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1/25/2000

Sub.

IN THE MATTER OF THE
ARBITRATION BETWEEN:

CITY OF GRAND LEDGE

and

MERC Case No. L 98 H-1003

POLICE OFFICERS LABOR COUNCIL

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION & AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Janet Lazar
City Delegate

Homer LaFrinere
Union Delegate

Date: January 25, 2000

Grand Ledge, City of

INTRODUCTION

These proceedings were held pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, City Delegate Janet Lazar, and Union Delegate Homer LaFrinere.

A pre-hearing was held on July 8, 1999 at the offices of the independent arbitrator and a hearing was held on December 6, 1999 at the Michigan Employment Relations Commission Lansing Office. The City of Grand Ledge was represented by Panel Delegate Lazar. The Union was represented by panel Delegate LaFrinere. No transcription was made of the hearing. Exhibits offered by the parties and accepted consisted Union Exhibits 1 through 6. The Employer offered no exhibits. No written last offers of settlement were submitted by the parties. Representatives for the parties did make closing statements at the hearing summarizing their respective positions. By written stipulations, which are contained in the case file, the parties waived all time limits applicable to these proceedings, both statutory and administrative and stipulated that the single issue pending before the panel would be considered within the context of the Act 312 proceeding. At the hearing the representatives for the parties agreed that the decision of the panel would be binding on the parties during the duration of the contract, which was the subject of this proceeding, which will be for a five year period from July 1, 1998 through June 30, 2003.

When considering the issue in this proceeding, the panel was guided by Section 8 of Act 312. The section provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

- (a) *The lawful authority of the employer.*
- (b) *Stipulations of the parties.*
- (c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*
- (e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.*

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

BACKGROUND

An Act 312 petition was filed with the Michigan Employment Relations Commission by the City of Grand Ledge on 4/26/99 seeking Act 312 arbitration between the City and the non-supervisory police officers employed by the City of Grand Ledge. The prior contract had expired 6/30/98. Several negotiating sessions had been held prior to the filing of the petition and at one time it was thought all issues had been resolved.

A pre-hearing was held 7/8/98, issues identified and a schedule set with the first day of hearing set for 11/16/99. Prior to the first hearing date the parties reached a tentative agreement on all the issues with the exception of the issue of which bargaining unit, supervisory or non-supervisory, would represent the position of Detective. In a 11/17/99 letter from the City and Union panel member representatives the parties sought panel determination on that one issue. A hearing was held on 12/6/99 on that issue. At the hearing the Union presented Detective Spagnoulo as a witness and the City presented Chief Underhill as a witness.

ISSUE

The issue presented to the panel is within which bargaining unit and, therefore, within which collective bargaining agreement, should the position of Detective be represented. The Union's position is that the Detective position should be contained within the supervisory unit. The City's position is that the Detective position should be contained in the non-supervisory unit. Both units are represented by the Police Officers Labor Council.

TESTIMONY & EVIDENCE SUBMITTED AT THE HEARING

Testimony and evidence submitted at the hearing revealed that the City of Grand Ledge did not have a position of Detective within the previous bargaining agreement. Both the supervisory and non-supervisory previous bargaining agreements expired 6/30/98 and the supervisory bargaining unit was in negotiations at the time the City sought arbitration for the non-supervisory agreement. Chief Underhill testified that in October of 1998 the supervisory unit consisted of the Chief, three Sergeants and one Lieutenant. A vacancy occurred in the Lieutenant position and Chief Underhill sought and got the then City Manager's approval to restructure the supervisory unit. The restructured unit consisted of the Chief and two staff Sergeants. By eliminating the Lieutenant position the Department was then able to create a position for Detective. The Chief testified that at the time this position was created he did have discussions with the City Manager about placing the position in the supervisory unit. The Chief stated the principle reason for considering the position for placement in the supervisory unit was a determination at that time by the City that the City might benefit economically, relative to the cost to the City for the pension plans of the respective employees, if the position was placed in the supervisory unit. On cross examination the Chief indicated that the job duties and the responsibilities of the position was not the major factor in discussions of placement of this position in the supervisory unit. Filling of the Detective position was authorized by the City Manager in late 1998, the position was posted and an exam given in early 1999 (U-1). The position was filled by Officer Dan Spagnuolo effective 2/22/99 (U-4).

Both Chief Underhill and Detective Spagnoulo testified that while there was discussion of the placement of this position in the supervisory unit during this period, there was never any formal decision made as to its placement and nothing in writing from the City or between the City and the Union. Chief Underhill stated that as discussions progressed toward the resolution of the agreements between the City and the supervisory unit and non-supervisory unit it became clear to the City that there was no economic reason for the placement of this position in the supervisory unit as opposed to the non-supervisory unit. Detective Spagnoulo, upon learning of the City's decision to consider the position to be located in the non-supervisory unit, filed a grievance. During the grievance process it was determined that there never was clarity on the proper location of the position, so the grievance failed to resolve the issue. The parties then agreed to have it addressed in this Act 312 proceeding.

Detective Spagnoulo testified to his duties. He stated that he does not have the authority to hire and fire personnel, that he considers a Sergeant to be his immediate supervisory; that he functions as "officer in charge" on days that the Sergeant who has duty on that day shift is off. Detective Spagnoulo's testimony revealed that his duties do, in fact, generally reflect the duties and functions described in U-3. He acknowledged that a small percentage of his review of police officer's reports are independent of reviews done by Sergeants. Detective Spagnoulo testified that he considered the location of the position in the supervisory unit appropriate because that is where he understood it would be located during discussions with the Chief and City management at the time the position was being

created and filled. He acknowledged that, except for members of the supervisory unit having one leave day more than the non-supervisory personnel, there was little economic impact resulting from the location of the position.

The representatives for the parties, in their respective summations, emphasized the following:

For the City:

- This position does not perform supervisory responsibilities and is more aligned with a "lead worker" position. The responsibilities of the position described in the current position description (U-3) do not describe supervisory responsibilities.
- Placement of this position in the supervisory unit could have impact on other cities using it as a comparable, which would be a distortion of the facts.
- Economic impact of the location of the position is not a major concern.
- Location of the position in the supervisory unit would increase the number of supervisory personnel in proportion to the non-supervisory personnel out of line with generally accepted police management organization practices.

For the Union:

- The City originally advised the Detective that this position would be represented in the supervisory unit and, therefore, should not reverse its position.

- There is minimal economic impact to the City or the employee on the location of this position.
- The relationship of the number of supervisors in proportion to the number of non-supervisors should not be a concern to the City since they previously had a Lieutenant position in the supervisory unit, which they did not refill.

FINDINGS AND OPINION

The panel has considered the testimony and evidence presented at the hearing in the context of the applicable factors to be considered as set forth in Section 9 of Act 312. The panel finds:

- (a) The Employer does have the right and responsibility to develop, create and fill positions such as that of Detective and develop position descriptions. Exhibits U-2 and U-3 were presented at the hearing. Exhibit U-2 was initially used by the City as indicating responsibilities of the Detective position. Exhibit U-3 along with Exhibit U-5 and U-6, however, were presented as being the most recent and current position descriptions used by the City in describing and distinguishing the responsibilities of the positions of Police Officer (U-5), Detective (U-3), and Police Sergeant (U-6).
- (b) The parties have stipulated to abide by the decision of this panel on this issue during the duration of this contractual agreement.
- (c) The financial ability of the City is not an issue in this decision.

(d) No comparables were offered in this proceeding. It was acknowledged by the representatives that placement of Detective positions in supervisory or non-supervisory units vary among employers and are dependent upon the size of the unit of government and other individual government considerations.

(e) Cost of living is not an issue in this case.

(f) The only compensation issue in this case relates to the additional leave day the position would be entitled to in the supervisory unit as opposed to the non-supervisory unit. The panel does not find that to be of significant impact on either the employer or the employee.

(g) The panel finds that the changes in the City management, counsel, and discussions between those parties and the Chief of Police on this issue between the expiration of the previous contracts and during the creation and filling of the Detective position in negotiations leading to the agreement between the City and the supervisory and non-supervisory unit resulted in confusing this issue for the parties. The major reason it is even before the panel is because of lack of communication or miscommunication on this issue between the City and representatives for the bargaining units involved during that time period.

(h) Factors other than those presented during the hearing were not a component of the panel's decision. The panel does acknowledge the concern on the part of Detective Spagnuolo in this case of being told at one point, one thing and then later, told another. However, testimony and evidence revealed there is minimal economic consequence as a result of the City's changing positions on this issue. Both parties acknowledged during the hearing that, while perhaps not

formally adopted, the position descriptions presented for the position of Police Officer (U-5), Detective (U-3) and Police Sergeant (U-6) are currently operative and taken from models developed by the Michigan Municipal League and generally reflective of the duties and responsibilities of the police personnel in Grand Ledge. A review of those position descriptions reveals that the position of Sergeant requires substantial supervisory responsibilities. Those responsibilities are noted in the general summary and in essential job functions 1, 2, 10 and 11 (U-6). In contrast, the position description for Detective does not contain the same level of supervisory responsibilities. The general summary contains no reference to supervisory responsibilities. The position is supervised by a Sergeant and while items 2 and 9 of the job functions call for some supervision, these responsibilities are limited in scope and not a substantial portion of the responsibilities of the position (U-3). The panel finds the job duties and functions of the Detective position as currently functioning in Grand Ledge more aligned with the duties and functions of the non-supervisory personnel than the supervisory personnel.

Taking all of these factors into consideration the panel accepts the City's position on the issue of inclusion of the Detective position in the agreement between the City and the non-supervisory unit. Article 1, Section 1-Recognition and Article 48, Section 1B referring to the Detective position in the non-supervisory agreement will remain in effect for the duration of this agreement.

City: Agree J. Larr
Union: Agree _____

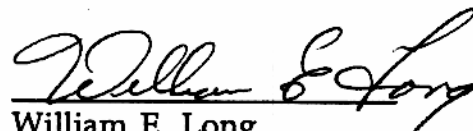
Disagree _____
Disagree James J. Larr

SUMMARY

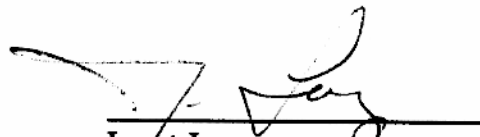
This concludes the award of the panel. The signature of the delegates herein and below indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing.

Re: City of Grand Ledge
Police Officers Labor Council
MERC Case No.: L 98 H-1003

Date: 1/25/2000


William E. Long
Arbitrator/Chair

Date: 1/12/2000


Janet Lazar
City Delegate

Date: 1-10-00


Homer LaFrinere
Union Delegate