

STATE OF MICHIGAN
COMPULSORY ARBITRATION

FILED
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CLERK OF CIRCUIT COURT
DETROIT, MICHIGAN

In the Matter of:

CITY OF DETROIT,

Employer

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

-and-

Case No: D07 K-1456
(Command Officers)

DETROIT COMMAND OFFICERS
ASSOCIATION,

Labor Organization

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ACT 312 AWARD

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APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Impartial Chairman
Brian Ahearn, Public Employer Designee
James Moore, Labor Organization Designee

FOR THE EMPLOYER

Kenneth Wilson, Louis Brown
Fraser Trebilcock

FOR THE UNION

Mary Ellen Gurewitz
Sachs Waldman

BACKGROUND

The Command Officers, which include the Commanders and Inspectors requested, Act 312 arbitration on June 20, 2008. The chairperson was appointed on February 2, 2009. A pre-hearing conference was held on February 20, 2009. The parties have waived all applicable time limits.

Hearings were held on March 16, March 18, April 2, April 7 and May 2, 2009. An Executive session was held on November 3, 2009. Post-hearing briefs were submitted by the parties.

The panel is statutorily required to apply provisions of Section 9 of Act 312 in reaching its decision. However, pursuant to *City of Detroit v DPOA*, 408 Mich 410, 482, the panel may apply greater weight to some factors over others. The Section 9 criteria are:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (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:
 - 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 proceeding.

- (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 factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

COMPARABILITY

The following communities were stipulated as the external comparables for this proceeding:

Cleveland
St. Louis
Pittsburgh
Baltimore
Philadelphia
Chicago

THE ISSUES

All issues except the following have been resolved. Remaining before the panel is:

City Issue No. 1; Union issue No.2–Pension Board Composition
Union Issue No. 9–Just Cause Protection
City Issues Nos. 3&4, Union Issue No. 1–Wages
Union Issue No. 3; City Issue No.2–Health Insurance
Union Issues No. 10&11–Preamble and Recognition of Association
Union Issue No.13–Optional Annuity Withdrawal
Union Issue No.5–Sick Bank Payout
Union Issue No.6–Funeral Leave
Union Issue No.7–Excused Time
Union Issue No. 12–Deferred Compensation
Union Issue No. 8–Pension Contribution
Unions Issue No. 10–Final Average Compensation
Union Issue No. 3–Open Enrollment for Health Insurance

PENSION BOARD COMPOSITION

The City proposes to change the composition of the Pension Board to provide for six Trustees from the City and six from the police and fire unions. Additionally, there would be a 13th Trustee, selected by the other trustees, who would not be an employee of the City. The DPCOA asks that the status quo be maintained.

It is contended by the City that the current decision making process has led to deleterious results. The Union asserts that pension decisions have been appropriate, and that the proposed changes will be harmful.

DISCUSSION

The panel has deemed the pension board composition issue to be non-economic, which means that it is not bound by the Last Best Offers of either side. The crucial language from the City's LBO is the following:

- K. This Article, shall be effective between the parties, when it, including all provisions in Section J, is contained in the collective bargaining agreements between the City and the Detroit Police Officers Association (DPOA), Detroit Police Lieutenants and Sergeants Association (DPLSA), and Detroit Fire Fighters Association (DFFA).

The above language means that the City's offer is contingent upon its inclusion in the contracts of the other police and fire unions. As a matter of internal comparability under Section 9 of Act 312, it would be expected that the DPCOA would follow the example of the other police and fire units. In particular, it would be expected that if the larger DPOA and DPLSA police unions had the City's LBO on pensions in their contract, the DPCOA would also.

It is neither necessary nor appropriate to reach the merits of the City's proposed change.

Instead, there should be a “me-too” obligation for the Command Officers. If the City’s current LBO on the Pension Board becomes contained in the contracts of the DPOA, the DPLSA and the DFFA, then it should also become part of the contract of the DPCOA.

AWARD ON PENSION BOARD COMPOSITION

The Command Officers will have a “me- too” relationship with the DPOA, the DPLSA and the DFFA in regard to the City’s LBO on the composition of the pension board. If the contracts of the DPOA, the DPLSA and the DFFA contain the City’s LBO on the composition of the pension board, then that language shall also be part of the contract of the DPCOA.

JUST CAUSE PROTECTION

The panel, at its November 3, 2009 executive session, granted leave for the parties to submit revised LBOs on the issue of just cause, and particularly as it pertains to the demotion of the command officers. This is a non-economic issue, where the panel is not required to accept either of the LBOs. On November 17, 2009 revised LBOs were submitted. The Union would revise section A of Article 5, on Management Rights, to provide a just cause standard for all demotions, both disciplinary and non-disciplinary, subject to the higher standards and responsibilities required by command officers. It wrote:

A. Nothing in this agreement limits or otherwise affects the existing authority of the Chief of Police under the 1997 Charter of the City of Detroit, except that the Department shall not discipline, discharge, demote or remove from rank any bargaining unit member except for just cause. The parties recognize the determination of just cause takes into consideration the rank and responsibility of the employee and the higher standards to which higher ranking employees are held.

The City's offered revision of the Management Rights Clause mirror's the Union's, except the word "demoted" is excluded. The City wrote:

A. Nothing in this agreement limits or otherwise affects the existing authority of the Chief of Police under the 1997 Charter of the City of Detroit, except that the Department shall not discipline, discharge, or remove from rank any bargaining unit member except for just cause. The parties recognize the determination of just cause takes into consideration the rank and responsibility of the employee and the higher standards to which higher ranking employees are held.

The City would additionally amend paragraph H of Article 9 on Arbitration to address removals or demotions for performance deficiencies as follows:

H. In an arbitration over a grievance involving the demotion or removal from rank of a bargaining unit member for alleged performance deficiencies, the Board of Arbitrators shall uphold the action of the Chief of Police if it determines that the removal was for just cause. In this particular context just cause shall exist if the Board of Arbitrators determines, based upon the totality of the evidence, that the Chief of Police had reasonable and demonstrable grounds that the removal was appropriate to further effective operation of the Department.

Finally, the City would add a new paragraph L to Article 10 on Discipline, to remove performance deficiency cases from the Trial Board process. It wrote:

L. The removal from rank of a bargaining unit member for alleged performance deficiencies shall not be processed through the discipline procedures in this Article, but shall be processed in accordance with Article, 9, Section H.

DISCUSSION

The City and TPCOA are in agreement on language requiring just cause for all disciplinary issues, including disciplinary demotions and removals from rank based upon a disciplinary event. This is subject to the caveat that, "The parties recognize the determination of just cause takes into consideration the rank and responsibility of the employee and the higher standards to which higher ranking employees are held." Under Section 9(b) of Act 312, the stipulation of the parties, the proffered language of the parties should be accepted by the panel. Further, the other Section 9 factors support inclusion of this language.

The area of disagreement pertains to a non-disciplinary demotion for performance deficiencies. The City would further qualify just cause in that circumstance to include a removal that was based on "reasonable and demonstrable grounds to further effective operation of the Department."

The record reflects that there was a widespread demotion of fourteen inspectors and four commanders on September 1, 2005. There was no suggestion that these individuals had done anything improper. Just cause protection for the Commanders is necessary to promote morale and job security within the Command Unit, even when the allegation is that the effective operation of the Department requires a demotion.

From a labor relations perspective, most job performance cases are disciplinary. The just cause standard that has been offered, with its qualification, will protect both the commanders and the City.

In collective bargaining agreements, it is unusual to define just cause. There is common law understanding of the concept, as it is further explained by arbitrators interpreting the agreement. It would not be appropriate at this time to further define the concept of just cause, except as has been agreed to by the parties.

The City further requests that non-disciplinary performance deficiency cases proceed outside of the Trial Board process. However, this issue has not been addressed in the Act 312 proceeding, and it would therefore not be appropriate to render a binding decision, without the Union having an opportunity to respond and to present evidence, if appropriate. This is not to say that the parties cannot or should not reach an agreement on their own. There is simply no recommendation made on the merits of the proposal.

AWARD ON JUST CAUSE PROTECTION

The following language is adopted as a revision of Section A of Article 5, Management Rights:

A. Nothing in this agreement limits or otherwise affects the existing authority of the Chief of Police under the 1997 Charter of the City of Detroit, except that the Department shall not discipline, discharge, demote or remove from rank any bargaining unit member except for just cause. The parties recognize the determination of just cause takes into consideration the rank and responsibility of the employee and the higher standards to which higher ranking employees are held.

WAGES

The LBO of the DPCOA would provide for percentage increases tied to those received by the lieutenants, notwithstanding the DPCOA's inclusion in the Executive Compensation Plan, which limits increases. The Lieutenants have received the following increases:

7/1/04	5%
7/1/05	3%
7/1/06	0%
7/1/07	0%
1/1/08	3%
7/1/08	3%

The Union asks for retroactivity only from 1/1/08. The Panel, at its executive session on November 3, 2009 requested a clarification of the Union's Executive Compensation Plan offer. This was provided on December 1, 2009 as follows:

B. Inclusion in Executive Compensation Plan

Effective July 1, 2004, the bargaining unit members shall continue to be included in the City's Executive Compensation Plan. The compensation range maximum for inspectors shall be \$100,000 and the compensation range maximum for Commanders shall be \$110,000.

The City's LBO for Inspectors provides for an \$83,000 wage for inspectors, who were in the unit on July 1, 2008 and \$80,000 for those entering the Unit after the date of the award. Further, it

provides for percentage salary increases enjoyed by the lieutenants after July 1, 2008. The executive compensation plan would provide for an \$80,000 minimum and a \$95,000 maximum.

The City's offer for commanders provides for a \$94,300 salary for those in the unit on July 1, 2008 and a \$91,000 for those entering the unit after the date of the award. After July 1, 2008 commanders would receive the same increases as the lieutenants. The executive compensation plan would provide for a \$91,000 minimum and a \$106,000 maximum.

The Union asserts that its offer on the executive compensation plan will maintain the differential which existed at the time the commanders and inspectors were included within the plan.

The Union further contends that its offer will retain parity with the lieutenants per the prior contract, whereas the City's offer will retain parity only after July 1, 2008. It is noted that the inspectors received a 1.5% increase on July 1, 2004 and the commanders received a 4.7% increase. Further increases were prevented by the cap of the executive compensation plan. It is maintained that inspectors are presently at \$79,800 and commanders are at \$90,800. The Union points out that its offer will require an additional 13.2% for the inspectors, or \$90, 183 and 10% for commanders or \$99,476. It is noted that lieutenants received a 14.7 compounded increase over the period of the contract.

The Union contends that the City's offer will reduce the pay differential between the command officers and the Lieutenants. This differential is said to be even greater for those promoted after the date of the award. It is pointed out that a newly promoted inspector and commander will receive only \$200 more that she/he received in her prior position. In particular, it is noted that lieutenants make substantial overtime, which is barred for command officers, and therefore it is argued that the Employer's offer could make it difficult to find persons willing to take a promotion

to the command unit. The Union further argues that the Employer's offer devalues the command positions.

External comparability is also said to favor the Union. The Union also asserts that the Employer's insurance proposal would consume most of its LBO on wages.

The Union acknowledges the City's financial difficulties, but asserts that the financial impact on the City is slight, because the bargaining unit has few members. It further cites the Long Award for the LSA, which provided for a 3% retroactive wage increase to January 1, 2008 and July 1, 2008.

The Union contends that its changes in the pay band maximum approximates the percentages that existed when the prior contract was negotiated.

The City argues that the prior contract did not create wage parity with the LSA, but rather made wage increases subject to the restrictions of the pay bands. It is asserted that the executive compensation plan is designed to create a differential with the Deputy Chiefs, to allow that position to be properly staffed. The Union's LBO on wages is asserted to impair that differential.

It is noted that in December of 2001, a Deputy Chief earned \$96,2000, and that the Union's LBO would, with merit increases, lead to a situation where commanders would earn more than a DC. This is said to be contrary to the intent of Act 312, and the City argues that it will have difficulty staffing the DC position if the Union's LBO is awarded.

The City argues that its LBO on wages more nearly comports with the prior negotiated agreement between the parties. The City further asserts that the bargaining unit receives a significant benefit by having pensions calculated from the top of the pay band in the executive compensation plan. The City additionally contends that the cost of health coverage will not be as great as argued by the Union, and it maintains that the DCs have already been paying the increases since 2006,

despite not receiving any increases in wages since July 1, 2004.

The City additionally maintains that Fact Finding Reports and Act 312 Awards show that it is in the midst of a financial crisis, and that the wages of the City's non-uniformed personnel support its Last Best Offer on wages. It finally contends that the overall compensation afforded to the Union and the external comparables supports its LBO on wages.

DISCUSSION

The panel is primarily confronted with two legitimate, competing concerns. The Union sees the City's LBO as reducing the historical salary differential between command officers and the lieutenants. It notes that the City's offer will create a situation where a newly promoted inspectors will make only \$200 more than they were paid as lieutenants, and that they will likely earn less, since command officers are not eligible for overtime. The Union argues that the LSA received a 14.7% increase over the contract period, and that the City is only offering 6.0% for inspectors and 8.8% for Commanders, thereby reducing the differential significantly between the DPCOA and the LSA.

The City sees a similar problem regarding the historical differential between the DPCOA and the Deputy Chiefs. It contends that if the Union LBO for the Commanders is adopted, their overall compensation, including merit pay will exceed that of the Deputy Chiefs. This is argued to be contrary to the intent of the parties when they negotiated their prior contract.

The compensation of the Deputy Chiefs is outside of the jurisdiction of the panel. Certainly, if the City finds an inequity in compensation for the Deputy Chiefs, it has the exclusive authority to address that issue. The panel is required to address the Section 9 criteria of Act 312 as it pertains to the inspectors and commanders.

Salary differentials with the LSA were discussed in the prior contract between the City and the DPCOA, so this is not a new concept. Further, the City's LBO endorses the maintenance of salary differentials with the LSA after July 1, 2008. The City's LBO on wages would substantially reduce the salary differential between the DPCOA and the lieutenants, whereas the DPCOA LBO serves to preserve it. Therefore, internal comparability supports the union.

Moreover, the City's LBO could impair the morale of the DPCOA vis a vis the officers they are supervising. It could be argued that it sends the wrong message to command officers, if they receive a significantly lower percentage increase than their subordinates.

Also, pursuant to the City's LBO, the slight differential between the salary of a newly promoted command officer and his/her prior salary as a lieutenant, which includes overtime that is denied to command officers, could act as a disincentive for a lieutenant to seek a promotion to the command group. Certainly, the City does not want anything to dissuade the best and the brightest in the Department from seeking a promotion to the command unit. The interest and welfare of the public is best served under Section 9 by having a wage paradigm that encourages the finest officers to seek a promotion to the command group.

Finally, there is nothing on the record to support that the very small command unit should be placed in a disadvantageous position in regard to wages relative to the much larger, and more expensive to the City, lieutenants and sergeants group. The compression of wage rates between the lieutenants and the command officers, which is sought by the City, is not supported by the record.

AWARD ON WAGES

The DPCOA's Last Best Offer on wages is adopted by the panel.

HEALTH INSURANCE—ARTICLE 36

The City proposes changes in the health insurance coverage for the bargaining unit, including participation by the command officers in the cost of insurance premiums. The City maintains that health care costs have significantly contributed to the City's disastrous financial situation, and that its requested relief is required.

The City notes that its health care costs significantly exceed those of the external comparables. The Employer further asserts that two Fact Finders, Roumell and Long, have endorsed its proposal in this proceeding.

The City additionally contends that in the recent DPOA Act 312 proceeding, Arbitrator Richard Block supported cost savings in health care, and that Arbitrator William Long in the LSA 312, D06 D-0169 , awarded the health insurance sought by the City in this Act 312 case.

The Union requests the status quo for Article 36, except that it request an open enrollment for changes in health coverage. It is further noted that the Employer's requested premium sharing would consume much of the wage improvements.

DISCUSSION

The wages sought by the Association, and awarded in this proceeding, mirror those obtained by the LSA in Act 312. Therefore, internal comparability would require a similar award of the health care provision awarded to the LSA in the Long award. Moreover, the financial plight of the City demands that its requested health care relief be awarded. Finally, the Union received its LBO on

wages; it would be expected as a matter of collective bargaining under Section 9 of Act 312 that the Employer would receive countervailing relief in Health Care.

AWARD ON HEALTH INSURANCE–CITY ISSUE NO.2

The City's LBO on modifications of the Article on Medical, Dental and Optical Health Care is adopted.

PREAMBLE AND RECOGNITION OF THE ASSOCIATION

In its November 24, 2009 correspondence to the panel, the City waived its objection to the Union's LBO concerning the Preamble. Therefore, the Union LBO on the Preamble is adopted by the panel.

The City further waived its jurisdictional objection only to the panel's consideration of the Union's LBO concerning Article 2, Recognition, where the Inspectors and Commanders are combined within the unit. Its other objections, including jurisdictional ones, are maintained.. The City asks that the current language in the Recognition Clause remain in the contract.

The Union does not object to the deletion of the case number in its LBO. Therefore, reference to that case number should be deleted.

Pursuant to the decision of the MERC in Case No. UC06 C-008, the inspectors and the commanders are properly included within the unit, and therefore the Recognition Clause. The union further asks for a limit of three confidential employees. It notes that the City's 2009-2010 budget calls for 14 commanders, or half the unit, to be non-union or confidential employees. The Union feels that it requires the protection of a limit of three confidential employees, to prevent its unit from being destroyed.

DISCUSSION

The Union's LBO comports with the inclusion of the inspectors and commanders within the unit. The one possible difficulty could be the limitation on the number of confidential employees excluded from the unit. The Union has shown that it needs protection against the wholesale designation of commanders as confidential employees; however, it is unknown if some small number in excess of three could be required. Further, the prior contract did not have a limitation on

the specific number of confidential employees permitted, and there is no indication that there was a problem with the excessive use of confidential employees . Therefore, there should be language protecting the union against the use of confidential employees to either undermine the union, or to improperly reduce its scope. However, it would be inappropriate to include a specific number at this time, except that up to three confidential employees will not be seen as undermining or reducing the scope of the bargaining unit..

AWARD ON RECOGNITION CLAUSE

The Recognition clause shall read as follows:

Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer hereby recognizes the Association as the sole and exclusive representative for the purposes of collective bargaining with respect to wages, hour, and other terms and conditions of employment both economic and non-economic as follows:

All full-time and regular part-time Commanders and Inspectors employed by the City of Detroit Police Department, excluding confidential employees. The use of confidential employees shall be for necessary and appropriate purposes only, and confidential employees shall not be used to undermine or reduce the scope of the bargaining unit. The use of up to three confidential employees for necessary and appropriate purposes will not be considered an improper action to undermine or reduce the scope of the bargaining unit. The use of more than three confidential employees can be challenged by the Union in arbitration or in another appropriate forum.

OPTIONAL ANNUITY WITHDRAWAL

The DPCOA offers the following language on Article 38:

DPCOA retirees who elect to leave a balance in their annuity savings will have the option of receiving a quarterly payment of interest earnings or to allow periodic withdrawals of principal, in addition to the option of a one-time complete withdrawal.

The Union asserts that this proposal will benefit employees, but will cost the City nothing.

The City accepts this proposal in principle, but modified as follows:

In the manner provided in PFRS Board Resolution: at meeting 2566 RE: Option of Leaving Defined Contribution Plan (Annuity Savings Fund)Balance in the Defined Contribution Plan after Retirement; DPCOA retirees who retire after the effective date of this award and who elect to leave a balance in the Defined Contribution Plan (Annuity Savings fund) would have the option of receiving a quarterly payment of interest earnings only or to allow periodic withdrawals of principal, in addition to a one-time complete withdrawal. Members must make their selection a minimum of thirty days before the beginning of a quarter; quarter defined as beginning March 1, June 1, September1, and December 1.

DISCUSSION

This issue was presented before Arbitrator Long in the most recent LSA Act 312 Award, D06 D0169. He accepted language that is identical to the City's LBO in this proceeding. Therefore, as a matter of internal comparability under Act 312, the City's LBO should be accepted.

AWARD ON OPTIONAL ANNUITY WITHDRAWAL

The City's LBO on Optional Annuity Withdrawal is adopted.

SICK BANK PAYOUT

In 2008, the contracts of the uniformed service were amended to allow a portion of the payout for sick banks to be used for Final Average Compensation, and the percentages that could be used were increased. The DPCOA, the DFFA and DPLSA receive 85%; the DPOA receives 100%. The Union asks for an increase to 100%; the City asks that the status quo be continued.

It is suggested by the Union that the command officers rarely use their sick days, and that it would be unfair to penalize them at retirement for their diligence during their careers. The panel agrees. Further, there should be an incentive for command officers to refrain from using sick days because of the importance of their work, and the difficulty of covering for their absence. Finally, internal comparability with the largest uniformed unit, DPOA supports the command officers' LBO. The LBO of the DPCOA should be awarded.

AWARD ON SICK BANK PAYOUT

The Last Best Offer of the DPCOA is adopted on sick bank payout.

FUNERAL LEAVE

The Union seeks to expand the definition of the applicable persons, for whom funeral leave will be permitted under Article 25. It asserts that the addition of stepson, stepdaughter, son-in-law, and daughter-in-law represents a recognition of the changing nature of families. Further, the expansion of paragraph D to a great grandson, great granddaughter and niece and nephew is said to be appropriate. The City argues for the status quo, and contends that the record is devoid of evidence to support the Union's LBO.

There is not support among the internal, police comparables for the Union's LBO. Although the cost of the proposal is probably slight for this group, adoption of the LBO could be a precedent for the larger units, where the cost would be significantly higher. In consideration of the City's financial plight, and the other gains made by the Union in this proceeding, the status quo should be maintained.

AWARD ON FUNERAL LEAVE

The City's LBO on funeral leave, to retain the status quo, is adopted.

EXCUSED TIME

Currently, command officers receive 4 hours of excused time on Good Friday and no excused time on Easter. The Union asks for 8 hours of excused time on both Good Friday and Easter. It notes that the DPOA and DPLSA have this benefit in their contracts. The City requests the status quo and references the generous holiday benefits already enjoyed by the command officers and the external comparables.

Internal comparability dictates that the Command Officers enjoy the same excused time benefit granted to a lower supervisory group, the LSA. Therefore, the Union's LBO should be adopted by the panel.

AWARD ON EXCUSED TIME

The Union's LBO on excused time is adopted.

DEFERRED COMPENSATION

In its offer, the Union seeks to be allowed to place allowable amounts, upon retirement, from sick leave and other banks into its 457 accounts. This is seen as being a non-cost item to the City, which can provide tax savings to the command officers. The City asks that the status quo be maintained in the absence of supporting evidence for the Union's proposal.

Insofar as this a non-cost item to City with a tax benefit to bargaining unit member, it is appropriately granted under paragraph (h) of Section 9 of Act 312.

AWARD ON DEFERRED COMPENSATION

The Union's LBO on deferred compensation is adopted.

PENSION CONTRIBUTION

The Union seeks new language in Article 41 on pensions, which would require the City to make its pension contributions in twelve equal installments. It suggests that by waiting until the last day of the year to make contributions, as it does presently, the City finds itself without the sufficient funds to make its contributions. The Union sees its LBO as ameliorating that situation.

The City contends that the Union's offer is not a mandatory subject of bargaining, and is not properly before the panel. The City additionally argues that the real problem is that its contribution rates are excessively high.

Without reaching the question of whether the panel has jurisdiction to decide this offer, it should be noted that the record insufficiently supports the requested change by the Union. Under paragraph (h) of Section 9 of Act 312, it would not be expected that this offer would be adopted by the panel, and the status quo is retained.

AWARD ON PENSION CONTRIBUTION

The Last Best offer to maintain the status quo on pension contribution is adopted.

FINAL AVERAGE COMPENSATION

The Union seeks to reduce the time in grade required for computation of the final average compensation from 3 years to 12 months. This is to allow commanders, who are promoted late in their careers, and who have 25 years of seniority, but less than 3 years in grade, to participate in a DROP program, that the Union believes will be implemented shortly. The Union regards its proposal as being cost-neutral to the City, and further asserts that it would affect a limited number of people.

The City contends that the requested provision is absent in the LSA and DPOA contracts, which require 60 months in grade. Further, it is maintained that it was not established that the proposal would not carry with it any cost, and it is emphasized that the City cannot afford to undertake additional pension costs.

Internal comparability favors the City. Further, it was not sufficiently proven on the record that the Union's proposal would be cost-neutral to the City, in the absence of testimony from an actuary. Given the City's financial plight, an additional pension cost, if indeed there is one, would not be appropriate. Therefore, the City's LBO should be awarded.

Having said that, if the Union can demonstrate to the City that its proposal is cost-neutral, there is nothing to prevent the parties from reaching an agreement. However, it would be premature to order the change in this Act 312 proceeding.

AWARD ON FINAL AVERAGE COMPENSATION

The City's LBO on average final compensation is adopted.

OPEN ENROLLMENT FOR HEALTH CARE

The Union included in its status quo offer for health care a new Section R for Article 36, which provides for open enrollment under the present circumstances, where a new health care plan has been required. The City addressed this as an offer separate from the Union's status quo offer on health care, and opposed it. The panel will consider this as a separate LBO.

The Union maintains that there should be new open enrollment period for its members. The City contends that it would be unnecessarily costly to hold an open enrollment for only 28 members of the bargaining unit.

Insofar as the City's negative financial situation would not support this additional cost item, the Union's LBO on Open Enrollment should be rejected

AWARD ON OPEN ENROLLMENT

The City's Last Best Offer, rejecting open enrollment, is adopted.

PANEL SIGNATURES

Date: 2/18/10



Mark J. Glazer, Chairman

Date: _____

Brian Ahearn, Employer Delegate*

Date: _____

James Moore, Union Delegate**

* Concurs on all last best offers awarded to the City, and dissents on all last best offers awarded to the Union.

** Concurs on all last best offers awarded to the Union, and dissents on all last best offers awarded to the City.

PANEL SIGNATURES

Date: _____

Mark J. Glazer, Chairman

Date: February 1, 2010

Barbara Wise Johnson
Labor Relations Director
Brian Ahearn, Employer Delegate*

Date: _____

James Moore, Union Delegate**

* Concurs on all last best offers awarded to the City, and dissents on all last best offers awarded to the Union.

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