

660

Sub. MSA
11/3/95

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION

IN THE MATTER OF

CITY OF PORT HURON

MERC Case No. D94 A-0116

-and-

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

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN

* * * * *

ACT 312 AWARD

* * * * *

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

NOV 10Y - 6 AM 10 33

RECEIVED

Port Huron, City of

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman
Douglas Alexander, Employer Designee
Gerald Radovic, Union Designee

FOR THE EMPLOYER

Andrew T. Baran

FOR THE UNION

William F. Birdseye

UNION'S LAST BEST OFFER

Effective December 15, 1995 the employer and the employees share the cost of the E-2 benefit.

EMPLOYER'S LAST BEST OFFER

The status quo remains in place and there shall be no change in the pension language of the contract which is set forth in paragraph 41.1.

BACKGROUND

The Port Huron Command Officers petitioned for an Act 312 arbitration on December 19, 1994. The unit consists of five sergeants and five lieutenants.

A pre-hearing conference was held on March 2, 1995, followed by the arbitration hearing on August 8, 1995. An executive session of the panel delegates was held on October 5, 1995.

The only issue before the panel is the E-2 pension escalator, which provides for up to a 2.5% COLA increase for retirees. Command officers currently have the B-4 retirement benefit, which provides for 2.50% of a member's FAC multiplied by years and months of service, with an 80% cap of FAC.

The parties have reached an agreement for a July 1, 1994 - June 30, 1998 contract, except for the present E-2 issue. Included in the provisions of the contract are wage increases of 3%, 3.5%, 4%, and 4%, a \$50.00 increase in the uniform allowance for each year of the contract, an additional vacation day starting January 1, 1995, and new optical and medical programs.

The cost of the E-2 benefit is approximately 3.49% of salary for both the Employer and the Command Officers.

The panel is required to apply the following factors found in Section 9 of Act 312:

- a. The lawful authority of the employer;
- b. Stipulation of the parties;
- c. The interests and welfare of the public and financial ability of the unit of government to meet those costs.
- d. Comparison of 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 communities generally:

In public employment in comparable communities.

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, continuity and stability of employment, and all other benefits received;
- g. Changes in any of the foregoing circumstances presented 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 determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact findings, arbitration or otherwise between the parties, in the public service or in private employment.

Pursuant to City of Detroit v. DPOA, 408 Mich 410 (1980)

the panel need not give equal weight to each of the section 9 factors.

COMPARABILITY

The Union proposes Marysville and St. Clair County as comparables. The City proposes: Bay City, Burton, East Lansing, Holland, Jackson, Kentwood, Midland, Muskegon and Portage.

The Union believes that its members must work side by side with its comparables, and that they are more representative than the Employer's. It further believes that Marysville and St. Clair County represent the relevant labor market as opposed to the Employer's comparables. The Union notes that Marysville has the E-2 escalator and St. Clair County has an escalator through social security.

The Employer argues that there is an extensive Act 312 history wherein its comparables have been awarded by arbitrators. It further asserts that its comparables are closer in SEV, population, size of department and other relevant factors that have been utilized by arbitrators.

DISCUSSION OF COMPARABILITY

Starting in 1980 arbitrators began awarding the old "Area II" cities, which were established at one time by the Michigan Municipal League. These cities are utilized by Port Huron in this proceeding. The Area II cities were awarded to the fire fighters in 1980 and 1983, to the police patrol in 1984 and 1986, to the firefighters in 1987, to the communication employees in

1988, and to the firefighters again in 1992.

particular significance is arbitrator Beitner's 1986 award involving the Port Huron Patrol Officers (MERC Case No. D85-G-1873). The arbitrator specifically rejected the Union comparables of St. Clair County and Marysville and accepted the Area II cities. The same arguments that were advanced in this proceeding were presented to Arbitrator Beitner, who nevertheless found the Area II cities to be the most comparable. The arbitrator noted, in part, that Marysville and St. Clair County were but two of several contiguous jurisdictions, but despite this, the Union had only presented Marysville and St. Clair County

The unequivocal holding of the various arbitration awards in Port Huron is that the Employer's comparables should be utilized. Further, it appears that the parties have used the Employer's comparables in bargaining for the present contract and earlier ones. Absent changed circumstances, the Employer's comparables should be utilized in this proceeding.

**SHOULD THE E-2 ESCALATOR BE AWARDED
WITH A 3.49% PAYMENT BY THE EMPLOYEES,
AND A 3.49% PAYMENT BY THE EMPLOYER?**

I can understand and appreciate why the command officers would want a pension escalator: as life spans increase, the purchasing power of a fixed pension is eroded by inflation. Nevertheless, as the parties understand, an arbitrator in a 312 proceeding must follow the statute: the arbitrator can't simply decide that a benefit is a good idea; there must be a legal basis for awarding it.

External Comparability

An important factor under Act 312 is section 9 (d) on a comparison of benefits in comparable communities. A review of the comparables reveals that of the nine comparables, only two have the E-2 escalator, and Burton limits this escalator to hires prior to July 1, 1994. Therefore, external comparability favors the Employer's last best offer.

Internal Comparability

The Union's key argument is that certain non-union employees, with salaries similar to police sergeants and lieutenants, will eventually enjoy a superior pension return because they have social security, which increases based upon the cost of living. The Union believes that the E-2 escalator will create parity with these non-union employees.

The City asserts that this unit could have signed up for social security 20 or 25 years ago, but it elected not to do so. Further, it is maintained that the non-union employees have the B-3 pension plan, which has a 2.25% multiplier as opposed to the 2.50% B-4 plan enjoyed by the command officers.

The City also argues that social security benefits are paid by the employees throughout their careers through payroll deductions; this deduction is not required for the command officers. Finally, the City contends that if the command officers had saved an amount equal to the social security deduction, they would have a greater benefit than that enjoyed by the non-union employ-

ees with social security. The City also sees the proposed cost of the E-2 benefit as being too high.

DISCUSSION OF INTERNAL COMPARABILITY

The cost to non-union employees for social security is in excess of 6% of salary. Therefore, the non-union employees have received less take-home pay prior to their retirement than the command officers. Upon retirement, the non-union employees will also initially receive less than the command officers due to the superior B-4 multiplier.

At some point, the total pension dollars will be greater for the non-union employees than for the command officers, due to the COLA aspects of social security. However, this doesn't mean that the B-3 plan plus social security is superior to the B-4 plan without social security.

A non-union employee retiring at 55 doesn't receive social security until age 62. This means that a command officer will receive a pension advantage for seven years due to the superiority of the B-4 plan. This monetary advantage, if invested, could be used to offset social security benefits.

Further, a command officer who wasn't required to make a payment for social security throughout his or her 25 year career, could have invested money that was equivalent to the social security deduction. This could have served as an offset to the social security benefit.

Based upon the record that was presented, it is not certain

that a B-3 pension plus social security, which is utilized by the non-union employees, is superior to the B-4 pension applied to the command officers.

Additionally, the non-union employees are not the only relevant group for internal comparability purposes. The Port Huron firefighters and the Port Huron police patrol officers both receive the B-4 pension benefit without an E-2 escalator.

After careful consideration, it must be concluded that internal comparability would not require the E-2 escalator.

A CONSIDERATION OF SECTIONS 9 (f) AND 9 (h)

Section 9 (h) requires the panel to consider factors normally considered in collective bargaining and section 9 (f) requires the panel to consider the overall package.

The cost to the Employer for the E-2 escalator is approximately 3.49% per year. The parties have already achieved a comprehensive contract, which includes wage and benefit improvements for the command officers. It was not shown on this record that the contract is out of balance so as to require an additional 3.49% cost to the Employer.

Therefore, sections 9 (f) and 9 (h) favor the Employer.

SUMMARY

For the foregoing reasons, the Employer's last best offer should be awarded.

AWARD

The Employer's last best offer to retain the status quo on pension language is awarded.

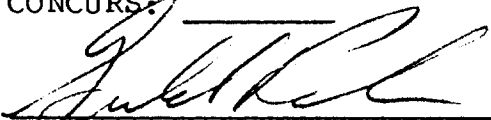


MARK J. GLAZER, Chairman

Dated: 11/3/95

DOUGLAS ALEXANDER, Employer Designee
CONCURS.

Dated: _____



GERALD RADOVIC, Union Designee
DISSENTS: X

Dated: 10/23/95

AWARD

The Employer's last best offer to retain the status quo on pension language is awarded.

Mark J. Glazer
MARK J. GLAZER, Chairman

Dated: 11/3/95

Douglas A. Alexander
DOUGLAS ALEXANDER, Employer Designee
CONCURS: X

Dated: October 23, 1995

Gerald Radovic
GERALD RADOVIC, Union Designee
DISSENTS: _____

Dated: _____