

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION

6/6/87 ARB
RECEIVED
1987 JUN 16 AM 9 52
STATE OF MICHIGAN
BUR. OF EMPLOYMENT RELATIONS
DETROIT OFFICE

In the Matter of:

CITY OF ST. JOSEPH

MERC Case No. G86 C-283

-and-

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

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE (Patrol Unit)

* * * * *

ARBITRATION OPINION AND AWARD

* * * * *

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

APPEARANCES

For the Compulsory Arbitration Panel:

Mark J. Glazer, Chairman
Kevin M. McCarthy, City Panel Member
James J. Quinn, Union Panel Member

For the City:

Kevin M. McCarthy
Miller, Canfield, Paddock & Stone

For the Union:

Peter P. Sudnick, Attorney at Law

Present and Participating:

William S. Sinclair, City Manager;
Tom Cooper; James J. Quinn and
William Kronbetter

St. Joseph, City of (ARB.)

BACKGROUND

On June 9, 1986 the labor council of the Michigan Fraternal Order of Police, representing St. Joseph Police Officers, filed for statutory arbitration pursuant to Act 312. At issue was a re-opener on retirement under the then current Contract that was to expire on 6/30/86. The Union petitioned as follows:

Article XVII RETIREMENT SYSTEM

Section 1. The retirement plan to be modified as follows:

- (a) Increase the multiplier to two and one-half percent (2 1/2%) for the first twenty-five (25) years of service.
- (d) Include lump sum payments of unused sick leave in determining final average compensation.
- (f) (NEW) For employees retiring after January 1, 1986, the employee's spouse, at the date of retirement will be entitled to receive a monthly benefit equal to fifty-five percent (55%) of the employee's pension benefit in the event of the demise of the retiree.
- (g) (NEW) The Employer shall pay one-half (1/2) of the premium of the then existing hospitalization insurance plan for retiree's and their dependents until the age of sixty-five (65).

A pre-hearing was held in St. Joseph on September 3, 1986. An arbitration hearing was held on December 18, 1986; thereafter, comprehensive post-hearing briefs were filed by the parties and the panel held executive conferences.

Pursuant to the statute, the Union offered the following as its last best offers:

UNION'S LAST BEST OFFERS:

1. Pension Formula: Multiplier shall be increased to reflect 2.25% for the first 25 years of service and 1.5% for each year of service in excess of 25 years. This offer is a reasonable modification of the

current plan (2.0% x 25 years and 1.5% for each year thereafter). While it does not raise the police officer to the level enjoyed by firefighters at 25 years, it does allow officers to reach that level by the 30 year mark. Since the cost is not as significant as that reflected in Proposal B and since the police officers are still not receiving the same benefit as firefighters, the employee contribution rate must remain status quo.

2. Lump Sum Sick Leave Payout in FAC: Union drops this issue.

3. Automatic Survivor Benefit: For employees retiring after January 1, 1986, the employee's spouse, at the date of retirement, will be entitled to receive a monthly benefit equal to 35% of the employee's pension benefit upon the death of retiree, at no cost to the employee.

4. Hospitalization for Retirees: The Union's offer is to modify the current language under Article X, Section (c) to provide that an employee may elect to have placed in an escrow account an amount representing 75% of his accumulated sick leave time up to 120 days (maximum credit for 90 days). This fund will be used to pay one-quarter (1/4) of the hospitalization premiums for the retired employee and spouse for as long as there is a sufficient sum to pay such premiums. The remaining three quarters (3/4) of such premiums shall be paid by the City for as long as there is a sufficient sum in the employee's escrow account to pay such premiums. The sum to be placed in the account shall be on the basis of the employee's straight time hourly rate of pay.

The CITY'S LAST BEST OFFER was:

To maintain the status quo on the benefit level and to increase the employee contribution rate to 5.5%.

Insofar as the issues are economic, Act 312 requires the panel to select one of the last best offers on each of the issues. Additionally, the panel must decide upon the comparable communities in order to apply Section 9(d) of the Act. The panel is to determine which factors are the most important under the particular facts of this case: it need not afford each factor equal weight. As Justice

Williams stated in City of Detroit v. DPOA, 408 Mich 410; 294 NW2d 68, 97 (1980):

We disagree with the City's contention. The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the statutory factors that consideration required by law. 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 on the panel through the use of the word "shall" in Sections 8 and 9. In effect then, the Section 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 Section 9. Since the Section 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. Our comment in Midland Twp. v. State Boundary Comm., 401 Mich. 641, 676, 259 N.W.2d 326 (1977), is here apposite.

With this background, comparability will now be considered followed by an analysis of the last best offers under the Article 9 criteria.

COMPARABILITY

The Union proposes the following as comparable communities:

Grosse Pointe
Ludington
Mt. Pleasant
Owosso
Sturgis
Hazel Park
Alpena
Benton Harbor
Coldwater
East Grand Rapids
Grand Haven
Muskegon Heights
Niles
St. Joseph
Adrian

It argues that these cities are relevant because of their population, square miles, department size, state equalized value, total taxes, and per capita income.

The City selects as comparable communities:

Adrian
Benton Harbor
Coldwater
Grand Haven
Muskegon Heights
Niles
Norton Shores
Owosso
Sturgis

These cities are said to be comparable because they were selected in a prior 312 award involving the city and the firefighters. East Grand Rapids is deleted as a comparable because it has become a public safety department. The City argues that its comparables are similar on demographics and total crimes and that the Union list is inappropriate because it includes communities found in the Detroit area labor market.

DISCUSSION

In City of Birmingham and Birmingham Firefighters, Local 1248, MERC Case No. D84 El618 (1986) I held that comparables previously awarded in an Act 312 proceeding should be retained unless there are changed circumstances. This approach enables the parties to engage in contract negotiations with the knowledge of a potential outcome should they require an Act 312 proceeding. I said:

In the interest of promoting stability in the bargaining relationship, and because changed circumstances have not been proven with the exception of Hazel Park, the prior list of comparables with the exception of Hazel Park should be adopted. Hazel Park could regain its appropriateness for a future Act 312 proceeding should the public safety concept be rejected.

Accordingly, the comparables selected by Arbitrator Brown in City of St. Joseph and the St. Joseph Firefighters Association (1982) should be selected with the exception of the community that has adopted public safety. No other changed circumstances have been established.

AWARD

The following are the comparable communities:

Adrian
Benton Harbor
Coldwater
Grand Haven
Muskegon Heights
Niles
Norton Shores
Owosso
Sturgis

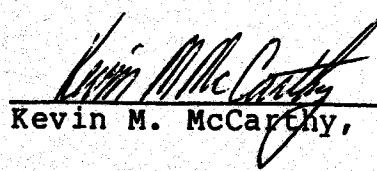
Dated: June 6, 1987


MARK J. Glazer, Chairman

Dated: _____

James J. Quinn, Union Designee

Dated: _____


Kevin M. McCarthy, City Designee

LAST BEST OFFERS

I

LUMP SUM SICK LEAVE PAYOUT IN FAC

This issue has been dropped by the Union; therefore, no award is necessary.

II

AUTOMATIC SURVIVOR BENEFITS

The Union, in the Survivor Benefit issue, asks that spouses be awarded 55% of the pension benefit upon death of the retiree at no cost to the employee. The City asks that this benefit be denied and that the status quo be maintained.

None of the comparable communities provide this benefit. Further, there is no suggestion that this type of increased benefit was anticipated in collective bargaining as part of a re-opener. The cost to the City would be significant and there is no showing that the public welfare will be enhanced by the Union's position. Accordingly, the City's last best offer should be awarded on this issue.

AWARD

The last best offer of the City to maintain the status quo on Automatic Survivor Benefits is awarded.

Dated: June 6, 1987

Mark J. Glazer
MARK J. Glazer, Chairman

Dated: _____

James J. Quinn, Union Designee

Dated: _____

Kevin M. McCarthy
Kevin M. McCarthy, City Designee

III
HOSPITALIZATION FOR RETIREES

The Union requests a plan to escrow employee funds to pay for hospitalization of retirees and for the City to deduct 3/4 of the hospital premiums so long as there are escrowed employee funds. The City requests that this benefit increase be denied and that the status quo be maintained.

None of the selected comparables provide this benefit and no other unit in the City provides this coverage. Evidence fails to reveal that the bargaining history of this Contract suggests that this benefit was anticipated, and there isn't any proof that the welfare of the public will be enhanced by an award of the Union's position. As a result, the City's last best offer is selected.

AWARD

The City's last best offer to retain the status quo on Hospitalization for Retirees is awarded.

Dated: _____

June 6, 1987



MARK J. Glazer, Chairman

Dated: _____

James J. Quinn, Union Designee

Dated: _____



Kevin M. McCarthy, City Designee

IV
PENSION FORMULA

The Union seeks to increase the pension multiplier from 2% to 2.25% for the first 25 years of service, while maintaining the employee contribution rate at 5%. The City asks to retain the multiplier at 2%, while increasing the employee contribution rate to 5.5%.

Initially, it should be emphasized that neither last best offer represents a reasonable expectation of collective bargaining, which is also a statutory criteria found in Section 9(h) of Act 312. The Union's offer, while lower than the St. Joseph Firefighters rate of 2.5%, fails to include the firefighters' higher employee contribution rate. It is totally unrealistic for the Union to anticipate that it would obtain in collective bargaining, under a re-opener, a benefit that is superior to its internal comparable, especially when support is lacking from the external comparable communities.

Conversely, the City asks for a roll back in a benefit: the increase in the employee contribution rate. There is no proof that the parties, when they negotiated a re-opener, anticipated a roll back in the absence of unexpected, negative economic conditions. Moreover, if the City was seriously seeking this type of a change, one would expect it to appear in the bargaining history, in the City's answer to the Union's petition for 312, or in a petition by the City for 312. None of these circumstances occurred, however.

A decision must be made in conformance with the statutory criteria: Factor 9 (h) will be given particular weight, however, to attempt to fashion this award as closely as possible to the expected outcome in collective bargaining. This is required by Act 312, and

to prevent the Act from existing in a vacuum, it makes sense for the result in 312 to mirror a negotiated outcome as much as possible.

POSITION OF THE UNION

The Union cites the internal comparable of the St. Joseph Firefighters: their pension multiplier was increased to 2.5% effective July 1, 1983. It also points to the selected external comparables of Owosso and Sturgis as supporting its position. The Union further maintains that the City does not suggest that it lacks the ability to pay.

In response to the City's argument that higher pension benefits were granted to the firefighters in order to encourage them to retire, to be replaced by reserves, the Union asserts that the police have also experienced an attrition in personnel since 1979 and that there is no proof that an all volunteer fire department is contemplated.

POSITION OF THE CITY

The City maintains that its current rate is extremely competitive when the comparables are considered. It further points out that the City's current contribution rate is much higher than the majority of the other communities and that the Union's position will push the total cost of the contract well in excess of what the consumer price index would justify.

Regarding the firefighters, the City argues that the 2.5 rate was a trade-off for a reserve program that has resulted in the elimination of three firefighter positions. The City does not anticipate

a commensurate decrease in police personnel if the Union's position is awarded.

DISCUSSION

The Section 9 factors will now be analyzed.

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

These factors are not applicable.

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

Insofar as the Employer does not claim an inability to pay, this aspect would favor the Union. The interest and welfare of the public would not seem to be impinged by either offer, although I believe that an increase in the employee's contribution rate as proposed by the Employer, would lead to the decreased morale of the officers that could effect their performance.

- (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.

At issue is the internal comparable of the firefighters and the external comparables previously selected.

The Firefighters

The firefighters currently have a 2.5 annuity factor with a 6.5% employee contribution rate. Consequently, the Union's proposal of 2.25 approaches the firefighter figure, whereas the status quo of-

ferred by the City does not. The Union's offer of maintaining the employee contribution rate at 5%, however, places the police officers ahead of the firefighters. The 5.5% contribution rate suggested by Employer is more in line with the firefighters' benefit.

Therefore, a mix of last best offers, whereby the Union's offer on the multiplier is selected and the Employer's on employee contribution is used, places the parties closest to the firefighter comparable.

External Comparables

Of the other comparables, only Owosso and Sturgis have a higher multiplier than the 2% currently enjoyed by the police officers. Most of the comparables are at the 2% figure; therefore, this factor supports the Employer's offer.

- (e) The average consumer prices for goods and services, commonly known as the cost of living.

Insofar as the wage increase in the third year of the Contract already exceeds the cost of living, and there will be an increase cost to the Employer under the Union's proposal, this factor favors the City.

- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medicals and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

A complete picture of the entire wage and benefit structure of the St. Joseph Police Officers was not presented: the focus at the arbitration was on the pensions, the actuarial cost, and the relationship of the police officer to the firefighters and the comparable police departments. Therefore, this factor would not favor either party.

- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

This factor is not applicable.

- (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.
(MCLA 423.239; MSA 17.455 (39))

It must be emphasized that the contribution rate issue is part of a contract re-opener; however, the bargaining history of the previously settled contract was not presented. Therefore, we don't know if the re-opener was inserted because the parties were waiting for changes in economic conditions or, if as so often happens, the parties delayed deciding pensions in order to achieve a settlement.

One issue is certain, however: the parties intended to resolve the pension issue under this Contract; it is not an issue in a subsequent 312 arbitration regarding the post June 30, 1986 Contract. Therefore, a non-decision, by maintaining the status quo, would have been an unlikely result in true collective bargaining.

Moreover, I find it unlikely that a re-opener would have resulted in an increased cost to the police officers, with no increase in benefits: the thrust of the Union's decision to raise the pension issue was clearly to achieve parity with the firefighters.

Conversely, it would be unrealistic to expect the City to grant a larger benefit to the police officers than that enjoyed by the firefighters (i.e. a higher multiplier with no increase in employee contribution) especially in consideration of the higher employer costs and the lack of support among the comparable communities.

A collective bargaining solution can only be obtained through reference to the next Contract; in fact, it is my belief that this pension issue should have been considered together with the prospective 312 case. There are just so many dollars to be awarded under the next Contract, and it is their total, not their character, that is of particular significance to the City.

An award on the pension issue for the Union, particularly in view of the comparable police departments, means that there are fewer dollars to be awarded for wages and other benefits in the future. The parties, however, have made a decision to consider pensions alone under the Contract, without reference to wages and other benefits. The Union, in particular, has opted to place a high premium on obtaining parity with the firefighters.

A 312 proceeding should both be consistent with collective bargaining and follow the law, which also requires that collective bargaining be considered. An award of the Union's position on the multiplier and the City's offer on employee contributions best complies with the Act 312 factors and the projected outcome of collective bargaining.

It must be emphasized that this result puts the police officers on the high side in terms of the comparables, and that due to the significant cost to the City it may negatively impact on their recovery in the next 312 award or in collective bargaining. Nevertheless, I am convinced that the community and the department will benefit, because the disparity with the firefighters will be reduced, thus diminishing a nagging resentment within the police department. Therefore, a bifurcated award should be granted.

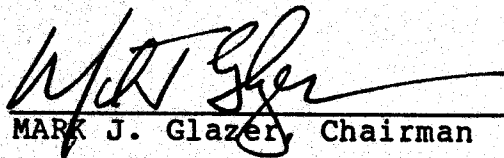
MARK J. GLAZER, ATTORNEY AT LAW, ARBITRATOR • 3705 W. MAPLE ROAD • BIRMINGHAM, MICHIGAN 48010. (313) 642-2013

AWARD

The Union's offer of a 2.25 multiplier for the first 25 years of service and 1.5% for each year of service in excess of 25 years is awarded. The Employer's offer of a 5.5% employee contribution rate is awarded.

Dated: _____

June 6, 1987


MARK J. Glazer, Chairman

Dated: _____

James J. Quinn, Union Designee

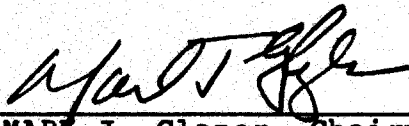
Dated: _____

Kevin M. McCarthy, City Designee

AWARD


The Union's offer of a 2.25 multiplier for the first 25 years of service and 1.5% for each year of service in excess of 25 years is awarded. The Employer's offer of a 5.5% employee contribution rate is awarded.

Dated: June 6, 1987



MARK J. Glazer, Chairman

Dated: 3/20/87



James J. Quinn, Union Designee

Dated: _____

Kevin M. McCarthy, City Designee

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION

In the Matter of:

CITY OF ST. JOSEPH

MERC Case No: G86 C-283

-and-

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE (Patrol Unit)

STIPULATED ADDENDUM TO ACT 312 AWARD

NOW COME the above parties, by and through their respective Delegates, and stipulate and agree that the effective date of the Arbitrator's Award be January 1, 1986. The Pension Plan will be funded by the City's contributions as if the benefit level had increased as awarded on that date, and the employee contributions will be increased to 5.5% of payroll for all payroll periods ending on or after January 1, 1986. The employee contribution shall be paid through payroll deductions to be made in a manner agreed upon by the Union and the City.

Date: May 5, 1987

CITY OF ST. JOSEPH

By Kevin M. McCarthy
Kevin M. McCarthy
BUSINESS ADDRESS:
444 West Michigan Avenue
Kalamazoo, Michigan 49007

May 5, 1987

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE

By James J. Quinn
James J. Quinn
BUSINESS ADDRESS:
1207 Academic Way
Haslett, Michigan 48840