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ACT 312 STATUTORY ARBITRATION TRIBUNAL

In the matter of arbitration between

THE CITY OF SOUTHFIELD

-and-

THE POLICE OFFICERS ASSOCIATION OF MICHIGAN
MERC Case No. D96 A-0130

Southfield City of

HEARING DATES: December 19, 1996 and May 8, 1997

ARBITRATION PANEL: Paul Jacobs, Chairperson
Kenneth E. Grabowski, Union Delegate
Dennis B. DuBay, Employer Delegate

APPEARANCES:

For the Union:

Tim Barr, President Southfield Police Officers Association of Michigan
Tina Alexander Officer
Vincent Naviglin Officer

For the City:

Dennis B. DuBay Counsel for the City
Thomas Marsh Director of Labor Relations, City of Southfield

DECISION AND AWARD

Background

The current Collective Bargaining Agreement between the City of Southfield (City) and The Police Officers Association of Michigan (POAM) expired June 30, 1996. Subsequent thereto the parties made a good faith effort to bargain a new contract. Tentative agreements

on many issues were reached and those tentative agreements are included in the new collective bargaining agreement. Subsequent to the parties entering into their tentative agreements on July 17, 1996, the Union filed a petition for arbitration with the Employment Relations Commission dated August 12, 1996.

The remaining issues before the panel, when it convened for a pre-conference on Thursday, December 19, 1996, were the issues of contract duration and wages. The parties agreed to waive the statutory time limits for issuing an award. At the request of the City's Counsel and delegate, Dennis B. DuBay, the Panel was requested to make a determination as to duration. The City urged a two-year contract duration and the Union urged a three-year contract duration. After a discussion between all three Panel members, it was the decision of the Panel, with Dennis B. DuBay, City Counsel and delegate dissenting, that the duration of the contract be for a term of three years.

The parties then agreed that the only remaining issue to be resolved by the Panel was the issue of wages. The Panel Chairperson requested that the parties continue negotiating and the parties agreed with the proviso that a hearing date be set for Thursday, May 8, 1997. A one-day hearing was held on Thursday, May 8, 1997, after which the parties submitted their last best offers to the Chairperson for exchange. The parties completed the process by subsequently filing Briefs, which were also directed to the Panel Chairperson for exchange.

Last Best Offers

Union's Last Best Offer:

July 1, 1996, 4%
July 1, 1997, 3%
July 1, 1998, 3%

City's Last Best Offer:

July 1, 1996, 4%
July 1, 1997, 2%
July 1, 1998, 3%

Comparability

In this Arbitration, as in the prior Act 312 Arbitration, the Union submitted ten cities and/or townships as comparable and they were adopted by the prior Panel Chairperson. The City now includes those ten cities and/or townships, and adds ten additional names. The parties agree on the following townships and/or cities:

Bloomfield Township

Dearborn

Dearborn Heights

Farmington Hills

Redford Township

Royal Oak

Troy

Waterford Township

West Bloomfield Township

Westland

In addition, the City believes that Birmingham, Canton Township, Clinton Township, Ferndale, Hazel Park, Madison Heights, Pontiac, St. Clair Shores and Taylor are comparable communities under its interpretation of Section 9, (d) of Act 312. The City asks that the Panel adopt its communities because they are all in Wayne, Oakland and Macomb Counties, with a full-time police department and a 1990 population within 50% of the 1990 population of the City of Southfield. The City urges that these communities be considered because they all fall within the same geographical area. That they are a broad base set of comparables offering the

best picture of existing pay and benefits in area police departments. That the City of Southfield is very similar to these communities in population in per capita SEV, in median housing value, in per capita income, in SEV for police officers and in total arrests per officer.

I agree with Arbitrator Potter who decided in the previous Act 312 arbitration between the City of Southfield and the POAM to the extent that ten or more comparable cities upon which both parties can agree is an adequate basis for determining comparability. In this arbitration the city's list contains all ten of the cities designated as comparable by the Union. I see no need to go beyond that inasmuch as some of the additional communities are really quite far-flung in terms of geographic location, albeit they are all within Wayne, Oakland and Macomb Counties. When both parties can agree on ten comparables there is more than enough from which to compare.

Wages

Position of the City

The City's position on wages differs from that of the POAM only with regard to the second year of the contract, beginning July 1, 1998. The parties are at this point one percent apart in terms of their last best offers. The City reasons as follows, citing Section 9 of Act 312 Sections (a) thru (h):

[T]he arbitration panel shall base its findings, opinions and order upon the following factors, applicable:

- (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) 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 City states on page twenty-five of its Brief as follows:

“First, the Arbitration Panel must consider the total cost or overall impact of its award. The adoption of the City’s Final Offer of Settlement will provide members of the unit with fair increases and a very competitive overall compensation package. Given the City’s financial condition, it is imperative that the Arbitration Panel not issue an award in excess of the City’s means.

Second, for the reasons discussed above, the primary focus of the City’s analysis is on the wages, benefits and conditions of employment in the comparable communities and the other City units.

Third, in considering the wage issue, we respectfully submit that the Arbitration Panel must be sensitive to the clear evidence of record with respect to each of the Section 9 standards for decision -- the evidence with respect to Section 9 standards squarely supports the City's final offer of settlement. The Arbitration Panel must also be sensitive to the overall impact of its award on the City and other employee units."

The City argues that with regard to Section 9(c) the interests and welfare of the public and the financial ability of the City to pay, that the City is now offering a compensation improvement which exceeds the rise of the consumer price index over the contract term. The City submits that its position on the wage issue is very fair to the members of the bargaining unit since the unit members already enjoy a very favorable position in comparison both with other city employee groups and with other employees in comparable public sector employment.

The City also cites the issue of its financial ability, and states that the City's revenues are declining while the City is operating at its full taxing level. In further support of its position that it cannot pay more than two percent (2%) in the second year of the contract, the City's Brief states as follows:

"Under Section 9(c) of the Statute, the Arbitration Panel is also to consider the financial ability of the municipality. Although the City has in the past not experienced significant budget deficits, the City's future financial picture is not bright. The revenues available to the City are declining, while at the same time the City is operating at its full taxing level. Despite this fact, the City has offered fair wage improvements to unit members. The Union's attempt to obtain even greater wage improvements is absolutely without justification. As became very clear at the hearing, the City does not have the financial ability to pay for the Union's excessive wage demand. There can be no serious dispute that the City is (and will continue to be for the foreseeable future) in financial difficulty. To fully demonstrate the critical urgency of the City's position, the City called Mr. Thomas Marsh to present, in detail, the City's budgeting process and the City's financial condition. The City provided whatever information was

requested by the Arbitration Panel or the labor organization throughout the course of the hearing.

The City is subject to Public Act 621, which mandates: the use of fund accounting; the use of the "standard classification of municipal accounts"; the preparation of an annual financial report; the preparation of an annual audit; and the adoption of a balanced budget. In conformance with Public Act 621, each year the City adopts a budget for the following fiscal year. The budget is adopted after public hearings are conducted by the City Council. The City's budget and financial reports, including annual revenues and expenditures, are subject to audit by a certified accounting firm. There is no claim, and absolutely no evidence to suggest, that the City is not in complete and full compliance with the Uniform Budgeting and Accounting Act.

It is undisputed that to be fiscally sound, the municipality should have an unappropriated general fund balance of approximately 15% of the total general fund budget. It is imperative for a municipality to maintain at least a 15% general fund balance for several reasons. First, unbudgeted and unanticipated revenue shortages are generally incurred by any municipality, demanding that a reserve fund balance be on hand. Further, the City's bond rating is directly correlated to its maintenance of a 15% general fund balance. Specifically, a less than 15% general fund balance will lower the City's bond rating, which increases the interest rate that must be paid by residents of the City. Also, Michigan law precludes a municipality, such as the City, from utilizing monies scheduled for one specific purpose (i.e., money for road improvements) to pay for wages and benefits for unit members. Only general fund revenues may be utilized by the City to fund the wages and compensation of the police officers unit. In analyzing the City's financial condition then, one must focus on the City's general fund.

The Arbitration Panel was presented with the City's 1995-1996 budget (C.Ex. 55), as well as the 1996-1997 budget (C.Ex. 57). Mr. Marsh testified that, as revealed in C.Ex. 55, the "general operating levy" set forth in the 1995-1996 budget refers to revenues which are derived from the general operating millage (T-107). This millage, which is currently 16.46 mills (C.Ex. 58) cannot be increased by a vote of the City Council, but can only be increased through a vote of the people. Moreover, the "police and fire levy" on line 2 of the C.Exs. 56 and 58 refers to a three mill authorization for operating the police and fire departments, and is the maximum levy available.

The state-shared revenues received by the City are also detailed in both City budgets. These state-shared revenues, set forth in C.Ex. 55 as "income tax returns, sales and use tax returns, SBT returns, SBT inventory reimbursement and growth intangibles," are revenues returned to the City from the state based

upon a State created formula. The City does not have control over how much state-shared revenue it will receive during any particular year since the formula is based on the City's population (which has been stagnated [C.Ex. 29], SEV (the growth of which is fixed by law [C.Ex. 61] and millage rates (already at the maximum).

Comparing the General Fund revenues in the 1995-1996 budget with the General Fund revenues in the 1996-1997 budget shows an increase in revenues of a mere 2.21%. The virtual stagnation in revenues is attributable to a number of underlying events over which the City has no control.

As detailed above, the City's SEV over the past several years has only minimally increased and at a much lower rate than that in the comparable communities. Between 1990 and 1996, the City's total SEV increased only 14.2%, whereas the comparable communities experienced an average increase of 33.4% (C.Ex. 35). As reflected in C.Ex. 59, the City experienced a .6% decrease in total 1994-1995 SEV, which had a significant impact upon the total tax base available to the City (C.Ex. 26; T-110-111). This decline in the total SEV is a historic event in the City's financial history and generates grave concern for the City's future financial position (Id.).

The City's concerns are magnified by a number of other considerations. First, the City is currently operating at its maximum millage for General Fund operations. Second, recently enacted tax legislation will severely limit the City's growth potential in the future (T-112-113). Under this legislation each commercial property is now limited in its yearly increase in SEV by the lesser of 5% or inflation (C.Ex. 61). The City's ability to generate revenue through commercial property is thus severely limited. Third, the City already has one of the highest property tax rates amongst the comparables -- which discourages investment. Fourth, Southfield is a fully built community and unlike many other communities new development cannot be expected. Fifth, as noted above, state-shared revenues are tied to population, SEV and millage rates. Since the City has a stagnant population (C.Ex.29), a declining SEV (C.Ex. 26) and already levies one of the highest millage rates of any of the comparables (C.Ex. 53), and is already at the millage rate maximum, there is no realistic hope of any increase in state-shared revenues.

The City, on the other hand, has done all it can to reduce expenditures and avoid budget deficits. The City has been required to reduce expenditures through the elimination of 40 full-time positions between fiscal year 1991-1992 and fiscal year 1996-1997 (T-111-112; C.Ex. 60). The reduction of the 40 full-time equivalent positions, which reduced the authorized personnel within the City by some 5%, fell in the general City units (C.Ex. 50). Only one Police

Department position and two Fire Department positions were eliminated through attrition (T111-112; C.Ex. 60)."

City argues that the wages paid the Southfield police officers compared to wages paid in the private sector are extremely favorable and points to the fact the average seniority is in excess of seven years, that the City received approximately 120 applications for one police officer job posted. The City concludes by stating that police officers in the City of Southfield have never, nor do they now, concern themselves with "layoffs."

The City urges that when examining the Consumer Price Index which is required by Section 9(e) of Act 312 that the appropriate Consumer Price Index is the one that includes all items less medical care. The reason being that the City pays the full cost of medical insurance premiums for its police officers. The City's position is that in considering the Consumer Price Index the Consumer Price Index to be utilized is for the period twelve months immediately preceding the date on which any increase is to be given. Using its Consumer Price Index, the one without medical insurance costs included, the City argues that from the period June 1968 through June 1996, whereas the Consumer Price Index had risen 315% for all items and 300% for all items less medical, the police officers salaries had increased 424%, and that the police officers salaries would not have fared so well had increases been based strictly on increases in the Consumer Price Index.

In treating overall compensation (Section 9(f) of Act 312), the City argues that the overall compensation of the police officers in the City of Southfield for the 1995-1996 year ranks only behind Bloomfield Township at \$45,327; Farmington Hills at \$44,290; and Southfield at \$44,138.

The City also urges the Arbitration Panel to consider Section 9(g), Changes in the Underlying Circumstances. The City notes that its SEV has declined, as has its state-shared revenues.

Position of the Union

The Union states its position on wages in its memorandum in support of Final Offer of Settlement as follows:

"The Union seeks across-the-board wage increases of 4%, 3% and 3% for the three years of the contract. The Employer offers 4%, 2% and 3%. Accordingly, the first year wage increase is not in dispute. Essentially, the third year is also settled. Only the second year and its impact as a base for the third year needs to be evaluated.

Three essential criteria must be measured as relative to the question of wages. They are 1) comparability, 2) cost of living and 3) ability to pay. The Employer did not raise inability to pay.

Union Exhibit 16 set forth the percent increases for the City's internal groups in the police and fire departments. The wage increase was 4% for those units at July 1, 1996, the first year of the contract in this arbitration. None of the units have a settled contract beyond that year. Accordingly, this panel will be "breaking new ground" in the City of Southfield for the second and third years.

Regarding external comparables, both the Union's list and the Employer's list prove a 4% increase for the first year (Union Exhibits 13 and 15). The parties themselves were wise enough to embrace this fact in their final offers of settlement. When one attempts guidance from the external comparables for the second year beginning July 1, 1997, more than half the Employer's comparables are expired (as are the Union's). Accordingly, no meaningful average of wage levels or percent increases can be established.

The criterion which may best serve this panel is that of cost of living, such as measured by the Consumer Price Index. The Union entered a number of graphs demonstrating the loss of purchasing power which occurred over the last contract term. Notwithstanding the arguments which occurred between the parties concerning the "correct" point in time to begin a comparison of wages and the Consumer Price Index, the Union illustrated that in every instance, it

would take more than 4%, 3% and 3% over this three-year contract to keep bargaining unit members even with the inflation rate. In fact, the calculation can be made from Employer Exhibit 91 to represent that at no time over the last contract or for any time period to date within this contract period, has the inflation rate been as low as the 2% the City offers for the second year.

This Employer wishes to set a 2% pattern for the other uniformed services in the City with which it is currently negotiating. No compelling need or problem was demonstrated to this panel that a sub-standard wage adjustment was warranted. Yet this Employer asks this panel to establish just such a pattern. A 2% wage increase is an aberration. It is true that aberrant contract terms are negotiated in some circumstances. But when an Employer wishes to negotiate something out of the ordinary, there is usually a quid pro quo, or some meeting of the minds. Such has not occurred in this instance. This Employer has done nothing more than to roll the dice and hope that smoke and mirrors, compounded by pages and pages of irrelevant exhibits, will somehow cause the panel to grant what the Employer itself could not gain in an instance of voluntary collective bargaining.

The Employer cannot rely upon internal comparables to prove its case because there are no settled contracts.

The Employer brought a list of external comparables to this hearing of which half are expired for the crucial second year. It cannot rely upon external comparables to prove its case.

Inability to pay is not an issue. The City possesses the ability to pay for either party's final offer.

All that is left is the cost of living criterion which proves that 2% is too low. No year of inflation (regardless of which month-to-month, year-to-year interval is calculated) has ever been as low as 2.0% in this contract period or over the entire last contract. Yet, this Employer asks the panel to place employees in a situation where they will not be able to keep even with inflation.

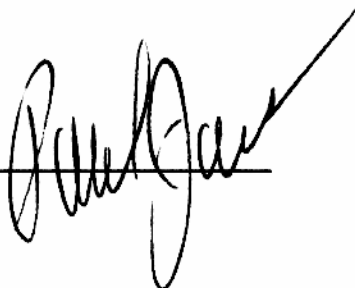
This panel should just say NO!

The Union urges the Panel to examine the equities inherent to this issue and construct its opinion on that basis."

AWARD

Based upon the testimony, the evidence, the arguments of the parties at the hearing, their briefs, and their reasoning, the Arbitration Panel adopts the City's Last Best Offer.

Paul Jacobs
August 18, 1997



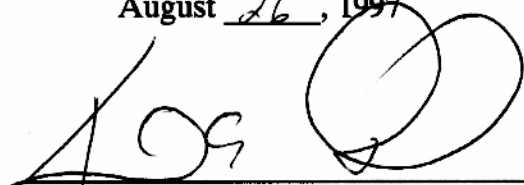
Concurs

Dennis B. DuBay
Dennis B. DuBay, City Delegate
August 26, 1997



Concurs

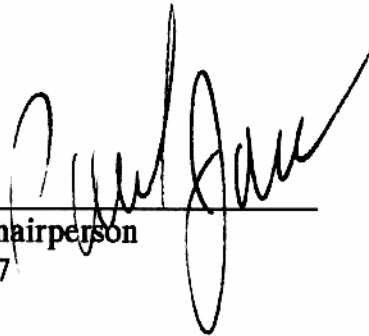
Kenneth Grabowski, Union Delegate
August 28, 1997



Dissents


TENTATIVE AGREEMENTS

All tentative agreements and partial settlements previously agreed to by the Parties are stipulated to for inclusion in the new contract.



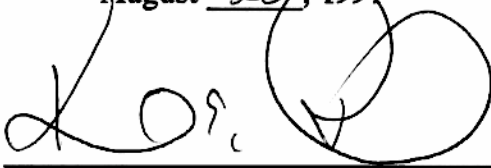
Paul Jacobs, Chairperson
August 18, 1997

Concurs



Dennis B. DuBay, City Delegate
August 26, 1997

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Kenneth Grabowski, Union Delegate
August 22, 1997

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