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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

CITY OF SAGINAW,

Employer

-and-

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,

Labor Organization

Case No. L86-4

1986 JUL 24 PM 3:48
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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Saginaw, City of (ARB)

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
Steven B. Rynecki, City Delegate and its Attorney
Peter P. Sudnick, Union Delegate and its Attorney

CHRONOLOGY:

The last collective bargaining agreement between the parties was for the period July 23, 1984, through June 30, 1986; a mediation session was held on June 23, 1986; the Act 312 Petition giving rise to this case was filed by the Union on July 7, 1986; the City filed its Answer on that same date; the Chairman was appointed by the Commission on August 25, 1986; a pre-hearing conference was held in Saginaw on September 15, 1986; the parties used November 18, 19, and part of December 1, 1986, to discuss settlement; the hearing was therefore held on December 1 and 2, 1986; last final offers were submitted on January 2, 1987; the City's brief was filed on February 13, 1987, and the Union's brief on March 13, 1987; the City filed a letter responding to the Union's brief on March 20, 1987; the Panel held a meeting in Romulus, Michigan on May 18, 1987; this Opinion and Award issued July 14, 1987.

OPINION AND AWARD

Introduction

The hearing was originally scheduled to begin on November 18, 1986, and continue on November 19, December 1, 2, 3, and, if necessary, December 4, 1986. This schedule, however, was adjusted to accommodate the comprehensive and protracted negotiations by the parties during which they made a sincere and good faith effort to settle all of the issues that were blocking a new collective bargaining agreement between them. As a result, most of the issues were resolved; many proposed changes were withdrawn while others were modified.

This willingness by the parties to compromise substantially shortened the hearing process. The parties requested that the understandings reached during these negotiations be made a part of the award and, accordingly, they are set forth below under the heading "Stipulations."

Unfortunately, there were three issues that eluded resolution: Wages, the "buy back" of layoff and military time for retirement service, and the elimination of shift differential pay. Those issues were dealt with in hearings held on December 1 and 2, 1986, and argued at length in able briefs filed by counsel. The three issues are also discussed below under appropriate headings.

Stipulations

Union Issues 1 - 4 (Promotions). The parties will select an assessment center. That assessment center will be used for testing officers who seek promotions. A single promotion list will be created. To be eligible for placement on the list, an officer must receive a score of at least seventy percent. The officer on the list who has the highest score will be selected for promotion. The specific language of the agreement is to be left to the parties.

Union Issue 5 (Employee Transfers). Article XII of the current Agreement will continue, as clarified by an arbitration award issued during the term of the Agreement. Posting and bidding vacancies in SRO, IB, crime analysis, and crime stopper units are governed by the provisions of Article XII, but excluded from such coverage are traffic and the administrative assistant to the chief.

Union Issue 9 - Section 2 (Coordination of Health Care Benefits). The provision of the agreement between the City and the Police Command Officers unit governing coordination of health care benefits will apply to employees who retire after July 1, 1986.

Union Issues 11 (Remuneration) and 14 G (Lay-off and Military Service Retirement Credit). These items were left for resolution by the Panel. However, it was agreed that the term of

the new Agreement would be for two years (July 1, 1986 - June 30, 1987 and July 1, 1987 - June 30, 1988).

All other Union Issues, including 6 (Seniority), 7 (Corrective Lenses), 8 (Vacations), 9 - Sections 1, 3 (Health Insurance), 10 (Sick Days in Computing FAC), 12 (Training), 13 (Outside Employment), 14 A (Pension Multiplier), 14 F (Pre-retirement Residency), and 15 (Appendix G) were dropped.

City Issue 28 (Educational Assistance and Incentive Program). Article XXXIII of the most recent Agreement shall not apply to employees hired on or after July 1, 1986.

City Issue 24 (Shift Differential). This item was left for resolution by the Panel.

All other City Issues dealing with substantive terms and conditions of employment were dropped.

Prefatory Statement

Act 312 (Section 9) which establishes the standards for determining the Award requires the Panel to "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 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 process.
- (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 parties bottomed their respective positions primarily on factors (c), (d), and (f). In reaching its decision, the Panel considered the evidence and arguments in relationship to the above factors, but with special emphasis on those relied upon by the parties. In this regard, the Panel was guided by the following comment of the Michigan Supreme Court in City of Detroit v Detroit Police Officers Association, 408 Mich 410, 484 (1980):

The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Sec. 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory in the panel through the use of the word "shall" in Secs. 8 and 9. In effect then, the Sec. 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Sec. 9. Since the Sec. 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts

of a case, although, of course, all "applicable" factors must be considered.

Wages and Rates of Pay

The major differences between the City's final offer of settlement and that of the Union is in the first year of the Agreement. The City urges that no increase be granted. First, it claims an inability to pay. Secondly, it asserts that the overall compensation of its officers when compared to their brethren in the comparable communities does not warrant an increase. Finally, it contends that inasmuch as other City bargaining units have accepted a one year wage freeze during the past several years, equity requires that the Police unit do so too.

On the other hand, the Union proposes 2.5% increases on July 1, 1986, and January 1, 1987. It disputes the City's claim of ability to pay, and relies most strongly on the increases granted to police in the comparable communities, a comparison of overall compensation between those same groups, and the increases given to other City employees.

The City has described its condition in the following general terms:

[T]he \$2.2 million deficit in the 1986-87 budget, and the \$3.8 million deficit in the 1987-88 budget cannot be ignored. These deficits are a direct result of the poor economic trends which have faced the City of Saginaw throughout the 1980's. Saginaw has experienced minimal increases in major general fund revenue sources and state equalized valuations. There has been a

decline in population and the number of housing units in the city, among the highest unemployment figures and lowest per capita income figures, and an increase in the relative tax effort of Saginaw's taxpayers when compared to all other major cities in the State of Michigan. Thus, the downturn in the Michigan economy in the 1980's has hit Saginaw the hardest, a fact reflected in Saginaw's present deficit budget. (Brief, p. 1).

The Union attacks the reliability of the City's financial statements, questions its cost-cutting efforts, and its spending priorities. As is frequently the case in a proceeding of this type, extreme contentions are not unusual. It appears that the City's problems are not as great nor its prospects as bleak as it claims. Correspondingly, the situation is not as good nor as promising as suggested by the Union. The true picture lies somewhere in between the respective positions of the parties. Nevertheless it is clear that Saginaw has some financial difficulties, not unlike those of other urban communities. Moreover, the City seems to be meeting this challenge and taking reasonable steps to resolve its problems.

The "financial ability" factor must, of course, be considered, but it is not necessarily the dominant factor in the scheme of things. City of Hamtramck v Hamtramck Fire Fighters Association, 128 Mich App 457 (1983); leave den. 419 Mich 871 (1984). And, it is certainly not entitled to controlling weight where, as here, the municipality has continued to grant wage increases to both its represented and non-represented employees

during the very period in which it claims to have sustained these serious financial reversals.¹

On balance, the other factors cited by the parties -- a comparison of the wages and benefits between the police in Saginaw and their counterparts in the comparable communities² and the overall compensation of those employees -- are entitled to substantial weight. These factors enable the panel to "approximate as closely as possible the agreement the parties themselves would have reached had their negotiations borne fruit." City of Southfield and Southfield Fire Fighters Association, MERC Act 312 Case NO. D79 E-1199.

An examination of the wage rates in the comparable communities demonstrates beyond peradventure that the Union's

¹ For the fiscal years 1984, 1985, and 1986, the City has granted the following wage increases (in percentages) to its employees: Management - 7 (including 4 merit), 5, and 3; Hourly and Salaried - 5, 5, and 5; Fire - 4, and 5 and 3 in Act 312; Police Command - 7, 5, and 5. (City Exhibit 34)

² The parties stipulated that the cities of Pontiac, Lansing, Flint, Bay City, Battle Creek, Muskegon, and Jackson are comparable to Saginaw. The Union, contrary to the City, claims that Southfield is also comparable to Saginaw. A majority of the panel agree that Southfield should not be included in the equation of comparable communities. If the two cities are examined side by side, they are clearly dissimilar. Even establishing a range of all of the acknowledged comparable communities, Southfield falls outside thereof on such important criteria as Median Housing Value (19,800 to 28,200 v. 66,300), Per capita Income (6101 to 7280 v. 12,668), Change in SEV (-4.7 to 3.2 v. 12.75), SEV Commercial (10.4 to 23.1 v. 45.20), SEV Industrial (5.6 to 21.6 v. 1.40), SEV Per Capita (7025 to 9290 v. 20,353), SEV Per Authorized 000 (4602 to 7585 v. 18,308), and Budget (3.2 to 16.4 mil. v. 17.5 mil). Accordingly, Southfield will not be used as a community that is comparable to Saginaw.

offer of 2.5% and 2.5% is more reasonable than the City's offer of no increase at all. The percentage increase among the comparable communities is from 3% (Jackson) to 5.75% (Flint). The average increase is 4.1% with the median being 4%. In terms of real dollars, the average increase is \$1128.00 with the median being \$1042.00.

The Union's offer for 1986-1987 of a 3.78% increase represents \$1042.00 and is within the range of the increases granted to police in the comparable communities.³ Similarly, the Union's offer does not alter the rankings on the basis of overall compensation: Saginaw continues in the third position. An examination of the increases given to the so called "internal comparables" also warrants acceptance of the Union's offer. In voluntary collective bargaining, the City granted its SEIU and Police Command units 5% for 1986-1987, and at the same time budgeted 3% for Management employees.⁴ Thus, a zero increase for police appears to be inconsistent with the City's overall labor policy.⁵

³ The City's argument that the Union's offer will cause it to leapfrog ahead of the other communities is not well founded. The first 2.5% increase will maintain Saginaw in fourth place among the comparable communities. The second 2.5% will move it to third by \$211. It is virtually impossible to maintain a level position and some fluctuation must be expected.

⁴ Firefighters were awarded a 3% increase by an Act 312 Panel.

⁵ The City claims that these other employees have at one time or another during the past five years foregone wage increases and that now it is the Union's turn to do the same. There are two problems with this argument. First, the rationale

AWARD

Employees in the bargaining unit shall be given a wage increase of 2.5% on July 1, 1986, and an additional 2.5% on January 1, 1987, in accordance with the Union's Final Offer of Settlement.

Donald F. Sugerman, Chairman

Peter P. Sudnick, Union's Delegate

Steven B. Rynecki (Disputant)
Steven B. Rynecki, City's Delegate

For 1987 - 1988, the parties are not far apart. The City proposes a 2% increase on July 1, 1987 and a like increase on January 1, 1988. The Union proposes increases of 2.5% on each of

for these zero increases is unclear. However, it is unusual, to say the least, for a City facing a significant shortfall to ask (or demand) sacrifices from some of its employees while at the same time granting increases to others with the expectation that the latter group(s) will be amenable to make the same sacrifice at some future time. Different contract expiration dates do not account for this unique approach. For example in 1981 when salaried employees received no increases, management employees (who are not represented) were given 3%, plus up to an additional 7% in merit raises. And although the zero increases came in 1981, 1982, and 1983, the City nonetheless agreed to wage increases for members of the Union in the very next agreement that was negotiated (1984 and 1985). Second, the evidence does not establish whether employees were granted benefits in lieu of wages increases. If they were, it obviously detracts from the claim of equity. In any event, the City's actions make this argument unpersuasive.

those dates. The City's offer is a 4.04% increase that in dollars translates to \$1154.51 (\$571.54 and \$582.97). The Union's proposal is a 5.06% increase and represents \$1446.70 (\$714.42 and \$732.28) in new dollars.

Of the comparable communities, only four -- Pontiac, Flint, Bay City, and Battle Creek -- have settled agreements for 1987-1988. The range of the settlements in those cities is from 1.0% to 5.0% and from \$281.00 to \$1545.00. The average is 3.17% and \$943.00. These figures are obviously incomplete. The final settlements in the remaining cities (Lansing, Muskegon, and Jackson) may, of course, alter the averages. Be that as it may, the nature of these proceedings frequently makes it impossible to have complete information for comparison purposes. However, the trend suggests that the City's offer is closest to the settlements in the comparable communities. So does the cost of living which has risen modestly over the past year or so. When these factors are superimposed on the City's financial condition, its offer, rather than the one proposed by the Union must be accepted.

AWARD

Employees in the bargaining unit shall be given a wage increase of 2.0% on July 1, 1987, and an additional 2.0% on January 1, 1988, in accordance with the City's Final Offer of Settlement.

Donald F. Sugerman, Chairman

Steven B. Rynecki, City's Delegate

Peter P. Sudnick, Union's Delegate

Pension Improvements

The Union proposes that unit employees "be permitted to purchase up to three years of military service and/or layoff time to be used in calculating their pension at retirement regardless of when this service and/or time occurred provided the employee pays 10-3/4% of salary for each year claimed." (Brief p. 25). The City contends there is no justification for this change and proposes that it be rejected. There is merit to the position of the City.

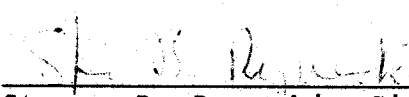
Police officers have a plan with liberal benefits that compare very favorably with their counterparts in the other seven communities under consideration. Indeed, the benefits of police rank-and-file are better than other City employees with the exception of those in police command. Among the comparable communities, Saginaw is the only one that provides a benefit of "twenty and out" with no minimum age requirement. On the other hand, no other comparable community permits the buy back of


layoff time. And, the City contends there is no other unit in the State that permits the purchase of credit for layoffs, a fact not contested by the Union. Under the circumstances, and particularly because of the City's finances, this is not a propitious time to improve pension benefits.

AWARD

The City's offer of no change in the pension benefit will be accepted.


Donald F. Sugerman, Chairman


Steven B. Rynecki, City's Delegate


Peter P. Sudnick, Union's Delegate

Shift Pay Differential

The City proposes to change the long standing practice of paying a differential based on a percentage of earnings to one based on a fixed hourly amount. The differential is now a 5% premium for second shift employees, 7% for third shift employees, and a combination of the two for employees on the umbrella shift. If the City had its druthers these percentages would be converted to 35 and 45 cents per hour. The net effect of this change

would, at current rates, more than halve the differential payments.

The City finds support for its position by turning to the comparable communities: Four cities have no differential,⁶ two pay a lower hourly amount than is being proposed here, and only one other community pays a percentage (6.5% for the second shift and 7% for the third). Beside the initial savings, the main thrust of the City's position is that the differential rises in direct relation to wage increases. "It is this inflation which the city's final offer attempts to curb." (Brief, p. 40).

In the instant case, use of the comparable communities is inconclusive. Of those that provide differential payments, two have an hourly rate and two (including Saginaw) use a percentage. That factor does not support the change proposed here. If the City's main concern was creeping inflation, a proposal that converted the percentage payment to one approaching its equivalent in a fixed hourly amount would certainly have been more palatable. But this proposal goes further and would substantially reduce the earnings of unit employees -- to the point of wiping out the wage increase -- even the ones proposed

⁶ The danger in using the comparable communities to support the removal or reduction of a benefit is that a city and union that establish a new benefit will face the prospect of it being rescinded in a subsequent Act 312 proceeding simply because none of the comparable communities negotiated that type of benefit or program. This is not to suggest that a dual standard be employed by panels. It simply highlights the fact that comparability must be used with great care and circumspection.

by the City.⁷ Under the circumstances, there is no justification for radically reducing the differential pay.⁸

AWARD

The Union's offer of no change in the shift pay differential will be accepted.

Donald F. Sugerman, Chairman

Peter P. Sudnick, Union's Delegate

Sh. B. Rynecki (Dissent)
Steven B. Rynecki, City's Delegate

⁷ In its brief, the City contends that officers are rotated on the shifts; first, second, third, and umbrella, the latter consisting of three hours on the second shift and five on the third. In its brief, the Union claims that employees work permanently assigned shifts that are not rotated. The record is unclear on this point. However, on a rotation basis, the change would result in a reduction of approximately 50%; a total loss to each officer of about \$700.00 in each of the two years of the Agreement. If, on the other hand, officers are assigned permanent shifts, the change would eliminate or exceed the effect of the wage increase granted by this panel to those employees who work on the premium shifts.

⁸ It is also noteworthy that Command officers receive this same differential. No evidence was presented that it was an issue in the recent negotiations involving that unit.