603

Dec. 11/8/95

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION

IN THE MATTER OF

TOWNSHIP OF NORTHVILLE

-and-

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN

MERC CASE NO. D93 D-0600

Arising pursuant to Act 312,
Public Acts of 1969, as amended

Northville Township

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ACT 312 AWARD

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APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman
Paul W. Coughenour, Employer Designee
Gerald Radovic, Union Designee

FOR THE EMPLOYER

Paul W. Coughenour,
Attorney at Law

FOR THE UNION

William F. Birdseye,
Representative

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

UNION'S LAST BEST OFFER

Article XXXVII
PENSION

37.7: Effective [date of award], the Employer shall take action to replace the existing defined contribution plan by participating in and providing benefits under the Municipal Employees Retirement System (MERS) on behalf of members of the bargaining unit, or adopt a qualified defined benefit homerule pension plan equivalent to MERS standard benefits and optional benefit program B-3 F50 (25) and FAC3.

Pension - Defined Benefit Plan to be effective [date of award]

Wherefore, the Final Offer of Settlement of the Union is tendered in good faith and upon careful consideration.

EMPLOYER'S LAST BEST OFFER

The Charter Township of Northville proposes as its last best offer to amend Article 22.9 to read as follows:

> In addition to their regular wages, all full-time members of the bargaining unit shall be made a part of the Employer's pension plan administered by Manulife. Any and all questions regarding application, eligibility or interpretation of the plan shall be subject to approval by Manulife.
>
> Effective April 1, 1994 the Employer agrees to contribute fifteen (15%) percent of the employee's annual compensation to the plan.
>
> Employee contributions will be voluntary. Employees may contribute a percentage in accordance with the pension plan and federal law.
>
> The Employer agrees to obtain a long term disability insurance rider which will insure the costs of the Employer's contribution to a disabled employee's pension contribution during the period of said long term disability.

On December 9, 1993 the five command officers in Northville Township filed for an Act 312 arbitration. The impartial chairman was selected on January 21, 1994 and a pre-hearing was held on February 9, 1994. An arbitration hearing was held with the Township offices on June 8, 1995 followed by a panel meeting on August 28, 1995. Thereafter last best offers and comprehensive post-hearing briefs were submitted by the parties.

BACKGROUND

The parties have reached settlement on all issues except for the pension modification sought by the Union. Currently, the command officers have a defined contribution plan, which means that the Employer is bound to place a percentage of payroll into an account each year that is invested through the Manufactures Life Insurance Company. In its last best offer, the Township proposes to retain the defined contribution plan, but to increase the contribution rate to 15% from 14% of payroll.

The Union in its last best offer seeks MERS B-3 F50 (25) and FAC 3; this means that member would receive a defined benefit set at 2.25 % of FAC multiplied by years and months of credited service. The cost to the Employer of this plan has been estimated by the MERS actuaries to be 16% of payroll. In the alternative, the Union asks for a homerule plan that is equivalent to the MERS B-3 F50 (25) and FAC 3.

The panel is required to apply Section 9 of Act 312. That provision requires consideration of the following:

a. The lawful authority of the Employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

d. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
   (i) In public employment in comparable communities.
   (ii) In private employment in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost of living.

f. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Under Detroit v. DPOA, 408 Mich 410 (1980) the panel is not required to afford equal weight to each of the Article 9 factors.

Comparables

The Union cites the following as comparables:

Canton Township
2. Livonia
3. City of Northville
4. City of Novi
5. City of Plymouth

The Employer cites the following as comparables:

1. Brownstown Township
2. Chesterfield Township
3. Plymouth Township
4. Van Buren Township
5. Redford Township

General Considerations

The five command officers include one captain, one lieutenant, and three sergeants. There are 65 regular full and part-time employees within the Township. Currently, all Northville Township employees, including the POAM patrol officers, are covered by the Manulife defined contribution plan.

POSITION OF THE EMPLOYER

The Township asserts that the consideration of MERS is either an illegal or permissive subject of bargaining, which is beyond the authority of the Act 312 panel to award. It is emphasized that a homerule plan was never presented prior to the LBO, and no supporting evidence was provided. Also, it is maintained that the Township must vote to join MERS, and that therefore the panel cannot order it to do so.

The Township's principal argument is that MERS is not a legal option because 10% of a municipality's employees must be included in a MERS plan, and the command officers represent less than 10% of the Township employees. MCLA 38.1541 (3) states

> A municipality shall not participate under this act unless on the effective date of participation 10% or more of all employees of the municipality are included as members of the retirement system. However, a municipality which includes less than

10% of all municipal employees as members of a retirement system of this act may participate if the municipality has elected to include only individuals first hired after the effective date of the municipality's participation.

The Township argues that PERA does not supersede the 10% rule because the 10% standard was established after PERA. Also, it is asserted that because MCLA 38.1541 (3) is more specific than PERA, it is applicable. Various Michigan cases are cited in support of the Employer's position including Irons v. 61st Judicial District Court Employees, Mich App 313 (1984) and Council No. 23 Local 1905 AFSCME v. Records Court Judges, 399 Mich 1 (1976).

The Employer contends that the 10% rule and the requirement of an affirmative vote by the Township board precludes adoption by the panel of the Union's last best offer.

Additionally, internal comparability is argued to support the Employer's position insofar as all of the Township employees currently have the same defined contribution plan, with approximately the same contribution rate.

The Union's external comparables are argued to be unrepresentative based upon population, population density and SEV. The Employer's comparables are said to be all townships and closer in the relevant criteria. It is noted that only two of the Employer comparables have defined benefit plans.

The overall package for the bargaining unit is said to include a 4% increase in 1993, 1994 and 1995 and a 5% increase in 1996. This package is argued to be the same as the one achieved by the POAM patrol officers.

The Township argues that officers can expect a 30 year payout under the present plan to approach the B4 benefit, provided officers retire at age 55. The Township also suggests that the national trend is for defined contribution plans. It is further argued that it is inappropriate to split the

patrol and command officer pension plans, and that a small group could be excessively volatile in costs.

The 1% additional expense for MERS is said to be excessive. Also, it is noted that the bargaining unit, under its last best offer, would keep its defined contribution benefits in addition to the benefits under the MERS plan. The Employer further argues that there is no practice of splitting off a small group of employees into the MERS plan. Finally, it is contended that the parties have bargained for a defined contribution plan for many years.

POSITION OF THE UNION

The Union asserts that four of the six Employer comparables have a defined contribution plan; the remaining two are in MERS. Three of the Union's comparables are in MERS; one has a defined contribution plan and one has a city ordinance plan comparable to B-4 with FAC 3 and F50.

When part-time employees are considered, it is suggested that the unit may meet the 10% test. Even if it doesn't, it is argued that PERA supersedes the 10% MERS statute. Local 1318 of the IAFF v. City of Warren, 411 Mich 642 (1981) is cited as requiring this result.

Finally, the equities are strongly argued to support the Union's position.

DISCUSSION

Section 9 (A), The Lawful Authority of the Employer as Related to Section 9 (H), Concerning Collective Bargaining and Arbitral Issues

Whether the MERS plan is a permissive or mandatory subject of bargaining is not properly considered in an analysis of the Section 9 factors; it is something that is necessarily dealt with prior

to a consideration of the Section 9 factors, since it is clearly within the lawful authority of the Employer to consider a MERS plan. Similarly, it is clearly within the lawful authority of the Employer to adopt a MERS plan, even if it would require a vote of the Township's governing board.

The crucial issue is the one concerning the Employer's lawful authority to adopt MERS based upon the 10% employee rule found in MCLA 38.1541 (3). That provision says that a community shall not participate in MERS unless 10% of the employees are in the system; the record fails to prove that the command officers represent 10% of the relevant Northville Township employees.

Therefore, the MERS statute would deny the Township legal authority to adopt MERS unless PERA supersedes MCLA 38.1541 (3). I decline to make an outcome-determinative ruling based upon Section 9A of Act 312.

That is because a ruling of the panel based only upon Section 9A is far from final. If the Employer prevailed based upon Section 9A, the Union could go to court and possibly win years in the future. Similarly, if the Union prevailed based upon Section 9A, the Employer could go to court and again win several years later.

The result in either case could be a severe disruption in the pension system and the retirement plans of the affected officers.

In the absence of either a declaratory judgment decision or an attorney general opinion on the applicability of the 10% rule, it would be inappropriate under Section 9 (H) to make the outcome of this case hinge on the applicability of the 10% rule: The uncertainty of the ultimate viability of the decision makes a definitive ruling under 9 (A) inappropriate under Section 9 (H).

On that point, an award in favor of the Union would not be expected based upon a consideration of Section 9 (H). If I award MERS to the Union, either MERS or the Township might

seek to block implementation of the plan. This could lead to confusion and uncertainty in the pension system. It would not be expected in collective bargaining that the parties would adopt a provision that would create a lawsuit; similarly, it would not be expected that an Act 312 arbitrator under Section 9 (H) would adopt a provision that could lead to extensive litigation and uncertainty.

Finally, based upon the language of the 10% provision, it would appear that the 10% rule would preclude the Township's membership in MERS. PERA may possibly supersede this statute, but under Section 9 (H) it would be necessary to have either a declaratory judgment action or an attorney general opinion before a MERS provision was adopted with less than 10% of the municipal employees.

As a result, Section 9 (H) would not support an award for the Union.

Article 9 (H) and The Homerule Offer

The Union offers a homerule proposal as an alternative to MERS, so long as the homerule plan is equivalent to the MERS proposal. However, evidence pertaining to a homerule plan wasn't presented at the hearing. The MERS expert, Alan Sonnanstine, suggested that a homerule plan would be more expensive than MERS. In the absence of financial data concerning the cost of a homerule plan, and faced with the suggestion that it would cost more than the 16% for the MERS plan, it would not be expected under Section 9 (H) that a homerule plan would be adopted in this proceeding. Moreover, there are no details provided concerning the homerule plan: An award of a homerule plan would leave the Township with no blueprint for implementation. Thus under Section 9 (H) a homerule plan should not be awarded.

Section 9 (C): The Interest and Welfare of the Public and the Financial Ability of the Unit of Government to Meet These Costs

The MERS expert, Alan Sonnanstine, testified that a MERS plan for command officers and a defined contribution plan for patrol officers could lead some patrol officers to decline promotions in order to stay within the defined contribution plan. It would be contrary to the best interest of the public to have recommended officers decline promotions in order to stay within the defined contribution plan. Further, Mr. Sonnanstine indicated that with two pension plans, the MERS plan could eventually become closed, which would cause extra expense for the Employer. This would affect the financial ability of the Employer to pay the costs of the Union's proposal. Also, a five member group could expose a MERS plan to extreme financial volatility. Again, this could cause a financial hardship to the Employer.

Therefore, Section 9 (C) would not support the Union's offer.

Section 9 (D): Internal and External Comparability

All of the Township has the defined contribution plan. Therefore, internal comparability supports the Employer.

External comparability is not a factor that requires any weighting, given the importance of the other factors of the Act in this particular proceeding. As a result, a determination of the applicable comparables will not be made.

Section 9 (F): The Overall Compensation

The Union's last best offer would cost the Employer at least 1% over the package accepted by the patrol officers. It was not shown on this record that the agreed upon contract for the command officers is out of balance so as to require an additional 1% cost to the Employer. Consequently, Section 9 (F) favors the Employer.

Additional Section 9 (H) Considerations

There was testimony that it is unusual to have a small MERS group within a municipality that is covered by a different plan. Therefore, it would not be expected that either in collective bargaining or arbitration an employee group would be split so as to create a small group of MERS employees.

Summary

Under the Section 9 factors, the Employer's last best offer should be awarded.

AWARD

The Employer's last best offer is awarded.

Mark J Glazer — Dated: 11/8/95

MARK J. GLAZER, Chairman

Paul W Coughenour — Dated: 11-3-95

PAUL W. COUGHENOUR, Employer Designee
CONCURS: ✓

_____ Dated: _____

GERALD RADOVIC, Union Designee
DISSENTS: _____

AWARD

The Employer's last best offer is awarded.

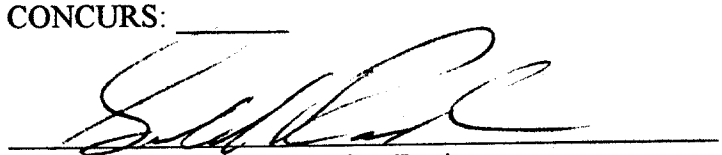
Dated: 11/8/95

MARK J. GLAZER, Chairman

Dated: _____

PAUL W. COUGHENOUR, Employer Designee

CONCURS: _____



Dated: 11/6/95

GERALD RADOVIC, Union Designee

DISSENTS: ✓