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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CITY OF RIVER ROUGE

and

MICHIGAN FRATERNAL ORDER
OF POLICE, UNIT 1 (Patrol)

ARBITRATION AWARD
AND OPINION

MERC Case No. D83 I-2384
Act 312 Public Acts 1969 as Amended

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City of River Rouge

ARBITRATION PANEL

JOSEPH P. GIROLAMO, Chairman

CONRAD KREGER,
Employer Delegate

CHARLES W. WITHERS,
Union Delegate

EMPLOYER REPRESENTATION

ESLY B. WILLIAMS, Asst. City Attorney

UNION REPRESENTATION

JEROME SABBOTA, Attorney

Arbitration Hearings:

Dates: June 28, June 29 and August 1, 1984

Place: Offices of City of River Rouge, Michigan

Joseph P. Girolamo
JOSEPH P. GIROLAMO
1756 Penobscot Building
Detroit, MI 48226
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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CITY OF RIVER ROUGE

Act 312 Arbitration

and

MICHIGAN FRATERNAL ORDER
OF POLICE, UNIT I (Patrol)

MERC No. D83 I-2384

INTRODUCTION

The parties herein, City of River Rouge (City) and Michigan Fraternal Order of Police, Unit I (Patrol) (Union) were unable to resolve their differences concerning wage and hospitalization re-openers contained in their labor contract which expired on June 30, 1984. Utilization of mediation services provided by the Michigan Employment Relations Commission (Commission) did not result in a negotiated agreement. The Union petitioned for arbitration pursuant to Act 312, Public Acts 1969 as Amended, on February 21, 1984. The Commission, by letter dated April 24, 1984, appointed the undersigned Chairman of the Arbitration Panel. At the time of the undersigned's appointment two (2) issues were in dispute. In the course of Hearings, one issue - Hospitalization - was resolved and is to be made a part of this Award by Stipulation of the parties. The remaining issue in dispute is that of wages.

The City has proposed a list of four (4) comparable communities, all of which the Michigan Municipal League recommends as comparable with the City of River Rouge. The City justifies its selection "on the basis of their declines in population, their similarity in median family incomes, their median owner occupied housing value, and their racial make-up".

The City and Union have included the Cities of Ecorse and Melvindale in their respective lists of comparables.

The City list also includes Ferndale and Inkster, both of which are listed as recommended comparables with the City of River Rouge by the Michigan Municipal League. Ferndale is located outside of the relevant area and therefore it is excluded as a comparable community.

The Union list includes the Cities of Lincoln Park and Wyandotte - both recommended as comparables by the Michigan Municipal League. Presumably, the City would not strongly disagree with these communities as comparables since it has placed reliance on the recommendations of the Michigan Municipal League.

The statutory framework directs adherence to communities with comparable and not identical characteristics. The City objects to the inclusion of many municipalities within the Union list on the basis that these are middle to upper middle class communities with characteristics vastly different than River Rouge. The Panel notes that the City has, to a large extent, ignored per capita state equalized value (SEV) as a relevant factor. River Rouge's 1983 SEV per capita at \$18,933.00 is more than double that of Melvindale; more than four (4) times that of Inkster; and well above that of Ecorse.

The City's primary witness concerning its financial condition - Leslie Pulver, CPA - testified and related in City Exhibit No. 1 (a) that:

"Revenue is determined by multiplying the City Millage Rate by the State Equalized Value of City property."

Since "property taxes are the largest general fund source, representing 69% of the total" (in River Rouge), it is felt that this factor deserves consideration in arriving at a list of comparables. To this end, those communities suggested by the Union as comparables and having a per capita SEV in excess of \$10,000.00 are included in the Panel's list of comparables.

The communities selected for inclusion are Allen Park, Trenton, and Riverview. The per capita SEV in all of these communities is less than that in River Rouge. Within this list, Riverview has experienced the greatest percentage population increase from 1970 to 1980 of 28.5%, indicating it is a "growth" community. All others have experienced a population decline. Other criteria such as median family income, poverty level, and median value of owner occupied housing are more favorable in these communities.

In a very real sense, River Rouge is unique, given its high per capita SEV (\$18,933.00) and the less than favorable economic conditions of its residents. It is the view of the Panel that since SEV is a major component of local revenue, it is a factor deserving of consideration.

The Panel adopts the following list of comparable communities: Allen Park, Ecorse, Inkster, Lincoln Park, Melvindale, Riverview, Trenton and Wyandotte.

DISCUSSION AND FINDINGS

L. WAGES

CURRENT CONTRACT LANGUAGE:

Section 1.

The following pay schedule shall be effective July 1:

	<u>1982-83</u>	<u>1983-84</u>
Patrolman - Start	\$20,061.22	
Patrolman - 1 year	\$22,443.49	
Patrolman - 2 year	\$23,697.31	
Patrolman - 3 year	\$24,324.22	
Patrolman - 4 year	\$24,825.75	
Corporal -	\$25,502.00	

Section 3.

Starting salary for all employees in the department, who are hired subsequent to 7/1/82.

<u>Years</u>	<u>Salary</u>
First	\$17,000.00
Second	\$19,500.00
Third	\$22,000.00
Fourth	\$24,825.75

CITY LAST OFFER:

Wage freeze for the Fiscal Year 83-84.

UNION LAST OFFER:

A wage increase of four (4%) percent added to the patrol officers base retroactive to July 1, 1983.

EVIDENCE AND COMPARABLES:

The main argument of the City is that it simply does not have the ability to pay. Budgetary data indicate revenues of Eight Million Three Hundred Fifty-Three Thousand (\$8,353,000.00) Dollars for Fiscal Year 83-84 compared with receipts of Eight Million Four Hundred Ninety-One Thousand (\$8,491,000.00) Dollars in Fiscal Year 82-83 - a loss of One Hundred Thirty-Eight Thousand (\$138,000.00) Dollars. A major contributor to the declining revenue is the reduction in the State Equalized Value (SEV). The City is at its maximum millage rate of 23.45 mills and is unable to increase the tax rate without a vote of the electorate. Although the Budget for Fiscal Year 83-84 indicates expenditures in the amount of Eight Million Three Hundred Fifty-Two Thousand (\$8,352,000.00) Dollars, the figure is deemed overly optimistic, leading the City's CPA to conclude "It appears the City will end up in a significant deficit position at June 30, 1984".

The Union questions the City's sincerity on the matter of ability to pay. The City CPA estimated that a six (6%) percent increase in wages for this Unit would result in a salary cost increase of Thirty Thousand (\$30,000.00) Dollars to the Employer.

The Union also notes that in 82-83 it agreed to a wage freeze together with the surrender of two (2) holidays and two (2) vacation days, whereupon the City "discovered" Fifty-Three Thousand (\$53,000.00) Dollars to begin a Public Safety Officer Program. The Union had agreed to the concessions in response to the City's contention that it had an inability to pay, yet, "once the City received the concession made by the Union, in violation of the City Charter, began a program to convert to Public Safety Officers".

Insofar as wages are concerned, the 81-82 Budget with reference to the Patrol Unit, reflected an allocation of Five Hundred Forty-Two Thousand Six Hundred Nine (\$542,609.00) dollars. The comparable wage figure for 83-84 is Five Hundred Eight Thousand Five Hundred Twenty-Five (\$508,525.00) Dollars. The difference is Thirty-Four Thousand One Hundred (\$34,100.00) Dollars. According to Mr. Pulver, a six (6%) percent increase would result in a Thirty Thousand (\$30,000.00) Dollar salary increase for Unit 1. The Union demand (4%) would cost the City approximately Twenty Thousand (\$20,000.00) Dollars in wages alone. The largest additional increase associated with a wage hike is the City's Pension Contribution - approximately Seven Thousand (\$7,000.00) Dollars. A four (4%) percent increase to this Unit would leave salary costs to the City for the same number of officers - twenty-two (22) - some Seven Thousand (\$7,000.00) Dollars below 81-82, the last year this Unit received a raise. This apparent paradox results from the fact that officers hired subsequent to July 1, 1982 receive a lower wage in their initial three (3) years of employment.

The City argues that the interest and welfare of the public demand that the Panel accept its position of a wage freeze. In this connection, it is said - "The City is extremely desirable of avoiding layoffs". Presumably the Union has no quarrel

with this view. One officer, testifying on behalf of the Union, while acknowledging the desirability of more manpower, pointedly stated that given the choice between more manpower or money "I'd rather have the money".

In the course of the hearing and in its post-hearing brief, the City has referred to the so-called "me too" provisions of other unions in the City. The Panel is primarily concerned with the merits of an increase for this Unit. To the extent that the City has negotiated "me too" clauses with other unions, it is not directly relevant to this proceeding. Otherwise, employers could "stack the deck" in every arbitration by agreeing to raise all salaries at identical rates and then argue before an Act 312 Panel that to grant the increase will bankrupt the employer because it has committed itself to grant an identical raise to all of its other employees. These provisions were freely negotiated and they cannot be given primary consideration since the primary responsibility of this Panel is to consider the merits of a wage increase for the Patrol Unit.

Another factor on which the City places heavy reliance is the matter of pension costs. The Employer accumulated some 1.8 million dollars in unpaid contributions to the various City funded retirement systems. As the result of a consent judgment, the City agreed to repay this money into the systems in fifteen (15) annual installments at six (6%) percent interest. It appears that the City's inordinate pension contribution rate - 34.13% of payroll - is directly related to this earlier failure to make necessary payments. While this event has a bearing on ability to pay, the degree to which the Panel should be influenced is unclear since it is not certain that this Unit directly benefited from the failure to make these payments by way of larger wage increases.

In any event, the total increased pension cost to the City is approximately Seven Thousand (\$7,000.00) Dollars.

The City also urges "the Panel should be cognizant of the fact that nowhere (sic.) in the General Fund Budget is \$1,415,000.00 in accumulated but unpaid sick days reflected". In this regard, the Panel cannot ignore the fact that Sick Leave has never been budgeted on an accumulated basis. The City has always paid accumulated sick leave at the applicable rate when the employee separates. The City does not contend that this Panel's Award will materially affect its existing accounting practices. Although the Employer's Brief cites various employees who retired in 83-84, only one individual is a member of this Unit and her Sick Leave "pay-out" amounted to \$11,817.00. A four (4) percent increase would raise that amount by \$473.00.

Another item to be noted is that this Unit does not receive any cost of living allowance. Three of the comparable communities do have a cost of living provision. The precise movement of the Consumer Price Index during the relevant period was not provided to the Panel, but City Exhibit 1 (b) reveals it has moved in a upward direction.

With reference to the comparables, the average wage for July 1, 1983 through June 30, 1984 was \$24,777.00. A four (4%) percent wage increase gives the River Rouge Patrol Officer with four (4) years of service, an annual wage of \$25,818.78. This rate is below the comparables which the Panel has included because of their per capita SEV (Allen Park, Riverview and Trenton). The rate is above each of the remaining comparables whose other demographics more nearly approximate that of River Rouge. This is deemed an equitable outcome given River Rouge's unique character.


PANEL DECISION:

The last offer of the Union is adopted.

The Panel recognizes that the City is in a position of difficulty. The payment awarded will be made in Fiscal Year 84-85 and therefore the City can adjust its finances accordingly. In this connection, the City will receive a financial benefit since the Union has accepted the City's hospitalization proposal. Finally, the City should receive a benefit in that the Award herein should mollify the Union's demand in current negotiations.


JOSEPH P. GIROLAMO

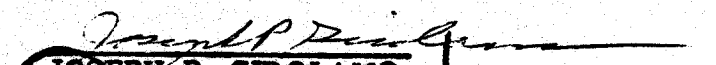
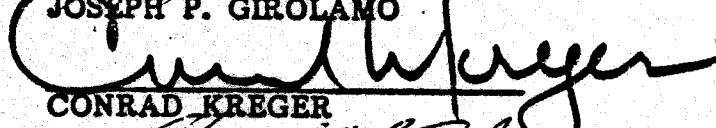

DISSENT
CONRAD KREGER


CHARLES WITHERS

2 - HOSPITALIZATION

STIPULATED AWARD:

It is hereby stipulated and agreed by the City and the Union that the present Blue Cross/Blue Shield plan be transferred to the American Community Insurance Plan. It is further stipulated and agreed by the City that should any coverage that presently exists under the Blue Cross/Blue Shield Plan not be covered under the American Community Insurance Plan, that the City will then pay any bill when received and due for those benefits that would have been covered under the Blue Cross/Blue Shield Plan.


JOSEPH P. GIROLAMO

CONRAD KREGER

CHARLES WITHERS

City Delegate Conrad W. Kreger dissents as follows:

The undersigned respectfully dissents from the decision and findings of the panel majority with respect to the economic issue, entitled wages, for the following reasons, among others:

- (1) The findings are not supported by the record when viewed in its entirety.
- (2) Ability to pay is the factor of overwhelming importance in the view of the undersigned.

The majority acknowledges the existence of the issue of ability to pay but resolves that issue solely on the basis of the SEV of the City, that is, based on the ability of the City to generate revenue. It is submitted that revenue production represents only one-half of the equation embraced within the concept "ability-to-pay." In essence the majority never really considers whether the City has the current ability to pay and that lack of consideration is demonstrated by the majority's stated reasons for not being persuaded on this issue:

- (1) The Union questioned the sincerity of the claim because in the past the City found the funds to replace retiring officers with public safety officers in violation of the City Charter.
- (2) The increase demanded by the Union will not significantly add to the deficit.
- (3) "Parity" or "me to" clauses are the City's own fault.

- (4) The overwhelming deficit is caused by a court ordered requirement that the City return its pension systems to actuarial soundness and it is uncertain that the police previously benefited from that historical failure to pay currently.
- (5) \$1.4 million in unfunded sick pay obligations is a historical practice of the City.
- (6) The bargaining unit does not receive a cost-of-living allowance.
- (7) 4% wage increase is not inequitable in relation to comparable city units found in the majority's decision.

The discussion of the majority begs the question of ability to pay rather than addressing that question. Not one reason cited by the majority substantively addresses the issue as to whether the City now has, or will have, the funds to pay the amount awarded. The facts are that the City does not, and will not in the visible future, have such funds:

- (1) Milleage is at charter maximum.
- (2) SEV has declined \$28 million, or 11% of the City's budget from fiscal year 1982-83 to date. The prognosis for the City to increase its revenues in the future is poor because there can be no significant commercial development due to the absence of available raw land. State shared revenues are based on population and the City's 1980 census show us a drop of 19% causing a 20% decline in state shared revenues. Federal revenue sharing

dollars will not increase. The City balanced its budget with assumptions, that is it budgeted a 10% decrease in wages for police based on its assumed ability to secure that amount as a concession in bargaining. The reality is now a 4% increase awarded by this panel or a 14% budgetary assumption error on a single budgetary item.

- (3) Even though it is a sound business practice required of private sector businesses by standard audit principles, the City is not funding \$1.4 million in sick pay obligations owed City employees.
- (4) The budget was adjusted by fiscal slight of hand used by mainly fiscally troubled municipalities; current obligations are transferred from current to long term.
- (5) There is no place to cut the budget as capital expenditures have already been cut to the bone and there are no realistic contingency reserves.

All of the foregoing is in the record but ignored by the majority. Indeed the following quotation is illustrative of what drives the decision of the majority:

"One officer, testifying on behalf of the Union, while acknowledging the desirability of more manpower, pointedly stated that given the choice between more manpower or money 'I'd rather have money'."

The officer's point of view is quite understandable. After all, he has a gun with which to protect himself. The quotation, however, is also illustrative of the frustration many communities have with Act 312 as a concept. There is or should be, more to Act 312 than the desires of a minority. Furthermore, an unelected stranger comes into the City, and decides that he would allocate the City budget between competing social demands differently than the elected officials who attended budget hearings and listened to arguments of their constituency. After deciding, such unelected stranger leaves town with no requirement to live with the consequences of a decision. The stranger makes his decision with only one seeming claimant for funds wherein the reality is there are many claimants.

In addition to the fundamental differences hereinbefore expressed, the writer feels compelled to address the social commentary of the majority, cited as its reasons for being unpersuaded by the City's ability to pay argument. It is indeed social commentary, because it addresses methodology of fund allocation, not ability to pay.

With respect to the Public Safety Officer commentary, it is clear that the City can only fund its operations out of uniformed manpower so long. Sooner or later a staffing level is reached that must be maintained for the safety of the public. While one cannot applaud the violation of the City Charter, the attempt demonstrates to the undersigned that the City was innovatively approaching a fiscal and staffing problem through attempting to get maximum use for the least dollar cost. Public Service Officers are not a new concept in this state. Such officers act as both firefighters and police officers while on duty, and cities seeking to use that concept usually do so

to reduce cost not because they are insincere. Absent evidence of a nefarious purpose in this case, I would not assume such a purpose as the majority apparently does. The argument that the amount granted to the Union will not significantly add to the deficit is not the issue that ability to pay speaks to. There comes a point when that one more drop will sink the enterprise and the undersigned believes that it was the intent of the legislature that the panel prevent that level being reached. The undersigned further believes that the constitutional mandate for a balanced budget identifies public policy as to the point beyond which the panel cannot go. By ordering the City to add to its deficit I believe the decision of the majority goes beyond the point permissible by the statute and constitution.

To argue that "parity" clauses are the City's own fault is to ignore their historical origin and purpose.

Arbitrator Harry H. Platt, a labor arbitrator of some renown, considered the relevance of "Parity" as a factor for consideration by Act 312 Arbitration Panels, stating at page 28 of his City of Detroit decision ^{1/}.

"Section 9(h) of Act 312 lists among the factors to be taken into consideration by the Board, other factors not specifically enumerated which are normally or traditionally taken into consideration by arbitrators, mediators, fact-finders or the parties. In so doing, we note that in a

^{1/} City of Detroit and Detroit Firefighters Association, Local 334
January 4, 1971.

large number of disputes involving parity...continuation of an established historical parity relationship between police and fire pay was awarded or recommended".
(citation omitted)

Arbitrator Platt's panel reached an uncommon unanimous decision and had the following observation concerning parity as a comparable:
Platt, City of Detroit, supra, page 28:

"...a particular factor may have such significance and be entitled to such weight as to make it controlling.
Such is the case here.

Without doubt, the crucial issue in this proceeding ...is the established historical parity relationship between fire and police salaries. This is a comparison factor of high relevance." (emphasis supplied)

Charles Killingsworth's Panel considered both the concept of parity and the Platt Panel decision and, after observing that the Platt Panel made the parity principle controlling, followed that decision (Killingsworth,^{2/} pages 17, 27, 58). Killingsworth further purported to review all the then recent arbitration awards and fact finding reports dealing with police-fire parity, concluding (Killingsworth, City of Detroit, supra, page 17):

"All of them support the parity principle."

Both the Platt and the Killingsworth panel exhaustively evaluated the comparability of the police and fire services and found as stated by Killingsworth at page 18^{3/}:

"...the overwhelming consensus of the informed neutrals

^{2/} City of Detroit and Detroit Firefighters Association, Local 334, December 1, 1971.

^{3/} Killingsworth outlines the similarities he finds between the police and fire service at page 18 of his decision, and Platt outlines such similarities at page 34 of his decision.

whose decisions and reports we have examined is that the similarities greatly outweigh the differences."

Since the authorities cited and the research reviewed by those authorities have uniformly reached the conclusion of comparability of the police and fire services, the burden of proof is upon the party claiming that parity should not control to establish by compelling reasons that parity should not be maintained. ^{4/} Contrary to the majority in this case, "parity" is not a fault concept it is a "controlling" consideration in Act 312 proceedings.

With respect to arguing that the City cannot have the benefit of consideration of its pension deficit because the majority is uncertain whether the police benefited from that failure to pay, the writer can only observe the police and fire salaries dominate a City's budget and there is almost a presumption of benefit. However, assuming lack of record support the undersigned views the majority's observation as, at best, uncertain as to meaning and without probative value as to whether the City now has, or will have, the financial resources to fund the majority's award.

It is equally injudicious to ignore a debt of \$1.4 million in unfunded sick pay when "more business like" is a standard being applied to all enterprises. Clearly, there should be provision for current funding and a public reviewing body should encourage "more business

4/ Platt Panel, City of Detroit, pages 30-31 requiring the party objecting to parity to demonstrate why parity should be abandoned. Killingsworth Panel, City of Detroit, page 17, requiring the party attacking parity to show changed circumstances. Kanner Panel, City of Dearborn Heights and Dearborn Heights Police Officers Association, 1981, pages 6-7 requiring the party attacking the status quo to demonstrate compelling reasons why the status quo should be abandoned.

like" activities of government rather than sanctioning a practice identified by expert testimony as an exception to the generally recognized principles of a well run business.

To argue that a City should provide a wage increase because it does not have COLA, in essence whether or not it has the ability to pay, is somewhat obscure as to meaning in this case. The Bureau of National Affairs in its loose leaf service "Collective Bargaining Negotiations and Contracts...Basic Patterns In Union Contracts" reports at page 93:2:

"Cost of living escalators appear in...33% of non-manufacturing contracts analyzed."

To consider probative, much less significant, a factor which nationwide exists in one-third of labor agreements at best, is questionable in the extreme. To consider that concept as important in evaluating a City's ability to pay is incomprehensible. If, on the other hand, the argument is inserted as a make weight argument to justify the act of granting a 4% wage increase, it is based upon slim grounds when applied to a City and its citizens living in relative economic deprivation. The undersigned does not consider the absence of COLA either significant or particularly meaningful in this case, especially considering the fact we are comparing a \$25,000 per year police officer to a City's ability to pay where the citizens of that City have a median family income of \$18,618, the lowest of all the Cities found comparable by the majority.^{5/}

^{5/} The comparables found by the majority are also somewhat strange considering median income and the fact at least in the City of Wyandotte's case, subordinate units of government add up to \$800,000 per year to the general funds of the City.

The undersigned further believes that the utilization by the panel majority of raw salaries unenhanced by cash fringes is meaningless as a practical consideration if a true comparison of in pocket monies is intended. The only party to the proceedings to buttress their data with all relevant monies was the City and its unchallenged data, excluding the pension contributions the majority finds artificial is as follows:

River Rouge	\$32,663
Inkster	\$30,790
Melvindale	\$28,535
Ecorse	\$25,532 ^{6/}

In choosing to ignore cash fringes the majority erected a meaningless example for comparison.

In the further view of the undersigned, the addition of 4% of police salaries to the City deficit is unwarranted by the record considered in its entirety.

It would also appear that the majority has considered a factor not permitted or sanctioned by Act 312 in that the majority's decision is admittedly partially based upon the following:

"...the City should receive a benefit in that the Award herein should mollify the Union's demand in current negotiations."

The undersigned would find that the City's last offer of a one year wage freeze is mandated in these proceedings by the record considered in its entirety.


CONRAD W. KREGGER

6/ Unit under control of a court appointed Receiver.