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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION
PUBLIC ACTS OF 1969 AS AMENDED

In the Matter of the Arbitration Between:

CITY OF PORT HURON

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

MERC Case No. D85 G 1873

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Port Huron City of

OPINION AND AWARD

Chairman of Arbitration Panel	:	<u>ELLIOT I. BEITNER</u>
Employer Delegate	:	DOUGLAS R. ALEXANDER
Labor Organization Delegate	:	WILLIAM BIRDSEYE
Representing Employer	:	JOSEPH CLARK
		WILLIAM J. SMITH
Representing Labor Organization	:	WILLIAM BIRDSEYE
Pre-Hearing Conference	:	March 7, 1986; Detroit
Hearings Held	:	April 23, April 29 and
		June 12, 1986; Detroit
Executive Session of Panel	:	July 31, 1986
Opinion and Order Issued	:	September 2, 1986

BACKGROUND:

The prior 312 Arbitration between the parties before Arbitrator George Roumell resulted in the execution of a three-year contract with a reopener for the third year for the purpose of renegotiating wages, COLA, and other option items; that reopener for the period of July 1, 1985 through June 30, 1986 is the subject of this 312 Arbitration.

Beitner, Elliot

At the pre-hearing conference on March 7, 1986, the parties agreed to waive any time requirements of Act 312 and further stipulated that all issues not contained in the petition have been settled or waived by the parties. At the Executive Session on July 31, 1986, the parties stipulated that the Union would be allowed to file an amended last offer in order to make the wage request for meter maids conform to its general wage request. The parties filed a written stipulation allowing this amendment, and the Union promptly filed its amended last offer on wages. The Final Offers of the Union and the Employer were discussed at the Executive Session; all the issues to be decided by the Panel are economic in nature:

1. Wages
2. COLA
3. Pension - Multiplier
4. Pension - Normal Retirement Age
5. Pension - Escalator
6. Pension - Annuity Withdrawal

Because all of the issues to be decided are economic, the Panel is required to accept the last offer of settlement made by one or the other party for each issue. The Panel was therefore charged with the responsibility of determining which Final Offer for each issue is most consistent with the factors listed in section 9 of Act 312 PA 1969, as amended. That section reads:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement

or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations 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) 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.

WAGES AND COMPARABILITY:

The Final Offers for Wages for the period of July 1, 1985 through June 30, 1986 were:

City's Final Offer:

<u>Classification</u>	<u>A Start</u>	<u>B 6 Mos.</u>	<u>C 1 Year</u>	<u>D 2 Years</u>	<u>E 3 Years</u>
Detective	24007	24563	25134	26304	27531
Juvenile Officer	24007	24563	25134	26304	27531
Traffic Safety Officer	24007	24563	25134	26304	27531
Patrolman	23049	23582	24127	25246	26422
Dog Warden	20546	21016	21499	22486	23523
Meter Attendant	12551	12813	13082	13634	14215

Reflective of: 5% across the board, wage increase for all bargaining unit members retroactive to July 1, 1985.

Union's Final Offer:

<u>Classification</u>	<u>A Start</u>	<u>B 6 Mos.</u>	<u>C 1 Year</u>	<u>D 2 Years</u>	<u>E 3 Years</u>
Detective	24579	25147	25732	26930	28187
Juvenile Officer	24579	25147	25732	26930	28187
Traffic Safety Officer	24579	25147	25732	26930	28187
Patrolman	23597	24143	24701	25847	27051
Dog Warden	21036	21516	22011	23021	24083
Meter Attendant	12849	13118	13393	13959	14553

[Represents 7.5% across-the-board increase].

Wages to be retroactive to July 1, 1985 on all hours compensated.

Comparability:

It is generally acknowledged that a key factor, and perhaps the

most important factor, listed in Section 9 of Act 312 is that of ascertaining "comparable communities in public employment." The Union argues that the County of St. Clair and the contiguous city of Marysville are the most similar comparables to Port Huron. These entities like the City of Port Huron offer full law enforcement services 24 hours a day, 7 days a week. The Union asserts that these communities are located within a common labor market, have geographic homogeneity, and share law enforcement duties. The City argues, however, that the Michigan Municipal League's comparables, formerly known as Area II Cities* should be used. All of these Area II Cities are located in the lower peninsula of Michigan:

Port Huron
Bay City
East Lansing
Holland
Jackson
Kentwood
Midland
Muskegon
Burton
Portage

This group includes all cities with a population of between 25,000 and 50,000.

* The City pointed out that the term "Area II Cities" is no longer correct insofar as MML data are concerned, but the term is used here to refer to those cities previously designated as Area II Cities.

The Panel has concluded that the comparables argued for by the City are of greater applicability than those urged by the Union for several reasons. The parties have traditionally bargained using the MML Area II Cities as comparables. The City has been involved in two Act 312 Arbitrations with its firefighters and one prior 312 Arbitration with the police officers' union and in each case the parties used the Area II Cities as comparables. Furthermore, they discussed the Area II Cities throughout most of their negotiating on this current contract before arriving at an impasse.

Specific factors such as population, SEV (State Equalization Value), SEV per capita, general fund budget, police department budget, and other important characteristics establish the similiarity of the Area II Cities with Port Huron.

A model prepared for the City by Industrial Relations Inc. using 13 criteria, including those listed above, is of some persuasiveness in determining that the Area II Cities are the most appropriate comparables. Certainly, the Union is correct in arguing that models can be established using other criteria that would lead to an opposite conclusion. The Panel, however, has determined that the 13 criteria established, while not absolute in nature, are relevant standards to determine the comparability of various municipalities. In this regard it should be noted that Port Huron's population of 33,981 approximates the average population of the Area II

Cities, which is 33,296, and the average number of patrolmen in Port Huron (33) parallels that for the average of the comparable cities (34.9). The general fund budget and the police department budget for the City of Port Huron also approximate the averages shown for Area II Cities, and the police budget's percentage of the general fund also approximates the average.

Having concluded that the City's comparables are the most relevant, the Panel does not disregard completely the argument of the Union with regard to its suggested comparables. There may be merit to the concept of a discrete labor market having developed in the City of Port Huron and County of St. Clair. Perhaps greater weight could have been afforded the Union's proposed comparables if a stronger factual record had been developed with regard to Port Huron as a discrete labor market and the University of Michigan report prepared by President Harold Shapiro had been offered as an exhibit. The fact that the Union considered only the contiguous city of Marysville and the County of St. Clair and excluded Algonac, St. Clair, and Marine City (all cities within St. Clair County) weakened its argument to consider this area as a discrete labor area. The three cities omitted had significantly lower wage rates. Their sizes, while smaller than Marysville, were closer to Marysville's size than Marysville is to either the City of Port Huron or the County of St. Clair. If St. Clair County and the City of Port Huron are to be considered a discrete labor market, it is probably logical to include Algonac, St. Clair and Marine City.

The Panel is also persuaded that the differences between a city and a county are greater than the similarities, despite the fact that deputy sheriffs and Port Huron police officers perform some shared duties and sometimes work in overlapping areas. The services performed within the County are spread out over a larger population base, and the police budget represents a smaller portion of the general fund than does that of the Port Huron police budget. The Union's argument that St. Clair County and Port Huron should be considered comparables ignored the factors generally used: population figures, State Equalization Value, SEV per capita, and other factors traditionally used to establish the comparability of communities. The Panel therefore concludes that the hearing record did not establish St. Clair County as a comparable to the City of Port Huron.

Wages:

City's Final Offer : 5 percent across-the-board wage increase, retroactive to July 1, 1985, for all bargaining unit members.

This offer would result in a salary for a Patrolman of \$26,422 after three years.

Union's Final Offer : 7-1/2 percent across-the-board wage increase, retroactive to July 1, 1985.

This offer would result in a salary for a Patrolman of \$27,051 after three years.

The Union's last offer as amended by stipulation requests a 7-1/2 percent across the board wage rate for all police officers. Traditionally, the police and City have used the classification of a patrolman at the top step as a benchmark for wage comparisons. The Union's proposal calls for a 7-1/2 percent increase, or a wage rate of \$27,051 for a patrolman, while the City's final offer calls for a 5 percent pay raise, or \$26,422. It should be noted that the Union, in making its last offer on wages, appears to have backed away from its own suggested comparables. A top step patrol officer in Marysville as of July 1, 1985 earns \$28,965, and a deputy sheriff, \$29,606. Using these communities as comparables would have resulted in a significantly higher last offer by the Union, an amount in excess of \$29,000. In essence, then, the Union appears to have accepted -- at least for the purposes of its final offer on wages -- the comparables urged by the Employer.

The average patrolman's pay on July 1, 1985 for the Area II Cities was \$26,906. The Union does point out, however, that as of January 1, 1986 the wage rate in East Lansing had been raised from \$26,561 to \$27,622, and the contracts for Bay City, Burton and Muskegon had expired. Presumably, new contracts will provide raises, and the pay for these communities for the first six months of 1986 will be higher than for the last six months of 1985. The average pay for the settled contracts for these Area II Cities as of January 1, 1986 was \$27,716. The only way to get a truly accurate picture of the wages as of January 1, 1986 would be also to include the new contract

amounts for Bay City, Burton and Muskegon, but apparently those had not been determined. In any event, reference to the January 1, 1986 figures for Area II Cities shows that the average pay for a patrolman during the period of July 1, 1985 though June 30 1986 would be somewhat in excess of \$26,906 and might even be in excess of the Union's proposed offer of \$27,051. In view of these figures, the Union's proposed offer is more consistent with the average wage of the comparable communities than is the City's offer of \$26,422.

The City points out in addition, however, that the gross wages listed in the salary schedules do not consider the amount of the pension contribution made by police officers in the various comparable cities: the average pension contribution made by individual officers in the Area II Cities is 4 percent, and for Port Huron is only 2 percent. The City argues that the Port Huron policeman thus actually takes home wages 2 percent higher than the actual salary rate listed and that 2 percent should be added on to the Port Huron patrolmen officers salary to obtain an accurate picture. There is, however, a fallacy in this reasoning.

Firstly, the parties have traditionally considered actual wages during negotiations and not wages based on a reduced employee pension contribution. The two Port Huron firefighter cases presented make no reference to the amount of pension contribution in determining an appropriate salary rate for its officers. It is true that there is a reference to this difference in pension contribution in the last Act 312 Arbitration, but that

award, as was explained by both parties, was actually a mediated award, the parties agreeing to the amount of wages and the arbitrator developing a rationale for the amount awarded. Secondly, and more importantly, the parties have traditionally bargained separately on the issue of pensions. The amount of pensions, the multiplier used, the years of service required to obtain a pension, and other factors have historically been bargained for separately from the actual wage rate. Here, the parties bargained over pensions and agreed to a pension plan that provided for personal contributions of only 2 percent per officer. The Union, having won that lower personal contribution base in the pension provision, should not now be penalized in having that base taken from or added on to its wage rate when comparing wage rates between communities. The appropriate time to bargain with regard to the percentage of the pension contribution is when pensions are being negotiated.

Lastly, the issue of pensions is, of course, also before this Panel to be decided. In considering an appropriate percentage for payroll contributions to pensions, it is appropriate for the parties to consider the fact that the City has enjoyed a reduction in its payroll contribution because of either changes in actuarial assumptions or because of the investment success of the pension fund. There may also be other arguments as to why that 2 percent rate is equitable. It is concluded that the pension contributions should not be considered in determining the appropriate wage rate. While the Panel accepts the Employer's comparables as the most

accurate, it is held that the Union's last offer of 7-1/2 percent most nearly conforms with the average wages paid in comparable communities. Having concluded that, however, is not necessarily dispositive of which final offer to accept.

Comparability is not the only factor to be considered; also of relevance is the City's ability to pay. In this case, the City has indicated that negative financial consequences could flow from granting the Union's requests on wages, pensions, and COLA but has not actually pleaded an inability to pay. In fact, the City has a budget surplus in excess of \$700,000 and did budget \$50,000 during July 1, 1985 fiscal year to cover an anticipated 5 percent wage rate increase. What is involved then, at most, is an additional \$25,000 for the period in question, and this amount is clearly within the City's ability to pay.

Of more importance is the City argument that it has negotiated a 5 percent wage increase with all its other bargaining units, including the firefighters, and therefore the police should also be required to accept the same amount. There is certainly something to be said for consistency in wage negotiations. A raise to one bargaining unit can come back to haunt the City in negotiating with other units. Act 312 Arbitration recognizes a distinction, however, for firefighters and police officers with regard to negotiating collective bargaining agreements. The police and firefighters are granted a right to have binding arbitration, and this exception for

police officers and firefighters was created legislatively in recognition of the importance of the services these employees provide to communities and the undesirability of work stoppages. No compelling reason has been shown to restrict an award to police officers to the 5 percent awarded. Therefore the Union's last offer is accepted because it is most consistent with the wages paid in comparable communities.

The Panel accepts the Union's Final Offer and orders a 7-1/2 percent wage increase across the board to all bargaining unit members retroactive to July 1, 1985.

COLA:

City's Final Offer : No change from present contract.

Union's Final Offer : Add to Article XIV: "Cost-of-living will be reinstituted effective July 1, 1985 for employees covered by this Agreement."

The three year contract resulting from the mediated Act 312 award contains a COLA freeze for the first two years and a reopener for the July 1, 1985 through June 30, 1986 period. The Union argues that the purpose of COLA is to make sure that the value of an employee's wage rate does not diminish because of inflation. To support its argument, the Union prepared an exhibit showing the reduced value of wages from the inception of this collective bargaining agreement to the present. The Union argues that the cost to grant such COLA retroactively would be only \$133.90.

The flaw in the Union's argument, as the Panel sees it, is that it compares the wage rate from the beginning of the collective bargaining agreement with the increase in the cost of living rather than restricting its consideration to the period in dispute between July 1, 1985 and June 30, 1986. The parties bargained away COLA for the first two years of the collective bargaining agreement. Presumably, at least part of the consideration given the Union for bargaining away COLA was the wage rate that was negotiated, a wage rate of 6.7 percent for the first year of the contract and 4 percent for the second year.

It should be pointed out that neither of the Union's proposed comparables have COLA as a benefit, and only one of the City's listed comparables has COLA. This fact demonstrates a pattern among municipal employers to move away from paying such an allowance. The purpose of giving a cost of living allowance is to protect employees during periods of inflation, and the history of inflation over the past few years -- especially during the period in question -- shows that inflation has not been a significant factor.

For the period in question, July 1, 1985 to date the inflation rate has been minimal. In fact, from July 1, 1985 through April 1986, there has been only a 1/2 of 1 percent rise in the cost of living index. The wage rate awarded of 7.5 percent will more than adequately compensate police officers for this slight rise in the cost of living. COLA entitlements for the future are, of course, subject to future negotiations. There has been no persuasive

showing, however, of any reason to reinstate COLA for the third year of this collective bargaining agreement. The Panel accepts the City's Final Offer, which offer is to deny COLA entitlement, and make no change in the present contract.

PENSION - MULTIPLIER:

City's Final Offer : No change in present contract.

Union's Final Offer : Change the multiplier from 2% for the first 25 years of service plus 1.5% for years of service in excess of 25 years to 2.2% times the first 25 years of service plus 1.5% of years of service in excess of 25 years.

In determining the appropriate pension multiplier, the complete pension systems and the benefits provided in the various comparable communities must be considered. The pension amount actually paid is not based simply on the multiplier used; varying amounts are used by these communities as the final annual compensation figure, and this changes the final figure that is to be paid to any particular retiree. When all factors are taken into consideration, Port Huron has one of the better plans because it uses as the wages in the multiplier the highest three consecutive years of the last five years when wages are presumably at their highest.

Also included are lump sum payments for accrued sick and vacation time. This inclusion of sick and vacation time results, according to Actuary

GERALD SONNENSCHNEIN, in an increase of 8 percent in pension benefits.

The pension benefits paid to Port Huron officers are consistent with those paid in comparable communities; the benefits are higher than most of the listed cities. Jackson and Midland do have higher multipliers, but the 2 percent multiplier applied in Port Huron is equal to or higher than the multiplier used in all of the other communities. Several cities use the multiplier for only the first 25 years also, but Port Huron pays 1.5 percent for years over 25.

If the multiplier is isolated from the rest of the factors that make up the pension plan, the result can be confusing, and an increase in this multiplier could result in significantly increased pension costs. With regard to costs, it has also been noted and taken into consideration that Port Huron officers pay only 2 percent into the pension, whereas employees in other comparable communities pay an average of 4 percent. The Port Huron pension plan compares favorably with the plans of other Area II Cities, and the City's last offer is therefore accepted.

The Panel accepts the City's Final Offer that no change be made in the 2 percent multiplier in the present contract.

PENSION - NORMAL RETIREMENT AGE:

City's Final Offer : No change from present contract.

Union's Final Offer : Effective (Date of Award), the age for unreduced, normal retirement for employees covered by this agreement shall be lowered to from age 55 to age 50.

This provision is theoretical in nature because the parties stipulated that for the period of July 1, 1985 through June 30, 1986 no officers would be affected. Moreover, no compelling reasons were presented to suggest that the age should be changed during this third year reopener. More appropriately, normal retirement age is a subject for future bargaining. In such future negotiations, the Union's argument that police work is a young man's profession could be considered. As to this reopener, the comparables offered by the Union - the City of Marysville and St. Clair County -- have a current retirement age of 55 years. One community has a lower age rate, but that does not go into effect until January of 1987, well beyond the period in question for this award. For these reasons, the City's proposal is accepted.

The Panel accepts the City's Final Offer that no change be made in the normal retirement age of 55 in the present contract.

PENSION - ESCALATOR:

City's Final Offer : No change in present contract.

Union's Final Offer : A pension escalator added to that original amount which shall be an additional 2% each year on each July 1 following the date of retirement up to a cumulative maximum escalator of 10%.

Actuary SONNENSCHNEIN, who is employed by Gabriel, Roeder, Smith & Company, testified that the Union's offer of a 2 percent increase for each year following an officer's date of retirement would result in increased costs of 6.27 percent of the payroll contribution (City 10). This proposed change would be the most expensive of the Union's final pension offers: costs would be \$80,052 in the first year. Costs for a combination of two or more of these pension proposals, he said, would most likely be more than the costs he projected for the individual proposals.

The Union's argument that this 2 percent per year increase would cost less if amortized over a period of 40 years, rather than over the 24-year period used in SONNENSCHNEIN's calculations, is unpersuasive. This approach can be compared, as the City points out, to amortizing the cost of a car that is expected to operate for only five years over a ten-year period. At the end of five years you must pay for a car you no longer have the use of and must purchase another car for transportation. The present figures are based on a life expectancy of 25 years after retirement for police officers; the average non-police retiree has a life expectancy of 15 years following retirement. A 40-year amortization would not be prudent, according to SONNENSCHNEIN.

The Union's brief incorrectly states that the payroll contributions made by the City are greater for other City employees than for police personnel. The exact opposite is true. The City pays approximately 14.4

percent of payroll to cover pension contributions for its regular City employees, including Social Security payments, and pays in excess of 18 percent, or about 4 percent more, for its police officers. Actuary SONNENSCHNEIN also pointed out that police officers generally retire early to go into less stressful jobs and thus build Social Security benefits and a second pension.

None of the Area II Cities offers such a pension escalator, and only one of the two Union comparables, Marysville, offers such a benefit. According to City Exhibit 16, an excerpt from a survey of retirement systems in 1985 for Michigan cities, less than 10 percent of this group offered a pension escalator benefit. It should also be noted that Marysville, one of the few cities giving a pension escalator benefit, contributes 32.57 percent cost of payroll to police officers' pensions, an extraordinarily high contribution. No showing has been made of any compelling reason to add the significant additional cost of a pension escalator.

This decision is made with the awareness that a Port Huron police officer is required to contribute only 2 percent of his pay to the pension plan, while those in comparable communities contribute considerably more. Police officers in St. Clair County and Marysville, the Union's proposed comparables, both contribute 5 percent. The average contribution for Area II Cities is 4 percent, twice the amount paid by Port Huron officers.

The Panel accepts the City's Final Offer that no change be made in the present contract to add a pension escalator.

PENSION - ANNUITY WITHDRAWAL:

The parties have agreed to an annuity withdrawal and to accept the language proposed by Gabriel, Roeder, Smith & Company as contained in a letter dated July 17, 1986 from GERALD SONNENSCHN. That language reads:

Annuity Withdrawal. Effective [date of award], an employee who (has not retired and) is eligible to receive pension benefits may withdraw his/her contribution to the pension system including interest attributable to such contributions, provided that in such event, the amount of his/her pension benefit shall be based only on the City contributions, and therefore, the pension benefit provided for such employee shall be proportionately reduced by actuarial calculation to reflect withdrawal of the employee's contribution and interest. The amount of the reduction will be determined based upon the mortality assumption adopted by the Retirement Board and the interest assumption published by the Pension Benefit Guaranty Corporation (for immediate annuities to be used for single employer plan termination calculations) and effective for PBGC purposes for the month of retirement.

This language is thus to be made a part of the contract.

CONCLUSION:

The Panel orders the following:

ISSUE 1 - WAGES:

Union's Final Offer.

ISSUE 2 - COLA:

City's Final Offer.

ISSUE 3 - PENSION - MULTIPLIER:

City's Final Offer

ISSUE 4 - PENSION - NORMAL RETIREMENT AGE:

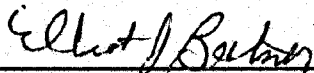
City's Final Offer

ISSUE 5 - PENSION - ESCALATOR:

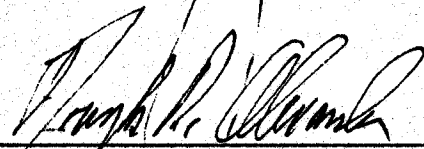
City's Final Offer

ISSUE 6 - PENSION - ANNUITY WITHDRAWAL:

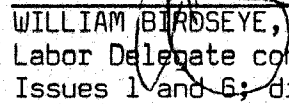
The parties both adopt the language drafted by Gabriel, Roeder, Smith & Company to allow police officers to withdraw their contributions from the pension plan.



ELLIOT I. BEITNER, Chairman
Panel of Arbitrators



DOUGLAS R. ALEXANDER,
City Delegate concurring on
Issues 2, 3, 4, 5, and 6;
dissenting on Issue 1



WILLIAM BIRDSEYE,
Labor Delegate concurring on
Issues 1 and 6; dissenting on
Issues 2, 3, 4, and 5