

Arb 9/24/79

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF CENTER LINE, Michigan

and

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
Council No. 25

Local Nos. 1277 and 1917

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

FINDINGS OF FACT, OPINION AND AWARD
Pursuant to Act 312, Public Acts of
1969, as amended.

1979 SEP 25 AM 9 18
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
BENTLEY OFFICE

RECEIVED

Center Line, City of

ARBITRATION PANEL

LEON J. HERMAN, Impartial Chairman
PETER J. TRANCHIDA, City Designee
ROBERT WINES, Association Designee

Issued: September 24, 1979

This is a proceeding in arbitration pursuant to Act 312 of Public Acts of 1969, as amended. Peter J. Tranchida was named by the City as its designee to the panel. Robert Wines was appointed by the Union Locals as their designee. On November 30, 1977 the undersigned, Leon J. Herman, was appointed as impartial chairman of the arbitration panel and duly sworn.

Hearings were held on April 14 and August 22, 1978. Action was suspended following these dates on advice of the parties that the dispute had been settled. In April, 1979 I was informed that the settlement had not been consummated and was asked to reopen the matter.

Hearings were held on April 20 and July 17, 1979 at City Hall, Center Line, Michigan. By mutual agreement no transcript was taken because no testimony was heard. The parties agreed to and did submit statements of position and final offers.

Roy W. Rogensues, Esquire, represented the City of Center Line. George Maurer, Esquire, appeared on behalf of Locals 1277 and 1917.

Conferences between the members of the panel of arbitrators were held on August 21 and September 24, 1979.

Both parties entered in good faith into the proceeding. No issue of arbitrability was raised. No question was raised as to the legality or authority of the arbitration panel to determine the issues presented. Time limits were extended as required

to meet the restrictions of the statute.

Locals 1277 and 1917 have been the bargaining agents for the City patrolmen and command officers, respectively, for a substantial number of years. They claim the right of representation for approximately 18 members of the Department up to but not including the classification of Chief. For 1977-1980 the parties have agreed upon all issues with respect to wages, hours and other terms and conditions of employment with the exception of the issues presented by stipulation to this panel for determination. The unresolved economic issues to be decided are the following:

Issue No. 1	Layoff
Issue No. 2	Longevity
Issue No. 3	Holidays
Issue No. 4	Vacations
Issue No. 5	Uniform Allowance
Issue No. 6	Funeral Leave
Issue No. 7	Wages
Issue No. 8	Cost of Living Allowance
Issue No. 9	Detective Differential

In addition, the City has demanded a residency clause which the Unions have rejected. All other noneconomic issues have been resolved or withdrawn. The City has specifically withdrawn demand for a revised management rights clause, a physical fitness provision, a revised no strike-no lockout clause and a standby clause. The Unions have cancelled their standby time demand.

The statute pursuant to which this proceeding came into

being and under which this panel functions poses certain specific criteria which the panel must consider in arriving at a conclusion:

- 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.

That a city may negotiate wages, hours and working conditions of its employees with a recognized bargaining agent has been established by the Public Employee Relations Act. The Locals have been duly recognized as the bargaining agents for all Department employees, up to but not including the grade of Chief, for a number of years. Both the City and the Unions have agreed to statutory arbitration of the items remaining in dispute in their current negotiations in accordance with Act 312 of Public Acts of 1969, as amended.

The City agrees that it has the lawful authority and obligation to negotiate and conclude an agreement in consonance with the award of this panel.

The parties have stipulated that the panel may consider the issues above listed and render an award thereon which both will accept; that all proceedings of this panel of arbitrators have been properly taken in compliance with the governing statute, and that this award is duly processed and is binding upon the parties.

The interest and welfare of the public and the financial ability of the City to meet the increased costs resulting from implementation of this award have been considered and determined.

Comparison of wages, hours and conditions of employment, in both the private and public local sectors, as well as in comparable communities, is discussed hereinbelow, as are increases in cost of living as a factor in the determination of this panel.

By mutual agreement the 1976-77 agreements have been continued in full force pending receipt of this award. Relations between the parties have continued in status quo. No objectionable practice has been charged against either party.

Other factors considered by the parties and the panel are listed in the opinion.

It should be emphasized at this point that all comments, opinions and interpretations of factual evidence stated herein are solely and exclusively the responsibility of the impartial arbitrator, unless specifically attributed to another member of the panel.

In the following discussion I have considered primarily the demands of Local 1277. The contract to be executed between that Local and the City will normally be adopted by Local 1917, with some necessary modifications, such as a percentage override in the wage scale. There appear to be no issues in which Local 1917 has a separate interest.

The City of Center Line is an enclave within the City of Warren. It has a population of approximately 10,000. The City of Warren has 175,000 residents.

The parties have agreed that the following communities are comparable for purposes of comparison: Berkley, Clawson, Ecorse, Flat Rock, Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Harper Woods, Hazel Park, Mount Clemens, Plymouth, Rochester, Woodhaven, Melvindale, Riverview and River Rouge. The City and the Local differ somewhat with respect to the propriety of comparative values between those cities and Center Line. I have not delved into these differences because the peculiar circumstances here applicable make the comparisons somewhat irrelevant.

In March, 1977 an arbitration panel headed by Mario Chiesa issued an opinion and award for the year beginning July 1, 1976. The instant proceeding covers the years July 1, 1977 through June 30, 1980. In October, 1978 the negotiating teams for the City and the Locals reached agreement on all but a few minor matters, upon which they were unable to concur. The matters were then referred back to this panel. In the absence of a transcript it would appear hardly necessary to delve into the background of facts and figures upon which each party relies in presenting its final offers. This panel's award will be based upon the final arguments presented in support of the last best offers, while taking into consideration the settlement that was reached in October, 1978, which it is felt should influence the panel in making its award.

ISSUE NO. 1 - LAYOFF

The Unions ask that the layoff provision directed in Arbitrator Chiesa's opinion and award be continued without change. The City had objected to the provision, with the result that Locals petitioned for enforcement in the Macomb County Circuit Court. The matter eventually reached the Michigan Court of Appeals, which issued its opinion in Case No. 78-553 on July 11, 1979:

The city also challenges the layoff clauses as beyond the authority of the arbitration panel. The problem of layoffs was determined to be a non-economic issue. A majority of the arbitration panel rejected both parties' proposals and substituted a clause providing:

"The word 'layoff' means a reduction in the working force due to a decrease of work or a general lack of funds. If for lack of funds, police officers may be laid off only in conjunction with layoffs and cutbacks in other departments."

From the discussion at oral argument, it appears that the clause should be interpreted to allow all reductions in force for lack of work in the police department, and requires that reductions in force for economic reasons be in conjunction with reductions in other departments. The precise relationship between layoffs in the police department for economic reasons and layoffs in other departments is not settled by the clause nor was it intended to be. As explained by the majority of the arbitration panel this compromise language was intended to protect the members of this bargaining unit from retaliatory layoffs because of what the city perceived to be a lack of

cooperative attitude in fiscal matters, while at the same time expanding the city's right to protect itself from a real fiscal crisis.

Viewed in the context of the previous relationship of these parties, the clause actually expands management rights. The prior layoff clause was interpreted to prohibit layoffs solely for economic reasons. Metropolitan Council No. 23, Local 1277, American Federation of State, County and Municipal Employees, AFL-CIO v City of Center Line, 78 Mich App 281, 286; 259 NW2d 460 (1977), lv den, 402 Mich 814 (1977). The city, under the award language, may now lay off policemen for economic reasons but cannot do so in a manner which discriminates against the members of this bargaining unit. We do not perceive the language as restricting the basic legislative choices of the city in providing municipal services and conclude the award was within the power of the arbitration panel.

The City now asks that "City to have sole and complete discretion in determination of size and work force. Restricted only in that layoffs conducted in accordance with seniority."

The Union asks that the status quo be continued.

The City argument was presented before the issuance of the appellate decision. Despite that opinion, the City's position remains unchanged. It argues that the size of the police force should not and cannot be decided by the panel. The present language, fashioned by the previous Act 312 panel, infringes upon the right and the necessity of the City to be able to control the size of its work force. Under this language the City cannot lay off police officers without ordering cutbacks in other municipal

departments. The level of police force is thus made to depend not on levels of need, available revenues, or any other public interests, but rather on the minimum level of service to be maintained in other departments. The City insists that it has the basic legislative right to determine the ultimate level of police protection and it should not be restricted. It proposes that layoffs be made on the basis of seniority without other considerations.

The Union urges that the existing language be maintained.

I am not fully persuaded that the Court of Appeals is correct in its conclusion that "The clause actually expands management rights." I am of the opinion, however, that the current contractual provision, arrived at after so much time and effort expended in arbitration and litigation, should at the least be given a fair trial for a reasonable period of time. Accordingly, I propose that the current provision be continued without change throughout the term of the agreement.

Mr. Wines concurs.

Mr. Tranchida dissents.

ISSUE NO. 2 - LONGEVITY

The contract that expired in June, 1977 provided for a two percent longevity premium payable for five to ten years of service, four percent payable for 10 to 15 years of service, six percent payable for 15 to 20 years of service, eight percent payable for 20 to 25 years of service, and 10 percent for 25 and more years of service.

Both parties are in agreement on a change in the longevity program to the following formula:

<u>Years of Service</u>	<u>Percent of Base</u>
1-5	2%
5-10	4%
10-15	6%
15-20	8%
20-25	10%

The City proposes that the maximum cap or base be retained at \$10,000. The Union proposes an \$11,000 cap.

The City further proposes that only those employees who were on the payroll prior to July 1, 1978 shall be eligible to receive longevity pay. The Union does not agree to the elimination of longevity for new hires.

The October settlement included a provision that "Employees hired on or after July 1, 1978 shall not be eligible for benefits under this section."

I believe a limitation of \$10,000 as a cap is a reasonable provision. I would have questioned the July 1, 1978

eligibility date, but in view of the Union's earlier agreement to this provision I also concur.

Mr. Tranchida concurs. Mr. Wines concurs as to the schedule but dissents as to the cap and the eligibility date.

ISSUE NO. 3 - HOLIDAYS

The Union proposed that holidays be increased from 12 to 13 per year as of July 1, 1977. The City agreed to allow 13 holidays as of July 1, 1979.

The Union accepted the City proposal and withdrew the issue from arbitration.

ISSUE NO. 4 - VACATIONS

The City presently provides police officers with 16 days of vacation for up to five years of service, 20 days of vacation for six to 15 years of service, and 25 days of vacation for 15 or more years of service. The City permits an accumulation of 30 days of vacation from past years.

The Union proposes that there be 18 days of vacation for up to five years of service, 22 days of vacation for six to 12 years of service, and 27 days of vacation for 13 or more years of service. The Union further proposes that an accumulation of 40 days of vacation be permitted.

The Union notes that other employees of the City receive 25 days of vacation for 13 or more years of service.

The City has offered, effective July 1, 1978, a revised vacation schedule which corresponds with that accepted by Fire Department employees. It offers 16 days of vacation for up to five years of service, 20 days for up to 12 years of service, and 25 days after 12 years. It asks that the 30 vacation day accumulation be retained.

It is noted that in the October, 1977 settlement the Locals agreed to an accumulation of up to 30 vacation days and that the proposed format should be effective July 1, 1978.

Accordingly, I recommend a vacation schedule for police officers of 16 days up to five years of service; 20 days from six

to 12 years and 25 days after 12 years. An officer may accumulate up to 30 vacation days. The proposed program shall take effect as of July 1, 1978.

Mr. Tranchida concurs. Mr. Wines dissents.

ISSUE NO. 5 - UNIFORM ALLOWANCE

The Union has proposed that the uniform allowance be increased from \$350 to \$400 per year. The City has agreed on condition that the money be disbursed on a quartermaster system. To this latter provision the Union objects.

The Union further proposes an annual \$125 cleaning allowance, effective as of July 1, 1979. The City has denied the proposal.

I agree with the Union that no quartermaster line of credit system should be inaugurated. It appears to be an innovative proposal, hardly worth the extensive bookkeeping it would entail. Accordingly, I propose that an annual uniform allowance of \$400 be paid in the format currently in effect.

Mr. Wines concurs. Mr. Tranchida dissents.

I see no reason for a \$125 cleaning allowance. The \$400 already allowed should be ample to include whatever cleaning may be needed during the year. Accordingly, I propose that no separate cleaning allowance be paid.

Mr. Tranchida concurs. Mr. Wines dissents.

ISSUE NO. 6 - FUNERAL LEAVE

Currently employees are allowed a five day funeral leave if the funeral is that of a spouse or child, three days if the mother, father or other member of the family is deceased, and one day for remote members of the family. The Union finds the current language to be sufficient and asks no change.

The City has proposed that the necessary time off for funerals, varying from one to five days, be granted upon approval of the Department head.

I see no reason for change from the current procedure. The Department head must be notified that an officer is taking time off. This should be sufficient to satisfy the informational needs of the Department. Whether the employee is to receive one, three or five days now depends on the closeness of relation to the officer. No approval of supervision should be needed. The time allowed is not excessive and should be permitted to stand as is.

Mr. Wines concurs. Mr. Tranchida dissents.

ISSUE NO. 7 - WAGES

The Union has proposed a wage increase of eight percent for the 1977-78 year, which would provide a patrolman at maximum a wage of \$17,614 per year.

The Union proposes an eight percent wage increase for the year 1978-79, which would provide a wage rate at maximum of \$19,023.

For the year 1979-80 a seven percent increase is proposed, which would result in a maximum rate for a patrolman of \$20,355.

The City has proposed a wage increase of six percent beginning July 1, 1977, six percent beginning July 1, 1978, and seven percent beginning July 1, 1979.

In the October, 1978 settlement the parties agreed to an increase of six percent across the board.

The Union contends that its proposal leaves it only \$168 above the annual average for the various cities which have been considered in this proceeding. Its 1979 proposal is about \$600 above the reported average. Forty-six communities with an average wage of \$19,105 have allowed an average increase of 6.8 percent over the prior year. For 1979-80 23 communities with an average wage of \$21,143 plus cost of living allowance have increased wages by an average of 7.1 percent.

As late as October, 1978 the Union was satisfied with

a six percent wage increase. Both parties have agreed upon seven percent as a fair wage increase for the year 1979-80.

The Locals have proposed as their final offer a salary increase schedule of seven percent for 1977-78, seven percent for 1978-79 and seven percent for 1979-80. The City strenuously opposes such a wage increase as in excess of what the Locals were willing to accept last October.

I can appreciate the justification of the City position, but I am mindful that this past year has seen immoderate inflation which even the cost of living allowance has not overcome. In the circumstances I deem it unreasonable to restrict the police to their 1978 proposal. Their current offer is moderate and should be approved.

Mr. Wines concurs. Mr. Tranchida dissents.

ISSUE NO. 8 - COST OF LIVING ALLOWANCE

The Union has proposed that the COLA formula be continued for 1977-78 and 1978-79 at one cent for each 0.4 increase in the CPI, reverting to zero at the end of each bargaining year. It asks that for 1979-80 it be paid one cent for each 0.4 rise in the CPI, with reversion to zero at the end of each bargaining year.

The City has consented to the current COLA formula for 1977-78 and 1978-79. It asks that COLA be deleted for the 1979-80 year to compensate for its improved wage offer for 1978-79 and 1979-80.

The Union has disclosed that the cost of living allowance for the 1977-78 year cost the City \$337. For the 1978-79 year the cost was \$882. The amount involved is clearly an insignificant factor in the City's budget.

In the current state of the economy I cannot find that the City's wage offer is so improved that COLA should be discontinued. The City has made no offer. The Unions have asked continuation of the currently allowed one cent for each 0.4 increase in the CPI for 1979-80, with reversion to zero at the end of each bargaining year. I propose that the Union's proposal on COLA for the third year be adopted.

Mr. Wines concurs. Mr. Tranchida dissents.

ISSUE NO. 9 - DETECTIVE DIFFERENTIAL

On February 22, 1971 then City Manager John Crawford wrote to the vice president of Local 1917:

At a meeting held on February 15, 1971, you requested that Section 39 of the 1969-1971 Police Department Contract be amended to include the rate of pay for a "Detective" as this was omitted from the Contract erroneously.

Your request was approved and the following language is to be made a part of this 1969-1971 Police Department Contract:

SEC. 39. RATE OF PAY.

The Detective position in the Center Line Police Dept. will not hold rank, however, the rate of pay of a Detective will be the same rate of pay as that of a Corporal. Should a Patrolman be transferred to the Detective position on a temporary basis, he will return to his regular rate of pay and fringe benefits as a Patrolman upon his being transferred back to his prior position.

The Union has asked that the language as set out by Mr. Crawford be included in the agreement.

The City reports that it neither has nor recognizes the position of detective. Personnel are assigned from among the existing ranks to a detective function but at no time has the officer performing the function been paid at a higher rate. In actuality the City has no detective position and does not recognize such a position.

Accepting as correct the City's statement that no detective position has been in effect for years and that none

is contemplated, there is no point in including a detective differential in the agreement. The request is therefore denied.

Mr. Tranchida concurs. Mr. Wines dissents.

The foregoing determination does not affect the arrangement in which both parties concur, that a patrolman temporarily appointed to sergeant rank shall be paid the sergeant rate for the duration of the appointment after eight hours.

ISSUE NO. 10 - RESIDENCY

As a standard policy the City has required that residency within City limits be required uniformly of all City employees. The Union has proposed that residency within a 25 mile radius of the City be permitted.

The City points out that there is more than adequate housing available within the City. There are in excess of 3,500 residential units of substantial value within the economic range in which the police officers fall. No need has been demonstrated for a change in the status quo.

Of 16 communities included in the surveyed areas, ten require residency of its employees.

The Union does not contend that the housing market in Center Line is economically of such character as to make it impossible for the police officers to buy housing within the City. It notes that the City is a relatively small community geographically, with a population of 10,000 persons and no room to expand. A residency restriction severely constricts the housing market for persons in the collective bargaining unit.

I have little empathy for the residency rule. The argument is put forward that a police officer residing within the City limits has a more personal interest in protecting persons and property within the City. I gravely doubt that this philosophy motivates most or even any of the police officers.

An officer performs his duties well or poorly as his personal character dictates. If he is a good officer he will do his job well whether he lives in the City or 25 miles away.

I strongly suspect that the underlying reason for the residency rule is the City's desire to recoup some of the employee salaries through taxes.

Be that as it may, it cannot be questioned that a large number of Michigan cities, from Detroit on down, have imposed residency restrictions upon their employees. The pattern is too widespread to be overlooked. I can find no reason to distinguish Center Line from the other communities in the state with respect to residency. It has not been contended that suitable habitation within the City at a reasonable cost is not available to the officers. Accordingly, I propose that the residency rule be continued without change.

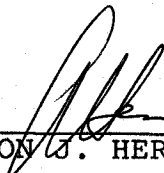
Mr. Tranchida concurs. Mr. Wines dissents.

As previously noted, other issues were presented and subsequently withdrawn. Illustratively, the Union demand for standby pay and the City's counter-demands for a physical fitness provision, a modification of the No Strike, No Lockout, No Interference clause and an amplification of the Management Rights clause have been removed from panel consideration after the parties reached agreement thereon.

I sincerely hope that the foregoing proposals will meet

with agreement by the City and the Locals so that a collective bargaining agreement can be executed with a minimum of delay.

I wish at this time to express my sincere thanks to my co-panelists for their sincere cooperation in bringing this matter to conclusion. Their signatures hereto express their concurrence or dissent as indicated in the foregoing opinion.



LEON J. HERMAN, Arbitrator

Southfield, Michigan
September 24, 1979

A W A R D

The undersigned panel of arbitrators, having been duly appointed pursuant to Act 312, Public Acts of 1969 as amended, and having heard the testimony and examined the exhibits presented herein, do hereby, by majority vote as shown in the accompanying opinion, AWARD AS FOLLOWS:

ISSUE NO. 1 The layoff provisions contained in the 1976-77 collective bargaining agreement shall be continued without change throughout the term of the proposed 1977-80 agreement.

ISSUE NO. 2 Longevity premiums shall be paid in accordance with the following formula:

<u>Years of Service</u>	<u>Percent of base</u>
1-5	2%
5-10	4%
10-15	6%
15-20	8%
20-25	10%

The maximum cap of \$10,000 shall be retained. The longevity program shall not apply to employees hired after July 1, 1978.

ISSUE NO. 3 The holidays allowed per year shall be increased from 12 to 13, effective as of July 1, 1978.

ISSUE NO. 4 Vacations shall be allowed as follows: 16 days for up to five years of service; 20 days from six to 12 years of service; and 25 days after 12 years of service.

Vacation days may be accumulated up to 30 days.

This vacation program shall take effect as of July 1, 1978.

ISSUE NO. 5 The uniform allowance is increased to \$400 per year effective July 1, 1978; payable in the format presently in effect. No separate cleaning allowance is allowed.

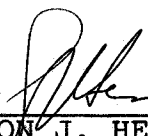
ISSUE NO. 6 Funeral leave shall be allowed as currently in effect.

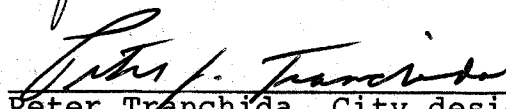
ISSUE NO. 7 Wages of police officers shall be increased by seven percent for 1977-78; seven percent for 1978-79; and seven percent for 1979-80.

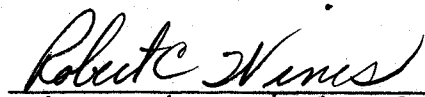
ISSUE NO. 8 A cost of living allowance of one cent for each 0.4 increase in the Consumers Price Index is allowed, effective with the inception of the proposed 1979-80 agreement, with reversion to zero at the end of each contract year.

ISSUE NO. 9 No detective differential is allowed.

ISSUE NO. 10 The residency rule currently in effect is continued without change.


LEON J. HERMAN, Impartial Arbitrator


Peter Tranchida, City designated arbitrator


Robert Wines, Union designated arbitrator