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STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
DETROIT OFFICE

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

Statutory Arbitration between

MERC Case

City of Oak Park

No. D93 F-0918X

-and-

Police Officers Association of Michigan

OPINION AND AWARD  
(DATE) Sept. 21, 1994

Arbitration Panel  
Stanley H. Brams, chairman  
Joseph Fremont (for the City)  
Kenneth E. Grabowski (for the POAM)

Hearing Dates  
Starting May 3, 1994  
ending June 23, 1994

ADVOCATES;  
William Birdseye (for the POAM)

Burton R. Shifman (for Oak Park)

APPEARANCES:  
For the Union:  
Ann Maurer  
Donald Gundy  
Kevin Loftis  
James Grindem

For the City  
Gerald Tuzinowski  
Amy Sullivan  
Glenn R. Seifert, Jr.  
Dorothy D. Cheesbro

This is a proceeding under Act 312, Public Acts of 1969 of Michigan as amended, requiring compulsory arbitration as a procedure for avoiding strikes by such municipal employees as policemen and firemen.

In a prehearing conference on April 13, 1994, the parties identified the issues as follows:

- Pensions: Normal age and time in service
- Pensions: Multiplier factor in setting rates
- Pensions: Maximums
- Promotions to Detective
- Duty disability
- Performance evaluating

The matters involved and the Panel's decisions are based on the testimony, the exhibits, and the final offers of the parties. They are here taken up in the order presented at the hearings.

PENSIONS: (This issue was momentarily complicated by a hangover matter involved in the earlier agreement. The arbitrator was asked to rule, prior to the then-oncoming arbitration, whether pensions could be at issue at all. The arbitrator ruled they could. That preliminary decision is appended to the end of this section.)

Comparisons were drawn, often in minute detail, between the formulas used by Oak Park and other Oakland County municipalities chosen by the parties as comparable. (POAM named Berkley, Beverly Hills, Bloomfield Hills, Farmington and Huntington Woods; Oak Park designated Berkley, Beverly Hills, Bloomfield Hills, Centerline, Farmington, Fraser, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Woods, and Huntington Woods).

Testimony and exhibits on this subject demonstrated that there are all but endless variables in comparing total pension packages. To begin with, all packages put employment length into their formulas for figuring benefit amounts--but based in some instances on the average of certain past years, in others an average of the highest years of pay, etc. And in some cases a ceiling was specified on the total years involved; others specified a floor. Then came the multiplier aspect--the amount of pension per designated year of employment, stated as a percentage. Some made provision for Social Security; others did not. Some plans called for a specified input by the employees, and this amount varied. So many factors were involved that comparisons of one plan against another might well have required the mathematical genius of an Einstein to arrive at cost or benefit comparisons.

Moreover, the basics in pension size determination--length of service, pay rates, and multiplier--should not be considered by themselves. The evidence noted other aspects and modifications as well, even though relatively less major. Including them made it clear that pension shape and size is affected by all the factors, major and minor. All of them interrelate with each other. None exists in a vacuum.

The POAM's final offer covered the three pension matters thus:

"Provision shall be made for the voluntary retirement of any non-covered (Social Security) member at age 50 years or over provided that the member has ten (10) or more years of service credit. Effective (date of award) any non-covered member may elect unreduced, voluntary retirement after 25 years of service credit regardless of age.

"Effective (date of award) the maximum shall be increased to 84% of the Final Average Compensation.

"Effective (date of award) the multiplier shall be increased to 2.8% of Final Average Compensation times number of years of credited service."

The City's last best offer would rid negotiations of comparison with the Michigan Employees Retirement System, as referenced in the Award below. Moreover, any panel decision to change the three pension factors at issue would intrude into the bargaining process. All elements which were used to arrive at the POAM pension formula were involved with the others. Modifying one, two or all three issues disputed here could unbalance the formula reached by past negotiations between the parties. Beyond that, and surely highly important, is the finding that pensions of Oak Park safety officers appear fairly in line with those in comparable communities. The ruling must run against POAM's last best proposals, and in favor of the City's position for eliminating a troubling hangover issue of past bargaining.

DECISION ON THE THREE PENSION ISSUES; The City's position is supported. Its language is that "in view of the very high pension benefits received by members of the union as a result of the extremely high wages and other compensation received by its members from the city of Oak Park resulting in exceedingly high final average compensation, Section 32.11 of Article XXXII be deleted in its entirety."

This returns the pension formula for POAM members to the other terms covered in the Oak Park-Oak Park Public Safety Officers Association contract effective to June 30, 1994.

STANLEY H. BRAMS  
24500 Southfield road  
Southfield, MI 48075

April 21, 1944

RE: MERC case D93 F-0918

City of Oak Park

-and-

Police Officers Assn. of Michigan

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#### P R E L I M I N A R Y     F I N D I N G

The arbitrator has been asked to determine what pension issues raised by the Police Officers Assn. of Michigan in this proceeding can be considered in the oncoming arbitration.

Article XXXII, Paragraph 11 of the present agreement between the parties says that pension negotiations can continue under certain conditions. The conditions applicable here, briefly stated, include (a) actuarial study of costs of moving the Oak Park pension system into the Michigan Employees Retirement System (MERS); (b) if savings are thus achieved after including (i) a 25 and out clause and (ii) 50% of Blue Cross for retirees, as presently funded, "the entire issue of pensions will continue...open; and (c) there will be full negotiations on any additional changes or improvements in the pension system" (with these to provide levels "no less than...under the current pension system").

The Union asked for arbitration on three specifics-- normal age and service, maximum benefit, and multiplier. Determination on these issues must be based on whether transfer of the pension plan to MERS, including 25 and out and continuation of present Blue Cross benefits for retirees, can achieve savings. The arbitrator, at this point, has no evidence that this can be achieved, so he cannot rule until the actuarial findings are entered into the proceedings.

FINDING AND DECISION; If actuarial studies demonstrate savings in the proposed transfer to MERS under the conditions cited, arbitration can proceed on the "entire issue of pensions."

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Stanley H. Brams, Arbitrator

4

DUTY DISABILITY; The work of public safety officers may at any time become hazardous. A police officer or fireman may suddenly have to face a situation where he stands at risk, not only as to injury but as to life itself. The risks can be in many forms. Testimony involved the case of one policeman investigating a burglary and walking a roof in the dark, seeking to see whether any suspects were hiding there. The roof had two levels; the officer did not realize this and fell to the lower level, incapacitating himself.

Oak Park practice provides that if a public safety officer is injured and unable to function in departmental duties, he is offered a city job if one is available. Past examples were cited showing that in those cases the jobs offered were at lower pay levels, and, moreover, could eventually result in pensioning at lower levels than provided to a covered public safety officer under the POAM contract.

To cover this situation, the City's last best offer referred to Article XXVII, Section 27.1 of the 1991-94 contract, and provided that "Section 27.1 of Article XXVII be deleted and in view of the very high duty disability payment provisions resulting from the City of Oak Park's extremely high wages and other compensation included in final average compensation, the following be substituted:

"Duty disability will be in accordance with the provisions for duty disability found in the pension system provisions of the Charter of the City of Oak Park, if any, and the ordinances promulgated pursuant thereto which remain in full force and effect."

An open-ended sort of situation described in the testimony-- maybe a job, maybe at lower pay scales--is not a worthwhile remedy for an employee whose livelihood can be jeopardized by an incident occurring at any time while performing duties always potentially injurious or even fatal. He falls in a far different category than do other city employees whose work is not inherently dangerous. That difference must be recognized in disability compensation of a special sort. POAM's last offer is embodied in the language below:

DECISION ON DUTY DISABILITY; Effective with the date of this award, when any employee is disabled in the performance of his/her duties as a public safety officer and the employee's injury or illness is work-

9

6

compensable, as defined by Michigan Workers' Compensation Act, such employee shall immediately report any illness or injury to his/her immediate supervisor who shall note same in writing and take first-aid treatment as may be recommended, or waive such first-aid, in writing. The employee shall receive full pay, wages and benefits for the duration of disability but not to exceed one (1) year. Any Worker's Compensation payments received by the employee shall be returned to the Employer. Such employee shall suffer no loss in sick time or benefits during this period.

After one year, if an employee is found to be totally and permanently incapacitated from full, unrestricted duty as a public safety officer, the employee shall be placed on a duty disability retirement within the pension system. The process of medical determination of duty disability shall be that as defined in the pension system at May, 1994.

Any employee receiving a duty disability retirement shall be paid at least sixty-six and two-thirds (66-2/3) of his/her base pay at the time of retirement or an amount calculated as regular retirement, whichever is greater. An employee shall remain on duty disability retirement until he/she reaches what would have been normal age necessary for regular, unreduced retirement. At such time the officer's benefit shall be recalculated based on final average compensation at the time of disability retirement utilizing years of service plus years the employee has been on duty disability retirement. There shall be no offsets of any kind to a duty disability retirement benefit.

If an employee is killed in the line of duty, the employee's spouse shall receive an amount equal to duty disability benefit payments as described above.

These provisions shall be retroactive for employee Barry Kraemer from date of seniority.

PERFORMANCE EVALUATION; Testimony on performance evaluation involved long expositions of how the present system of evaluation was developed for Oak Park's public safety people, of whether the POAM had influence in arriving at the final details (it claimed it didn't), and--most important--of what should properly should be the

7

The panel was not impressed with some aspects of the evaluating system, which became available for installation in early 1993 but was held in abeyance due to controversy over the bargaining agreement. It might seem that overmuch emphasis was given to report writing (for example, incorrect spelling was a negative factor in grading an officer's performance). The point system, too, left panel members wondering why the writing of a traffic ticket should create more point credits than interrupting a robbery.

The City's position, briefly stated, would give the director of public safety broad powers in creating and operating a system of evaluation. Its final offer was as stated in the Award below. The final POAM proposal called for the City to end performance evaluations altogether. It was evident that neither side was quite happy with the existing system.

This is a complex issue, and both sides recognize that fact. It is evident that it will be a subject of contract bargaining which is now on the verge of beginning, if indeed it has not already started. For that reason, the Award is the practical one.

AWARD: The past formula as specified in Article XX of the past agreement is continued with the exception of the second sentence, calling for mediation and, possibly, arbitration. The balance of Article XX provides for naming of a committee to develop a revised form of performance evaluation; and until agreement is reached on that subject the current system will continue.

PROMOTION TO DETECTIVE; This subject has been argued for several years by these parties. Appointments to detective were permanent before 1987. In contract negotiations that year on a new contract the issue deadlocked, and the sides agreed to arbitrate. That was done. The ruling was that future vacancies would be filled by appointment. But the controlling fact is that the arbitration award was overturned. So the question has continued unsettled.

The Union seeks to have appointments to detective made permanent, as before 1987. It testified that the present system allows the Director of Public Safety to choose candidates for detective jobs without examination, and that he can remove them at will. Instead of this system, it wants formalization of the promotion process.

2

The City, meanwhile, sees reasons for flexibility in selection of detectives, and equal freedom to return them to patrol duty. The Director of Public Safety pointed out that the Commission on Law Enforcement Accreditation recommends flexibility in transfers from patrol work to detective--and vice-versa. He noted that men promoted to detective are not always happy in the new job, and that when a man moves from detective back to patrolman he carries with him added know-how that helps him do his job better. The City's last offer is that "Section 19.4 of Article XIX be deleted in its entirety," which would establish all PSO II positions at the discretion of the director of public safety for an indefinite term.

Let it be observed that the issue of promotion to detective is classified as an economic issue. Oak Park practice has been to pay an eight percent addition while an officer serves as a detective, whether temporary or permanent. The department Director testified there was no intention of ending that additional payment. (The Commission report, meanwhile, recommends that there be no difference in pay between patrolman and detective, so as to make transfer easier). This would seem to eliminate the economic aspects in these promotions, leaving procedure in promotions as the only issue.

With the eight percent added payment apparently not in contention, the only issue then involved is procedure in promoting. The positions of both the City and the POAM have merit. On balance it appears that the last best offer of the City would fit the situation somewhat better than the POAM proposal.

AWARD: Because the current system of promotion to detective appears to have been working satisfactorily, it should continue. The City's position is sustained. Elimination of Clause 19.4 of Article XIX, as the City seeks, is affirmed; it refers only to the 1991-1994 agreement, soon up for renegotiation.



AWARD SUMMARY

THREE PENSION ISSUES:

Approved (Chairman) Stanley W. Hays Dissented (POAM) LO Q  
(City) Joseph W. Fremont

DISABILITY PAY:

Approved (Chairman) Stanley W. Hays Dissented (City) Joseph W. Fremont  
(POAM) LO Q

PERFORMANCE EVALUATION:

Approved (Chairman) Stanley W. Hays  
(City) Joseph W. Fremont  
(POAM) LO Q

PROMOTION TO DETECTIVE:

Approved (Chairman) Stanley W. Hays Dissented (POAM) LO Q  
(City) Joseph W. Fremont

SEPT. 21, 1994