brought up through the ranks of the police officers where they spent the bulk of their time performing the same or similar duties. On the other hand, it contends that fire fighters do not perform similar duties and have little in common with the police officers.

On the effective date of whichever proposal is awarded by the panel, the Union argued that making it January 1, 1988, the provision would be unfair to employees who could be forced to retire before that date. It was established that only one police officer might be affected by this possibility. In its Post-hearing Brief the City states: "The parties have additionally agreed (posthearing) that any retirees between July 1, 1987 and January 1, 1988 will be covered by the prescription drug rider awarded by the Panel effective January 1, 1988."

DISCUSSION

One of the factors which Act 312 requires the panel to consider in deciding a case is the stipulations of the parties. Hence it is consistent with the intent of the Act to honor the stipulation of the parties that only the evidence offered at the hearing be considered in arriving at this decision.

There is no question but that the City has the lawful authority to enter into the contract with the Union including whichever proposal the panel decides is appropriate. '

Obviously it is in the best interest and welfare of the public in the City of Muskegon to obtain the services of the police department for the least amount of money as long as there is no loss of quality in those services. Realistically, however, it is clear that in times of rising costs of living more money has to be paid out to maintain service without loss of quality. The question is, how much more is reasonable. The uncontradicted testimony of the City established that with its rising costs and diminishing revenues, it will have to cut other services if the Union's proposal is granted. In this situation, it is the conclusion of the panel that other services should not have to be cut if the benefits enjoyed by the Union compare well with those of other employees performing similar services and with other employees generally. The only other employees mentioned on the record whose benefits were compared to those represented by the Union were the fire fighters and the command officers. According to the wage schedules set forth in Joint Exhibit #1 and Union Exhibits #3 and #4 the wages of the police officers much more closely paralleled those of the fire fighters than those of the command officers. The panel further concludes that the responsibilities of the police officers are similar to those of the fire fighters in that both groups deal directly with the public in matters of safety. While the command officers have come up through the ranks, in their present positions they have less direct contact with the public and are charged with greater responsibilities. Because of this difference in their duties and responsibilities as well as their greater experience, the Panel concludes that the command

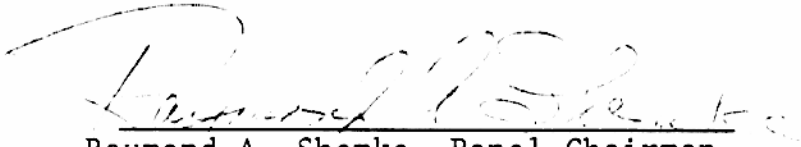
officers are entitled to expect, and should receive a differential in wages and/or other benefits over and above those of police officers and fire fighters.


The panel believes that the question of morale is properly raised as a factor to be considered in an Act 312 arbitration, but that, for the reasons stated in the preceding paragraph, the argument that the morale of the police officers will suffer if the Union is granted its proposal is not persuasive. Indeed, it seems more likely to the panel that the prospect of greater benefits as a reward for excellence in loyal service would be more likely to boost morale than the feeling that there is very little to be gained by being promoted into the command officer level.

DECISION AND AWARD

For the reasons set forth above, the last offer of the City of Muskegon is adopted:

The City will continue the prescription drug plan (a prescription drug rider similar to that provided to the IAFF Local No. 370 - Firefighters) to those who retire after January 1, 1988 and their spouses until the retiree attains age sixty-five.


Raymond A. Shemke, Panel Chairman


Michael M. Knowlton, Employer-appointed
Panel Member

Union-appointed

Panel Member

SEE ATTACHED DISSENT
KENNETH M. GONKO
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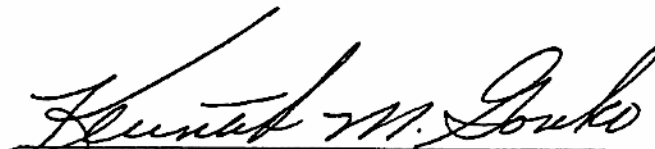
TEAMSTERS, STATE, COUNTY and
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DISSENT

The Union respectfully dissents. The decision by the arbitration panel is wholly without foundation and is supported by no evidence in this record. The prescription rider at issue - that being the difference between the two riders - only affects employees over 65 years of age. Not a single employee in this unit who will retire in the next four years will even reach that age for at least 4 years. It is inconceivable, then, that any decision can be premised on economic loss since the employer will have none for at least four (4) years.

Beyond that, though, the employer showed no proof over age 65 that any cost was involved. They claimed that this benefit was already paid under master medical. If that is so, shouldn't the fact that the most elderly retirees need the convenience of a prescription card and immediate recoupment of money laid out, rather than mailing it to the City under master medical and filling out forms, override the City's arguments here? The Union believes it should.

For these and other reasons, the Union respectfully
dissents.

A handwritten signature in cursive script, reading "Kenneth M. Gonko". The signature is written in dark ink and is positioned above the printed name.

Kenneth M. Gonko

FOR TEAMSTERS, LOCAL 214

9-4-87