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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

STATUTORY ARBITRATION

In the Matter of:

CITY OF PORT HURON

-and-

PORT HURON FIRE FIGHTERS ASSOCIATION, LOCAL 354, IAFF, AFL-CIO

MERC Case No. D 86 D-1105

Arising Pursuant to Act 312, Public Acts of 1969, as Amended

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ARBITRATION OPINION AND AWARD

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APPEARANCES

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BACKGROUND

On August 27, 1986, the Port Huron Firefighters filed for statutory arbitration under Act 312. A pre-hearing conference was held on January 13, 1987. The issues were narrowed to wages for fiscal years commencing June 30, 1986 and June 30, 1987, and to a workers disability compensation plan.

Thereafter, the parties proposed comparable communities. The Union submitted: Allen Park, Detroit, Ferndale, Garden City, Inkster, Lincoln Park, Madison Heights, Southgate and Wyandotte. The Employer submitted: Bay City, East Lansing, Holland, Jackson, Kentwood, Midland, Muskegon, and Portage.

An arbitration hearing was held on April 6, 1987. Last Best Offers were then submitted on the wage and disability compensation issues. The Union proposed wage increases of 5% for each of the two years in question and the status quo on the disability compensation issue. The Employer proposed 4% and 3% wage increases, and a roll back on the disability compensation issue. See Last Best Offers of Employer and Union, attached hereto.

Post-hearing briefs were submitted and the Union filed a Motion to Strike certain allegations in the Employer's brief based upon the absence of evidence in the record. This Motion is granted. An executive session of the panel was held on June 27, 1987.

Insofar as the issues are economic, Act 312 requires the panel to select one of the Last Best Offers. The panel must also determine the appropriate, comparable communities in order to apply Section 9(d) of the Act.

The 9(d) factors need not be afforded equal weight. As Justice

Williams stated in City of Detroit v. DPOA, 408 Mich 410; 294 NW2d 68, 97 (1980):

> We disagree with the City's contention. The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the statutory factors that consideration required by law. The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Sec. 9 be accorded equal weight Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word "shall" in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular factors of a case, although, of course, all "applicable" factors must be considered. Our comment in Midland Twp. v. State Boundary Comm., 401 Mich. 641, 676, 259 N.W.2d 326 (1977), is here apposite.

With this background, comparability will now be considered followed by an analysis of the Last Best Offers under the Section 9 criteria.

COMPARABILITY

In the LoCicero Award between these parties (D 79 I-2677), Bay City, East Lansing, Holland, Jackson, Midland, Muskegon and Portage were chosen as comparable communities. These cities were placed in Area 2 by the Michigan Municipal League. The Union had submitted 15 cities within 75 miles of Detroit with a population between 25,000 and 50,000.

This award was followed by a decision involving these parties in Case No. D-80-3909. Arbitrator Browning noted that the parties

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agreed on Midland, Bay City, East Lansing, and Jackson as comparable communities. The Union, however, offered Area I comparables, in addition. Arbitrator Browning found that the City's Area 2 comparables were appropriate, stating:

> Based on the exhibits and testimony it is apparent to a majority of this Panel that the Area 2 Firefighter comparables offered by the City are more comparable to Port Huron, than the Area 1-Area 2 Firefighter comparables blend offered by the Union. It is evident that Port Huron as of this time, and past bargaining history, more nearly approximates an Area 2 League City than an Area 1 League City of similar population size. The Area 1 Firefighters higher wage rates, fringes have not significantly been extended to Port Huron as is tangibly demonstrated by Union Exhibits 56-57.
>
> The Panel understands the Union's desire to extend the Area 1 sphere of influence, wage area wise to Zone 2. However, the Record demonstrates that this has not happened in the bargaining history of the parties, or in prior Act 312 Arbitration.
>
> Consequently, this Panel will base its study of salaries and fringes and economic demands upon Area 2 comparable cities, with regard to Port Huron Firefighters as being more nearly comparable to Port Huron.

Police arbitrations involving Port Huron also continued the Area 2 comparables. Arbitrator Roumell in Case No. D 83-D-1107 employed Area 2 cities, including many of those proposed by the City in this arbitration. Further, Arbitrator Beitner in a subsequent police arbitration held that the Area 2 cities, although they no longer had that designation, were appropriate. He said:

> The panel has concluded that the comparables argued for by the City are of greater applicability than those urged by the Union for several reasons. The parties have traditionally bargained using the MML Area II Cities as comparables. The City has been involved in two Act 312 Arbitrations with its firefighters and one prior 312 Arbitration with the police officers' union and in each case the parties used the Area II Cities as comparables. Further-

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more, they discussed the Area II Cities throughout most of their negotiating on this current contract before arriving at an impasse.

Specific factors such as population, SEV (State Equalization Value), SEV per capita, general fund budget, police department budget, and other important characteristics establish the similiarity of the Area II Cities with Port Huron.)

The Union argues that the prior Awards are flawed, particularly because the Michigan Municipal League no longer employs the Area 2 designation. It suggests that the S.M.S.A. (Standard Metropolitan Statistical Designation) is more relevant and that Port Huron should be compared to other cities in the 25,000 to 50,000 population range in the Detroit-area. The City, however, maintains that St. Clair, Port Huron's County, is only a "fringe" county under the S.M.S.A. and that other factors reveal a greater relevance to its proposed comparables.

The bargaining and arbitration history of the parties reveals a reliance on the City's comparables. Furthermore, these cities do exhibit a demonstrated relevance to Port Huron. If the Panel were to peremptorily change to the Union's comparables, it would be impossible to determine Port Huron's correct place among them.

In City of Birmingham and Birmingham Firefighters, Local 1248, Case No. D 84-E-1618 (1986) I held that comparables previously awarded in Act 312 proceedings should be retained unless there are changed circumstances. This approach enables the parties to engage in contract negotiations with the knowledge of the potential outcome should they require an Act 312 proceeding. I said:

> In the interest of promoting stability in the bargaining relationship, and because changed circumstances have not been proven with the exception of Hazel Park, the prior list of comparables with the exception of Hazel Park should be adopted.

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Hazel Park could regain its appropriateness for a future Act 312 proceeding should the public safety concept be rejected.

There is an insufficient showing of a "changed circumstance" in this case to justify a reliance on the Union's comparables. Based upon the extensive arbitration history, the City's comparables will be considered in this proceeding.

ISSUE I

WAGES

As of July 1, 1986 wage data for all of the comparable communities, with the exception of Holland, is available. Effective July 1, 1987, only wages for Bay City and Jackson are known.

The City argues that its first year offer of 4% will keep firefighters at the average among the comparables. It further argues that its longevity plan puts the firefighters above the average, and that when total compensation is taken into consideration, firefighters are still above the average. The 3% increase for the second year is seen as consistent with the average percentage increase among the comparable communities.

The Union maintains that its offers of 5% are necessary to keep firefighters above the average of the comparables, especially when average compensation is considered. It further suggests that pay equity with the police requires the Union's position. Finally, the firefighters argue that in the second year, the average of the settled communities is closest to its figure.

Arbitrator LoCicero noted in his 1980 award between these parties that, "On 6/30/79 Port Huron was at a level substantially above average firefighters' salaries in the comparable cities at that

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time". Arbitrator Browning in his 1982 award compared salary with COLA to determine the relative rankings of the comparables. He said, "Port Huron's firefighters, with salary and COLA, rank favorably among the Zone 2 comparables".

Arbitrator Roumell in his 1984 police award noted, "In comparison with Area 2 cities the Port Huron firefighters compare well". Finally, Arbitrator Beitner in his 1986 award stated that:

> The parties have traditionally considered actual wages during negotiations and not wages based on a reduced employee contribution. The two Port Huron firefighter cases presented made no reference to the amount of pension contribution in determining an appropriate salary rate for its officers.

Arbitrator Beitner also refused to consider the amount of the firefighter increase in determining his police award.

A review of these prior awards reveals several factors. First, firefighter salaries had been noted to be above the average of the comparable communities drawn from the same area as those in this case. Secondly, wages have been considered independently of pensions and other forms of compensation at arriving at the better-than-average analysis. Third, the compensation of the police has been viewed by police arbitrators as not being tied to firefighter compensation.

According to the Employer, the average wage of fully paid firefighters in the comparable communities for fiscal year 1986-1987 is $26,978.00. The Employer offers a 4% wage increase in that year, which will place Port Huron firefighters below the average at $26,873.00. It justifies that figure, based upon Port Huron's longevity pay, which will place its firefighters above the average.

There is nothing in evidence in this arbitration, however, which

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would suggest that the parties have combined longevity pay with wages to arrive at compensation for firefighters in relation to the comparable communities. Rather, the arbitration history indicates that wages and COLA had been considered as a separate entity for firefighters.

The City's 4% offer would place the Port Huron firefighters below the average of the comparables. Also, as the Union notes, the City's offer will place the Union below the average of comparables for the first time since arbitration began in 1979. Consequently, the Union's 5% offer for the first year must be awarded.

The second year of the contract is more problematical. Of the comparables, only Bay City at 3.5% and Jackson at 7% have settled. The Union argues that the average of these favors its 5%, second year offer. However, two out of eight contracts is hardly statistically meaningful.

The City argues that its 3% offer in the second year is appropriate based upon a 2.9% average increase in fiscal year 1985-1986 and a 3.1% increase in fiscal year 1987-1988.

Insofar as the historical data favors the Employer's proposed 3% increase in the second year, the Employer's proposal for the second year should be granted. If, when the comparable communities settle or receive arbitration awards, it develops that the Union has moved below average, it will be able to seek adjustment through collective bargaining or arbitration.

ANALYSIS OF THE SECTION 9 FACTORS

The Section 9 factors will now be analyzed.

(a) The lawful authority of the employer.

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(b) Stipulations of the parties.

These factors are not applicable except, that the parties have stipulated that this arbitration is limited to the record and issues presented.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

The employer does not claim an inability to pay and the welfare of the public would not be adversely affected by either set of offers.

(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.

Private employment is not relevant to this proceeding. The relationship of the comparable has been previously discussed. The internal comparable, the police department, is relevant. However, the arbitration history indicates that police and fire wages have been considered as separate entities. The recent large police wage increases, could have an adverse impact on the morale of the fire-fighters. However, because the evidence reveals a separate consideration of police and fire wages, this factor will not be heavily weighted in this proceeding.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

This factor would favor neither party based upon the evidence in

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this proceeding.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medicals and hospitalization benefits, the continuity and stability of employent, and all other benefits received.

The overall compensation as of 7-1-85 shows Port Huron to be above the average. The parties, however, have shown a history of considering wages independently of overall compensation, and therefore, this factor will not be weighted against the Union.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

This factor is not applicable.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. (MCLA 423.239; MSA 17.455 (39))

The bargaining and arbitration history of these parties, as previously discussed, requires the Award in this matter.

AWARD

Effective July 1, 1986, there will be a 5% increase in the compensation rates, for all classifications and steps, in effect as of June 30, 1986. For fiscal year 1987-1988, there will be a 3% increase in the compensation rates, for all classifications and steps in effect as of June 30, 1987. These rate increases will be paid retroactive to their effective dates to any member of the bargaining

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unit on the payroll on or after the effective dates.

Dated: Aug 17, 1987 — Mark J. Glazer, Chairman

Dated: 7/16/87 — Douglas Alexander, City Delegate
Concurs/Dissents

Dated: 8-26-87 — Robert Eick, Union Delegate
Concurs/Dissents

1ST year 2nd year

ISSUE II

SUPPLEMENTAL PAY TO WORKERS COMPENSATION

The current language on this issue is as follows:

Current

Article 3 , Section 8

> Employee disabled during performance of his regular duty is entitled to full pay, less any Worker's Compensation benefits received, for a period of 90 work days, or longer at the discretion of the City Manager.

Proposed

Union

Status Quo

City

Reduce 90 work days to 45.

The City argues that all other City employees, with the exception of the firefighters, receive 90 calendar days or about three months of

paid injury time. Firefighters now receive 90 working days or approximately 10 months. The City believes that its 45 work day proposal is equitable. The Union argues that the proposed savings to the City are small based upon the experience rate. Also, it suggests that the City's proposal would drop the Union's ranking among the comparables.

DISCUSSION

Among the comparables, Bay City arguably has a better overall plan than the Union now enjoys. Jackson pays its firefighters for a year if they are injured. East Lansing, Midland, and Kentwood provide a better plan than the one offered by the Employer.

There is nothing in the record to suggest that Port Huron firefighters are abusing injury time or that the City is suffering meaningful losses. The relief requested by the City appears to be prospective.

The comparables definitely favor the Union. Furthermore, under (h) of the Section 9 factors, there appears to be no basis to conclude that the contract would be changed in ordinary collective bargaining. Accordingly, the Last Best Offer of the Union should be awarded.

AWARD

The Last Best Offer of the Union is awarded on the issue of supplemental pay to workers compensation and the status quo shall be maintained.

Dated: Aug 17, 1987

Mark J. Glazer, Chairman

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-and-

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MERC Case No. D 86-D-1105

Arising Pursuant to Act 312, Public Acts of 1969, as Amended

ADDENDUM TO

ARBITRATION OPINION AND AWARD

I indicated to the parties that they should contact me if they noted any errors. The Union responded by requesting an Executive Session, with the presence of counsel. An Executive Session was held on August 4, 1987.

The Union asks that the record be reopened to allow the introduction of two additional comparable contracts that were completed subsequent to the hearing in this case. Counsel for the Union noted that in my Award I stated that I was accepting the City's Last Best Offer in the second year because the historical data favored its three percent position. He maintains that the two new contracts would increase the available number of contracts for review to four in the second year, and that this would provide a meaningful statis-

tical number that would favor the Union's offer of five percent in the second year.

Counsel for the City argues that it would be impermissible to reopen the record after a draft Award has been prepared. He contends that to allow the additional contracts would make the proceedings open ended, since new contracts might become available as a new Award was being prepared.

DISCUSSION

Section 9 (G) of the Act would permit me to accept the two additional contracts. It allows the panel to consider, "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings". Since the arbitration proceeding is still pending, the Act permits me to consider the additional contracts, if necessary.

My obligation is to render a fair Award that is consistent with the law, and I would not hesitate to accept the contacts if I felt that they would further this goal. The difficulty with accepting two more contracts, however, is that the panel still would only have four out of eight contracts in the second year for comparison purposes.

Four out of eight contracts still leaves less than a desirable statistical sample. Consequently, the historical data presented in my Award is still the most meaningful basis for a decision, and therefore, nothing would be gained by admitting the additional two contracts.

I want to emphasize, however, that I believe that there is a good chance that when the remaining contracts are settled in the second year, the average increases will exceed three percent, and fire-

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fighters in Port Huron may fall below the average of the comparables.

I cannot render a decision based upon a guess, however, and for me to do so would violate the Act and would impair the labor relations between the parties. I am concerned, however, about some of the conclusions that have been made from my Award.

It is my strongest intention that the firefighters remain above the average for wages in the second year of this contract. This does not mean at the average or close to the average, but requires that firefighters' wages, exlusive of longevity pay or any other factor, exceed the average rate for the comparable communities in the second year.

If the Port Huron Firefighters find themselves below the average of the comparable communities in the second year, I would expect that a future award or settlement would place them above the average, and that they would be compensated for their losses in the second year as a result of their being below the average in wages.

The parties should be aware that the fundamental purpose of my Award in the second year was to keep the firefighters above average in wages: it was not my intent that the firefighters should suffer any losses by falling below the average in wages in the second year.

Mark J. Glazer, Arbitrator

August 18, 1987

Robert W. Eick 8-26-87

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