

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

POLICE OFFICERS ASSOCIATION OF MICHIGAN

and

CHARTER TOWNSHIP OF MERIDIAN

MERC CASE NO.: L16 F-0704



COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel

Chair: Richard N. Block

Employer Delegate: Stephen O. Schultz, Schultz Burzych Rhodes PLC

Union Delegate: James DeVries, Police Officers Association of Michigan

Advocates

Employer Advocates: Stephen O. Schultz, Fahey Schultz Burzych Rhodes PLC

Helen E.R. Mills, Fahey Schultz Burzych Rhodes PLC

Union Advocate: James DeVries, Police Officers Association of Michigan

PETITION FILED: March 13, 2017

PANEL CHAIR APPOINTED: April 14, 2017

SCHEDULING CONFERENCE HELD: April 17, 2017; May 9, 2017

HEARING DATE HELD: September 12, 2017

AWARD ISSUED: December 13, 2017

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1. INTRODUCTION AND BACKGROUND

The employer in this case, Meridian Charter Township (hereinafter the Township or the Employer), provides law enforcement services to the citizens of Meridian Charter Township, Michigan. The bargaining unit in this case is represented by the Police Officers Association of Michigan (hereinafter the Union or the POAM). The bargaining unit consists of non-supervisory police officers, juvenile officers, and court officers employed by the Township. There are approximately 35 employees in the bargaining unit.

The previous collective bargaining agreement was effective from January 1, 2014 through December 31, 2016 (Jt. Ex. 2). The parties were unable to reach a subsequent collective bargaining agreement. A mediation session held on January 13, 2017 was unsuccessful.

On March 13, 2017, the Union filed for Act 312 arbitration. Richard N. Block was appointed Act 312 arbitrator and panel chair on April 14, 2017. A scheduling conference was opened on April 17, 2017 and continued on May 9, 2017. Also on May 9, pursuant to the panel

chair's authority under Section 7a of Act 312, the case was remanded to the parties for additional collective bargaining for a period of three weeks. The parties were unable to come to agreement during that period of time. A hearing was held on September 12, 2017. Post-hearing briefs were filed with the panel chair on November 1, 2017 and the record was closed on that date.

2. STATUTORY CRITERIA

Pursuant to Public Act 312, as amended, the arbitration panel must consider the following statutory factors in rendering its award:¹

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
 - (i) The financial impact on the community of any award made by the arbitration panel.
 - (ii) The interests and welfare of the public.
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
 - (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.
- (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 in both of the following:
 - (i) Public employment in comparable communities;
 - (ii) Private employment in comparable communities.

¹ See Michigan Legislative Website, "Compulsory Arbitration of Labor Disputes in Police and Fire Departments," Section 423.239, Section, 9, at [http://www.legislature.mi.gov/\(S\(12gteuxvlg13x1xzlg3nixxa\)\)/mileg.aspx?page=getObject&objectName=mcl-423-239](http://www.legislature.mi.gov/(S(12gteuxvlg13x1xzlg3nixxa))/mileg.aspx?page=getObject&objectName=mcl-423-239), accessed November 6, 2017.

- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) 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.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
- (i) Other factors that 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.
- (j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

The panel is of the view that the “other factors” includes consideration of the fairness and equity of each LBO on an issue and the bargaining history of the parties. In addition, in considering these statutory factors, Act 312, as amended, requires that “(t)he arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.”²

Each of the parties’ last, best, offers will be evaluated in accordance with the statutory factors listed above. The record establishes, however, that factors b, f, g, h, and j above, are not relevant to this case. Accordingly, these five factors will not be considered in rendering this award. The relevant factors for this award are a, c, d, e, and i. Every factor, however may not be relevant to every issue. Thus, for any issue, the award will only consider the remaining factors that the record establishes are relevant to that issue.

² Id.

3. STIPULATIONS AND PRELIMINARY RULINGS

Stipulation 1. Issue 2 Holidays

Effective January 1, 2018, add President's Day (Tr. 5-6, 9-10).

Stipulation 2. Issue 3, First Responders

Effective January 1, 2018, bargaining unit members who obtain or maintain a "Medical First Responder" certification shall receive a five hundred dollars (\$500) annually. The payment shall be made each year in the first pay period of December. (Tr. 6-7, 9-10)

Stipulation 3. Issue 4, 12-Hour Shifts

The Memorandum of Understanding relating to 12-hour shifts shall be extended for the three-year term of the contract (Tr. 7, 9-10).

Stipulation 4. Issue 5, Employee Pension Contributions

The status quo shall be maintained for the term of the contract (Tr. 7-8, 9-10).

Stipulation 5. Issue 6, Vacation Picks

25.3: Effective April 1, 2018, selection of first vacation period shall be done by seniority with each officer with the current shift that the officer is assigned selection one vacation period. Then, in the same manner a second selection of vacation period shall take place. Subsequent selections shall follow the same procedure.

Officer's first and second vacation schedules shall be honored, regardless of changes to the officer's shift so long as the change was not caused by the officer and the vacation was picked by seniority as referenced above. (Jt. Ex. 1)

Stipulation 6. Issue 7, Health Insurance, Active Employees

The language shall be identical to the language contained in Section 16.5, paragraphs (a) and (b) of the contract between the Township and the IAFF (Tr. 8, 9-10).

Stipulation 7. Issue 9, Bereavement Leave

Amend Sections 27.1, 27.2, and 27.3 to read as follows:

27.1: If a death occurs among members of an officer's immediate family, the officer will be excused from work to attend the funeral and make other necessary arrangements without loss of pay from the date of death until after the funeral, but not more than a total of three

(3) days. Such leave shall be taken within 60 calendar days of the date of death. At the discretion of the Chief, an employee may, under extenuating circumstances, be provided with additional time off. All days in excess of three (3) days taken shall be charged to sick leave.

27.2: The immediate family shall be interpreted as including spouse, child, step-child, father, mother, sister, brother, step-siblings, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandfather, grandmother, grandchild, stepfather, stepmother, half-brother, half-sister, grandmother-in-law and grandfather-in-law.

27.3: One (1) day, the date of the funeral, is allowed in the case of the death of an aunt, uncle, nephew and niece. At the discretion of the Chief, an employee may, under extenuating circumstances, be provided with additional time off. All additional days shall be charged to sick leave. (Tr. 8-10)

Stipulation 8, Issue 11, Treasurer to HR Direction

Amend Article 8 to replace references to Township Treasurer with Director of Human Resources (Tr. 9-10).

Stipulation 9, Issue 15, Health Savings Accounts

The language shall be identical to the language contained in Section 16.5, paragraphs (a) and (b) of the contract between the Township and the IAFF (Tr. 8-10).

4. COMPARABLES

External Comparables

The following jurisdictions shall be considered comparable to Meridian Township for the purposes of this Award:

City of Burton;
Flint Township;
Grand Blanc Township;
City of Norton Shores
Pittsfield Township.³

³ Letter from Panel Chair Richard N. Block to James DeVries, Kevin Loftis, Stephen Schultz, and Lizzie Mills, June 23, 2017.

Internal Comparables

Act 312 as amended also requires a consideration of internal comparability. These internal comparables, the other bargaining units within the Township, will be addressed within each issue to which they are relevant.

5. ISSUES BEFORE THE PANEL

a. 1. Issue 1, Wages (Economic)

Last Best Offer of the Township

Year 1, effective January 1, 2017, 2%;
Year 2, effective January 1, 2018, 2%;
Year 3, effective January 1, 2019, 2%.

Last Best Offer of the Association

Year 1, effective January 1, 2017, 3%;
Year 2, effective January 1, 2018, 2.5%;
Year 3, effective January 1, 2019, 2.5% .

Discussion on Issue 1

Positions of the Parties

Position of the Union

The Union notes that between January 1, 2014 and January 1, 2017, the mean top step salary of the comparables increased 7.12%, from \$55,984 to \$59,971 (Ex. 33; Tr. 48). The Union also notes that a 7.12% increase in the salary of the bargaining unit would place the unit at \$60,894 on January 1, 2017 (Tr. 48-49), which the Union argues would make the bargaining unit whole and which would also constitute a 5.01% increase from the January 1, 2017 bargaining unit top step salary of \$57,990 (Tr. 48-50). While the Union acknowledges that neither LBO will make the bargaining unit whole, the Union argues that its LBO brings the Union closer to than the Township's LBO.

Position of the Township

The Township notes that its LBO of a 2% increase each year effective January 1, 2017 is identical to the wage increases of all other bargaining units in the Township, including the firefighters. The Township also argues that adopting the Union's wage LBO will place even more stress on its pension funding, as it will increase the bargaining unit members' final average compensation (FAC) at retirement.

The Township notes that the Union's analysis of the wage adjustments of the external comparables is flawed. The Township notes that for 2017, the comparables will receive an average increase of 1.6%, which is less than the Township's proposal. Moreover, the Township notes, no comparable has received an increase of 3% for 2017. The average increase for the comparables in 2018 will be 2.25%, with two contracts expiring.

The Township also urges the panel to reject the Union's contention that 5.01% is an appropriate percentage increase. The Township notes that this contention does not include a 2% wage increase for January 1, 2017, which would bring the bargaining unit wage to \$59,150, similar to the comparables average top step wage of \$59,971. The Union's LBO, if accepted, would result in a wage that is \$1,000 above the comparables average and double the percentage increase.

Rationale for Award

The Union proposes 3%, 2.5%, and 2.5% on January 1, 2017, January 1, 2018, and January 1, 2019. The Township proposes 2% on each January 1.

The parties have agreed on the comparables and the Union has presented data on top step wages for the comparables for the period January 1, 2014 through January 1, 2018 (Un. Ex. 33). The record establishes, however, that there are two anomalies among the comparables that must be considered when comparing the wage adjustments among the comparables with the LBO's. First, it must be noted that the wage adjustment in Pittsfield Township on January 1, 2015 was 10%. No

other adjustment in the annual wage rates among the comparables between January 1, 2014 and January 1, 2018 was greater than 3%. The record does not provide the rationale for this unusually large wage increase (Tr. 40-41). Nevertheless, it is anomalous. Thus, when considering the comparables, the 2015 Pittsfield increase shall be given less weight than otherwise.

The second anomaly can be found in the City of Burton. The officers in Burton received zero wage increases during the relevant period. The other comparables, as well as Meridian Township, received positive increases. As a result, the City of Burton will receive less weight than the other comparables.

Turning to the salary adjustments, excluding the 10% increase in Pittsfield Township and the zero percent increases in the City of Burton, the exhibit shows there were 15 annual January positive salary adjustments among the comparables between January 1, 2015 and January 1, 2018. Eleven of those 15 salary adjustments were at 2%. This evidence supports the Township's LBO.⁴

Second, the average of all these positive wage annual top step wage increases, excluding the 2015 Pittsfield increase, was 2.2%. This percentage, which is closer to the Township's LBO than the Union's LBO, supports the Township's LBO.

Third, in January, 2014, the Township top step salary ranked fourth, including the Township in the group of comparables. That ranking would not change for January 1, 2017 and January 1, 2018, for either LBO. Thus, adoption of the Township's LBO, which is supported by considerations associated with the external comparables, would not reduce the rank of the top step salary in the Township relative to the comparables.

⁴ The police officers in the City of Norton Shores received salary adjustments on July 1 of each year (Un. Ex. 33). For the City of Norton Shores, the percentage difference in the January-to-January wage rate was considered as the adjustment.

Fourth, the record establishes that all other bargaining units in the Township, including the firefighters, an Act 312 unit, have received a 2% increase (Tr. 83). Thus the factor of internal comparability supports the Township's LBO.

A majority of the panel finds the Union's contention regarding its make whole argument less convincing than the Township's argument on comparability. First, it must be noted that the anomalous 2015 increase in Pittsfield Township disproportionately influences the overall average salary of the comparables. If the Pittsfield Township unit had received a 3% increase in 2015, the same increase it had received in 2016, the January 1, 2017 average of the comparables would have dropped to \$59,105 from \$60,221. Taking this into account, a Township top step salary of \$59,150, which would exist with a 2% increase, would place the bargaining unit above the comparables' January 1, 2017 average.

Taking this hypothetical analysis a step further, and adding an assumption that the officers in the City of Burton received a 2% increase each year rather than the 0% increases they actually received, the hypothetical average January 1, 2017 top step salary would be \$59,524, a difference of only \$374 vis-à-vis the Township's LBO.

Based on the foregoing, a majority of the panel finds that the Township's LBO on wages is more consistent with the statutory factors than the Union's LBO on wages. Accordingly, on Issue 1, wages, a majority of the panel awards for the Township.

Award on Issue 1

The LBO of the Township on Issue 1 - Wages is accepted. The LBO of the Union on Issue 2-Wages is not accepted.

b. 1. Issue 8, Health Insurance – Retirees (Economic)

Last, Best Offer of the Township

New language in bold:

Those sections related to retiree health and hospitalization shall be amended to provide that, for **employees hired before January 1, 2017**, the Employer will provide health and hospitalization coverage to a retiree, and his or her spouse **at the time of retirement**, if the retiree is eligible to draw an unreduced pension, following 25 years of actual service with the Township. **For employees hired on or after January 1, 2017, the Employer will provide health and hospitalization coverage to a retiree, and his or her spouse at the time of retirement, if the retiree is at least 55 years of age and eligible to draw an unreduced pension, following 25 years of actual service with the Township.** The purchase of service credits shall be taken into account when calculating the employee's actual years of service with the Township only if purchased before September 1, 2016. The Township shall also provide health and hospitalization coverage to employees who qualify for duty disability retirement, upon their separation from the Township. All health and hospitalization coverage shall be **as provided to and on the same terms as current employees of the Township until the retiree is eligible for other coverage.**

Last, Best Offer of the Union

Status quo from 2014-16 Agreement

Discussion

Positions of the Parties

Position of the Township

The Township argues that this proposal will decrease the unfunded pension liability of the Township because it will encourage bargaining unit members to work to age 55 prior to retirement. The Township also notes that even with this LBO, the bargaining unit members are in a better position than the members of other bargaining units in the Township; those units receive only contributions to a health care savings plan. In addition, the Township notes that the firefighters have accepted a provision identical to the LBO.

Position of the Union

The Union notes that this provision will place the bargaining unit members at a disadvantage relative to the command unit; that unit does not have a minimum age at which the bargaining unit retiree may receive health insurance.

Rationale for Award

As regards ability to pay, the Township's LBO will provide some cost savings to the Township over the long run, but it does not appear that it will impact expenditures in the foreseeable future. The Township funds post-employment benefits on a pay-as-you-go basis (Er. Ex. 23, p. 56). Nevertheless, a majority of the panel finds that the factor of ability to pay supports the Township's LBO on Issue 8.

Turning to internal comparability, the firefighters, an Act 312 unit, have included in their agreement with the Township language identical to the Township's LBO for Issue 8 (Er. Ex. 24, p. 15). The age 55 minimum for retiree health insurance is also in the public works agreement (Er. Ex. 25, p. 16). Although the agreements with the professional supervisory association and the non-supervisory professionals do not reference a minimum age in the health care provision (Er. Ex. 26, pp. 15-16; Er. Ex. 27, pp. 12-13), and the command unit does not have an age minimum, the record still establishes there is precedent in the Township for an age 55 minimum for retiree health insurance.⁵ Thus the record on internal comparability provides some support for the Township's LBO.

Turning to external comparability, of the five comparables, two, Burton and Pittsfield Township, limit retiree health benefits to employees who have attained the age of 55 (Er. Ex. 4, p. 16; Er. Ex. 17, p. 28). Two of the comparables, Flint Township and Norton Shores, do not

⁵ The agreement with the administrative-professional employees is not comparable because retirees from that unit purchase their own health insurance (Er. Ex. 28, p. 11).

reference an age minimum for retiree health care (Er. Ex. 7, pp. 29, 31-32; Er. Ex. 14, p. 24). The fifth comparable, Grand Blanc Township, does not offer retiree health insurance for employees hired on or after January 1, 2017 (Er. Ex. 11, p. 25). Based on the foregoing, the record establishes that the external comparables provide some support for the Township's LBO, as two of the comparables have established an age minimum for retirees to receive health care. Moreover, one of the comparables, Grand Blanc, no longer provides retiree health coverage, which means that new hires in the Township will have superior health coverage than the officers in Grand Blanc.

The record also establishes that the factor of fairness and equity supports the Township LBO on Issue 8. It is reasonable for the Township to limit the period of time during which it must provide primary health insurance for a retiree prior to Medicare eligibility.

Based on the foregoing, a majority of the panel finds that the Township's LBO on Health Care-Retirees is more consistent with the statutory factors than the Union's LBO on Health Care-Retirees. Accordingly, on Issue 8, Health Care-Retirees, a majority of the panel awards for the Township.

Award on Issue 8

The LBO of the Township on Issue 8 Health Insurance-Retirees, is accepted. The LBO of the Union on Issue 8 Health Insurance-Retirees is not accepted.

c. 1. Issue 10, Sick-Leave Sellback (Economic)

Last, Best Offer of the Township

Eliminate Section 21.10 sick leave sellback for all employees hired on or after January 1, 2017.

Last, Best Offer of the Union

Status quo from 2014-16 agreement.

Discussion

Positions of the Parties

Position of the Township

The Township argues that eliminating sick leave sellback across all the units will save it \$38,000 per year, based on its payouts in 2016 (Tr. 204). The Township also notes that the sick leave payout has been eliminated completely for the public works unit and has been eliminated for employees hired on or after January 1, 2017 in the firefighter unit.

The Township notes it has also moved to reduce sick leave payouts in two other units. For the non-supervisory professionals, the maximum payout will be reduced from 40 hours to 30 hours for 2017, to 25 hours in 2018, and to 20 hours in 2019. For the administrative professional unit, sick leave payout was eliminated for all employees with less than 200 banked sick leave hours after January 1, 2017 and for all employees hired after that date.

The Township notes, that, with respect to external comparability, there is no consistent pattern for payout of sick leave. Grand Blanc provides no cash value. Norton Shores and Pittsfield Township permit the funds to be deposited into a health care savings account.

Position of the Union

The Union argues that adoption of the Township's LBO would place the members of the patrol unit at a disadvantage relative to the command unit, which continues to enjoy that benefit. The Union notes, however, that the firefighters have a payout of 100% of sick leave in the event of a duty-related death and increased the accrued sick leave payout for non-duty-related death from 25% to 50%. The patrol officers receive only 25% of accrued sick leave at separation or retirement.

The Union also notes that adoption of this LBO would violate Section 10 of Act 312. The Union argues that Section 10 permits only the retroactive awarding of compensation increases, not compensation decreases.

Rationale for Award

The Township's LBO would eliminate an employee payout for unused sick leave for all employees hired after January 1, 2017. The Union's LBO would retain the current unused sick leave payout system which permits an employee who has at least 500 hours of sick leave in his or her bank at the beginning of the contract year to sell 50 hours of the sick leave in the bank back to the Township. (Jt. Ex.2, p. 21)

The Township makes both an ability-to-pay argument and a comparability argument in support of this proposal. With respect to ability-to-pay, while there is no evidence that the Township does not have the ability to pay this benefit, adoption of its LBO would generate some savings. The record does not establish the amount that would be saved in this unit, as the record establishes that the \$38,000 payout was the amount paid for all bargaining units in the Township. Thus, I find that the factor of ability to pay supports the Union's LBO. (Tr. 204)

Turning to internal comparability, the record establishes that the firefighters, also an Act 312 unit, have accepted a provision identical to the Township's LBO. In addition, three other units have accepted some reduction in sick leave payouts. Although the command unit continues to enjoy the sick leave sellback, I find that, based on the foregoing, the factor of internal comparability supports the Township's LBO.

Turning to external comparability, the agreement between Grand Blanc Township and the POAM includes a provision for a payout of unused sick leave in a contract year at termination (Er. Ex.11, p. 20). The agreement between Flint Township and the POAM includes a provision providing for the payment of unused sick/personal hours at the time of layoff (Er. 7, p. 16). The agreement between the City of Norton Shores and the Police Officers Labor Council (POLC) provides for the payment at retirement of 50% of all unused sick days greater than 75 days and for the payment of 50% of all sick leave accrued over 180 days on the first full pay period in July of

each year (Er. Ex. 14, p. 18). The agreement between Pittsfield Township and the POAM gives an employee at termination the choice of a cash payout of 50% of unused sick leave or a conversion of 100% of the unused sick leave to a Health Care Savings Plan (Er. Ex. 17, p. 13). The agreement between the City of Burton and the POAM provides employees the option of cashing out unused sick and personal days after accumulating 21 days in the employee's personal bank (Er. Ex. 4, p. 15). Only the City of Burton provides for a payout of unused sick leave prior to retirement or termination. Accordingly, the record establishes that the external comparables support the Township's LBO.

It must also be noted that Article 21.4 of the agreement between the Township and the POAM provides for a payment of 25% of unused sick leave upon separation (Er. Ex. 2, p. 20). This provision is not dissimilar to the provisions in Flint Township, Norton Shores, and Pittsfield Township; all provide their unused sick leave payout at separation. Thus, the Township's proposal will not result in a situation in which new hires will not enjoy a payout for unused sick leave. Overall, the factor of external comparability supports both LBOs.

Turning to the factor for fairness and equity, I find that the record establishes a financial interest on the part of the Township in eliminating or reducing the payout for unused sick leave and that three other units have concurred with this. Based on the foregoing, I find that the statutory factor of fairness and equity supports the Township's LBO.

Overall, based on the interests of Township in reducing its liability for unused leave, the willingness of other units in the Township to concur with that interest, and the fact that the agreement will still have a payout for unused sick leave on separation, a majority of the panel finds that the Township's LBO on sick leave sellback is more consistent with the statutory factors than the Union's LBO on sick leave sellback. Accordingly, on Issue 10, sick leave sellback, a majority of the panel awards for the Township.

A majority of the panel does not consider the Union's argument based on Section 10 of Act 312. The Union has cited no authority to support its interpretation of that provision; that a reduction in the elimination of the sick leave sellback for employees hired on or after January 1, 2017, the effective date of the new agreement, is unlawful.

Award on Issue 10

The LBO of the Township on Issue 10, Sick Leave Sellback is accepted. The LBO of the Union on Issue 10, Sick Leave Sellback, is not accepted.

d. 1. Issue 12, Defined Benefit Pension Plan – Multiplier, Current Employees

2. Last, Best Offer of the Township

The multiplier for current participants in the MERS⁶ pension system shall be 2.5% for all service to the Township after December 31, 2016.

Last, Best Offer of the Union

Status quo from 2014-16 Agreement

Discussion

Positions of the Parties

Position of the Township

The Township notes that its current pension funding level is 58%, which places it in the bottom 15% of all MERS jurisdictions. The Township notes that it has a pension liability of \$30.7 million, and the liability increased by \$5.5 million between 2015 and 2016.

The Township notes that, if the MERS rate of return continues to decline, the Township's annual minimum pension payment of \$2.5 million (\$209,000 per month) could increase by 30% to 61%. If the return drops to 5.75%, the annual payment will be \$4 million.

⁶ Municipal Employees Retirement System. See <http://www.mersofmich.com/>.

Turning to the bargaining unit, the Township currently pays 11% of its patrol unit payroll in the normal cost and another 10.5% toward the unfunded pension liability. The Township also notes that all of the members of the command unit are former members of the patrol unit. Because the pension liability of the patrol unit employee moves with him or her to the command (pension) division, the Township must pay 50% of payroll toward the command unit's unfunded pension liability.

The Township has a plan to eliminate this liability over a 10-year period and is engaged in a multi-faceted campaign to reduce it. It pursued a successful millage campaign to raise funds and it attempted to complete negotiations with its bargaining units. Five of the seven units accepted reductions in pensions.

The Township notes that the two non-public safety units in the Township all agreed to substantial pension changes. The public works unit, although the best-funded division in the Township, doubled its employee contribution from 2.5% to 5%, albeit keeping the same multiplier of 2.25%. The Administrative-Professional unit decreased its multiplier from 2.5% to 2.25% and increased its contribution from 3.9% to 5%. The Township also notes that the firefighters settled at the exact package offered by the Township to the patrol unit LBO – reduction of the multiplier to 2.5%, a modified FAC, and maintenance of the same contribution.

The Township also notes that the comparables all have funding levels similar to that of the Township and the comparables have reduced pension benefits in order to address their pension funding levels. Flint Charter Township eliminated a COLA benefit for new hires and Norton Shores reduced the multiplier for new hires from 2.5% to 2.25%. The Township notes that the patrol pension multiplier of 2.75% exceeds the highest multiplier offered; the proposed reduction to 2.5% constitutes a very modest concession, is the highest standard multiplier offered by MERS, and brings the Township's patrol unit in line with the comparables with respect to the multiplier.

The Township notes that although a millage was recently passed, the Township manager promised the Township's residents that only \$1.5 million would go to pension funding, the remainder would go to equipment, and hiring two police officers and two firefighter paramedics. If the optimistic 7.75% rate of return is not reached, the results of the additional \$1.5 million in pension funding are unknown and the Township would be unable to move toward full funding of its pensions. The Township notes that over 90% of the pension money to address the liability will come from the residents; the police and fire department are being asked to do a small part. The Township notes that given the pensions of the external and internal comparables, its LBO on the pensions for current employees is justified and fair.

Position of the Union

The Union notes that four of the comparables have a 2.5% multiplier and one has a 2.25% multiplier. All of the comparables have similar age and service requirements. Four of the comparables have an FAC-3 and one has an FAC-5. All have an E-2 cola rider. The Union notes that three of the comparables have modified plans for new hires.

The Union notes that its high multiplier was financed by its members. Over the life of the bargaining relationship, the employees' contribution increased from 4.5% to 8.29%. Thus, if the Township's LBO is accepted, the bargaining unit members will be required to pay for a benefit they no longer enjoy.

The Union also notes the Township's LBO on current employee pensions violates Section 10 of Act 312. That provision of Act 312 allows only retroactive increases in compensation, not decreases in compensation.

The Union also points out that MERS prohibits changes in constitutionally protected benefits. The Union notes that the bargaining unit members have been accruing benefits at the 2.75% rate since January 1, 2017. Those benefits they have accrued cannot be reduced.

Finally, the Union notes that the Township has not provided the required statutory evidence to change the pension multiplier; the Township has not provided the required supplemental actuarial assessment of the change required by Public Act 55. The Union notes that there is no conflict between the Township's obligation to bargain over mandatory subjects and the provision of a supplemental actuarial assessment. The Union notes the panel is without authority to consider the Township's LBO on the pension multiplier for current employees.

Rationale for Award

The Township's pension plan was 58% funded on December 31, 2016 (Er. Ex. 24, p. 20). The current multiplier for active bargaining unit employees is 2.75% with a contribution of 8.29%. The Township's proposal would reduce that multiplier to 2.5% for all service after December 31, 2016 with no change in the pension contribution of 8.29%.

The Township ended 2016 with a General Fund balance of \$7.1 million (Er. Ex. 23, p. 9). Although this was a decrease of \$200,000 from its \$7.3 million General Fund balance in 2015 (Er. Ex. 23, p. 9), this balance demonstrates that the Township is well-managed financially. The Township has not contended that it does not have the ability to pay the 2.75%. Rather, the Township contends that it is important to eliminate its pension liability, as its pension funding is in the bottom 15% of all MERS townships.

First, the record establishes that the Township's funding level is similar to four of the five comparables. The record establishes the following 2015 funding levels for the comparables: Burton - 41%; Flint Township - 64.5%; Grand Blanc Township- 58.1%; Norton Shores- 47.4%; and Pittsfield Township- 69.7%, with an average 2015 funding level of 56.1%. The Township's 2015 funding level was 56.6%. In that sense, a consideration of the pension funding levels of the comparables does not support the Township's LBO. (Er. Ex. 3, p. 22; Er. Ex. 6, p. 22; Er. Ex. 10, p. 21; Er. Ex. 13, pp. 25-26; Er. Ex. 16, p. 27; Er. Ex. 19, p. 23)

Second, I note that the record establishes that, in 2015, the average funding level for MERS plans was 74% (Tr. 183). The record also establishes that there is no statutory requirement that requires a municipality to be at a certain funding level (Tr. 161). While MERS suggests that a jurisdiction put in money every year so it can be fully funded, this is not a requirement (Tr. 161). Based on the foregoing, the record establishes that it is not necessary for a jurisdiction to completely eliminate its pension liability and be 100% funded. There is no evidence, that at this time, the average funding level of 74% for its jurisdictions has prevented the MERS jurisdictions from meeting their pension obligations. To the extent that this record constitutes evidence similar to ability to pay, it does not support the Township's LBO. There is no evidence on the record that the Township must be at a pension funding level of 100% to meet its pension obligations.

Turning to the Township's 2016 actuarial report, the Township's 58% funding level results from a wide variation in funding levels across MERS divisions. Division funding levels in 2016 in the Township ranged from a high of 84.7% in the public works division, a bargaining unit represented by the American Federation of State, County, and Municipal Employees (AFSCME), to a low of 15.7% in the closed Teamsters division. The patrol unit has the second highest funding level, at 78%. Thus, a majority of the panel finds that the relatively high multiplier enjoyed by the bargaining unit has not caused a funding crisis in that unit. (Er. Ex. 20, pp. 23-24)

The Township notes that the comparables at this funding level obtained pension concessions to increase pension funding. A consideration of the 2015 actuarial valuations of the comparables, however, shows that there are differences in the extent to which the patrol units contribute to the underfunding level in the jurisdiction. In the Burton, for example, in 2015, the patrol unit division was 22.5% funded, while the City was 41% funded (Er. Ex. 3, p. 22), suggesting that the patrol unit was a substantial factor in the Burton underfunding. In Norton Shores, in 2015, the large patrol division was 53% funded and the city overall was 47.4% funded (Er. Ex. 13, pp 24-25), suggesting

that the large patrol unit was a factor in the Norton Shores underfunding. In Flint Township, the patrol division was 55.1% funded while the Township overall was 64.5% funded (Er. Ex. 6, p. 22). Thus, even if there were pension concessions in the comparables, the record establishes that the patrol units in all the comparables are not similarly situated with respect to the jurisdiction's pension liability.

In addition, there is no way of knowing whether any pension reductions were offset by improvements for the comparables' bargaining units in other provisions of the agreement. The record does not include testimony on trade-offs in negotiations.

The record also establishes that the funding level in the Township's pension plan increased from 2015 to 2016, from 56.6% to 58% (Er. Ex. 19, p.23; Er. Ex. 20, p. 24). This evidence suggests that the multiplier in the patrol unit agreement did not prevent the Township from slightly improving its funding level during calendar year 2016.

It also must be noted that a December, 2016 supplemental evaluation from CBIZ estimated, based on the 2015 actuarial evaluation, that if the patrol unit multiplier was decreased from 2.75% to 2.5%, the 2015 funding percentage would have increased from 75.3% to 75.6% , an increase of only .3 percentage points. Based on this record, a majority of the panel finds that the financial benefit to the Township from this proposal is outweighed by the harm done to the employees who would receive a reduced pension benefit. (Er. Ex. 31, p. 12)

The record establishes that that the patrol unit has pension benefits that are slightly superior to the pension benefits of the comparables. All of the comparables have a MERS B-4 plan, a multiplier of 2.5%, as compared to the 2.75% multiplier enjoyed by the bargaining unit. While the employee pension contribution of the patrol unit is slightly less than three of the comparables – Flint Township (10%); Grand Blanc Township (9.14%); and Burton (9%), it is far higher than the

other two comparables – Pittsfield Township (6.17%) and Norton Shores (2.5%).⁷ Based on the foregoing, a majority of the panel finds that the statutory factor of external comparability favors the Township’s LBO, albeit by a small amount.

The record establishes that the firefighter unit agreed to a reduction in its multiplier from 2.75% to 2.5% (Er. Ex. 24, p. 17). It must be noted, however, that MERS Division 5, the firefighter division, was only 46.4% funded on December 31, 2016 (Er. Ex. 20, p. 23). Thus, based on this division funding level, there is greater justification for reducing the multiplier for the firefighter unit than for the patrol unit. It also must be noted that the firefighter unit employee contribution is 7.76% (Er. Ex. 24, p. 17), less than the 8.29% the patrol unit currently pays; thus, the firefighter unit will contribute less, on a percentage basis, than the patrol unit and receive lower pension benefits. Overall, then, with respect to the firefighter unit, a majority of the panel finds that internal comparability favors neither LBO.

The record establishes that the administrative-professional unit and the public works unit have a 2.25% multiplier but only a 5% employee contribution (Er. Exs. 25, 28). Thus, the mix of current employee expenditures and future benefits differs from the LBO. The record does not provide any actuarial estimates of the cost difference associated with these two combinations of benefits. Accordingly, a majority of the panel finds that, with respect to these two units, the factor of internal comparability is ambiguous.

It must also be noted that the police command unit is only 53.2% funded. The record establishes that all members of the command unit are former members of the patrol unit (Tr. 78-79). The record also establishes that when a member of the patrol unit transfers to the command unit, the transferring member’s pension liability goes with him or her, and that the transferring member will have a higher FAC in the command unit than he or she would have had if the member remained in

⁷ See Un. Ex. 33.

the patrol unit (Tr. 140-42). This record suggests that there are pension funding issues that arise when a patrol officer transfers to the command unit and changes MERS divisions that may be addressed during negotiations with the command unit.

Also relevant is the statutory factor of “other factors,” in this case, bargaining history and fairness and equity. With respect to bargaining history, the record establishes that bargaining unit employees increased their contribution in order to receive a 2.75% multiplier, in essence, they sacrificed current income for future income. That bargaining history must be respected and this factor supports the Union’s LBO. The record with respect to bargaining history is also consistent with the factor of fairness and equity.

Finally, although the 2016 pension valuation assumes a rate of return of 7.75%, the Township is concerned about the financial implications of a rate of return of 5.75% or 6.75% if the valuation assumption does not hold. Yet, the record establishes that the MERS valuation rate of return of 7.75% is modest; over the last 30-plus years, the MERS rate of return has been a little over 9% (Tr. 178). These rates of return do not support reducing the bargaining unit member’s pension benefits based on overoptimistic MERS assumptions as regards the rate of return.

Based on the foregoing, a majority of the panel finds that the Union’s LBO on pension multiplier is more consistent with the statutory factors than the Township’s LBO on pension multiplier. Accordingly, on Issue 11, pension multiplier, a majority of the panel awards for the Union.⁸

⁸ Because a majority of the panel awards Issue 12 for the Union, it is unnecessary to address the Union’s contention that the Township’s LBO is barred by statute.

Award on Issue 12

The LBO of the Union on Issue 12, Defined Benefit Pension Plan – Multiplier, Current Employees is accepted. The LBO of the Township on Issue 12, Defined Benefit Pension Plan – Multiplier, Current Employees, is not accepted.

e. 1. Issue 13, Defined Benefit Pension Plan – Final Average Compensation (FAC), Current Employees

2. Last, Best Offer of the Township

New section of the collective bargaining agreement to be effective January 1, 2017. FAC at the time of retirement shall be on the same basis as is currently defined except that all holiday pay and longevity pay shall be excluded from the calculation of FAC effective after December 31, 2016. In addition, after December 31, 2016, other than overtime, no more than 240 hours of compensation at straight time (e.g., vacation and any other compensation) shall be included in FAC.

- Last, Best Offer of the Union

Status quo from 2014-16 Agreement

Discussion

Positions of the Parties

The positions of the parties are identical to the positions of the parties on Issue 12, the multiplier for current employees. They will not be repeated here.

Rationale for Award

For all time employed on or after January 1, 2017, the Township's LBO would reduce pension benefits by eliminating three components of compensation from the FAC determination: holiday pay; longevity pay; and other straight-time compensation, primarily vacation pay, in excess of 240 hours. Essentially, this would mean a reduction in the pension received by the bargaining unit members.

First, with respect to ability-to-pay, there is nothing on the record that establishes the savings to be associated with reducing FAC as is proposed by the Township and the extent to which such savings will be used to reduce the Township's UAL. The December, 2016 Supplemental Evaluation prepared by CBIZ assumes the current FAC (Er. Ex. 31, p. 14; Tr. 177-78). It also assumes a 7.75% rate of return, while the record establishes that MERS rate of return over the last 30 years has been approximately 9%. (Tr. 178).

Turning to the comparables, none of the external comparables include any contractual reductions in the FAC based on the components of monetary compensation earned. One comparable, Flint Township, states that the FAC is composed of W-2 earnings (Er. Ex. 7, p. 31). From this it may be inferred that the Flint Township FAC includes all monetary compensation regardless of component. The agreements of the four comparables, Pittsfield Township, Norton Shores, Grand Blanc Township, and Burton, refer simply to FAC, as does the current Township patrol agreement.⁹ Based on this, the record establishes that none of the comparables reduce FAC by specified components of compensation, as is proposed by the Township's LBO. Thus, the statutory factor of external comparability supports the Union's LBO.

Turning to the internal comparables, it must be first noted that the firefighter unit has agreed to an FAC computed in the manner that is proposed in the Township's LBO (Tr. 75; Er. Ex. 24, p. 17). As to the MERS non-public safety units in the Township, the public works unit (Er. Ex. 25, p. 23) and the administrative-professional unit (Er. Ex. 28, p. 15), both units have accepted an FAC as defined in the Township's LBO. Thus, the internal comparables support the Township's LBO.

A majority of the panel also finds that the statutory factor of fairness and equity does not support either party's LBO. On the one hand, there is merit in the contention of the Township that

⁹ Jt. Ex. 2, p. 16 (Meridian Township); Er. Ex. 4, pp. 26-27 (Burton); Er. Ex. 11, pp. 23-24 (Grand Blanc Township); Er. Ex. 14, pp. 28-29 (Norton Shores); Er. Ex. 17, pp. 27-28 (Pittsfield Township).

the patrol unit should share in the burden of reducing the Township's UAL and fairness dictates that the FAC for the patrol unit should be the same as for the firefighter unit as well as the other MERS units. The patrol unit also enjoys a multiplier that is high relative to the other bargaining units on the record.

On the other hand, the employees in the patrol unit also contribute a greater percentage of their salary toward their pension than other bargaining units in the Township. In addition, the record does not provide a complete picture of the amount of pension benefits that the bargaining unit is being asked to sacrifice. Based on this record, it is impossible to estimate the reduction in pension associated with removing holiday pay and straight-time compensation in excess of 240 hours. Accordingly, there is no basis for concluding that either LBO is more consistent with the statutory factor of fairness and equity than the other LBO. There are sufficient differences in the pension benefits and contributions of employees across the Township to make such comparisons difficult, if not impossible.

When one party submits an LBO that requests a change in the status quo and the other party submits an LBO that requests retaining the status quo, the party requesting a change bears the burden of proof. A majority of the panel finds that, based on this record, the Township has not met that burden.

Based on the foregoing, a majority of the panel finds that the Union's LBO on pension-FAC is more consistent with the statutory factors than the Township's LBO on pension-FAC.

Accordingly, on Issue 13, pension-FAC, a majority of the panel awards for the Union.¹⁰

¹⁰ Because a majority of the panel awards Issue 13 for the Union, it is unnecessary to address the Union's contention that the Township's LBO is barred by statute.

Award on Issue 13

The LBO of the Union on Issue 13, Defined Benefit Pension Plan – Final Average Compensation, Current Employees is accepted. The LBO of the Township on Issue 13, Defined Benefit Pension Plan – Final Average Compensation, Current Employees is not accepted.

f. 1. Issue 14, Defined Benefit Pension Plan – New Hires

2. Last, Best Offer of the Township

A new Section shall be added to the contract to provide that, as of January 1, 2017, the following pension benefit shall apply to any new hire within the bargaining unit:

- a. The multiplier for new participants in the MERS pension system shall be 1.75 for all service to the Township.
- b. Final Average Compensation shall include base wages, and no more than 240 hours of any other compensation at straight time (e.g., overtime, vacation, holiday, longevity, education or paramedic bonuses as applicable, or any other compensation).
- c. There shall be no E-2 benefit.
- d. 8.29% employee contribution.
- e. Early retirement age shall be 55 years with 25 years of service.
- f. In addition to the defined benefit plan, employees hired after January 1, 2017 shall participate in a defined contribution plan with an initial employer contribution of 2% of base wages plus a one for one match of any employee contribution of up to 3% of base wages.

Last, Best Offer of the Union

Status quo from 2014-16 Agreement

Discussion

Positions of the Parties

Position of the Township

The Township argues that the record supports its LBO of a hybrid plan for new hires into the bargaining unit. The Township notes that this LBO will help to reduce its unfunded pension liability by reducing the multiplier on the defined benefit component of the plan. At the same time,

the new bargaining unit members will make up the difference with the defined contribution (DC) component of the LBO.

Second, the Township argues that the LBO places the new hires into the patrol unit in an advantageous position vis-à-vis the non-Act 312 bargaining units. Those units have accepted at 1.5% multiplier without a DC component. Third, the Township notes that the firefighters accepted this LBO.

Position of the Union

The Union's arguments on Issues 12 and 13 also apply to Issue 14. They will not be repeated here.

Rationale for Award

The Township is proposing the introduction of a hybrid plan for bargaining unit employees hired on or after January 1, 2017. The Union is proposing the status quo, which means that employees hired on or after January 1, 2017 will have the same pension benefits as employees hired prior to January 1, 2017.

Turning to the statutory factor of ability to pay, the considerations are the same as they were for the other two pension issues and will not be repeated here. The patrol unit is well-funded and pays a high percentage of its salary as a contribution. The record does not establish the amount that the Township's pension funding percentage is likely to increase if the Township's LBO on Issue 14 is accepted. As the Township's ability-to-pay argument is based on its unfunded pension liability, the record with respect to ability-to-pay does not support the Township's LBO.

Turning to internal comparables, as with the other two pension issues, the record establishes that the patrol unit pension is funded at 78% whereas the overall pension funding level in the Township is 58%. The Township notes that the firefighter unit has accepted the hybrid plan. As with Issue 12, it must be noted that the firefighter division was funded at only 46.4% in 2016; it is

funded at a lower level than any of the Township's open divisions. Thus, there is greater justification for requiring new hires in the firefighter unit to accept a hybrid plan than is the justification for the patrol unit. Thus, the factor of internal comparability supports the Union's LBO.

In addition, due to the differences in funding levels, the firefighter unit and the patrol unit are not similarly situated for pension purpose. Therefore the factor of fairness and equity does not support the Township's LBO.

Turning to the external comparables, there is no consistent pattern as regards recent agreements that have required employees hired after the date of its most recent agreement to accept a hybrid plan or a different plan than current employees. There are no pension differences based on hire date in the 2017-19 agreement between Grand Blanc Township and the POAM (Er. Ex. 11, pp. 23-24). The City of Burton and the POAM last negotiated a difference in 2005, for bargaining unit members hired on or after July 1, 1994, increasing the multiplier for those employees from 2.25% to 2.5% and increasing the employee contribution to 1% , but nothing since then (Er. Ex. 4, pp. 27-28). The 2014-15 agreement between Flint Township and the POAM provides for a DC plan, a hybrid plan or a combination of the two for employees hired on or after July 1, 2012 (Er. Ex. 7, pp., 31-32). The City of Norton Shores and the POLC reduced the pension multiplier from 2.5% to 2.25% and increased the FAC from 3 years to five years for all employees hired on or after July 1, 2012, but did not require those employees to take a hybrid plan (Er. Ex. 14, pp.,28-29). Of the comparables, only Pittsfield Township and the POAM include in their agreement a hybrid plan, that plan to be effective for employees hired after January 1, 2015 (Er. Ex. 17, p. 28). Overall, it must be concluded that the factor of external comparability provides support for neither LBO.

Based on the foregoing, a majority of the panel finds that the Union's LBO on defined benefit pension plan – new hires is more consistent with the statutory factors than the Union's LBO

on defined benefit pension plan – new hires. Accordingly, on Issue 14, defined benefit pension plan – new hires, a majority of the panel awards for the Union.¹¹

Award on Issue 14

The LBO of the Union on Issue 14, Defined Benefit Pension Plan – New Hires, Current Employees is accepted. The LBO of the Township on Issue 14, Defined Benefit Pension Plan – New Hires, is not accepted.


6. SUMMARY OF AWARD

ISSUE	AWARD
Issue 1: Wages	January 1, 2017: 2% increase; January 1, 2018: 2% increase; January 1, 2019: 2% increase;
Issue 8: Health Insurance - Retirees	<p><i>New language in bold:</i></p> <p>Those sections related to retiree health and hospitalization shall be amended to provide that, for employees hired before January 1, 2017, the Employer will provide health and hospitalization coverage to a retiree, and his or her spouse at the time of retirement, if the retiree is eligible to draw an unreduced pension, following 25 years of actual service with the Township. For employees hired on or after January 1, 2017, the Employer will provide health and hospitalization coverage to a retiree, and his or her spouse at the time of retirement, if the retiree is at least 55 years of age and eligible to draw an unreduced pension, following 25 years of actual service with the Township. The purchase of service credits shall be taken into account when calculating the employee's actual years of service with the Township only if purchased before September 1, 2016. The Township shall also provide health and hospitalization coverage to employees who qualify for duty disability retirement, upon their separation from the Township. All health and hospitalization coverage shall be as provided to and on the same terms as current employees of the Township until the retiree is eligible for other coverage.</p>

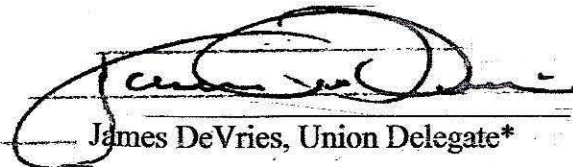
¹¹ Because a majority of the panel awards Issue 14 for the Union, it is unnecessary to address the Union's contention that the Township's LBO is barred by statute.

Issue 10: Sick Leave Sellback	Eliminate Section 21.10 sick leave sellback for all employees hired on or after January 1, 2017.
Issue 12: Pension Multiplier	No change from 2014-16 agreement
Issue 13: Pension FAC	No change from 2014-16 agreement
Issue 14: Pensions New Hires	No change from 2014-16 agreement


December 13, 2017


 Richard N. Block, Panel Chair

December 13, 2017


 James DeVries, Union Delegate*

December 13, 2017


 Stephen O. Schultz, Township Delegate**

*Concurs on Issues 12, 13, and 14; dissents on Issues 1, 8, and 10.

**Concurs on Issues 1, 8, and 10; dissents on Issues 12, 13, and 14.