

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

City of Algonac, Employer

Algonac Police Officers Association
Teamsters Local 129-Labor Organization

MERC ACT 312
Case No. D86-C-501

REPORT, ACTIONS, RULINGS
ACT 312 ARBITRATION PANEL

Issues

Economic

Shift Premium
Vacation Schedules
Pension, Past Service Credit

Non-Economic

Shift Scheduling

PANEL MEMBERS:

Chairman - Jerry Raymond
City of Algonac - Bruce Gluski
Police Officers Assn.
Teamsters Local 129 - Jerry Caster

Report, Actions and Rulings Act 312 Arbitration Panel

City of Algonac Employer
and
Algonac Police Officers Association,
Teamsters Local 129 Labor Organization

MERC ACT 312
Case No. D86-C-501

PANEL MEMBERS

Jerry Raymond, Chairman
Bruce Gluski, For City of Algonac
Jerry Caster, For the Union

Hearing pursuant to Public Act 312 of Public Acts of 1969 as amended, held June 17, 1987, Algonac City Hall, Algonac, Michigan, commencing on or about 10:00 a.m. and concluding on or about 5:45 p.m.

Issues as per stipulation of parties:

Economic

Pension-Past Service Credit
Vacation
Shift Premium

Non-Economic

Shift Scheduling

The following witnesses testified on behalf of the respective parties as indicated.

Witnesses Appearing for
City of Algonac

Douglas C. Larson-City Manager
(1983-1986)
Gerald J. Norkiewicz-Chief of Police
Wayne L. Maybaugh-City Manager

Witness Appearing for
Algonac Fire Fighters Assn

Ralph Cierpial -

Transcript of Record and Testimony-232 pages-Filippo Liburdi-Court Reporter.

Exhibits admitted and made part of the record.

Joint Exhibits

- 1) City of Utica
- 2) City of St. Clair
- 3) City of Romeo
- 4) City of Richmond
- 5) City of N. Baltimore
- 6) Marine City
- 7) 86-89 Tentative Agreement
- 8) 85-86 Contract
- 9) 82-85 Contract
- 10) 80-82 Contract
- 11) Teamsters D.P.W.
- 12) Pensions

City Exhibits

- C-1 History of Pensions
- C-2 Letter 9/2/83 from Teamsters
- C-3 Transfer Letter
- C-4 Letter 9/17/86
- C-5 4/18/86 Medical Report
- C-6 Pension Contribution
- C-7 Police Pension Costs
- C-8 Employment Seniority
- C-9 Benefit Overview
- C-10 Police Hire Date & Age
- C-11 Shift premiums

Union Exhibits

- U-1 Position of Parties
- U-2 Comparables
- U-3 Vacation
- U-4 Vac. Comps.
- U-5 Scheduling.
- U-6 Shift Comps.
- U-7 Past Service Credit
- U-8 Pensions
- U-9 Comparables

C-12 Comparables-vacation
C-13 Comparables-scheduling
C-14 Pension contributions
C-15 Algonac Vacation
Comparables

Your Impartial Arbitrator has reviewed and considered each of the exhibits as presented by the parties, jointly or individually. In addition, consideration has been given to the testimony of each witness. This includes all hearsay testimony, which testimony was considered for what it was worth. Where the testimony of a witness favored the position advanced by that witness or was critical of or derogatory toward the other party, such testimony was considered in the light of from whose point of view it was given. Where exhibits presented by a party or the testimony of a party's witness was against that party's position or tended to support the position of the other party, proper weight was given to such testimony.

Your arbitrator notes that the bargaining unit is comprised of six persons; namely, 4 currently active patrolmen, a sergeant and a patrolman inactive because of a workers compensation disability. From exhibits and testimony it appears he will not be returning to active duty. Accordingly, one employee represents 20% of the whole.

SHIFT PREMIUM

Undisputed testimony established that the practice of paying shift premium has existed for many years. Originally, the premium was 5 cents for afternoon shift and 10 cents for midnight shift. The current contract provision of 10 cent for afternoons and 15 cents for midnight was first established in the late 70's or early 80's.

City Exhibit (C-11) - Comparable Communities - Shift Premium shows, Marine City -- afternoon 25 cents; midnight 30 cents; Village of Romeo -- afternoon 5 cents; midnight 10 or 15 cents; City of St. Clair -- afternoon 32 cents; midnight 32 cents, or an average of 20 cents and 25.5 cents, respectively, for afternoon and midnight in those comparable cities where the contracts, Exhibits 2 -3 and 6 specifically provide for shift premiums.

Your Arbitrator noted that the contracts of 3 comparable communities made no provision for shift premiums. However, Exhibit 1 - City of Utica, provides for employees changing shifts every 28 days (swing shifts); accordingly, all employees work all shifts. The Utica contract also provides for wage rates substantially higher than those paid to patrolmen and officers by the City of Algonac. The Utica comparable also provides for

quarterly cost of living payments of \$350.00 or \$1,400.00 per year.

Your Arbitrator takes note that shift premiums provided by the City of Algonac has not changed since the late 1970's or early 1980's. Accordingly, as hourly wages have increased the shift premiums represent a smaller percentage of the hourly rate than it represented in 1980 or prior thereto.

Your arbitrator notes that in some of the six communities, police officers rotate shifts. City of New Baltimore and City of Richmond contracts make no reference to shifts or shift premiums.

Your arbitrator looked at wages and other benefits paid and noted that in the City of New Baltimore, where there is no provision for shift premium, higher hourly wages including regular quarterly cost of living adjustments and pension benefits wherein the employees contribute 2% of their earnings.

In considering the comparables, it should be noted, your arbitrator did not exclude a comparable simply because a benefit was not specifically spelled out. The comparables as stipulated to by the parties and numbered EXHIBITS 1 - 6 are the whole contracts and the total benefits provided therein. That is the way they were reviewed and considered by your arbitrator. Average benefits are conclusions, not facts. Like the average man, though they are a statistic to be considered, in reality they do not exist.

VACATION

Testimony was given that the present vacation plan was instituted in the early 1970's.

Your arbitrator looked at the record; namely, Pages 113 and 114 of the Transcript. Testimony of City of Algonac Witness, Mr. Douglas Carl Larson, former City Manager.

Mr. Larson established the policy followed by the City in contract negotiations. Namely--everything is put in terms of money. The City has gone along with the union on where the money was applied. If the union had a particular desire for one thing or another, the City went along with it so long as the total cost was the same.

It is noted by your arbitrator that the seniority of employees is as follows:

1 employee	22 years
1 employee	20 years - inactive
1 employee	3 years
3 employees	1 year

A review of vacation comparables standing alone shows that as to employees with 10 years or less seniority City of Algonac patrolmen receive less vacation pay than Marine City, City of St. Clair and City of Utica and approximately the same vacation benefits as police officers in the cities of New Baltimore, Richmond and Romeo. Except that Romeo police officers receive 15 days vacation pay after nine years rather than 10 as in the City of Algonac.

However, when we look at the vacation benefits currently provided after 10 years of service under the Algonac contract we find Algonac benefits to be substantially higher than all comparable communities.

Accordingly, your arbitrator notes that under the existing vacation plan all but one active employee receives substantially less vacation pay than like employees in the six stipulated comparable cities. One active employee with 23 years seniority receives substantially more.

Your arbitrator notes that the present vacation schedules have been in effect for many years. Again reference is made to the testimony of Mr. Larson to the effect that contracts have been settled on the basis of a total package, with little difference from the city's point of view how that package was distributed. Your arbitrator notes the concurring testimony of the union witness, Mr. Cierpial, and union Exhibit #4, that the vacation schedules were established in the early 1970's and were granted in lieu of other monetary benefits.

PENSIONS

Should covered employees receive credit for past service with City paying the cost for such past service.

Apparently, the history of pension or retirement benefits for police officers in the City of Algonac goes back many years. Pension programs starting with 1974 or 1975 provided for the City contributing 10 cents per hour; later 20 cents per hour and finally 50 cents per hour for all regular hours worked. Early in 1980's, this was increased to cover all hours worked.

The City has at all times maintained that money paid into the pension plan was City money and not the employees money. However, for some reason which has not been answered to the satisfaction of your arbitrator, when the City and the union agreed to change the plan from the then existing Teamsters Plan to the Shearson American Express Plan, funds held in the Teamsters Fund were apparently paid over not to the City but to the individual employees. That made no sense to your arbitrator, but that was not at issue. The only issue before your arbitrator is the city position that there should be no credit

for past service. The union position being full credit for past services.

City Exhibit reveals that the average employee contribution in the six stipulated comparable cities is 6.8% - 7.3% and the average employee contribution is 2.5% - 2.8%.

The only objection to past service credit given by the City was the objection to paying again, for the years already paid for, the funds for which were distributed to the employees. That period was 1974-----1983. Since 1983 apparently the contributions have continued to accumulate and there appears to be approximately \$13,000.00, more or less, now either in savings or Burger King Stock.

A review of the past service credit practice in the comparable six communities reveals four cities with past service credit in some form. However, the issue here really is not should employees have credit for past service, but rather, if the plan does provide for such credit, who shall fund it. The City position being if the police officers want credit for past service, we have no objection, but they must fund it.

A review of City of Algonac Police Officers Retirement Plans shows no contributions by the city in any past plan for years prior to 1974. City Exhibit (C-6) reflects a constant decline in the percentage of pension contributions to wages for the periods 1981 - 1987.

The percentage of wages cost to the City to funding past service was not accurately presented to your arbitrator. This is particularly true if employees contribution is increased to 5% and if all currently held funds are transferred to the new plan. This percentage cost is further reduced if and when additional police officers are added. Each added employee representing 20% of the present whole.

Your arbitrator gave particular attention to the interests and welfare of the public and the financial ability of the unit of government to meet the costs.

The testimony of City of Algonac Witness Chief Norkiewicz (pages 199 - 201) clearly sets forth the need for additional police officers to properly serve the interests and welfare of the public. The Chief requested five additional officers at a recent council meeting. His request for any additional officers was denied.

Your arbitrator must assume that Chief Norkiewicz knows what he is talking about. However, if we reduce the number of additional required police officers to only two or three additional

officers, the cost entailed in serving the interests and welfare of the public reduces the cost of funding the pension plan past service substantially and almost to an infadecimal amount.

Your arbitrator requested but he was not provided with certain statistical information (Pages 201 -202).

City of Alongac Witness, City Manager Wayne L. Maybaugh, testified that the City did have the ability to pay (page 220). Mr. Maybaugh further testified that the City of Algonac millage was 11.55 mills and that millage had not been increased since Algonac became a city in 1966 (page 209).

Your arbitrator has given consideration to each of the applicable factors as set forth in Sec. 9 of Public Act 312 and particularly to factors (b) The Stipulation of the Parties, (c) The Interest and Welfare of the Public and Financial Ability of the unit of government to meet the costs (d) Comparison of Conditions of Employees (comparables).

Your arbitrator is most impressed with the presentation by the City of Algonac regarding vacation schedules and the payment for past service as applied to the pension.

Pursuant to the provisions of Act 312, your arbitrator is restricted. He cannot make an equitable decision based upon the record as he sees it. Rather he is limited to choose between the final offers of the opposing parties.

As to vacation accrual, the case presentation of the City is sufficient to support a finding for some reduction in the vacation schedules after 10 years of service. However, there also was a good case made by the same exhibits that vacation schedules with less than 10 years of service should be increased. However, that was not before your arbitrator. A good case was made to set up an entire new vacation schedule, with some improvement in the lower years and with reduction in the later years, while grandfathering in the present employees with more than 10 years seniority. That choice was not offered to your arbitrator.

There was testimony that the present vacation schedules were given in lieu of other monetary benefits. There was further testimony that the present plan has been in effect many years and that one employee only was qualified.

If the upper schedules were to be reduced for the reasons stated, the savings should have been applied to improve the lower schedules.

VACATION SCHEDULING FINAL OFFERS

The City Final Offer re: vacation accrual is as follows:

Employment	1 - 4 years	10 days
	5 - 10 years	15 days
	11 - 15 years	20 days
	16+ years	1 additional day per year of service with maximum of 25 days

The Union Final Offer: Retain the Status Quo--No Change.

Accordingly, based upon the record and for the reasons stated, your arbitrator adopts the final offer of the union; namely, retain the status quo.

SHIFT PREMIUM FINAL OFFER

The City Final Offer Re: Shift Premium:

No change from Current Contract i.e.

Afternoon	10 cents per hour
Midnight	15 cents per hour

Union Final Offer:

Afternoon	20 cents per hour
Midnight	30 cents per hour

Accordingly, based upon the record and for the reasons stated, your arbitrator adopts the final offer of the union; namely:

Shift Premium: Afternoon 20 cents per hour
Midnight 30 cents per hour

RETIREMENT FINAL OFFER

City Final Offer:

The Police Officers in the bargaining unit shall be given the choice of the following two options and must notify the City of their choice within 30 days of their receipt of the Arbitrator's award.

Option A:

Police Officers will receive no credit in the "new" Aetna Pension Plan for service prior to 7/1/87. All funds in the "old" pension plan (with Delaware Charter Guarantee & Trust Company) will remain the property of the Police Officers. However, each Police Officer will be allowed a one time opportunity, on an individual basis, to self-fund the plan for years of service

prior to 7/1/87. This amount is to be paid in cash within 30 days of the date of this award.

Option B:

All existing Police Officers shall be given credit in the "new" Aetna Pension Plan for prior service. To avoid having the City pay twice for an employee's pension, all of the funds which the City has already paid into other pension plans, for existing Police Officers, shall be returned to the City, with interest. The cost of funding the "new" Aetna Pension Plan, for prior years of service, shall be paid for by the Employer contributing 60.4% of the cost and the Employees contributing 39.6% of the cost (equal to a City contribution of 6.1%, and an Employee contribution of 4%, under the "new" Plan).

Union Final Offer:

Retirement 1.75% FAE x(highest average of last 10 years x total departmental service. Employees to contribute 5% of Gross pay.)

Your arbitrator studied the two options made as the City final offer, in the hope that he might find something within either option that responded to the testimony and exhibits as presented. Your arbitrator as previously stated was looking for something that would tie in reimbursement for the repeated costs, with wages or other continuing benefits. However, such an equitable solution to the problem was not embodied in the City offer.

Your arbitrator did find some recognition of that in the union offer. The new offer provides that employees contribute 5% of their gross pay. This is a contribution of 25% more than previously made by the union. The new plan being a benefit plan with the additional contribution by the employees, the cost to the city is proportionately reduced. To that extent the City is reimbursed for past contributions. Additional reduction in cost of funding past service will result from increased employee as requested by Chief Norkiewicz. In addition, the interests and welfare of the public; namely, good and adequate police protection will be provided. That's what serving the constituents is all about. Keeping millage at the lowest is a meritorious objective only if adequate services are proved. Only then.

Accordingly, your arbitrator adopts the final offer of the union; namely,

Retirement 1.75% FAE x(highest average of last 10 years x total departmental service. Employees to contribute 5% of gross pay.

With reference to the non economic issue; namely, Shift Scheduling:

There was testimony that working set shifts was the long established procedure in Algonac.

Further, Chief Norkiewicz testified that he was able to meet all requirements under the present arrangement; but, however, that entailed much overtime. In response to a direct question, there was testimony that the problem of scheduling would be substantially resolved if additional patrolmen were added.

Your arbitrator also noted that the present contract does not prevent the City from changing schedules, but merely requires prior consultation with the union.

Your arbitrator is not convinced of any benefit derived from "fixen' it for fixen's sake". Further he believes that like plumbing, in labor relations, if it ain't broke, don't fix it!

Simply because someone will feel better if they have more leeway, is not a good reason to change a formula, which apparently works reasonably well. As Chief Norkiewicz stated at page 181 "...there has never been a refusal on the part of a police officer in this city to work additional hours, come in off time schedules and so forth..." It is apparent to your arbitrator that what is here referred to as scheduling problems are really problems which result from a shortage of officers to schedule.

Your arbitrator finds that sufficient reason to change, alter or modify the shift schedule formula as set forth in the current contract was not established by the employer, City of Algonac.

Accordingly, your arbitrator holds that the present shift scheduling formula be continued, namely:

7:00 a.m.	to	3:00 p.m.
3:00 p.m.	to	11:00 p.m.
11:00 p.m.	to	7:00 a.m.
8:00 p.m.	to	4:00 a.m.

Changes in schedule shall not be made in an arbitrary or capricious manner. Any changes in the schedule will not be made without prior consultation with the union.

Respectfully submitted,


Jerry Raymond

Impartial Arbitrator

Chairman-Act 312 Arbitration Panel

Dated: 8/10/87

The undersigned, Act 312 Arbitration Panel Members, re: Case No. D86-C-501 respond to the Report, Actions and Rulings of Jerry Raymond, Panel Chairman, as set forth in his Report and Rulings as follows:

FOR THE CITY OF ALGONAC:

FOR POLICE OFFICERS ASSN.
TEAMSTERS LOCAL 129

Shift Premium

Adopt _____
Decline to Adopt B. J. Hudak

Vacation

Adopt _____
Decline to Adopt B. J. Hudak

Pensions

Adopt _____
Decline to Adopt B. J. Hudak

Shift Scheduling

Adopt _____
Decline to Adopt B. J. Hudak
Date 8/19/87

Shift Premium

Adopt James D. White
Decline to Adopt _____

Vacation

Adopt James D. White
Decline to Adopt _____

Pensions

Adopt James D. White
Decline to Adopt _____

Shift Scheduling

Adopt James D. White
Decline to Adopt _____
Date 8-19-87