

STATE OF MICHIGAN
COMPULSORY ARBITRATION

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

In the Matter of:

TOWNSHIP OF MERIDIAN

Employer,

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

-and-

Case No: L09 A-4001

CAPITOL CITY FOP, SUPERVISORY,

Union.

ACT 312 AWARD

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Impartial Chairman
Paul J. Brake, Public Employer Designee
Thomas L. Krug, Labor Organization Designee

FOR THE EMPLOYER

Dennis B. DuBay, Esq.
Keller Thoma, P.C.

FOR THE UNION

Steven T. Lett, Esq.
Wilson, Lett, & Kerbaway, P.L.C.

The Supervisors Unit of the Meridian Township Police Department requested Act 312 arbitration on July 8, 2009. There are 10 persons in the bargaining unit. The chairperson was appointed on August 25, 2009. A pre-hearing conference was held on February 8, 2010. The parties have waived all applicable time limits.

Hearings were held on April 20 and April 21, 2010. An Executive Session was also held. Thereafter, by direction of the panel, modified LBOs were submitted on wages and generic time for retiree health care. 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:

Charter Township of Flint
Charter Township of Grand Blanc
City of Norton Shores
Charter Township of Pittsfield
Burton

THE ISSUES

The tentative agreements of the parties are incorporated into this award. The individual remaining issues will be discussed below.

UNION ISSUE I: RETIREE HEALTH CARE CONTRIBUTION

Currently, the Township pays 50% of the cost of the health care premium for both married and single command officers. The Union seeks to increase the Employer's responsibility to 100% for single command officers. The Township asks that the status quo be maintained.

The Union argues that the small cost of its proposal will place it in conformance with the external comparables. It concedes that internally, fire and police patrol are under the current arrangement. However, the Union maintains that its proposal is necessary to achieve parity with the comparables, and it notes that most of its members are married.

The Township argues that both married and single officers currently have 50% of their premiums paid for them. It notes that the Union's proposal will result in a \$77,850 charge over the period of retirement, in addition to representing a current unfunded liability that the Township must account for under the current accounting standards. The Township also contends that new federal requirements for mental health coverage will add to its expenses.

DISCUSSION

Internal comparability with the police patrol and the fire fighters would require a continuation of the status quo. Importantly, if the command officers receive this benefit, it will certainly be on the table in negotiations, or in Act 312, for the other Act 312 eligible units. The cost within the Township could grow significantly, if a change here became a precedent. Thus, Section 9(H) would support the Employer's position.

Moreover, single command officers are being treated the same as their married fellow officers, with the Employer paying half of the premium. With the negative financial environment faced by the Township, it would not be expected under Section 9(H) that an increase in costs to the Township would

occur. Therefore, the status quo should be maintained.

**AWARD ON UNION REQUEST TO INCREASE TOWNSHIP HEALTHCARE
PREMIUM PAYMENT TO 100% FOR SINGLE OFFICERS**

The status quo, requiring a 50% Township payment for both single and married officers for healthcare is maintained. The Employer's LBO is adopted.

**UNION ISSUE II: TOWNSHIP ISSUE II: REQUIRED SERVICE FOR RETIREE
HEALTHCARE**

The Union proposes to modify Article 6, Section 7, Subsection F on eligibility for retiree healthcare, by adding subsection 8, to state:

Minimum age of retirement to be fifty(50) years old with twenty-five (25) years of service, including Act 88 reciprocating time, but excluding the purchase of generic time. The exclusion of generic time shall not apply to persons currently in the command unit as of September 1, 2010.

The Employer's proposed change, as reflected in its modified offer, is the following:

To be eligible for the above-referenced retiree health care benefits, the employee must be age fifty (50) and have completed twenty-five (25) years of actual service, including Act 88 reciprocity time, but excluding the purchase of generic time. **This exclusion of the purchase of generic time shall only apply to such purchases occurring after the date of the arbitration award.**

Both proposals are a response to a grievance arbitration award, holding that the purchase of generic time could be used to qualify for retiree health care. The Union particularly seeks to grandparent one command officer, who has purchased generic time.

DISCUSSION

The Township's modified proposal will grandparent the one command officer who has already purchased generic time. Therefore, the Employer's LBO should be adopted. Allowing other existing command officers in the future to have use of purchased generic time to count towards retiree health care is a gain, which is not supported by the Section 9 factors. Further, there is no suggestion on the record that other command officers are interested in purchasing generic time. This supports the Employer's LBO.

AWARD ON REQUIRED SERVICE FOR RETIREE HEALTH CARE

The Township's modified LBO on required service for retiree health care is adopted.

UNION ISSUE III: EMPLOYEE PENSION CONTRIBUTION

In the prior collective bargaining agreement, paragraph K was added to Article VI Insurance and Pension, Section 7 Pension and Retirement. It said:

- K. During the term of the contract, bargaining unit members may elect to increase the pension multiplier from 2.5% to 2.75%. Implementation is subject to a current MERS actuary, the cost of which to be shared equally. Upon the effective date of the pension factor increase, the Officers will contribute 5% plus all other costs of the increase of the pension multiplier from 2.5% to 2.75% as determine by MERS actuaries.

The bargaining unit decided to accept the 2.75% multiplier. The actuary set the union contribution rate at 11.24%. The Union now seeks to cap its contribution as follows with a new section L:

- L. Effective January 1, 2009 the employee contribution to MERS will be 10.24%.

Effective January 1, 2010 the employee contribution to MERS will be 9.24%

Effective January 1, 2011 the contribution to MERS will be 8.24% and shall continue at this rate until change by future negotiations.

The Township asks that the current contract language be maintained.

The Union notes that the police patrol unit is paying 8.29%, that the firefighters are paying 7.76%, and that both have a 2.75% multiplier. It is further maintained that supervisors are paying more than the comparable communities. It is suggested that there is a disincentive for officers to seek a promotion, because of the increased pension cost.

The Employer asserts that the prior representatives of the supervisors proposed paragraph K. At that time, the bargaining unit was paying 5.5% for a 2.5% multiplier. It is emphasized that the comparable communities have a 2.5% multiplier, and that the average employee contribution for a 2.5% multiplier is 8.32%. The Union's proposal, it is argued, would allow its members to receive a 2.75% multiplier, at the same cost that the comparables pay for a 2.5% multiplier.

The Township asserts that the patrol unit and the fire unit, which includes supervisory and non-supervisory employee, have a lower contribution rate because the employees are younger, and will be contributing for more years than the police supervisors, prior to their retirement.

It is additionally argued by the Township that its required contribution for this unit has increased from 19.92% under the prior contract, to the current amount of 31.55%.

DISCUSSION

The Union is seeking by the third year of the contract, a contribution rate that approximates the one paid by the comparables for a lower 2.5% multiplier. Therefore, external comparability supports the employer.

The police patrol unit and the fire fighters in the Township do have a lower contribution rate for the same benefit enjoyed by the police supervisors. However, that is explained by the greater age and fewer years to retirement for the supervisors. The contribution rate was determined by the actuaries for patrol, fire, and supervisor's units, and clearly the demographics of the supervisors is the only reason that they have a higher rate.

The Township has been contributing at a high rate for the supervisors, and this would increase if the Union's LBO is granted. The current economic conditions would not support such a significant increase. The Supervisors have requested a 2.75% multiplier, and the Section 9 factors, including external and internal comparability support the LBO of the employer.

AWARD ON EMPLOYEE PENSION CONTRIBUTION

The Employer's LBO, which preserves the status quo, is awarded.

UNION ISSUE IV: SICK LEAVE PAYOUT

The Union proposes to increase the annual sick leave sell-back in Article 10, Section 3 from 40 hours to 50 hours. It would also eliminate the provision requiring a deduction for sick leave hours actually used. The new provision states:

When an officer has accumulated a minimum bank of 500 hours at the beginning of each contract year, he/she shall have the option to sell back to the township up to fifty (50) hours of unused sick leave each contract year. The employee shall be paid for any leave sold back to the township at his/her current base rate of pay. Payment shall be made on the first paid date after the contract years end.

The Union estimates that cost to the Township would be \$1,862 annually for the increase to fifty hours. It maintains that its proposal puts it in the middle of the external comparables. Internally, it is argued that the Union proposal places the supervisors in line with the firefighters and the patrol unit.

The Township asks that the status quo be maintained. It asserts that the supervisors are at currently at the same level as the 40 hour command firefighters. The Township maintains that the supervisors are well paid, and it cites the financial distress within the Township.

DISCUSSION

There is no indication that the police supervisors are sick leave abusers, and it would not be expected that they would be promoted to command if they were. The loss of a deduction for sick leave use has not been shown to be a significant concern.

Moreover, there is a good reason under Section 9 for granting the Union's LBO. It is in the best interest of the public to have the most capable officers seek promotion to the command unit. The loss of 10 hours of sick leave sell-back upon promotion to the command group, which is the current situation, would not meet this goal. Therefore, the Union's LBO should be awarded.

AWARD ON SICK LEAVE PAYOUT

The Union's Last Best Offer on Sick Leave Payout is awarded.

UNION ISSUE V: LONGEVITY ELIGIBILITY

The contract in Article 5, Section 10 provides for longevity pay, except for officers hired after January 1, 1997. There are two supervisors, who are currently ineligible for longevity pay. Patrol officers receive longevity pay, regardless of their hire date.

The Union argues that the disparity with the patrol unit acts as a disincentive for officers to seek promotion. External comparability is also argued to support the Union's position. It is also noted that no other unit within the Township has a bar on longevity pay, based upon date of hire.

The Township argues that four members of the unit receive a bonus based upon dual certification or assignment to the detective bureau. Also, it is maintained that the two supervisors sought promotion, notwithstanding the lack of longevity pay.

DISCUSSION

The internal comparables reflect that other Meridian Township employees receive longevity pay, including fire supervisors, without a 1997 cut-off point. In particular, police patrol receives longevity pay without a limitation. The loss of longevity pay for officers promoting to command, could work against the best officers seeking promotion. This would not further the interest of the public under Section 9. Internal comparability favors the Union.

External comparability also favors the Union, since all of them appear to provide some form of longevity pay for police supervisors. The last best offer of the Union should be awarded.

AWARD ON LONGEVITY ELIGIBILITY

The Last Best Offer of the Union on longevity eligibility is awarded.

TOWNSHIP ISSUE I: INSURANCE AND PENSION

The Township seeks to change to change the method of funding retiree health care and to revise

Article VI as follows:

Employees hired after (the date of the award), in lieu of retiree health insurance, shall participate in the following Retiree Health Savings Plan program. The Township shall implement the ICMA-Retirement Corporation's Vantage Care health savings program. Township will contribute 2% of base pay to be matched by employee's 1% pre-tax contribution immediate 100% vesting of Township contribution. Employee Benefit eligibility is designated at a normal retirement age (as defined in the plan document). Death benefit allowed for surviving spouse and dependents to sue for medical benefits. Unused sick leave must be contributed, as an additional employee match, upon separation or retirement.

The Union asks for a continuation of the status quo. The Township notes this plan would apply only to unit employees hired after the award. It further points out that non-public safety employees are under this plan within the Township. The Employer maintains that this plan represents a pay as you go system, which will reduce uncertainty in future funding.

The union notes that a patrol officer, who promotes to the supervisory unit, will lose his retiree health care under the system the he/she enjoyed in patrol. Also, it is argued that a new supervisor will not have built up his account under the new system for use at retirement. It is further emphasized that the Township's proposal was not presented during bargaining.

The external comparables are argued to support the Union as are the internal comparables, including the fire fighters, who recently settled a contract without the new proposal in its contract.

DISCUSSION

A review of the evidence reveals that the Township firefighters and the patrol officers do not have the new retirement plan sought by the Township for the police supervisors. This includes firefighter command officers. Therefore, internal comparability supports the Union.

External comparability also supports the Union, insofar as the comparables have not adopted a plan that is similar to the one sought by the Township.

Of concern is the retirement health plan available to an officer, who promotes into the supervisor unit late in his career, when he has not built up much of a fund under the Employer's plan. It would not be expected under paragraph (h) of Section 9 that officers would suffer a substantial loss by promoting into the supervisor's unit.

Based upon the current record, the status quo should be maintained.

AWARD ON EMPLOYER'S PROPOSED CHANGE TO RETIREE HEALTH INSURANCE

The Union's LBO is adopted, and the status quo is maintained.

JOINT ISSUE I: WAGES

Wage offers were submitted on a yearly basis for 2009, 2010 and 2011. The Lodge, in its revised offer proposes:

1. 2009 the Lodge proposes a wage increase of 0%.
2. 2010 the Lodge proposes a signing bonus of \$825.00*
3. 2011 the Lodge proposes a wage increase of 1%.

* This equates to 1.280% based on the salary of the top Lt. of \$64,417.00. The patrol officers received 1.268% based on their top pay and the fire Lts. received 1.98% based on their top Lt. salary.

The Township proposes in its revised offer the following:

Appendix A shall continue the status quo:

<u>Year</u>	<u>Adjustment</u>
2009	0%
2010	0%
2011	0%; each current member of the unit, as the date of the award, will receive a one-time lump sum payment of \$700. Payment will be made prior to the commencement of the 2011 fiscal year, i.e. prior to December 31, 2010.

Effective Date: As set forth above.

The Union argues that there is sufficient revenue to pay its proposed increases. It suggests that the Township has failed to prove that it lacks the ability to pay the requested increases, and that the Township's proposed proofs are lacking.

The Township asserts that in contracts negotiated after the housing crash in 2008, wages have been 0% for 2009, 2010 and 2011. It is noted that the Firefighters agreed to 0% in 2009 and 2010 and a \$700 lump sum signing bonus in 2009. The Employer contends that the Township is in dire financial condition, and that the Command Officers have fared better than other township employees relative to wage increases over the past years.

DISCUSSION

The Township and the Union are in agreement that a 0% increase should be awarded for 2009. They are also in agreement that a 0% increase in 2010 is appropriate on the scale, with the addition of a lump sum payment. They are \$125 apart on the amount of the lump sum, with the Township proposing \$700 and the Union proposing \$825.

Among the internal comparables, the Firefighters received a \$700 signing bonus in 2009 along with a 0% increase. The Teamsters also received \$700 lump sum and the AFSCME secretaries received \$500.00. The internal comparables, and particularly the Firefighters, who include command ranks, support a \$700 lump sum payment.

Remaining is 2011, where the Union offers a 1% increase and the Township offers 0% on the pay scale. The evidence shows that Township revenue is primarily based on taxes of personal residences pursuant to Proposition A. The 2011 taxable value is estimated to fall 12%, from \$185,295,00 to \$1,440,104,00. Township property tax revenue is estimated as falling significantly in 2011 as follows:

2009	\$10,574,194
2010	\$10,374,300
2011	\$9,129,384

The Union argues that these figures lack credibility. However, they were based upon the analysis of the existing data by Township experts, and countervailing testimony and evidence is not present. If wage increases are made in 2011, at a time of seriously declining revenues, a likely outcome is further layoffs of police officers, which is contrary to the best interest of the public. Further, on the existing evidence, the Township has established that it has an ability to pay problem. Consequently, the Section 9 factors favor the LBO of the Township, which includes a lump sum payment to ameliorate the difficulties presented by a wage freeze. Should the 2011 data present a surprising up tick in revenue, this

can be corrected in 2012 or thereafter. However, the present data would not justify an increase on the wage scale, when revenues are reasonably forecasted to decline in 2011.

AWARD ON WAGES

- | | |
|-------------|---|
| 2009 | Both the Employer's and the Union's LBO are adopted, since both are the same. |
| 2010 | The Employer's LBO is adopted. |
| 2011 | The Employer's LBO is adopted. |

PANEL SIGNATURES

Date: 11.30.10

Mark J. Glazer

Mark J. Glazer, Chairman

Date: Nov 24, 2010

Paul J. Brake

Paul J. Brake, Public Employer Designee*

Date: _____

Thomas J. Krug
Thomas J. Krug, Labor Organization
Designee**

* Concurs on all LBOs awarded to the Employer; dissents on all LBOs awarded to the Union.

**Concurs on all LBOs awarded to the Union; dissents on all LBOs awarded to the Employer.

PANEL SIGNATURES

Date: 11.30.10

Mark J. Glazer

Mark J. Glazer, Chairman

Date: _____

Paul J. Brake, Public Employer Designee*

Date: 11-24-10

Thomas J. Krug
Thomas J. Krug, Labor Organization
Designee**

* Concurs on all LBOs awarded to the Employer; dissents on all LBOs awarded to the Union.

**Concurs on all LBOs awarded to the Union; dissents on all LBOs awarded to the Employer.

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