

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS

**IN THE MATTER OF ARBITRATION
ARISING PURSUANT TO ACT 312 PUBLIC
ACTS OF 1969 AS AMENDED BETWEEN**

CITY OF FENTON (Employer)

-And-

POLICE OFFICERS ASSOCIATION OF MICHIGAN (Union)

MERC Case No. DO9 G-1096

FINDINGS OF FACT, OPINION AND ORDERS

APPEARANCES

A. Robert Stevenson, Impartial Chairperson
Steven O Schultz, Employer Delegate
William F Birdseye, Union Delegate

FOR THE EMPLOYER

Stephen O Schultz, Attorney for City
Helen Mills, Attorney for the City
Rick Azo, Chief of Police
Lynn P Markland, City Manager
Michael Burns, Asst. City Manager
Bill Rye, Mgt. Consultant
333 Bridge Street, N. W. Suite 800
Grand Rapids. Michigan 49504

FOR THE UNION

William O Birdseye, Union Representative
Kevin Loftis, Research Analyst
Gary Pushee, Union Representative
Jeff Cross, Police Officer
Roger Ellis, Police Officer
Dale Rauch, Police Officer

INTRODUCTION

As previously indicated, this proceeding is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. This petition was initially filed by the Employer April 5, 2011. I was appointed as the impartial arbitrator and chair of the arbitration panel, May 18, 2011. A prehearing conference by telephone was conducted on July 19, 2011, at 10:00 am and a hearing was scheduled for September 19, 27, 2011. However, the first hearing was later scheduled by agreement of the parties to September 27, 2011. It should be noted the parties waived all regulatory and statutory time limits.

The City and the Union reached tentative agreements on many issues, and those agreements are reflected in the Union's Testimony, pages 4-6 of the Hearing Transcript. The parties agreed that Wages and Vacations are the only issues to be decided at the hearing (Transcript pg.6). The parties did not agree on comparable communities to be used in the arbitration. The Chair ruled on August 11, 2011 that the following communities will be accepted as comparables in this case.

Mundy Township
Swartz Creek
Brighton
Howell
Flushing
Grand Blanc

In addition, internal comparables of the City are also to be considered.

The parties Last Best Offers of Settlement were exchanged on October 28, 2011.

STATUTORY SUMMARY

Section 9 outlines a set of factors upon which the panel shall base its findings, opinions and orders.

Those factors read as follows:

- (a) The lawful authority of the employer
- (b) Stipulations of the parties
- (c) The interest and welfare of the public and 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 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

This statute also provides that a majority decision of the panel, if supported by competent, material, and substantial evidence on the whole record, will be final and binding. As to economic issues, the arbitration panel must adopt the Last Offer of Settlement which in its opinion more nearly complies with the applicable factors prescribed in Section 9.

Section 10 of the Statute establishes, inter alia, that increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period or periods in dispute.

ISSUES

The outstanding issues which will be resolved by this arbitration are as follows:

1. Wages
2. Vacations

BACKGROUND

The City of Fenton is located in Genesee County and, according to the 2000 census, has a population of 10,582 and its estimated population in 2009 was 12,000 (Employer Exhibit 8).

The City has 4 bargaining units, Police Officers (expired 6/30/2008), Command Officers (expired 6/30/2008), Teamsters (expired 6/30/2009) and Fenton Employees-Unit 2 (expired 6/30/2010) (Union Exhibit 29). The Police Officer Unit has 11 employees (Employer 312 Petition). The Police Department salaries, fringe benefits, etc. make up 49% of all City expenses (Employer Exhibit 9).

The Police Officers Association of Michigan represents the City of Fenton sworn Police Officers, Matrons, and Police Dispatchers excluding the Chief of Police, Clerks, Sergeants, and all others (Joint Ex.5). As of this date the parties have reached agreement on some issues, leaving two issues to be resolved by this arbitration.

HEARING

The parties held a hearing before this Panel on September 27, 2011 at the Fenton City Offices at 301 South Leroy Street, Fenton Michigan. At the hearing, the Employer presented the City's current financial position. The City's Manager Lynn Markland testified as to decreasing revenues and increasing expenses. Regarding increased expenses he cited as examples fuel, health care, and vehicle costs (Tr. Pg. 18). He testified that since 2008, the City's tax revenues have dropped about 20%, causing the general fund to fall from a little over \$6 million to \$4.8 million (Tr. Pg.14). He further said that the trend of tax revenues for this fiscal year indicates another significant loss to revenue due to a declining property values and the corresponding 8-10% reduction of property revenues, just the proceeding year (tr. pg.14). Mr. Markland cited dependence on Downtown Development Authority and Local Development Authority funds that cannot be counted on to continue (Tr. Pg.15). He further testified as to a 5 year financial plan that shows by 2014 that the fund balance would be a deficit of \$500,000 (Tr. Pg. 24, Employer Ex 9). He further stated that In the last three years the City has privatized some work, laid off employees, made changes in medical care costs, cut overtime, had attrition in DPW and with people retiring, used part time workers, shifted responsibilities and eliminated positions (Tr. Pg. 18-20).

WAGES

EMPLOYER LAST BEST OFFER

The City proposes a wage freeze for the life of the contract with a one-time signing stipend in the amount of \$1,000.

UNION LAST BEST OFFER

First Year Wages – July 1, 2008

The Union's last best offer is a 3.0% increase for all steps contained in the Collective Bargaining Agreement.

Second Year Wages- July 1, 2009

The Union's last best offer is a 2.0% increase for all steps contained in the Collective Bargaining Agreement.

Third Year Wages- July 1, 2010

The Union's last best offer is a 1.0% increase for all steps contained in the Collective Bargaining Agreement.

Fourth Year Wages- July 1, 2011

The Union's last best offer is a wage freeze for all steps contained in the Collective Bargaining Agreement.

The Union proposes all wage improvements be retroactive for all hours compensated.

Kevin Loftis, Research Analyst testified on behalf of the Union.

The Union submitted a number of exhibits outlining a comparison of wages earned by Fenton Police Officers and those earned by police officers in comparable communities (Union Ex 25-28). They argue that these exhibits clearly demonstrate that the Union's proposal is actually below what officers in most comparable communities have been receiving in terms of wage increases (Union Brief pg.1). The Union feels the City's exhibits relating to overall compensation of police officers in Fenton and comparable communities is less relevant because of the variables that exist in each communities collective bargaining agreement such as sick pay, longevity pay, holiday pay and other benefits that could be considered "compensation" (Union Brief pg.2). During the period of the previous contract, from 2005 to 2008, the comparable communities received a total of 8.16% in wage increases (Union Ex. 26). Fenton officers received smaller wage increases during that time, and would require a wage increase of 1.94% in 2008 just to be equal to the average of the comparables (Union Ex. 26). In the years 2006 through 2009, the comparables on average have received wage increases of 2.43%, 2.92%, 2.59% and 1.69%, respectively Union Ex.28). The Union argues that their proposal is more in line with the wage increases received by

officers at comparable communities (Union Brief pg.5). They further argue that the City is not taking into consideration that the officers are already going to be experiencing a reduction in income because of the 20% premium sharing for health care (Union Brief pg.6).

William Rye a Management Consultant testified for the City on the issue of comparability.

He testified to Employer 17, which he prepared, which brings together the components of direct cash compensation including salary, longevity, shift differential and any other form of direct compensation (Tr. Pg. 44). Exhibit 17 shows direct cash compensation for a 10 year Patrol Officer (2007/08) as follows:

| <u>Comparable Communities</u> | <u>Total Cash Compensation</u> |
|-------------------------------|--------------------------------|
| City of Brighton | \$58,282 |
| City of Flushing | \$52,404 |
| City of Grand Blanc | \$55,454 |
| City of Howell | \$58,656 |
| Mundy Township | \$53,907 |
| City of Swartz Creek | \$50,327 |
| 6 Community Average | \$54,801 |
| 6 Community Average | \$54,570 |
| City of Fenton | \$57,347 |

The Employer argues that Exhibit 17 as of 2008 demonstrates that the total cash compensation package (composed of the three guaranteed rates of base salary, longevity, and shift differential) that the Union currently receives, is not only competitive but also better than the majority of the comparable communities (Employer Brief pg.10). They further argue that comparable communities wage scales have also slowed dramatically or been actually or effectively frozen since 2008 (Employer Brief pg.10, Employer Ex. 13, Union Ex. 28). The Employer argues that the Union proposal for in excess of 6% is unrealistic in relation to the dramatic and significant economic collapses suffered across the nation as of 2008 (Employer Brief pg.11). As to the 20% health care sharing, the employer position is that compensation was offer to the union to voluntarily make the change is the past three years in better economic times and was rejected by the union (Employer Brief Pg. 10). The Employer's offer of a one- time signing bonus of \$1,000 is offered to

reduce any burden unit members may bear as a result of a wage freeze for the duration of the contract (Employer Brief pg.12).

OPINION

Given the financial picture as presented, which has even deteriorated further since the end of the previous contract in 2008 the Employers offer of a wage freeze with a signing bonus seems more reasonable than the Unions proposed 6% increase plus retroactivity. As to the issue of retroactivity, the previous statute recognizes that retroactivity may be appropriate in many circumstances but this is not one of them with the financial pressures facing the City.


The City provides a competitive wage (that exceeded four of the six comparable communities in 2008).

While Fenton's wage only comparables are low they cannot be said to be uncompetitive when the total wage compensation package is considered as a whole. Using the comparables given and the reasons the employer has stated, the increase offered by the employer is not uncompetitive.

After carefully analyzing the evidence and all the factors in section 9 of the statute, the Employer's Last Best Offer should be adopted.

AWARD

The panel orders that the Employer's Last Best Offer be adopted: i.e. a wage freeze for the life of the contract with a one-time signing stipend in the amount of \$1,000.



A. Robert Stevenson
Chairperson

Union Delegate

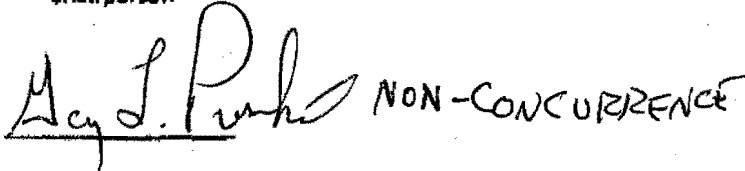
Employer Delegate

AWARD

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A. Robert Stevenson
Chairperson



Union Delegate



Employer Delegate

VACATIONS

Union Last Best Offer

Union proposed schedule.

18.1 Employees shall be entitled to vacation with pay in accordance with the following schedule:

- a. After one (1) year of service-ten (10) days.
- b. After six (6) year of service- fifteen (15) days
- c. After fourteen (14) years of service- -20 days.
- d. After twenty (20) years- twenty-five(25) days

The effective date of implementation will be the date of the Act 321 Award.

Employer Last Best Offer

The City proposes that vacation accrual remain as set forth in current contract

18.1 Employees shall be entitled to vacation with pay in accordance with the following schedule:

- a. After one(1) year of service- ten(10) days.
- b. After four (4) years of service-fifteen (15) days.
- c. After fifteen(15) years of service- twenty (20) days.
- d. After twenty-five (25) years of service-twenty-five (25) days

The Union provided a breakdown of vacation time received by officers at all the external comparables (Union Ex. 23). The Exhibit showed Vacation Hours for a 25 yr period, with Fenton receiving 420 days compared to 543 days average of all comparables. The Union's proposal delays the increase in vacation time from 4 years to 6 years to bring Fenton more in line with comparables at that step, while still being lower than 2 communities (Union Brief pg.8). At year 14 Fenton officers would be equal to four of the comparables but still less than two, and at year 20 would be equal to or less than four of the six comparables(Union Brief pg.9). The Union argues that its proposal is reasonable and merely seeks to

close the gap between Fenton and the comparables (Union Brief pg.9).

The City argues that a review of the record demonstrates that the total leave time is competitive with other communities (Employer Brief pg. 13). The City's position is that the current number of vacation days and other leave time available is consistent with the comparables: and similar to four of the six comparables (City Brief pg. 13). The City offers an equivalent or greater number of sick days than comparable communities in the amount of 12 days; and the unit members have a competitive personal leave time schedule with 2-3 days available (Employer Exhibits 10, 12 and 18).

OPINION

In weighing the Last Best Offers I feel the Union's proposal is reasonable. By bring back vacation increases from 4 to 6 years this proposal brings vacations closer to comparable communities which constitutes a Union give back. While at year 14 there would be an increase in benefit it would still be equal to four of the comparables, but less than two. At year 20 a 25 day vacation would also be within the comparable communities.

While other time off such as sick, and personal time may have certain requirements or other Purposes, vacations are without restrictions and thus are different from combining all wage compensation.

After carefully analyzing the evidence and all of the factors in section 9 of the Statute, the Union's Last Best offer should be adopted.

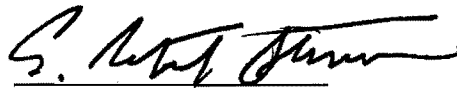
AWARD

The panel orders that the Union's Last Offer of Settlement be adopted: i.e. that the contract Section 18 is as follows:

18.1 Employees shall be entitled to vacation with pay in accordance with the following schedule:

- a. After one (1) year of service-ten (10) days
- b. After six (6) years of service-fifteen (15) days
- c. After fourteen (14) years of service- twenty (20) days
- d. After twenty (20) years of service- twenty-five (25) days

The effective date of implementation will be the date of the Act 312 Award



A. Robert Stevenson
Chairperson

Union Delegate

Employer Delegate

AWARD

The panel orders that the Union's Last Offer of Settlement be adopted: i.e. that the contract Section 18 is as follows:

18.1 Employees shall be entitled to vacation with pay in accordance with the following schedule:

- a. After one (1) year of service-ten (10) days
- b. After six (6) years of service-fifteen (15) days
- c. After fourteen (14) years of service- twenty (20) days
- d. After twenty (20) years of service- twenty-five (25) days

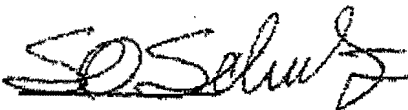
The effective date of implementation will be the date of the Act 312 Award



A. Robert Stevenson
Chairperson

 CONCUR

Union Delegate



Employer Delegate - DO NOT CONCUR