

2/7/91
ARB

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CITY OF ROYAL OAK

-AND-

MERC ACT 312
CASE NO: D89 A-0025

COMMAND OFFICERS, MICHIGAN FOP

COMPULSORY ARBITRATION

Pursuant to Act 312, Michigan Public
Act of 1969, as amended.

AWARD

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

1991 FEB 22 AM 10:35

Royal Oak, City of
RECEIVED

Arbitration Panel

Peter D. Jason
Arbitrator/Chairman

Charles Lowther
City Delegate

Mike Somero
Union Delegate

INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chairman, Peter Jason; City Delegate, Charles Lowther; and Royal Oak Command Officers Association Delegate, Mike Somero.

A pre-hearing conference was held on October 26, 1989, and hearings were held on February 6, 8, 9, 1990 at the Royal Oak Police Headquarters. The parties negotiated a settlement, but this settlement was rejected by the union membership so the matter was rescheduled. Hearings were held on June 6, 11, 20, 27, August 2, 1990 and a post-hearing deposition was taken on September 6, 1990. The city was represented by Craig W. Lange of the firm of Barlow and Lange. The union was represented by Kenneth W. Zatkoff of the firm of John A. Lyons, P.C. The record consists of 851 pages of recorded testimony and a total of 168 exhibits. After submission of last best offers on September 17, 1990, the parties forwarded written briefs on November 19, 1990, and November 29, 1990. The panel met in executive session on January 16, 1991.

The parties stipulated that the outstanding issues in this matter were all economic and so the panel was guided by Section 8 of Act 312. This section provides that each economic issue must be decided by the panel selecting the last best offer which more nearly complies with the applicable factors in Section 9. The applicable factors to be considered as set forth in Section 9 are as follows:

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

The panel considered the factors delineated in the statute.

COMPARABLE COMMUNITIES

At the outset the parties stipulated to the comparable communities. They are: Dearborn, Dearborn Heights, Farmington Hills, Roseville, Southfield, St. Clair Shores, Taylor, Troy and Westland.

In the presentation of its case, however, the city retreated somewhat from the initial stipulation. The city divided the comparable communities into two categories. One group was alleged to be extremely similar and was labeled primary communities. The group consisted of four communities. The other group was not as similar and was labeled secondary communities. This group consisted of the remaining five communities. The city then suggested that the panel pay particular attention to the primary group when making its judgments.

As chairman of the panel, I did not find this approach helpful. I do not regard comparability as a relative term. Either another city is sufficiently similar to be regarded as comparable, or it isn't. I was unable to adjust my thinking to degrees of comparability when making judgments on the weight I gave to evidence about wages and benefits in other communities. I, therefore, rejected this approach so that for purposes of this matter I treated all the cities the parties submitted as comparable.

ABILITY TO PAY

Act 312 requires that the panel consider the city's ability to pay when it makes judgments about increases in wages and benefits. To assist the panel the city made a comprehensive presentation about the city's financial situation. This presentation convinced me that the city was spending more than it was raising in revenue and to make ends meet was withdrawing money from a contingency fund. The city pointed out that new revenue sources were unlikely and the contingency fund would be exhausted in the near future. The city's point was that now is not the time for this panel to issue an exorbitant award. I think it is fair to state that the city's point was well taken and that the panel tried hard to be fair within the city's financial constraints.

AWARD

The parties have agreed on all outstanding issues for the period of June 1, 1989 through May 31, 1992, except those that were the subject of these proceedings.

The panel decided these issues in order:

ISSUE 1 - WAGES

City's Position:	Effective 6/1/89:	3.5% increase
	Effective 6/1/90:	3.5% increase
	Effective 6/1/91:	3.5% increase
Union's Position:	Effective 6/1/89:	4.5% increase
	Effective 6/1/90:	4.0% increase
	Effective 6/1/91:	4.0% increase

The wage issue was particularly difficult because the record reflects that the parties each justified their positions with strong arguments reflecting heavy reliance on logic, equity and the basic requisite statutory factors. Although I could find either of the wage offers justified under the statutory factors and each are well within the realm of reasonableness, I have selected the union proposal because it permits a broader consideration of subsection (h) relating to "other factors which are normally or traditionally taken into consideration in determining wages..." than I think the city has allowed.

I am persuaded that the additional responsibility of overseeing, managing, supervising and assisting in the training of "civilian dispatchers", referred to by the parties as PSA's, has complicated these officers' jobs and made their work more demanding. Even though the 911 and fire dispatch functions are basically an extension of the same or similar functions that were

already being exercised, they are being performed by less experienced people. I am concomitantly aware that this dispatch question has fueled the fires of controversy between these parties and, to the extent that it may assist them in approaching future bargaining with a clean slate, it should be known that the crucial balance in weighing these similar wage packages was the intent to resolve that lingering controversy and to insure that these officers are fully and fairly compensated for the additional burden and responsibilities created by the use of these civilian employees.

ISSUE 2 - RETIREMENT

- Purchase of Previous Governmental Time

City's Position: The City opposes the addition of a provision whereby members of the bargaining unit could purchase prior police or public service for retirement service credit and seeks to maintain the status quo contained in Section 46.5 of the collective bargaining agreement.

Union's Position: The Union advocates an employee be allowed to purchase up to a maximum of three (3) years of prior governmental time (local-state-federal) at the current base salary in effect at the time of the purchase. At the current pension contribution rate in effect. Purchase must be made by May 31, 1992.

Employees who previously purchased military time are not eligible for this benefit. Effective at signing.

The majority of the panel did not believe that this demand was justified. This is not the practice in the comparable communities and there is no great inequity to be addressed. Although the city

has allowed employees to purchase military time for pension purposes, this was done to reward people who made a sacrifice and served in the military rather than start a career with the city. This equity is non existent if the employee decided to work for another city rather than the military. Therefore, the panel decided to accept the city's position on this issue.

- Minimum Years of Service for Retirement

City's Position: The City's position on this economic issue is to oppose the amendment of the Retirement Ordinance No. 76-7 and to thereby maintain the status quo.

Union's Position: The Union is requesting eligibility for retirement after 25-years of service with no minimum age. Effective 6/1/91 (3rd year of the contract).

Both parties made compelling arguments on this point and referring to the comparable communities did not solve this issue. Several communities had 25 and out provisions and several required a minimum age. The one clear fact provided by the evidence was that this benefit is expensive. Therefore, since the majority of the panel has previously opted to award the union's position on wages, the panel decided to adopt the city's position. This decision was made on the basis of cost and not because we thought either position lacked merit.

- Employer Pick-Up

City's Position: The City opposes the addition of a provision which would impact the taxability of pension contributions pursuant to the IRS Code.

Union's Position: The Union is requesting that taxes be computed on base pay after pension contributions are deducted. Effective at signing of contract.

The Chairman's understanding of this issue was that the city was willing to comply with the union's request provided that there was no objection from the I.R.S. My further understanding was that this issue would be held in abeyance until I.R.S. approval. Consequently, the panel will adopt the union's position on this issue with the understanding that I.R.S. approval is necessary.

- Multiplier Factor

City's Position: The City proposes 2.8% for the first twenty (20) years of service. 2% for the next six (6) years of service and 1% for each year thereafter of the retiring member's final average compensation.

Union's Position: The Union is requesting 2.8% for the first twenty-five (25) years of service. 1% for the next five (5) years of service. For a maximum of 75% after thirty (30) years of service.

Pension contribution raised from 6% to 6.5% Both multiplier factor and pension contribution will take effect 6/1/91 (3rd year of contract).

The panel has decided to adopt the city's position on this issue. Because pension benefits are determined by a variety of factors, the yield is the important thing to consider rather than the makeup of the formula. On a comparative basis, the yield for the employees of this system was appropriate. On an absolute basis, the deposition testimony from the actuary convinced the panel that with the adjustments proposed by the city this system

will be adequate to maintain the standard of living that members now enjoy when working.

ISSUE 3 - SICK LEAVE

City's Position:

The City proposes to improve the sick leave payout at retirement as set forth in Section 29.8 of the collective bargaining agreement by modifying the provision to read as follows:

Section 29.8 In the event of retirement, any employee having a sick balance shall be paid for the sick leave balance at the time of retirement up to a maximum of four hundred ninety (490) hours. Such pay shall be at the employee's base rate in effect at the time of his retirement.

Union's Position:

The Union is requesting the following modifications for sick leave payout:

0-300 hours - 25% = 75 hours
300-600 hours - 50% = 150 hours
600-900 hours - 75% = 225 hours
900-no cap - 100% = payment of all hours over 900

No maximum on the amount of hours you may accumulate. An employee would be given the option of taking the number of days to which he/she is entitled under this provision, based on their current sick leave bank, or of accepting the amount under the existing provisions, whichever is greater. Effective 6/1/91.

The union stated that the current sick leave provisions are not adequate because they encourage employees who are nearing retirement to use them. The union explained that if sick leave days are not used they are lost when an employee retires. The union alleged that this causes manpower shortages and morale problems. The union claimed that its proposal would cure these

problems because employees would be encouraged not to take time off if they could be paid for sick days when they retired.

The panel majority decided to select the city's offer on this issue. The panel Chairman does not think it is wise to be innovative in an Act 312 award and I am uncertain whether adopting the union's proposal would produce the result the union claims. What is particularly disturbing is that there is no way to accurately predict the cost of the union proposal. Given the city's financial position, this does not appear to be the right time to experiment, especially considering that the city has proposed an increase in this benefit. This increase, together with the city's current policy of paying for some unused sick leave on an annual basis, puts the city in a reasonable position with respect to the comparables.

ISSUE 4 - LONGEVITY

City's Position: The City proposes to add a new provision to Section 38.9 of the collective bargaining agreement which shall provide as follows:

Command Officers appointed after June 1, 1990 shall retain the same longevity pay formula as was in effect at the time of their promotion from their former bargaining unit.

Union's Position: The Union requests that this provision remain status quo.

The majority of the panel selected the union's position on this issue. This kept in effect the status quo. The command officers were all promoted from the police officer bargaining unit which currently has the same longevity policy as the command

officers. Therefore, if the panel adopted the city's offer on this issue, there would be no immediate effect. However, we believe it would not be fair to adopt the city's position without knowing the long term effect. If and when there is a change in the longevity program for the police officers, that will be the time when this issue can be examined intelligently. Until then it makes sense to maintain the status quo.

ISSUE 5 - HEALTH EXAMINATION

City's Position: The City seeks to amend Section 27.0 of the collective bargaining agreement by requiring the participation of Association members in the "annual wellness program" provided by the City to Royal Oak employees. Specifically, the City seeks to include the following language in the collective bargaining agreement as Section 27.3:

27.3 Each employee of the bargaining unit shall participate in an annual height and weight, blood pressure, pulse rate and cholesterol examination at City expense. The results of this health screening, conducted by a recognized medical facility on City premises, will be mailed directly to the employee's home address by the provider. The City reserves the right to discontinue this program should the cost thereof, as determined by the City, become prohibitive.

Union's Position: The Union is proposing the following language:

The employee agrees to participate in an annual health examination program. Such as William Beaumont Hospital "Wellness Program". Such examination shall be during working hours with the examination costs paid by the City, the employee may elect to have an annual examination by his/her personal physician in lieu of the "Wellness Plan" examination. Such examination shall be on the employee's own time with costs being covered within existing medical insurance limits. In either examination the results shall be only available to the employee and not the Employer. Effective on signing.

The last best offers of the parties are very close. The panel has selected the city's offer because it provides for uniform testing. The city has assured the panel that the program is

intended to be non-intrusive because the city will not have access to the results. This is a worthwhile program and the panel Chairman was not told why the officers chose not to agree. If it was because they fear that the city will have access to results that may put their jobs in jeopardy, I am satisfied that this fear is not well founded.

ISSUE 6 - DUTY DISABILITY VS INJURY LEAVE LANGUAGE CHANGE

City's Position: The City proposes to modify Section 34.0 of the collective bargaining agreement, currently entitled "Duty Disability Leave". The City's proposal is intended to clarify the current section by designating "duty disability leave" as "injury leave."

Union's Position: The Union is requesting that this provision remain status quo.

The parties agreed that an employee on duty disability leave shall not receive more than 100% of his regular net pay.

The only issue that remained is whether "injury leave" should be substituted for "duty disability" to avoid confusion. The panel has adopted the union's position on this issue because we were not convinced any confusion existed and so there was no reason to change the status quo.

ISSUE 7 - MEDICAL INSURANCE

City's Position: The City's offer proposes the following modifications to Section 36.0 of the expired collective bargaining agreement.

(a) The Preferred Provider Organization (PPO Option), (a new coverage plan). With MMC-POV as a new Rider.

(b) Master Medical Option I (a change from MM Option IV).

(c) \$5.00 Prescription Rider (a change from \$3.00 Rider).

(d) Family Continuation - a new coverage for 19 through 25 year old child/student still claimed on federal income tax. City and subscriber each pay 50%.

(e) Duplicate Health Care Benefits: new concept to pay employee/subscriber 20% of regular premium to opt for spouse' health care coverage.

(f) Organ Transplant Coverage: new coverage.

(g) For retirees, the same coverage will be offered with the exception that item (a) above will revert back to the traditional pre-June 1, 1989 coverage.

Language to be added to the new collective bargaining agreement within Section 36.2 is as follows:

36.2

(a) The City shall provide and pay the full premium for Blue Cross/Blue Shield, (or similar insurance thereto which may be secured at the option of the City provided that the benefits are at least identical to the benefits described herein), with the Blue Preferred Plan (PPO Option); MVF 1; Master Medical Option I; \$5.00 PDR with Generic Drugs; Optical Coverage and ML, FAE-RC and VST riders for each employee, spouse and eligible dependents. Additionally, said coverage shall also include the MMC-POV rider and Organ Transplant Coverage.

(b) The Preferred Provider Organization (PPO Option), the BC/BS Blue Preferred Plan, is agreed to with contingency language based on the Blue Preferred Plan program continuing with no more than a 10 percent reduction in the listing of participating physicians - otherwise, the Command Officers have the option to return

to the traditional coverage, i.e., standard BC/BS hospital and surgical coverage with Predetermination and Mandatory Second Opinion.

(c) The City and the subscriber will each be responsible for fifty (50) percent of the premium for optional Family Continuation Coverage.

(d) Duplicate Health Care Benefits: The City agrees to pay the employee/subscriber or retiree 20 percent of the scheduled premium annually to select the benefits under a spouse's health care plan. Further, in the event the employee's spouse is terminated for any reason, the City will pay the COBRA payments until the employee subscriber or retiree can obtain coverage under the City sponsored health care programs.

(e) For all employees, qualified spouses, and other eligible dependents, retiring on and after June 1, 1989, the City shall provide and pay the full premium for Blue Cross/Blue Shield, (or similar insurance thereto which may be secured at the option of the City provided that the benefits are at least identical to the benefits described herein), for MVF 1, Master Medical Option I, \$5.00 PDR with Generic Drugs; and the ML, FAE-RC and VST riders with Reciprocity. Optical Coverage, Organ Transplant Coverage, Pre-determination and Mandatory Second Opinion.

Union's Position: The Union proposes the following modifications in medical insurance:

MVF-1	Status Quo
Master Medical I	
(reduced from IV)	
PDR \$5.00 (raised from \$3.00)	
Generic Drugs	Status Quo
Mandatory Second Opinion	Status Quo
Predetermination	Status Quo
ML-FAC-RC and VST	
(reciprocity)	Status Quo
Co-pay optical	Status Quo
50% Family Continuation	
Organ Transplant	

20% reimbursement for
duplicate coverage with
COBRA payment

Same coverage for active and retired
employees. Effective date of Award.

The panel recognizes that the union's last best offer includes a reduction from the current benefit level, i.e., Master Medical Option I reduced from Master Medical IV, and prescription drug rider raised from \$3.00 to \$5.00, but decided to adopt the City's position on this issue. The basic difference between the two proposals is the addition of the Preferred Provider Organization (PPO) to the Blue Cross/Blue Shield MVF-1. The panel was informed that this change does not effect benefit levels but rather requires that certain services be provided by a preferred provider. In light of the significant increases in health care costs in recent years, we believe this is a reasonable cost control measure. The evidence shows that there are thousands of preferred providers in the Royal Oak area and we expect that this change will not adversely affect the officers and their families.

SUMMARY

The Chairman's decisions on the issues are as follows:

ISSUE 1 - WAGES

Effective 6/1/89: 4.5% increase
Effective 6/1/90: 4.0% increase
Effective 6/1/91: 4.0% increase

CITY	_____	AGREE	<u>CML</u>	DISAGREE
UNION	<u>MPS</u>	AGREE	_____	DISAGREE

ISSUE 2 - RETIREMENT

- Purchase of Previous Governmental Time

The status quo contained in Section 46.5 of the collective bargaining agreement will be maintained.

CITY	<u>CML</u>	AGREE	_____	DISAGREE
UNION	_____	AGREE	<u>MPS</u>	DISAGREE

- Minimum Years of Service for Retirement

The status quo will be maintained regarding Retirement Ordinance No. 76-7.

CITY	<u>CML</u>	AGREE	_____	DISAGREE
UNION	_____	AGREE	<u>MPS</u>	DISAGREE

- Employer Pick-Up

Taxes will be computed on base pay after pension contributions are deducted, pending I.R.S. approval.

CITY	_____	AGREE	<u>CML</u>	DISAGREE
UNION	<u>MPS</u>	AGREE	_____	DISAGREE

- Multiplier Factor

2.8% for the first 20 years
2% for the next 6 years
1% for each year thereafter

CITY	<u>CWL</u>	AGREE	<u> </u>	DISAGREE
UNION	<u> </u>	AGREE	<u>MPS</u>	DISAGREE

ISSUE 3 - SICK LEAVE

Sick leave balance, up to a maximum of 490 hours, will be paid at the base rate in effect at the time of employee's retirement.

CITY	<u>CWL</u>	AGREE	<u> </u>	DISAGREE
UNION	<u> </u>	AGREE	<u>MPS</u>	DISAGREE

ISSUE 4 - LONGEVITY

The status quo regarding Section 38.9 will be maintained.

CITY	<u> </u>	AGREE	<u>CWL</u>	DISAGREE
UNION	<u>MPS</u>	AGREE	<u> </u>	DISAGREE

ISSUE 5 - HEALTH EXAMINATION

Section 27.0 will be amended to include new language as Section 27.3.

CITY	<u>CWL</u>	AGREE	<u> </u>	DISAGREE
UNION	<u> </u>	AGREE	<u>MPS</u>	DISAGREE

ISSUE 6 - DUTY DISABILITY VS INJURY LEAVE LANGUAGE CHANGE

An employee on "Duty Disability" shall not receive more than 100% of his regular net pay. Status quo on language change proposal.

CITY	<u> </u>	AGREE	<u>CMZ</u>	DISAGREE
UNION	<u>MPS</u>	AGREE	<u> </u>	DISAGREE

ISSUE 7 - MEDICAL INSURANCE

The City's medical insurance proposal with PPO was adopted.

CITY	<u>CMZ</u>	AGREE	<u> </u>	DISAGREE
UNION	<u> </u>	AGREE	<u>MPS</u>	DISAGREE

Peter D. Jason
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Arbitrator/Chairman

Charles M. Lowther
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City of Royal Oak Delegate

Michael P. Somero
Mike Somero
FOP Command Officers Union Delegate

DATE: February 7, 1991