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STATE OF MICHIGAN

STATUTORY LABOR ARBITRATION PANEL
(Pursuant to Act 312 P.A. 1969 as amended)
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CASE NO. D88-E1343

In the Matter of Arbitration Between

Township of West Bloomfield, Michigan

and

Labor Council
Michigan Fraternal Order of Police

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

INTRODUCTION

Pursuant to Section 3 of Public Act 312, a petition for arbitration was filed by the above named Union dated May 26, 1989. In the petition, the Union stated they had engaged in good faith bargaining and mediation; and the parties to the contract had not succeeded in resolving two (2) specific issues. Therefore, this matter came on for hearing before a panel of arbitrators appointed pursuant to the terms of P.A. 312 (P.A. 1989, as amended) for the purpose of hearing and deciding these unresolved issues and a new contract between the parties shown above.

Pursuant to the statute, Dawson J. Lewis was appointed by the Michigan Employment Relations Commission to serve as Chairman of the Arbitration Panel. The two other members of the panel were Mr. Dennis Dubay, for the Employer, and Mr. Michael Somero, for the Union.

A pre-arbitration conference was held on October 30, 1989 to allow the parties the opportunity to acquaint the panel regarding the unresolved issues. The parties stipulated, and the panel agreed, that the following issues were economic and therefore subject to the last best offer provisions of Section 8 of the Act.

Union Issue: Holiday Pay

"Revise Article XVI, second paragraph, first sentence by deleting the word 'uniform'."

Township Issue: Hospitalization Insurance

"Revise Article XIX by adding the following new provision to Section C: 'The Township's obligation is to pay the premium in

Lewis, Dawson J.

West Bloomfield Township

effect as of December 31, 1988. Any premium increase after that date shall be the responsibility of the employee."

The arbitration panel conducted a hearing on January 22, 1990 at the offices of the Township of West Bloomfield, 4000 Walnut Lake Road, West Bloomfield, Michigan.

The "Last Best Offers" were exchanged through the Chairman, postmarked no later than January 25, 1990.

Subsequently, the parties mailed their post hearing briefs to the Chairman of the panel, who in turn forwarded them to opposing counsel and the other members of the panel.

On May 23, 1990, the panel met in executive session to consider the evidence and arguments on the last best offers of the parties.

It needs to be emphasized that the panel members representing the Township and the Unit of Lieutenants and Sergeants disagreed with certain of the findings and awards set forth hereinafter. Each generally supported the last best offers of the party by whom he was appointed to the panel. Accordingly, the signature of either of the partisan panel members at the conclusion of this opinion and award does not represent a concurrence in each and every element of the final award, but does constitute a recognition that there exists a majority vote in support of each item contained in the final award.

BACKGROUND

The Township and the Fraternal Order of Police (FOP) were signatory to a Collective Bargaining Agreement with an expiration date of December 31, 1988. The parties commenced negotiations for a new contract. Several bargaining sessions were fruitless and the Union requested mediation.

Subsequently, on May 26, 1989, a demand was made for interest arbitration under Act 312. The parties mutually agreed to waive the time limit requirements of the act. No issue with respect to the proper appointment or constitution of arbitration panel was raised during the course of these proceedings. Neither was any question raised about the arbitrability of the disputes raised by the Township or the Command Officers Association.

LAST BEST OFFER

The parties exchanged their last best offers on each of the outstanding economic issues through the panel's chairman. They also exchanged briefs in similar fashion. For convenience, the issues are set forth in numerical order, with a recitation of provisions, if any, in the old contract, followed by the Township's last best offer and the Command Officers Association final offer of settlement.

UNION

UNION ISSUE: Holiday Pay

A. Current Provision:

"Because uniform employees of the West Bloomfield Township Police Department must maintain operation on every day of the year, the employees of this bargaining unit are required to work on their regular shift even though the shift may fall upon one of the above holidays. The employee shall therefore be entitled to twelve (12) extra days pay computed at straight time in lieu of the above holidays. Such sums shall be paid annually on November 30, If plainclothes personnel are required to work on a holiday, they shall be entitled to double time for that day."

B. Final Offer of Settlement:

"Because employees of the West Bloomfield Township Police Department must maintain operation on everyday of the year, the employees of this bargaining unit are required to work on their regular shift even though the shift may fall upon one of the above holidays. The employees shall therefore be entitled to twelve (12) extra days pay computed at straight time in lieu of the above holidays. Such sums shall be paid annually on November 30. If plainclothes personnel are required to work on a holiday, they shall be entitled to double time for that day."

TOWNSHIP ISSUE: Health Insurance

The Union is requesting the current contractual language remain status quo.

TOWNSHIP

UNION ISSUE: Holidays

Final Offer of Settlement:

"Retain current contract language and add no additional contractual provisions on this issue. Effective: Date of the Arbitration Award."

TOWNSHIP ISSUE: Health Insurance

Final Officer of Settlement

"Revise Article XIX - Insurance, Section C to provide as follows:

Section C. The Township agrees that, for the duration of this Agreement, it will continue to pay the premium to furnish the Blue Cross/Blue Shield hospitalization insurance (with Master Medical), or its equivalent, currently in force for seniority employees. An employee electing to be covered by a Township-provided health insurance program shall contribute ten (\$10.00) dollars per month. Employee contributions shall be made by payroll deduction as a condition of receiving health insurance benefits. Effective: First calendar month commencing after the date of the Arbitration Award."

DISCUSSION

Act 312, 1969 provides under Compulsory Arbitration of Labor Disputes in Police and Fire Departments for the factors to be considered in the findings and orders (423.239) Section 9 states:

"Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall 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, holiday and other excused times, 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."

Particular emphasis was placed on Section 9 (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.

The comparisons made were in public employment in comparable communities (d)(i). The comparable communities that were considered were:

- a. Birmingham, Michigan
- b. Bloomfield Township, Michigan
- c. Farmington Hills, Michigan
- d. Royal Oak, Michigan
- e. Waterford Township, Michigan
- f. Ferndale, Michigan
- g. White Lake Township, Michigan

The Union's position relative to the issue of Holiday Pay is that Paragraph 2 of Article XVI be modified to afford equal treatment to all members of the bargaining unit.

The Union points out that the Command Officer's unit currently consists of five (5) uniformed and five (5) non-uniformed officers. Under the current contract language, the uniformed officers receive twelve (12) extra days pay per year in lieu of having to work their regular shift even though the shift may fall upon one of the above holidays. The non-uniformed officers do not receive this benefit. In fact, the entire police department complement of officers, some forty seven or forty eight sworn officers including the Chief, receives this benefit.

The Union contends the exclusion of the five non-uniformed officers is unfair in that the uniformed officers, if scheduled to work a holiday, have the option of utilizing a vacation day, a comp day or a personal day off in lieu of working a scheduled holiday and still collect the twelve days holiday pay, or they can take up to five days off and charge the days off against the twelve (12) days payment and receive seven (7) days pay. The non-uniformed (detectives) officers do not have this option.

The Union is asking that the non-uniformed officers (detectives) receive the same benefit as the other members of the bargaining unit, contending that the uniformed officers make \$1750.00 per year more than the non-uniformed officers under the current contractual language. The lesser amount of pay per year impacts on the detectives final average compensation and reduces the Township's contribution into the Multi-Vester fund for these employees.

The Union argues that none of the comparable communities distinguish between uniformed and non-uniformed personnel for purposes of holiday pay.

The position of the Township on the matter of Holiday Pay is that the Township's current practice is in line with the comparable communities:

1. The number of holidays granted uniformed personnel is consistent with the number of holidays granted by the comparable communities.
2. The majority of the comparables compensate uniformed personnel in a lump sum payment.
3. Additional payment is not made to uniformed personnel required to work a holiday.
4. The plainclothes officers in the Township are compensated for holidays at the rate of double time if they are required to work the holiday, while six of the comparable communities compensate these officers at a straight time rate.

Further, the Township argues that the practice of not assigning plainclothes officers to work holidays is consistent with the practices followed by the comparable communities; i.e. the communities of Birmingham, Farmington Hills, and White Lake Township do not assign these officers to work holidays; Bloomfield Township assigns plainclothes officers to work five of the 13 holidays; the City of Ferndale assigns non-uniformed officers to work five (5) of the ten (10) recognized holidays; Royal Oak assigns the officers to work nine (9) of the thirteen (13) holidays; the Township of Waterford assigns plainclothes officers to work five (5) of the thirteen (13) recognized holidays.

The Township points out that in those cases where plainclothes personnel are assigned to work holidays, they are paid straight time rates, whereas if West Bloomfield plainclothes officers are assigned to work a scheduled holiday, they are paid double time.

The Township contends there is no justification for paying the plainclothes officers for days they do not work.

The Township argues that the equity of the current system of payment for holidays is clearly demonstrated:

1. Uniformed officers work an additional twelve (12) days per year and are paid for the 12 additional days worked.
2. Non-uniformed officers are paid for the 12 holidays although they normally do not work the 12 holidays.
3. The courts and schools are closed on legal holidays and the services provided these institutions by non-uniformed personnel are not needed.

4. Officers', in the Detective Bureau, work week is Monday through Friday, and they can be given the holiday off with pay, whereas uniformed officers are required to work the holidays that fall on their regular shifts; uniformed officers work three shifts covering the seven (7) days of the week.

The Township claims that the Union's contention that the holiday pay provision in the contract adversely affects the gross compensation paid the non-uniformed officers is not borne out by the comparison of the earning of uniformed personnel and plainclothes personnel.

Therefore, based on the record evidence, the Township submits that its "Last Best Offer" on this issue should be adopted.

Health Insurance Issue. On the matter of the Township's proposal that the employees in the Command Officers Unit be required to contribute ten (\$10.00) dollars each month toward the cost of their health insurance premium, effective after the date of arbitration, the Employer states that this proposal is in response to the staggering increase in the cost of health insurance; and because these costs have risen so significantly, the employees should contribute a portion of the increased costs.

The Employer cites the fact that from November, 1987 to November, 1989, the annual cost per officer for single coverage increased by \$1,056.00 per year; the cost for two person coverage increased by \$2,340.00 per year, and the cost for family coverage increased by \$2,472.00 per year. The increase in the cost of coverage represented increases of 96.71%, 97.50% and 96.27% over the two year period.

The Employer argues that because these increased costs will result in a financial burden to the Township, it is reasonable to cause the employees to pay a small portion of the cost of the health insurance. Further, the projections are that the cost of the coverage will increase 14%-15% for the year 1990 and while it is true that traditionally the cost of the health insurance has been paid by the Township, this is no longer feasible in light of substantially increased premium rates for the insurance.

The Employer submits the Last Best Offer on this issue is reasonable and should be adopted by the arbitration panel.

The Union's position on Health Insurance is there be no change in the health insurance provision.

The Union argues that the request made by the Employer that the employees in the Command Officers Association share the cost of the insurance is not supported by the evidence. While the testimony clearly shows that the rates have increased for the coverage, there is not any support for the Employer's request:

1. There is no evidence offered that the Township cannot meet the cost of the insurance coverage.
2. Exhibits and testimony shows that not any of the comparable communities require the employee contributions toward the cost of the insurance coverage.
3. Comparisons with other employees of the Township shows that no other units of employees are required to contribute to the cost of the insurance.

The Union contends the evidence is heavily weighted against the Township's position on this issue, and therefore, the Panel should maintain the status quo and reject the Employer's position on this issue.

OPINION AND AWARD

Holiday Pay Issue:

Relative to the issue of holiday pay, the Union contends the five (5) plainclothes officers assigned to the Detective Bureau are being denied a benefit that the uniformed employees enjoy, and thereby are being treated unfairly. In fact, the contention is that the method of payment of holiday pay to "plainclothes" officers causes them to make \$1,750.00 less per year than their counterparts in the patrol unit (uniformed personnel).

The method of payment of uniformed personnel is based on the fact that these officers are assigned to work shifts; coverage is provided 24 hours per day, 7 days a week.

When a holiday falls on an officer's scheduled work day, the officer is required to work the day unless excused or given permission to use a recognized "day off".

Rather than being paid "holiday pay" for each holiday, the contract provides that a lump sum payment will be made annually of 12 extra days.

The "plainclothes" officers, on the other hand, do not work shifts but work days, Monday through Friday, and are off on Saturday and Sunday. When a holiday falls on a scheduled work day, these employees do not normally work on that day and they receive holiday pay (straight time) for the holiday. If required to work, they receive double time for hours worked.

The crux of the matter is that the "plainclothes" officers want to work on the holiday if the holiday falls on their regular shift; and instead of receiving pay for holidays which fall within their scheduled work week, they would receive the lump sum payment of 12 extra days annually.

As Chairman of the Arbitration Panel, I cannot agree to "make" the Administration of the Police Department schedule officers to work on days they are not needed; as was pointed out by the Employer, normally there is no need for these officers to work on holidays as the courts and the schools, where services are provided by "plainclothes" officers, are closed.

If the majority of the Panel should order the Township to schedule the non-uniformed personnel to work on holidays, they would, in effect, modify the "Management Rights Clause (Article II)"; and this they cannot do as they would exceed their authority vested in them by the provisions of the Act. Section 8 of the Act states:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit within such time limit as the panel shall prescribe to the arbitration panel and to each other its last best offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive."

The issue before the panel relative to holiday pay for the five (5) non-uniform officer was a request that the contractual language of Article XVI - Holidays be changed to provide for the rescheduling of these five (5) officers. This was the issue that was determined to be before the arbitration panel. There was no issue before the Panel relative to the Management Rights Clause.

Specifically, the Management Rights Clause states:

"Section A. The Township Board on its own behalf and on behalf of its electors hereby retains and reserves unto itself without limitation all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan and the United States. Further, all rights which ordinarily vest in and are exercised by employers, except such as are specifically relinquished herein, are reserved to and remain vested in the Township Board including but without limiting the generality of the foregoing, the right . . .

- b. To introduce new equipment, methods or processes, change or eliminate existing equipment and institute technological changes, decide on supplies and equipment to be purchased; . . .
- e. To determine the size of the work force and increase or decrease its size; . . .

- h. To direct the work force, to assign the type and location of work assignments and determine the number of employees assigned to operations; . . .
- j. To establish and change work schedules, work standards and the methods, processes and procedures by which such work is to be performed; . . ."

Obviously, to grant the Union request would materially change the above quoted provisions.

It should be noted that the plainclothes officers do receive 12 paid holidays and the uniformed personnel receive the equivalent of 12 paid holidays; the only difference in pay that results is because the uniform personnel "work" more days in a year than do the non-uniform personnel.

The last best offer by the Union on the issue of Holiday Pay. The Union request that the contract language be changed to read:

"Because employees of the West Bloomfield Township Police Department must maintain operation on everyday of the year, the employees of this bargaining unit are required to work on their regular shift even though the shift may fall upon one of the above holidays. The employees shall therefore be entitled to twelve (12) extra days pay computed at straight time in lieu of the above holidays. Such sums shall be paid annually on November 30. If plainclothes personnel are required to work on a holiday, they shall be entitled to double time for that day."

Based on the above findings, the Panel hereby denies the "Last Best Offer" of the Union relative to Holiday Pay.

Health Insurance (Article XIX, Section C):

On this issue which is submitted by the Employer (Township of West Bloomfield, Michigan), the factors in Section 9 considered by the Panel were:

- "c. The interests and welfare of the public and the financial ability of the unit of government to meet these 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:

- ii. In private employment in comparable communities.
- 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."

There was no question raised regarding the financial ability of the Township to meet any increased costs of the health insurance coverage.

A comparison of the comparable communities utilized in these proceedings showed that no other community required employees performing similar services to contribute toward the cost of health insurance.

Further, no evidence was introduced that any other employees of the Township were required to contribute to the cost of the health insurance coverage.

Based on the above findings, the Panel hereby denies the "Last Best Offer" of the Township relative to health insurance.

AWARD

The last best offer by the Union relative to Holiday Pay, Article XVI, Paragraph 2, is hereby denied.

Township Panel Member, Mr. Dennis DuBay

Concurs DBD
Dissents _____

Union Panel Member, Mr. Michael Somero

Concurs _____
Dissents MPS

The last best offer of the Township of West Bloomfield, Michigan relative to the issue of Holidays:

"Retain current contract language and add no additional contractual provisions on this issue"

is accepted.

Township Panel Member, Mr. Dennis DuBay

Concurs DBD

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Union Panel Member, Mr. Michael Somero

Dissents _____

Concurs _____
Dissents MPA

The last best offer on the issue, Health Insurance, Article XIX, Section C, by the Union:

"The Union is requesting the current contractual language remain
status quo."

is accepted.

Township Panel Member, Mr. Dennis DuBay

Concurs _____
Dissents DBD

Union Panel Member, Mr. Michael Somero

Concurs MPA
Dissents _____

The last best offer of the Township of West Bloomfield, Michigan on the issue of Health Insurance:

"Section C. The Township agrees that, for the duration of this Agreement, it will continue to pay the premium to furnish the Blue Cross/Blue Shield hospitalization insurance (with Master Medical), or its equivalent, currently in force for seniority employees. An employee electing to be covered by a Township-provided health insurance program shall contribute ten (\$10.00) dollars per month. Employee contributions shall be made by payroll deduction as a condition of receiving health insurance benefits. Effective: First calendar month commencing after the date of the Arbitration Award."

is denied.

Township Panel Member, Mr. Dennis DuBay

Concurs _____
Dissents DBD

Union Panel Member, Mr. Michael Somero

Concurs MPA
Dissents _____

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

Panel of Arbitrators:

Dennis B. Dubay
Township Delegate

Michael P. Somers
Union Delegate

Dawson J. Limer
Panel Chairman

Dated: 6-14-80