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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

Before compulsory arbitration panel, pursuant to Act 312, Michigan Public Acts of 1969, as amended.

IN THE MATTER OF:

PONTIAC POLICE SUPERVISORS ASSOCIATION,

Union,

-and-

Michigan State University

LABOR AND INDUSTRIAL

CITY OF PONTIAC,

RELATIONS LIBRARY

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STATE OF MICHIGAN
DEPT. OF EMPLOYMENT RELATIONS
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Pontiac, City of

Sandra Silver 4-26-82 Employer.

Members of the Panel:

Harold J. Warell, City of Pontiac

J. Douglas Korney, Pontiac Police Supervisors Association

Sandra G. Silver, Arbitrator

Issue Presented for Arbitration:

Supplemental retirement annuity payments based upon cost-of-living increases and/or improvement in the retirement annuity.

Hearing Data:

Petition for Arbitration - February 25, 1981

Pre-Arbitration - October 22, 1981

Meeting of Panel, re: comparables - December 18, 1981

Hearings - January 26, 27, and February 19, 1982

Final Offers Submitted - February 19, 1982

Final Briefs Submitted - March 30, 1982

Silver, Sandra G.

BACKGROUND

The Pontiac Police Supervisors Association and the City of Pontiac entered into a collective bargaining agreement commencing July 1, 1978, to continue through June 30, 1981. At that time, as part of the contract, it was specifically agreed by the parties that in January, 1981, there would be a contract re-opening for the purpose of permitting bargaining on supplemental retirement annuity payments based on cost-of-living increases and/or an improvement factor in the retirement annuity. Such a contract re-opener did occur, but the parties were unable to reach agreement in negotiations. The parties continued bargaining under the auspices of a mediator, but mediation was unsuccessful, and a petition for compulsory arbitration, pursuant to Public Act 312 of 1969, as amended, was submitted to the Michigan Employment Relations Commission. Subsequently, Sandra G. Silver was appointed as arbitrator to serve as Chairperson of the panel, consisting of J. Douglas Korney for the Association, and Harold J. Warell for the City of Pontiac.

The Association is a small union of approximately 35 members, consisting primarily of police supervisory personnel

of the rank of sergeant, lieutenant, or captain. Until January 1, 1981, the members had paid eight percent of their wages as a contribution to the pension/retirement fund. As part of the last contract, the City began paying six percent of the employee's pension contribution January 1, 1981, leaving only two percent as the direct employee contribution from current wages. The Police Officers' Association had received a four percent contribution from the City beginning July 1, 1980, which became the full eight percent in 1981.

Because of the high rank of the members of the supervisory unit after promotion on the job, the membership average age is higher than that of the union representing the rank and file. Thus, the issues of retirement, pensions, and annuity are important considerations for the Association in arriving at any contracts. It is also noteworthy that members of the Association do not receive social security and no deduction for FICA taxes are made from their wages.

Under terms of the present collective bargaining agreement, the pension received by the unit is based upon a percentage of the final average earnings of the retirees. In addition, a two percent improvement factor is paid for a maximum of

ten years, or a maximum of twenty percent. The Association has made a demand for an increase in this improvement factor but was unable to reach agreement with the City. The last best offers made by the parties, and submitted to the panel, are:

"That the City will provide unit members retiring on or after January 1, 1981, annually, three percent of their base retirement annuity. Such sums shall be cumulative for a maximum of fifteen years. This provision is to be effective January 1, 1983. Such sums shall be paid annually thereafter." Offer of the Association.

"Effective July 1, 1983, employees retiring after January 1, 1981, shall receive an annual two percent of their base retirement, cumulative for twelve years, and after the thirteenth year, one percent will be added for a maximum of twenty-five percent. In addition, the City will begin paying the employees two percent pension contribution on July 1, 1983.

Effective July 1, 1984, employees retiring after July 1, 1984, shall receive an annual two percent of their base retirement cumulative for thirteen years for a maximum of twenty-six percent." Offer of the City of Pontiac.

DISCUSSION

Public Act 312, providing for compulsory arbitration of labor disputes and municipal police and fire departments, includes the basis on which the arbitration panel is to make its decision. The lawful authority of the employer, the City of Pontiac, is undisputed in this case, and the parties have stipulated that the only issue before the panel is that of an improvement factor on pension benefits. They further stipulated that this was done pursuant to the agreed upon contract re-opener established in the present collective bargaining agreement.

Other stipulations of the parties, although procedural in nature, effect the determination to be made under other factors mentioned in the statute, particularly as to the comparison to the wages, hours, and conditions of employment of other bargaining units performing similar services. It was agreed that all contracts of employment of other employee bargaining units within the City of Pontiac would be used by the arbitration panel as comparable units, and further, that the parties limited their presentation of other comparables to five governmental units employing similar personnel.

Much of the testimony at three days of hearing, and a majority of exhibits submitted into evidence, were directed at the issues of the financial ability of the City of Pontiac to meet the increased costs of any improvement in the pension benefits, the improvement factor of pension benefits paid by other units of government, and the effect of increases in the cost-of-living on the pensions received after retirement.

The City of Pontiac offered the testimony of the budget administrator as to the financial condition existing at this time. The exhibit prepared by the administrator (City Exhibit 6) showed an existing general fund shortfall of \$44,600.00. By testimony of current budget information, the shortfall of expenses over revenues as of December 31, 1981, was predicted to be \$453,000.00. In the breakdown shown in various city departments as to cost, anticipated revenues and assignment of tax dollars, a number of savings were demonstrated, largely by failure of the City to fill a position which had become vacant. The savings represented were achieved by a reduction in labor cost.

Although newspaper clippings were introduced into evidence as demonstrations of the possible cuts in state

revenue sharing to the City which may occur, these reports were largely speculative. The state budget had not officially been adopted at time of the hearing, and the percentages of state and federal revenues received by the City could not be determined with any accuracy. However, it is a matter of general knowledge, of which the arbitration panel could hardly fail to take notice, that the general poor economic conditions in the State of Michigan, the budgetary crisis at the state level, and the depressed economy of the area do exist. The high unemployment rate, decreased business revenues, and general malaise of the auto industry are facts which cannot fail to impact on every tax payer and municipality in this geographic area.

Cross examination of the budget administrator did firmly establish that the shortfall in the general fund was a projection and not an accomplished fact, although that projection was based on all available financial information. Counsel was unable to refute the basic proposition that under present available information, there would be a substantial deficit for the year unless expenditures were cut. It is true that the City had showed a surplus in revenues over expenditures in some past years, but the likelihood of that occurring in this fiscal year appeared most improbable from all evidence submitted.

In an attempt to contest the City's ability to pay the increase sought by the Association, there was considerable testimony and some documentary evidence of other expenditures made by the City. Among these expense items, for example, was the remodeling of new offices for City commissioners. None of the witnesses appeared to have specific knowledge of the cost of these items, (variously estimated at \$70,000.00), other than that they had been lawfully allocated by the proper authority.

It is not within the powers of this arbitration panel to pass judgment on the manner in which the duly elected officials of a municipality exercise their authority. The municipal government has the authority to exercise discretion in meeting the obligations of the City, and maintaining governmental operations. The panel can take cognizance of the fact that the City has incurred obligations, receives certain revenues, and authorizes certain expenditures. The propriety, or wisdom, of those decisions does not come within the purview of authority granted this arbitration panel.

In a similar vein, evidence was offered as to certain employment agreements that were entered into between the

City of Pontiac and management personnel. These contracts covered severance pay and benefits to be paid in a lump sum upon the employee's termination. One such contract had been performed by the City, resulting in a substantially large lump sum payment to a former employee. The Association argued that the cost of these benefits, if the City had to perform on all of the contracts involved, was considerably greater than anything being demanded by the Association in pension/benefit increases. It was argued by the City that such payments represented accumulated obligations of the City to the employee in the form of overtime, vacation pay, and pay-out of accumulated pension funds. These benefits for management employees are different than those received by the Association, as were the original salaries, etc. received.

No evidence was offered by either party to show precisely what the breakdown was. The panel only knew that one contract had resulted in payment to the employee of Forty-Three Thousand (\$43,000.00) Dollars, without any knowledge as to what that sum represented. Much of it may have been withdrawal of the employee's contribution to the pension fund not additional funds from the City. In presenting the City's line budget, no item on the employment contracts appeared to be added to make

up the estimated deficit. If there had been monies budgeted for this purpose, the Arbitrator could then have compared the benefits being given the management employees to that being demanded by the Association. This was not the case and the individual contracts were thus of doubtful relevance as a comparable in consideration of the issue of an improvement factor in retirement benefit. Since no expense was shown in the budget, these contracts also have no effect in determining the City's ability to pay. It is, therefore, impossible to deduce anything further from the separation agreements entered into by the City. If there is a cost incurred by the City by so doing, it does not appear on the budget forecast submitted into evidence.

The only information submitted as to the cost of the Association's demand was Union Exhibit 16. Surprisingly, the City, at no time, presented any evidence as to the increased cost to the City of the increase in the improvement factor on pension benefits. Thus, the Arbitrator accepts as uncontroverted the Union's estimate of cost at Sixteen Thousand Six Hundred Twenty-Four and 34/100 (\$16,624.34) Dollars annually. However, that cost is estimated on the basis of the present retirees in the system. There was no

actuarial data offered as to the cost to the City as the number of retirees receiving pensions increased.

When an analysis is made of the comparable communities submitted by both the City and the Association, one fact emerges immediately. There is no group covered which receives a three percent annuity improvement factor as demanded by the Association. Some do provide for a two percent with an unlimited cap, but none reach the levels requested by the Union. In a case by case analysis, the five cities submitted by the City of Pontiac as comparable, shows no payment of any improvement factor in Grand Rapids, Bay City, Flint, and Kalamazoo. It should be noted that the submission of City Exhibit 10 showing no improvement factor was demonstrated to be incorrect as it applies to Saginaw. In Saginaw, there does appear to be an appendix to the contract which describes such a cost-of-living increase. The City had been careless in reviewing these matters, and it did not check the contract reference.

Viewing the comparable units of government submitted by the Union, in the most favorable light, the same conclusion is inescapable. The maximum showing is an improvement factor of two and one-half percent, or a two percent with an unlimited

cap. The Association demand is for three percent with a fifteen year cap, considerably more than any of the comparables referred to.. If the Association had made its demands similar to the best of those which it had submitted for consideration as evidence of comparable worth, then the choice of the arbitrator would have been simpler. It did not, and the demand is greater than those shown to the panel.

A review of the contracts in effect with other units within the City of Pontiac produces the same results. The City has, in its last best offer, presented a package equal to or better than anything presently being received by other units. However, it should be noted that the Association received no increase on this issue in the last contract. Additionally, the Association members continued their employee contribution which some other units were not making at all. This contribution was reduced to two percent, and is still in effect. The Association, in its last best offer, offers to continue the employee contribution, but did not present evidence as to how this would defray the estimated total cost to the City of the increased benefit being paid. This arbitrator is keenly aware of the fact that the Association, in settling for a re-opener at a later date, continued its

contribution, operating on the assumption that the benefit would be more readily available later. Unfortunately, the economy, the revenues received by the City, and the comparable contracts entered into with other collective bargaining agents has not fulfilled that possibility.

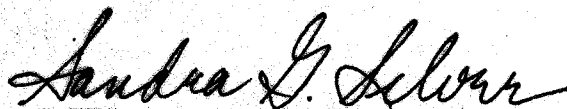
Just as the Arbitrator has taken judicial notice of the economic conditions existing at the present time in the State of Michigan, she is also able to take notice of the continuous eroding effect of recent years' inflationary cost-of-living on pensions. The testimony offered by the actuary and the exhibits developed by him amply demonstrated what effect inflation has on pension benefits. This is of understandably great concern to the Association members. However, that factor alone cannot provide sufficient basis for acceptance of the benefit demand and last offer of the Association. The economic condition of the City's budget and the comparable amounts paid by other cities and by Pontiac to other units make acceptance of the City's offer necessary.

It seems reasonable to expect that if a greater increase in this benefit of an improvement factor in pensions is to be gained by the members, that this would have to be negotiated into the next contract. This arbitration panel only has

authority to rule as between the two last best offers on a contract re-opener as of January 1, 1981. Negotiations on the 1982 contract are already in progress, and further adjustments may be possible.

AWARD

For all of the above reasons, this Arbitration panel finds that the last best offer of the City of Pontiac is most fully supported by the evidence and is accepted.

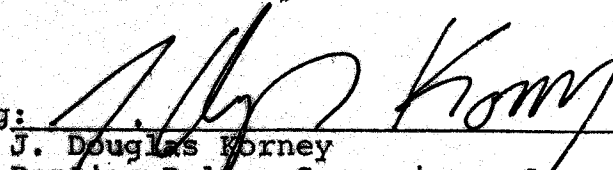


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Dissenting:



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April 26, 1982