

10/29/93  
msw

*Duke*

In The Matter Of The Act 312 Arbitration Between)	)
Charter Township Of Shelby	)
And	)
Police Officers Labor Council,	)
Shelby Township Patrol Officers	)
	)

MERC Act 312  
Case No.  
D91 L-2010

The case was authorized by the provisions of Act 312. A pre-hearing conference was held February 18, 1993 and a hearing on June 22, 1993 both in the offices of the Employer. The Employer was represented by Mr. Sidney R. Borders, Attorney and the Union by Mr. Kenneth W. Zatkoff, Attorney. Other panelists were Ms. Willa Taylor for the Employer and Mr. Michael Somero for the Union. A record of the proceedings was taken and transcribed by Mr. Phillip Liburdi. Last best offers were submitted on June 29, 1993 and post-hearing briefs September 13, 1993. The parties waived the time limits specified in Act 312. There is agreement that the case is properly before the panel.

Witnesses for the Employer:  
Donald Campbell  
Gilbert Parker

Witnesses for the Union:  
None

**Background:**

The only issue before the panel deals with pensions, an economic issue. The panel's decision on the issue would be retroactive to July 1, 1992 and extend for the term of the contract ending June 30, 1995.

**STATUTORY AUTHORITY**

Act 312 provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Section 8 of Act 312 states in relation to economic disputes that:

The arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions, and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

Section 9 of Act 312 contains eight factors on which the arbitration panel shall

1993 NOV -8 AM 8:52  
STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

RECEIVED

*Shelby Township*

Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

*Gordon F. Knight*

base its opinions and orders. The factors are as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) A 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 within other communities generally:
  - (i) In public employment in comparable communities
  - (ii) In private employment in comparable communities
- (e) The average consumer prices of 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 presented during the pendency of arbitration proceedings.
- (h) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary

collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public services or in private employment.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by competent, material and substantial evidence on the whole record. This is supported by the Michigan Supreme Court's decision in City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980). In that case the Court commented on the importance of the various factors as follows:

The legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 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 Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to insure 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 the case. Although, of course, all "applicable" factors must be considered. Id, p. 484.

The parties stipulated to the choice of comparable communities, namely, Mt. Clemens, Clinton Township, Sterling Heights, and Utica.

Issue: Pensions - Article 23.2(H)

Union Position: No change

Employer Position: For those employees hired prior to July 10, 1992, the employer agrees to continue to pay the required contribution rate pursuant to Act 345 of the Public

Acts of 1937, as amended, as well as the four (4%) percent contribution currently being paid by the employee with said contribution being credited as the employee's contribution. For those employees hired after July 10, 1992, their pension contribution shall be at the rate of five (5%) percent.

#### Discussion:

Of relevance to this issue is a decision by the Michigan Supreme Court in August of 1991 which ordered the Township to annually contribute to the retirement system an actuarially determined amount to ensure the availability of funds to cover pensions earned by active members by services to be performed in the current year, services already performed, and actual pensions to be paid to retirees. The underfunded amount as of December 31, 1992 stood at approximately \$2.5 million dollars.

In response to the Court's decision the Township began contributing an additional \$170,000.00 annually beginning in fiscal year 1992.

The intent of the Employer's proposal is to retire the unfunded accrued liability as soon as possible. In doing so it proposes to return to the pattern of employee contributions that existed prior to 1983 where all employees made a 5% pension contribution under the bargaining agreements and Act 345. The proposal receives additional incentive from the increased costs of fringe benefits on which the employer's pension contribution is based.

In order to accommodate this increasing pension contribution requirement, the Township instituted a two-tiered system with respect to pension contributions. All other bargaining units in the Township have approved such a system. This includes the police command unit, the firefighters, the 911 communication technicians, the municipal supervisors, the general employees, and the district court employees. The patrol officers is the only unit that has not approved such an arrangement.

According to the Employer the total annual value of patrol officers compensation in the Township at \$49,597.00 is the highest of the comparable communities. This figure includes wages, longevity pay, show-up time, shift premiums, sick leave costs value, holiday pay, clothing and cleaning allowance and 104 hours of additional pay for 12-hour shifts. It does not include in this figure personal days, vacation days, funeral leave, health care costs, life insurance and tuition payments.

The Township in response to the Union's claim that it's tiered system would jeopardize unit cohesion, notes that the Union has negotiated a tiered arrangement for health care, early retirement credit and a sick leave grant system.

The Township presents evidence showing the annual gross pay of a new patrol officer. The Township's figure at \$28,127.00 ranks third. The net pay comparisons after adoption of the 5% proposal would make the Township figure at \$26,721.00, second behind Utica.

The Township quotes the panel chair in a different case where, on the issue of health insurance, he gave greater weight to internal comparisons than external ones.

The Union argues that not a single comparable community has a two-tiered system with respect to employee pension contributions. It points out that the two-tiered system for the police command officers has no impact inasmuch as it would be some 15 years before it would be meaningful.

The Union asserts that when the 5% pension contribution is deducted from the starting salary of a patrol officer in the Township it is significantly below the average of the comparables.

It claims that the Township's proposal would deny newly hired patrol officers the benefits of the previous agreement where the Union took a reduction in their pension contribution in lieu of a pay increase.

The current underfunded status of the pension system is attributable to the way the fund was managed and now the Township is forcing the patrol offices to suffer the consequences of their mismanagement. The Union argues that the Township has the financial resources to maintain the contribution arrangement as it now stands.

#### Findings:

It is clear that there is no precedent for a two-tiered employee pension contribution system within any of the comparable communities.

It is equally clear that among the internal comparables, that is, the other organized employee units within the Township, that all except the patrol officers have accepted such a two-tiered system.

Irrespective of whether the Township previously acted imprudently in its funding of the pension system nonetheless, it is now faced with some unambiguous financial requirements as ordered by the State Supreme Court.

It is, of course, obvious that the adoption of the two-tiered system has no financial impact on patrol officers currently employed.

With the adoption of the Employer's proposal, the gross annual starting pay for a Shelby Township patrol officer would rank second amongst the comparables. (Note: The figure of \$28,873.00 for Clinton Township in the Employer's brief should be \$22,873.00 according to its contract.)

When one subtracts the pension contribution from each including the 5% proposed for Shelby Township, the net pay for patrol officers in the Township ranks second behind Utica. One must conclude that the proposal at issue here would not put Shelby patrol officers at a disadvantage with respect to their peers in comparable communities.

The Union's claim that the 5% reduction for pension contribution in the Township brings officers starting salary below the average is misleading. It fails to reduce the starting salaries in the comparable communities by their respective pension contributions and thus compare all on a similar net pay basis.

The Union argues that the Township is imposing on the newly hired patrol officers to shoulder the burden of its own mismanagement of the pension fund. The wisdom of the Township's decision in this regard may be subject to question, but nonetheless, the details of the Supreme Court's decision is not. Moreover, whatever one may conclude as to whether new patrol officers suffer as a consequence, it's clear that all other Township employee units have adopted a similar arrangement.

The aspect of this issue that should receive particular weight is the agreement with all the other organized employee units within the Township. It is of greater weight than the ability to pay. It goes beyond contractual disparities on non-economic issues. To affirm the status quo is to grant a 4% increase in net pay for each of the three years of the contract for patrol officers over and above any increases granted the other units.

Importantly, this 4% increment is not supported by compensation data from the comparable communities. In other words, the adoption of the Township's proposal does not relegate the compensation of Shelby patrol officers to an inferior position.

It is also noted that a two-tiered system in fringe benefits is not unprecedented, as the Employer noted in its brief.

In summary, the Township's position is affirmed. It does no harm to current patrol officers. It incorporates the same arrangements as all other organized employee units within the Township. It does not cause compensation of Township patrol officers to become less competitive with comparable communities. Moreover, there is a legitimate need being addressed by the Township's proposal.

While all the various decision criteria specified in Section 9 of the Act have not been discussed specifically in the foregoing, they have been considered, nonetheless.

It is stipulated all other outstanding contractual issues have been either withdrawn, or made the subject of tentative agreements.

Decision: The Employer's proposal is adopted.

Concur: Willa Taylor for Gordon F. Knight

Dissent: Michael F. Homew

Gordon F. Knight  
Gordon F. Knight  
Panel Chair

October 29, 1993