

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969 AS AMENDED

*In the Matter of the Act 312
Arbitration Between:*

CITY OF SOUTHGATE,

-and-

MERC Case No. D08 B-0158

POLICE OFFICERS LABOR COUNCIL,
SOUTHGATE PATROL OFFICERS
ASSOCIATION

ARBITRATION PANEL OPINION AND AWARD

**George T. Roumell, Jr., Chairman
Howard Shifman, City Delegate
John Viviano, Labor Council Delegate**

APPEARANCES:

FOR THE CITY OF SOUTHGATE:

Howard Shifman, Attorney

FOR THE POLICE OFFICERS LABOR
COUNCIL, SOUTHGATE PATROL
OFFICERS ASSOCIATION:

Brendan J. Canfield, Attorney

Background

The City of Southgate, Michigan is located in Southwest Wayne County, Michigan. The City operates a separate Police and Fire Department, as well as employing a number of non-union personnel in various departments. In total, the City has five bargaining units. In the Police Department, there are two bargaining units – the Police Officers Labor Council – Southgate Patrol Officers Association, representing the police officers. There are approximately 24 officers in this bargaining unit. The Command is represented by the Command Officers Association of

Michigan.

The Fire Fighters are represented by the International Association of Fire Fighters, Local 1307. The non-uniformed employees of the City are represented by AFSCME, Local 1589 and Local 1917, as well as Teamsters Local 214.

The Command Officers Association contract with the City is through June 30, 2009. The IAFF Local 1307 contract is through June 30, 2009. The Tentative Agreement with AFSCME Local 1589 is for a duration of July 1, 2008 through June 30, 2011. The AFSCME Local 1917 contract covers the same period. The Teamsters contract is from July 1, 2008 through June 30, 2012.

The Police Officers Labor Council (POLC)-Southgate Patrol Officers Association (SPOA)'s agreement with the City of Southgate covered the period July 1, 2005 through June 30, 2008. Prior to the expiration of the contract, the parties commenced negotiating for a successor contract with the Employer's initial proposal being dated June 3, 2008 and the POLC/SPOA's initial proposal being dated May 6, 2008. The parties negotiated, including participating in mediation, but were unable to reach an agreement. Thus, on June 11, 2008, the POLC filed a Petition for proceedings to be conducted pursuant to Act 312 of Public Acts of 1969, as amended.

On October 16, 2008, George T. Roumell, Jr. was appointed Chairman of the Act 312 Arbitration Panel. In the meantime, the parties did continue bargaining and two tentative agreements were reached, but were not ratified, thereby necessitating the continuation of the Act 312 proceedings.

A hearing date was set for January 16, 2009. The Panel convened. At the time of the convening of the Panel, the following issues were still outstanding between the parties:

1. Term
2. Wages
3. Vacations
4. Sick Leave
5. Funeral Leave
6. Gun Allowance
7. Insurance - Active
8. Insurance - Opt Out
9. Insurance – Retirement
10. Uniform Allowance
11. Retirement
12. Pensions
13. Pension Moratorium
14. FLSA
15. Movement of Tier Employees
16. New Hire Wage Tier
17. Delta Preferred Option
18. New Hires – Delta Preferred Option

Some of these items may have tentatively been resolved individually. As part of the total package, they were not resolved at the time of the convening of the Panel on January 16, 2009.

Thus, as the Chairman views the situation, the Panel has a responsibility to awarding a total package, which includes the 18 items listed above.

The Criteria

When the legislature enacted the provisions for binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 (MCLA 423.239) that Act 312 Panels are to consider the following criteria when fashioning opinions and awards:

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, 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.

Essentially, the Act 312 criteria addresses the cost of living, the financial ability of the employer to fund the Award, and internal comparables as well as external comparables with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements, which are not specifically enumerated in Section 9. This means that, in addition to the enumerated Section 9 criteria, an Act 312 Arbitration Panel can utilize criteria used by fact finders.

It also should be recognized that the particular circumstances may dictate that certain

criteria may be emphasized more than other criteria.

Among the criteria utilized by fact finders are the bargaining history of the parties, both past and current, as well as the “art of the possible,” namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations.

The Chairman described the “art of the possible” in a previous 312 Opinion that he issued in *County of Lake and Command Officers Association of Michigan*, MERC Case No. L02 H-9004 (2004), where he wrote at page 4:

The “art of the possible” in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In an earlier 312 opinion, this Chairman articulated the concept of the “art of the possible” when he noted that the goal of an Act 312 Chairman is to effect the settlement the parties would have reached if negotiations continued when the parties are confronted with the realities of the situation for, in *County of Ottawa Sheriff’s Department and Police Officers Association of Michigan*, MERC Case No. L96 H-6011 (1998), this Chairman observed:

A very distinguished arbitrator, Theodore St. Antoine of the University of Michigan Law School, in two recent act 312 Arbitration proceedings, pointed out that as to an Act 312 panel, to best preserve health, voluntary collective bargaining, “the soundest approach for an outsider in resolving union-employer disputes is to try to replicate the settlement the parties themselves would have reached, had their negotiations been successful.” See, e.g., *County of Saginaw and Fraternal Order of Police*, MERC Case No. I90 B-0797 (1992); *Macomb County Professional Deputies Association and County of Macomb*, MERC Case No. E91 I-1674 (1992). This is, indeed, an appropriate consideration and falls within the concept of Section 9(h).

In other words, the concept of the art of the possible is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the

possible, as the art of the possible is the essence of compromise.

The criteria are there to be followed. However, there is the dominant consideration, namely, the internal comparables, along with the financial realities now facing the City, the State and the nation at this time. When the criteria are considered along with the economic realities, then the path to the Award, combining the criteria with the art of the possible, becomes clear.

The Comparables

There was presented to the Panel the following proposed external comparables:

Demographics

Unit	County	Population	Taxable Value
Allen Park	Wayne	27,616	\$1,084,114,503
Eastpointe	Macomb	32,949	\$788,492,108
Ferndale	Oakland	21,312	\$641,649,210
Garden City	Wayne	28,473	\$716,618,452
Lincoln Park	Wayne	37,595	\$781,028,249
Wyandotte	Wayne	26,473	\$707,014,164
Southgate	Wayne	29,215	\$889,840,708

As the Chairman viewed the matter, the internal comparables became more dominant as the internal comparables did set the pattern as to pensions, pension contributions, health care and wages. This factor, along with the economic realities of the situation, was the driving force leading to the application of the art of the possible and resulting Award.

Financial Realities

By all accounts, the country is in a recession. Michigan is reported to have the highest jobless rate of any state in the country, along with one of the leading states as to home

foreclosures.

It has not been lost on the Panel that in Southeastern Michigan, the hub of the auto industry in the State, the economic realities have been harsh.

Southgate is a community of citizens who are primarily middle class and rely on the auto industry and allied industries for employment. This reliance affects the economic realities in the City and impacts on the taxable property values. The State of Michigan has been struggling with budget deficits. This, according to City officials, affects the State aid that Southgate receives. With the economic downturn and the actions of the Federal Reserve, the City, that has in the past been able to derive interest income deposits, has seen this source of income dwindle to the point that the City predicts that it will lose upwards to \$300,000 in interest income alone. This, coupled with the possible reduction of State aid and the economic downturn in general has put financial pressure on the City of Southgate.

The bottom line is, whether one is reviewing the financial ability of the City or the cost of living, this is a time of economic moderation.

Discussion

A. Organization of Award

The parties through their negotiations have made various offers. What the Panel has done is considered the various offers and has chosen to put together, under the guidance of the Chairman, an overall package that will constitute the Award as to all 18 issues and sub-issues thereto. Each issue will have been supported by a majority vote of the Panel. The discussion will center not on individual items as such, but a discussion of key items to explain the rationale for the package as a whole.

B. Comparables

The key comparables are the internal comparables. The Panel will adopt, for example, across-the-board raises through June 30, 2011, along with bonuses. In the other uniformed groups, the Command Officers Association, have a wage that goes to June 30, 2009. The Fire Fighters likewise go to June 30, 2009. The wages in the past three years prior to July 1, 2008 have been similar to the wage increases of the Command Officers and Fire Fighters. It is true that for 2008 there will be a zero increase for the Police Officers, whereas the Fire Fighters received 1.5% for the same period.

There is, however, a big “but.” The Fire Fighters agreed in pensions that, effective January 1, 2008, the employee contribution would be changed from 5% to 6.5%. The Award of the package as to pensions adopts the same pensions as the Fire Fighters, providing for the 5% to 6.5%. But in the case of the Police, this increase in contribution will not take place until January 1, 2009, or one year after the Fire Fighters’ increase. This difference is reflected in the difference in the wages for 2008 for, in effect, the Fire Fighters will be paying the additional 1.5% toward pensions a year earlier than the Police. Otherwise, the wages, along with the bonus, is consistent with the Fire Fighters. The wages are also consistent with the non-uniformed bargaining units. There are fluctuations but, in the end, the pattern is the same when the fluctuations from year to year are factored in.

Such items as health care insurance and insurance for retirement seem to be the same throughout the City as is in the Award. There were increases, for example, in pension contributions in the non-uniformed groups.

It is true that the Command has not had the increase from 5% to 6.5% in the pensions. But their contract will be expiring on June 30, 2009.

The bargaining history, which would be a criteria under 9(h), is that the Fire Fighters

agreed to the pension contribution increase for theirs was the first contract to address the issue. By virtue of this arbitration proceeding, the patrol unit will have the increase. Presumably, the increase then will come with the Command when their contract is negotiated.

As indicated, the non-uniformed groups have seen increases in their pension contributions. The point the Panel Chairman makes is that on major items of wages, insurance for active and retirees, and pensions, including the pension moratorium and contributions, the pattern has been set by other City bargaining units and there is no reason, applying the art of the possible, to expect that the POLC would be able to deviate from this pattern if the parties had voluntarily negotiated an agreement prior to the arrival of the Act 312 arbitration panel. The package Award that follows reflects the bargaining pattern in the City.

As to the external comparables, it is difficult to compare one department with another. But, wage-wise, along with the bonuses, Southgate seems competitive as it likewise is competitive in terms of pensions, health care and the other benefits set forth in the Award. Thus, when one views the internal comparables and translates same to the Police contract, this translation does not put the City of Southgate Patrol Unit in a competitive disadvantage with the external comparables.

D. The Art of the Possible – Financial Realities

The Chairman has alluded to the financial realities facing the City of Southgate, the State of Michigan, and the nation as a whole in these recessionary times. Adjustments are required. Add to this the economic pattern of negotiation that is evolving in Southgate, then the Award as a package is consistent with the City's financial ability, the economic times, and the bargaining pattern in the City. The package set forth in the Award represents, in the end, a consideration of all the criteria with certain emphasis on the internal comparables and the financial realities,

coupled with the bargaining history as revealed particularly with the Fire Fighters and consideration of the art of the possible.

In the end, a contract must be arrived at. In this case, if the parties were faced with a strike deadline, the parties would compromise, namely, the art of the possible. The art of the possible would be a package that represents the bargaining pattern in the City. This is what the Award does.

The Conduct of the Hearing

The Chairman arrived for the hearing on January 16, 2009. He consulted with the Panel members and their respective bargaining teams. The evidence was presented as to the comparables, along with the concerns of the respective parties. The Chairman then reflected on the parties' positions and the evidence and announced to the parties that the total package would be as set forth in the Award.

The Signatures

The parties through their Panel members stipulated that the respective Panel members would waive their signatures and that the signature of the Chairman would represent that there was a majority vote on each of the 18 items set forth in the Award. In other words, though there may be disagreements among the Panel members as to particular items, each item in the Award was supported by at least two votes, namely, a majority. The Chairman's signature, by agreement of the parties to waive their signatures, represents this fact.

A W A R D

The following is the Award of the Panel as to each item in dispute which Award as to each item, as already stated, is supported by a majority vote of the Panel.

1. **TERM**

July 1, 2008 through June 30, 2011.

2. **WAGES – ACROSS THE BOARD RAISES.**

Wage increase and bonuses effective July 1 each year.

Raises: 2008: 0%

2009: 1.5%

2010: 2.0%

Bonuses:

2008: 0%

2009: 1% of Base

2010: 0%

3. **VACATIONS**

Police Officers, new hires after 7/1/08:

16 vacation days for 1st 10 years of employment; 20 days starting on 10th anniversary.

4. **SICK LEAVE**

Police Officers new hires after 7/1/08: 12 days of sick leave and unused days not paid out at any time, including retirement.

5. **FUNERAL LEAVE**

Add 1 day (for tier 1,2,3,4)

6. **GUN ALLOWANCE**

Effective January 1, 2009, increase by \$80.00.

7. **INSURANCE – ACTIVE**

Existing employees:

HAP: no employee contribution for current HAP plan.

BC/BS Comm. Blue 4: employee contribution \$35 (F), \$25 (2), \$15 (1) per pay, 24 pays. Co-pays: \$30 Office visit.

BC/BS Comm. Blue 12: no employee contribution.

Drug co-pay for all plan options: \$10 generic, \$40 brand.

Mandatory mail order for maintenance drugs (MOPD 2).

Eliminate Blue Care Network.

Employees hired after date of ratification of this agreement:

HAP plan: no employee contribution.

Co-pays: \$30 office visit, \$100 ER, \$250 inpatient.

BC/BS Comm. Blue 4: employee contribution \$35 (F), \$25 (2), \$15 (1) per pay, 24 pays. Co-pays: \$30 Office visit.

BC/BS Comm. Blue 12: no employee contribution.

Drug co-pay for all plan options: \$10 generic, \$50 brand.

Mandatory mail order for maintenance drugs (MOPD 2).

Insurance to start 7/1/09

8. INSURANCE – OPT OUT

Effective July 1, 2007 and payable July, 2008. Change amount to \$125 per pay.

9. INSURANCE – RETIREMENT

For retirees after 7-1-15:

Insurance and drug rider in effect at time of retirement, at no cost.

Include spouse at time of retirement.

Retirees will be allowed to purchase family coverage only for spouse and dependents at time of retirement at their cost (pay difference between cost of coverage for retiree and spouse and cost of family coverage).

Upon becoming eligible for Medicare, retirees will enroll in parts A and B, and coverage will be coordinated with Medicare. The City will provide supplemental insurance that will not diminish benefits received prior to becoming eligible for Medicare.

Retiree benefits will be provided to retirees throughout their retirement.

(F) INSURANCE – MORATORIUM

Add new Section: There shall be a moratorium on insurance until 12-31-14.

10. UNIFORM ALLOWANCE -- AMOUNT

Effective January 1, 2009, increase by \$60.00.

11. RETIREMENT

Members promoted to command positions on July 1, 2006 and thereafter will be provided the same pension calculations and payouts at retirement they were provided as non command officers. (FAC, Sick leave, Vacation payout).

12. PENSIONS

Employee contribution: change 5% to 6.5% for all members effective January 1, 2009.

Calculation of pension: FAC based on 3 best out of 10 years for all employees.

Multiplier of 2.69% for first 25 years, then 1% for each year after that.

There will be a hard cap of \$89, 447.43 after annuity withdrawal.

Pensions for new hires after date of agreement:

Multiplier: 2.69% for first 25 years of employment, then 1% for each year after that.

Calculation of pension: FAC based on 3 best out of 10 years.


FAC roll-ins: only base wage, longevity pay, unused vacation (capped at 120 hours).

13. PENSIONS – MORATORIUM

Add new Section: There will be a moratorium on pension issues until 5-31-15.

14. FLSA: Lump sum payment annually of \$100.00.

15. Move current (2) full time employee from wage tier that started for employees hired after 5/13/05 and health tier that started the same to where the rest are no retro or reimbursement for co-pay or Meds.
16. Use New Hire wage tier for all new hires after 7/1/08.
17. Delta Preferred Option 2000/2000 to start 7/1/09.
18. New Hires after 7/1/08 Delta Preferred Option 1000/2000 with class changes:
Class 1 80/20, Class 2 70/30, Class 3 50/50, Class 4 50/50.



GEORGE T. ROUMELL, JR.
Chairman

Dated: February 5, 2009