

679
STATE OF MICHIGAN

MAY 1 1984

EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

REDFORD TOWNSHIP,

D83 A 274

and

Arbitrator:

Benjamin Stanczyk

REDFORD TOWNSHIP FIRE FIGHTERS UNION
LOCAL 1206, I.A.F.F. AFL-CIO

APR 25 1984

OPINION AND AWARD

PANEL:

Benjamin C. Stanczyk, Chairperson
Ethan Vinson, on behalf of the Employer
Philip M. Reseigh, on behalf of the Union

APPEARANCES:

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On behalf of the Union

Redford Township of

IN THE MATTER OF STATUTORY ARBITRATION BETWEEN:

TOWNSHIP OF REDFORD,

-and-

Arbitrator:

REDFORD TOWNSHIP FIRE FIGHTERS UNION,
LOCAL 1206, I.A.F.F. AFL-CIO

Benjamin Stanczyk

OPINION AND AWARD

Redford Township Fire Fighters Union, Local 1206, I.A.F.F., hereinafter the "Union," is the recognized, exclusive bargaining representative of all employees of the Redford Township Fire Department below the rank of Chief, under applicable Michigan law (Act 336, Public Acts of 1947, as amended by Act 379, Public Acts of 1965, as amended, being MCLA 423.201, et seq; MSA 455(1), et seq).

On March 29, 1983 the Union initiated binding arbitration proceedings pursuant to Act 312, Public Acts of 1969, as amended (being MCLA 423.31, et seq; MSA 17.455(31), et seq) to resolve certain issues in dispute between the parties. The economic issues to be considered herein must be decided pursuant to Section 8 of Act 312, which states in pertinent part:

At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall:

1. Identify the economic issues in dispute.
2. Direct each of the parties to submit within such time limit as the panel shall prescribe to the arbitration panel and to each other, its last offer of settlement of each economic issue. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which in the opinion of the arbitration panel more nearly complies with the factors prescribed in Section 9 of the Act.

References to the Joint, Township, and Union's Exhibits will be referred to as "Jt. Ex. _____", "Er. Ex. _____" and "U Ex. _____" respectively, followed by the number of the exhibit. References to the hearing transcript will be designated as "TR _____" followed by the page number, except for the February 17, 1984 hearing which will be designated as "TR II _____" followed by page number.

Section 8 of Act 312 provides for a decision of the arbitration panel "as to each economic issue" separately. Thus, the panel may adopt the last best offer of one party on a particular economic issue and the last best offer of the other party on another economic issue.

The panel is not so bound as to the non-economic issue of safety manning, but may render a decision as to this issue which differs from the proposals made by the parties.

The arbitration panel derives its authority from Act 312, which was enacted by the Michigan Legislature in recognition of the fact that where police and fire fighters are denied the ability to strike by law, it is requisite to the high morale and efficient operation of such departments that an alternative, expeditious and binding procedure for the resolution of disputes be instituted as the quid pro quo for strikes or other job action by these public safety employees (MCLA 423.231; MSA 17.455(31)).

As provided by Act 312, the arbitration panel is comprised of a delegate chosen by each party to the dispute, and an impartial chairperson selected by the parties or by the Michigan Employment Relations Commission. The instant panel is comprised of the Chairman, Benjamin Stanczyk; Philip Reseigh, panel member selected by the Union; and Ethan Vinson, panel member selected by the Township. Hearings were held in this matter on various dates from June 21, 1983 to February 17, 1984. Last Best Offers were submitted by the parties to the Chairman on February 24, 1984.

The parties met in an informal conference in May 1983, and hearings were held on nine separate days beginning June 21, 1983 and completed on February 17, 1984; an executive session of the panel was held on March 30, 1984. During the time that hearings were in progress the parties were able to resolve most of the issues which gave rise to the labor dispute originally. The Panel was to decide:

Manning - Safety

Annuity withdrawal

Effect of Letters of Agreement.

During the proceedings 127 exhibits were submitted and testimony taken from thirteen witnesses.

SAFETY MANNING (NON-ECONOMIC ISSUE)

The question of how many firefighters should be on duty at all times is the most perplexing issue for the panel. It involves the question of safety of the employees, response time with consequent reduction of loss as result of fire and cost to the employing public.

The Township maintains three fire stations, and since 1970 has provided three men per engine company at all times. (U. Ex. 116). In addition there is one rescue unit with a two man crew, giving a total of eleven firefighters on duty at all times. In 1982, because of financial problems, and to avoid layoffs, the union agreed to a minimum of ten firefighters on duty (U. Ex. 3).

In its last best offer the township proposes to continue with three men per truck, but seeks to reserve unto itself the right to close stations as it sees fit. The Union seeks to maintain the status quo, so that ten firefighters would be on duty at all times. It should be noted that the crew of the rescue unit is made up of the lowest ranking in seniority firefighters.

The employer, Redford Township, is the most heavily populated unincorporated township in Michigan; it has a population of more than 58,000 spread over 11¼ square miles. (U. Ex. 17). It is primarily a residential community. In addition there are 122 industrial-commercial establishments, (U. EX. 9); plus there are nursing homes, nursery schools,

28 schools and 25 churches (U. Ex. 9). Redford Township is crossed by numerous thoroughfares and railroads, (U. Ex. 7) which impede travel to a fire and thus reduce response time. The nursing homes, hospitals, schools and churches provide special hazards because of the immobility of residents, and concentration of people. In short Redford is more than a bedroom community.

It is the conclusion of the Arbitrator that the status quo should be maintained. This resulted from a series of long and tedious bargaining sessions between the parties. The parties have lived with this agreement since March 1982. There was modification in July 1982 to provide (non-fire fighters) as dispatchers.

The Township's proposal would give rise to unlimited lay-offs and a virtual gutting of the fire department. The union's proposal does not hamstring the employer from having flexibility in the management of fiscal affairs of the community, but it does provide for minimum of safety in the fire department. The Township can close a fire station if it deems that proper; it can eliminate one or more trucks, but with ten fire fighters on duty it will have adequate personnel to fight fires and protect life and limb, to say nothing of the property.

The employer has the heavy burden of proving that an established practice should be changed by this arbitration proceeding. This the Township failed to do. The Chief of the Department was never called as a witness to support the employer's position. His absence must be interpreted as an admission that he does not agree with the position of his employers. In contrast, the Union presented testimony of Chief Marion Hollen (U. Ex. 73), a 35 year veteran of the Detroit fire department. He commented primarily on the Township's proposal to reduce manpower per truck from three men to two. In his opinion that would be a most dangerous practice and highly impracticable since the crew would be grossly inadequate to cope with any real fire. It is not necessary to quote his testimony here, but it suffices to say that firemen must work in pairs in a burning building, and

one man must be on the truck to man the pumper. Fire fighters need to be relieved every thirty minutes while fighting a fire. The neutral arbitrator places great weight on this testimony which stands unrebutted. U. Ex. 74 at pp 14-87 support this proposition.

The neutral arbitrator is not impressed by the Township's argument that a mutual aid agreement with adjoining communities is of great significance, since the time factor is crucial in fire fighting. The primary response force must be adequate to prevent loss of life to say nothing of property. Before another fire department can be called, all of the local manpower must be exhausted (U Ex. 115, p. 2).

It is most significant that of the comparable communities some 22 in number, 10 have the provisions which the union urges be retained. (u Ex. 99). The comparibles relied on by the employer, 12 in number, have a similar provision in six communities (E.Ex. 58).

The argument advanced by the township that minimum manpower requirements will result in greater overtime payments must be rejected out of hand since the evidenced adduced is to the contrary. (E. Ex. 55 and U. Ex. 47) show that only 1.5% of the fire budget or only .27% of the total budget was used for overtime in the fire department during a ten month period, January 1983 to October 1983. Some of this overtime resulted from the use of firefighters as dispatchers (U. Ex. 108). U. Ex. 110 would indicate that the comparable communities expended 2.7 times the cost of Redford for firemen's overtime.

There has been no showing that the Township is unable to pay for the minimum manning which the union seeks to maintain. The only argument advanced has been a political one, i.e. it would not be wise for the public officials to raise taxes. There are no legal obstacles to Redford having enough money to operate its governmental affairs efficiently. Sec. 9 of 312 does not give political expediency as a basis for an award, but it does give the factors which may be used in arriving at an award.

It is curious that the Township has undertaken one function which is not required by law; that is garbage collection and disposal at a cost of \$1,602,00 annually. The township levies only .5 mils for this function; by law it can levy 5 mils, or an additional \$1,200,000 per annum without a vote of the people. This is more than enough to bring the general fund balance into a realistic position.

U. Ex. 19, 84, & 86 show that the Townships tax burden is less than all but four of the comparable communities. A very small fraction of per capita income is spent for local taxes as compared to the similar communities in the area (E Ex. 87-88. Redford residents clearly do not pay too much in local taxes. The union's last offer to maintain the status quo in manning must be the award of this panel.

The Township relied heavily on testimony of Kenneth J. Kunkel, C.P.A. with the accounting firm of Plante and Moran, who has been the auditor for the employer for 15 years. (Test. Trans. Vol. 3, pp 336 et seq.). Reduced to its essence, Mr. Kunkel's belief is that the residents of Redford did not want to pay for more government, and feared that business conditions will not improve sufficiently to enable them to undertake a heavier tax load in the future. Sec. 9 of Act 312, (MCLA 432.239, MSA 17.455 (39) in par. (c) provides that the basis for findings, opinions, and orders under the act by the arbitration panel shall be based on the following factors as applicable:

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

It is not necessary to cite the entire statutory language here since it is in the briefs of both parties. However, it is the position of the arbitration panel that the Redford does have the ability to pay for the continuation of its manning practices for fire protection, as it has in the past two years; that any political factors are out weighted by the "interests and welfare of the public".

This panel is mindful of the fact the Redford has been selling tax anticipation notes each year for 15 years, all without any objection

from the State of Michigan. In this connection the testimony of the auditor is interesting. (TR pp 422 and 438). The township can extricate itself from its financial troubles by following his advice. The township should levy and collect \$400,000 per year more than it spends for the next 8 or 9 years to build up its general fund balance to an adequate figure, and thus avoid the annual sale of tax anticipation notes (TR p 348). The Township can levy enough additional millage immediately to pay for the fire fighting needs of the Township. (TR. p. 402). An additional .2 mills will produce \$120,000 per year and a change in garbage collection and disposal practices will eliminate an expenditure of \$1,602,000 per year. (TR. p 407).

There was some testimony offered that Township residents would support additional taxes in order to avoid cuts in fire protection (TR. p 514).

There is ample judicial precedent for the arbitrators to decide this issue. City of Alpena v Alpena Fire Fighters Association, 56 Mich App 568 decided that issue in 1974. The court sustained a finding by a panel under Act 312 "That the manpower status quo shall be continued (eight man shifts when no one is on vacation and seven man shifts when one is on vacation" p. 570. Similar agreements have been reached with 4 comparable communities, they include Allen Park, Ann Arbor, Pontiac, and St. Clair Shores. Also see U. Ex. 102. In addition Clinton Township has a minimum manpower provision (E. Ex. 125).

The union's last offer of settlement on this issue is resolved by adopting same as the award of this panel.

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that an alternative, expeditious and binding procedure for the resolution of disputes be instituted as the quid pro quo for strikes or other job action by these public safety employees (MCLA 423.231; MSA 17.455(31)).

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As should be clear to the arbitrator from the evidence presented at hearing from the standpoint of the individual Redford Township firefighter, there is no issue in this proceeding that is more critical than that of safety manning since it involves life itself. It is well-recognized that firefighting is one of the most hazardous, if not the most hazardous of occupations. The United States Fire Administration, an agency of the Federal Government reports that each year, 100,000 fire fighters are injured in the United States and between 160 and 175 firefighters die in the United States and between 160 and 175 firefighters die in the line of duty. (U. Ex. 74). The dangers are not only physiological, but also psychological. As further noted by the USFA:

By its very nature, firefighting is a high stress occupation. Firefighters are repeatedly subjected to rapid, unanticipated transitions from the friendly environment of a fire. Not only are the transitions extreme emotionally--from calm to crisis, from safety to danger-- but they are also physically extreme--from shirt sleeves to an inferno. (U. Ex. 74 at 45).

The dangers and stresses inherent in the job of firefighter will be present under the most ideal of situations. However, the risks can be reduced if the community gives its Fire Department what is required to perform the job. One of the most important of these requirements is

adequate manpower since firefighting is a team, not an individual effort, in which every member's efforts must be highly coordinated towards a common goal. The ability to respond to an emergency is a function of getting the right manpower on the right equipment to the scene of the emergency within the critical first few minutes of the fire.

Pursuant to Section 8 of Act 312, as amended, the Union hereby submits its last offer of settlement on the non-economic issue of safety manning. The Union's last offer is to modify Article XV, Company Strength (Manning) of the recently expired agreement, as follows:

At least ten (10) 24-hour personnel will be on duty at all times. When manpower is reduced below that required, for reasons of sickness, vacation, leave, or any other reasons, and there are no men available from other companies, the officer in charge shall call in an off-duty man to work the shift or remaining portion thereof; the member that is called in to work shall be paid at the hourly rate of the classification in which he is working, subject however, to Article XIII of this Agreement.

NOTE: Union and management shall work out a "call-in" procedure for purpose of maintaining company strength, and distributing overtime on an equal basis.

ANNUITY WITHDRAWAL

The union requests that at the time of retirement a fire fighter can be given the option of withdrawing all his contributions to the pension fund plus any interest earned. The Township objects merely on the grounds that such withdrawal would make the corpus of the pension small for investment purposes (TR. p 687).

The effect of this demand will be to make the pension of the fire fighter smaller. The argument that the pension fund becomes weaker because it is small as a consequence of

lump sum withdrawals of a members contribution does not carry much weight. In essence if an employee wants to have a smaller pension in exchange for a sum of money in hand, he should be allowed to do so. The language of the unions last best offer is adopted by this panel.

Any member who retires after the date of this award may irrevocably elect, prior to the effective date of retirement but not thereafter, to be paid the accumulated contributions standing to the member's credit - plus accumulated interest. Upon this election and the payment of accumulated contributions, the retiring member's monthly pension shall be reduced by an amount which is the actuarial equivalent of the sums withdrawn. The actuarial equivalent shall be determined on the basis of the interest rate established by the Pension Benefit Guaranty Corporation for immediate annuities, as of the first day of the fiscal year in which the annuity is withdrawn. A retiring member and his/her spouse, if any, shall, if possible, jointly participate in a meeting with township representatives prior to the election at which the effects of the annuity withdrawal will be explained. The parties agree that in any future proceedings in which the issue of adequacy of pension benefits comes into question, the parties will acknowledge, where appropriate, that the reason that a retiree's pension benefit has been lowered is because of his election of the annuity withdrawal option.

III

LETTER OF UNDERSTANDING

At the last day of hearing, the parties notified the arbitrator that they could not agree as to the continued inclusion of two letters of understanding relating to manpower in the new collective bargaining agreement. They agreed that this would be an issue to be resolved by the arbitrator. (TR.II at 60-61).

In its last offer, the Union first proposes that the January 29, 1980, Letter of Agreement (U. Ex. 2), which was

incorporated into the recently expired agreement by Article XXXV, Section 6 of that agreement, should remain incorporated into the new agreement in its entirety. The Union also proposed that paragraphs 4 and 5 of the March, 1982 Letter of Understanding (U. Ex. 3) be specifically incorporated in the new agreement. These paragraphs provide as follows:

4. Emergency Medical Training - Certified EMT-Fire Fighter levels will be maintained at functionally efficient levels for each unit. The 3 lowest certified seniority Fire Fighters will run the squad on a rotation basis, unless there are certified EMT-Fire Fighter volunteers to run the squad from each unit.

If any EMT-Fire Fighters are required to change units to meet the functioning efficient levels for each unit, there shall be no overtime or other costs to the Township involved in the moves.

EMT-Fire Fighters now in school shall continue their training in good faith and make an honest effort to become certified EMT-Fire Fighters.

5. Central Dispatch - As of July 1, 1982, the Fire Fighters' dispatching shall be conducted under the new concept of "Central Dispatch" and will not be done by Fire Fighters' Local 1206. It is anticipated that Central Dispatch will be manned by "persons trained in dispatching for Fire and Police from one central location."

The Township made no last offer on these issues. Accordingly, the panel has no option but to accept the Union's last offer and to incorporate the requested provisions into the agreement.

This agreement has been recognized by both parties and honored by its inclusion in the contract from 1980 to 1983. Thus long standing agreement will be honored by the panel and included in the new contract.

Paragraphs 4 & 5 of the Letter of Agreement of March, 1982 should be accepted because they were arrived at by good faith bargaining, honored by both sides and respected through their operation and useage. No real reason has been presented by the Township why the practices governed by this agreement will require a change in the next contract. This language should be part of the new contract.

Ethan Vinson

Ethan Vinson
Township Delegate

Dissenting

Benjamin C. Stanczyk

Benjamin C. Stanczyk
Panel Chairman

Phillip M. Reseigh

Phillip M. Reseigh
Union Delegate

Dated: April 6, 1984
Detroit, Michigan