

116
STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF CHARLOTTE

Employer

-and-

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE

Union

MERC Act 312

Case No. L89-C-0216

Arbitration Panel:

Bruce A. Barton, Chairperson
Ray Wallace, Union Delegate
Dennis B. DuBay, Employer Delegate

OPINION AND AWARD

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

1990 APR -5 AM 9:46

RECEIVED

TABLE OF CONTENTS

	<u>Page</u>
I. Statement of Proceedings	1
II. Statutory Authority	2
III. Issues	4
IV. General Background	5
V. Comparable Communities	6
VI. Factors Considered on Several Issues	6
VII. Contested Issues	8
1. Contract Term	8
2. Residency	10
3. Working Hours and Conditions	15
4. Retirement	17
5. Wages	21
6. Grievance Arbitration Selection	24
7. Vision Care	25
8. Payday	27
9. Longevity	29
10. Hospital--Medical Insurance	31
11. Grievance Procedure: Step Two	33
12. Performance Evaluation	34
13. Retroactivity	37
VIII. Conclusion	38

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF CHARLOTTE

MERC Act 312

Employer

Case No. L89-C-0216

-and-

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE

Union

OPINION AND AWARD

1. STATEMENT OF PROCEEDINGS

On June 13, 1989, after reaching an impasse in contract negotiations with the City of Charlotte, Michigan, the Labor Council, Michigan Fraternal Order of Police, filed a Petition for Arbitration with the Michigan Employment Relations Commission (MERC), pursuant to Act 312, PA of 1969, as amended [MCLA 423.231, et seq.; MSA17.445(31), et seq.]. Thereafter, on June 19, 1989, the City filed an Answer to the Petition for Arbitration. Bruce A. Barton was appointed Chairman of the Arbitration Panel. The City designated Dennis B. DuBay as its panel delegate and the Union designated Raymond Wallace.

A pre-hearing conference was held on October 20, 1989. A formal hearing was conducted on November 28, 1989.

The parties have submitted their Last Offers of Settlement on the outstanding issues and the case is now ready for decision.

II. STATUTORY AUTHORITY

Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Section 8 of Act 312 states in relation to economic disputes that:

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 findings, opinion, and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

Section 9 of Act 312 contains eight factors on which the arbitration panel shall base its opinions and orders. The factors 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 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.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by competent, material and substantial evidence on the whole record. This is supported by the Michigan Supreme Court's decision in City of Detroit v Detroit Police Officers Association, 408 Mich 410, 294 NW2d 68 (1980). In that case the Court commented on the importance of the various factors as follows:

The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the legislature has made their treatment, where applicable, mandatory in 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 insure 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 facts of the case. Although, of course, all "applicable" factors must be considered. Id., 408 Mich at 484, 294 NW2d at 97.

In the deliberations of the present panel, each of the factors has been considered, if in any way applicable, on each issue. This Opinion and Award, however, will not mention every factor on every issue, but will mention key considerations in reaching its conclusions.

III. ISSUES

The parties agreed that the form of the new contract would be that of the Contract between the parties previously in effect from July 1, 1987, to June 30, 1989, as amended by stipulated tentative agreements and letters of understanding and the resolution of issues resulting from this opinion and award. All other issues were either settled without change in the previous contract or waived.

It was agreed that the hearing was confined to seven issues submitted by the Union, seven issues submitted by the City, and two mutual issues. One of the issues

originally submitted by the Union involving vacation benefits and one City issue regarding working conditions were subsequently withdrawn.

In order to permit the length of the contract to be considered by the parties in developing their last offers of settlement, the Arbitration Panel, after deliberation, issued a ruling on one of the mutual issues at the close of the hearing: that the new contract would be for a three year term. The remaining issues to be decided are those set forth in the parties last offers of settlement, including the precise language each party would insert in the contract.

IV. GENERAL BACKGROUND

The City of Charlotte is located in South Central Michigan, less than twenty-five miles southwest of Lansing, the State Capital. It is the County seat of Eaton County and is centrally located in the County. Population within a city area of 5.2 square miles is approximately 8,790.

There are currently 19 Charlotte Police Department sworn personnel, including twelve patrol officers, four sergeants and one detective. The Department has retained its personnel to the extent that on the date of this award all but four officers have more than ten years experience. One officer will reach the ten year mark on May 28. Average seniority for Sergeants and Detectives is now 16 years.

The fact that the City has a veteran police department may be reflected in a relatively low index crime rate, at least based upon 1986 statistics introduced at the hearing. The price of this status, however, has been that Charlotte has the highest police budget among comparable communities, excluding those which operate combined Public Safety Departments.

V. COMPARABLE COMMUNITIES

Before the hearing, the parties stipulated that comparable communities are Albion, Coldwater, Grand Ledge, Hastings, Hillsdale, Ionia, Marshall, Mason, St. Johns and Springfield. Each community is within a sixty-five mile radius of Charlotte and had a 1986 population within a range of plus or minus 3,500 (5,290--12,290) of the 1986 population of Charlotte.

VI. FACTORS CONSIDERED ON SEVERAL ISSUES

Certain portions of the evidence applied to all or several of the issues. Testimony indicated that an estimated fifty percent of the City's budget is generated by property taxes. The balance is received from such sources as state-shared revenues, fees, penal fines and contracted services.

The City has no present authority to levy an income tax because a proposed income tax was defeated by the elec-

tors in 1988. Millage proposals were defeated in 1986 and 1989. State equalized valuation ranked fourth among the agreed upon comparables and increases each year, although the amount or rate of increase and the relationship to increases in other communities was not established.

Testimony and exhibits further indicated that the City of Charlotte is among the lowest of the comparable cities in index crimes per 1,000 population, that it is fourth in police expenditures per capita (this statistic does not include Albion or Ionia, which operate public safety departments), and that in 1988 it ranked first in overall compensation to its patrolmen and third to its sergeants. Charlotte ranked third in ratio of citizens to officers, behind the two comparable cities which maintain public safety departments.

Further, cost of living information was introduced and compared with officer compensation under previous contracts. Stipulations of the parties on exhibits, comparable communities, their contracts and numerous other substantive and procedural matter were helpful to the panel. Changes in circumstances not reflected in the exhibits, where they occurred, were presented in testimony. Other factors normally considered in collective bargaining but not specifically enumerated in the statute were admitted where applicable.

The panel thus had substantial evidence and considered that evidence on each applicable factor on each issue.

VII. CONTESTED ISSUES:

1. CONTRACT TERM

As noted earlier, the panel met before the Hearing was closed and considered the application of all required factors to the length of the contract. It was the position of the Union that there should be a two year contract. The City requested a three year contract.

Review of the police contracts of comparable communities, which were introduced as exhibits at the hearing, indicated that the majority are contracts for three or more years.

No factor appears to strongly favor a two year contract. The City and the Union completed a two year contract on June 30 of 1989 and are now unable to settle the terms of the following contract until completion of these arbitration proceedings.

The City has long range capital improvement projects which may be affected by short range uncertainty with respect to labor costs. Officers of the Department will be better able to go about their activities knowing that differences with the City over the conditions of their employment are settled, at least for more than two years.

The interests and welfare of the public and the financial ability of the City to meet the costs of the new con-

tract and at the same time to plan for other City expenditures would thus appear to be best served by a contract for longer than two years.

As announced after deliberation earlier, the Contract resulting from this arbitration proceeding will be a three year contract.

Approved


Bruce A. Barton


Dennis B. DuBay

Dissent


Ray Wallace

2. RESIDENCY

Under the 1987 contract, police officers are divided into two groups. Those hired prior to December 3, 1978, are permitted to live within five miles of the city intersection of Cochran and Lawrence Streets, while those hired after that date are required after their first year to live within the actual city limits. Since the city has an area of 5.2 square miles, the straight line difference is, in most cases, less than three miles but the difference in area is more than seventy square miles.

The Union has requested that the residency requirement be made uniform by adopting the following language as the entire residency clause:

As a condition of continued employment after twelve (12) months, employees shall live within a five (5) mile radius of the intersection of Cochran and Lawrence in the City of Charlotte.

The City takes the position that this is an economic issue, and, for purposes of this opinion, it is considered an economic issue. Testimony indicated that the city considers payment of city taxes as one of the considerations in advocating residency, as well as being able to vote on millage and similar city issues affecting the economy of the city.

These are, of course, not the only things to be considered on the subject of residency. The City has called

to the attention of the panel such considerations as quick emergency response and off duty contact between police and those they serve, citing the 1967 report of the President's Commission on Law Enforcement and Administration of Justice, Task Force Report, The Police. [1]

Testimony and exhibits indicated that five full time Charlotte fire department personnel are permitted to live within one mile of the City limits. There are no restrictions on 25 or more volunteer firemen. The Department serves not only the City but, on a contract basis, five townships which are members of what is known as the Rural Fire Association. Another Charlotte union, representing employees of the Department of Public Works, agreed to a city residency clause for new employees after 1987, leaving employees from before that year the privilege of living outside the city.

External comparables lend little or no support to the City's position. No comparable city has a residency clause for patrol officers as restrictive as the current Charlotte provisions.

Residency requirements of comparable cities stated in terms of distance from a particular location or from the City limits range from five miles to fifteen miles. Three cities have no restrictions, while one permits residence anywhere in the county.

1. Government Printing Office, Washington, D.C. (1967).

Residency requirements which include "grandfather" clauses are negotiated by officers who protect themselves and bargain away residence rights of future department personnel not yet known at the time of the negotiations. The City argues that each officer who joined the Department after 1978 knew that there was a residency restriction, and therefore the restriction should not be changed, and that other arbitrators have adopted that rationale or made changes only to more restrictive requirements. Unfortunately to that view, an arbitration panel must examine all of the evidence as now presented and reach its own conclusions as provided by the statute.

The one mile limit for fire department residence outside the city limits has not been shown to have any rational relationship to the fact that the City has a contract with the Rural Fire Association, nor to hinder department effectiveness. One mile from the city limits of a 5.2 square mile city will in most cases be more than three miles from the center of the city. There would seem to be no substantial basis for distinguishing between three miles for fire department personnel and five miles for police personnel, nor should the Union proposal make any significant difference in emergency response time.

It is true that public works employees have contracted to live within the city. Whether a portion of those employees are on duty at all times, like the police, is not

reflected in the testimony but is unlikely. That they must be available on short notice to plow streets in a usual Michigan winter is clear.

The City cites a selected number of previous Act 312 decisions, including several from the Detroit Metropolitan area. Significantly, only one involves a stipulated comparable community in this case. That community, Mason, as a result of the decision permits its officers to live within five miles of the city limits, an area greater than the five miles from a city intersection proposed by the Charlotte officers.

Although the claim has been raised, the testimony does not support the argument that residency will affect concern by Charlotte police officers for community activities in the city. Testimony indicated that the officers have been very involved in those activities, and that that involvement included officers who live both inside and outside the city.

The contract which will result from this opinion will be a new contract, considering the relationship between the City and its employees not as it was in 1978 but as it is now. Human beings, including police officers, change over the course of years, and it should not be a surprise to expect that added years and growing families result in the desire for different housing. That there is a substantial difference between what is available in 5.2 square miles within the city and more than seventy-five square miles in a

five mile radius is irrefutable.

At present, approximately one-half of the Department is required to live in the city and one-half is not. Unit sergeants, given a choice by the grandfather clause, live outside the city. The Union argues that the privilege available to half its members should not be limited to that half, and testimony from one of the newer employees characterized it as an unfair situation. That characterization could well indicate the possibility of friction, discontent and morale problems among department members if the situation is not resolved.

It is doubtful that there would be a significant reduction in city taxes if the Union position is adopted. Further, viewed in a broader sense, those who live within five miles and work in the city remain as much a part of "community" as actual city residents.

After analyzing all applicable factors, this panel must reach the conclusion that the Union offer on residency is supported by the evidence and it is adopted.

Approved:


Bruce A. Barton


Ray Wallace

Dissent:


Dennis B. DuBay

3. WORKING HOURS AND CONDITIONS

Sections 2 (B) and 2 (D) Article 9, of the 1987 contract are as follows:

(B) Shift hours shall be consistent and will not alter by more than four (4) hours with the exception of the relief shift, vacation scheduling, sick leave, personal leave days, special assignments, holidays, leaves of absence, and special activities.

(D) Changes may be made in the posted shift schedule by the Chief of Police as may be required to meet the needs of the Department; however, the schedule will not be changed to circumvent the payment of overtime or for the purpose of reprimands.

The City asks to retain the above language, while the Union requests that it be changed to the following:

(B) The normal shift hours shall be as follows:

First Shift	-	8:00 a.m. to 4:00 p.m.
Second Shift	-	4:00 p.m. to 12:00 midnight
Third Shift	-	12:00 midnight to 8:00 a.m.
Fourth Shift	-	Early relief 8:00 a.m. to 4:00 p.m.
		12:00 noon to 8:00 p.m.
Fifth Shift	-	Late relief 4:00 p.m. to 12:00 midnight
		8:00 p.m. to 4:00 a.m.

Shift hours shall be consistent and will not alter by more than four (4) hours with exception of the early and late relief shifts. Vacation scheduling, sick leave, personal leave days, special assignments, holidays, leaves of absence, and special activities.

(D) Changes may be made in the posted

shift scheduled by the Chief of Police when required to meet a special need that cannot be accomplished with the current schedule within the Police Department; however, if the shift schedule is changed, the affected officer(s) will be given a minimum of three (3) days notice prior to the change. If the notice is less than three (3) days, the officer(s) shall be compensated at a rate of time and one-half (1 1/2) for all hours not within his regular scheduled shift. The schedule will not be changed to circumvent the payment of overtime or for the purpose of reprimands.

It appears that there was a five day notice requirement in Charlotte police contracts prior to 1985, when it was either negotiated out or inadvertently overlooked. The five day notice was not included in the 1987 contract.

The new proposal by the Union is not the same as any contract provision of any comparable community. Language similar to that of paragraph (D) of the 1987 contract is found in several of those contracts.

The proposed change includes not only a notice requirement but also overtime payment if there is no notice regardless of whether the time is actually overtime, and language which locks an hourly shift schedule into the labor contract. This last change may conflict with another section of Article 9, Section 1 (E), which indicates that determination of the starting time of work schedules is to be made by the City.

After consideration of all relevant factors, the

City position is adopted on this issue and the language of the previous contract will be retained.

Approved:


Bruce A. Barton


Dennis B. DuBay

Dissent:


Ray Wallace

4. RETIREMENT

Article 17 of the 1987 contract provided as follows:

Each regular full-time employee, after six (6) months service with the City, shall become a member of the City's retirement system, Municipal Employees Retirement System Plan B-1 benefits. This retirement plan shall be at no cost to the employee.

It should be noted that there is no employee contribution included in the above language.

The Union requests section numbers be added and that the following new language be adopted:

Effective January 1, 1990, the Retirement Plan B-1 shall be improved to include the F-55/25 waiver (fifty-five (55) years of age and twenty-five (25) Years of service). Employees shall contribute up to one percent (1%) of their base wage to the retirement improvement and the City shall contribute the remaining costs of the improvement.

Effective January 1, 1991, the Retirement Plan B-1 F-55/25 shall be improved to the MERS B-2 Plan with the F-55/25 waiver.

Employees shall contribute up to one percent (1%) of their base wage to the retirement improvement and the City shall contribute the remaining costs. The employee's contribution for the MERS B-2 F-55/25 pension plan shall not exceed two percent (2%) of their base wage.

Hearing testimony indicated that each of the improvements in the proposed paragraphs would cost 2% rather than 1% of base wage.

The formal position of the City was to oppose the Union proposal. However, the City had a proposal of its own, suggesting that language be added to Article 17 in two steps as follows:

Effective July 1, 1990, employees shall contribute two (2%) percent of their pay (calculated on the same payments to employees as the City's retirement contributions). Employee retirement contributions shall be made by appropriate payroll deductions.

Effective July 1, 1991, employees shall contribute four (4%) percent of their pay (calculated on the same payments to employees as the City's retirement contributions). Employee retirement contributions shall be made by appropriate payroll deductions.

The Union opposed the City proposal. The Panel, however, finds that the two proposals are not in conflict, with the result that the panel has the choice of adopting either, both or neither. It is clearly understood and agreed that adoption of both proposals would have the effect of requiring an employee contribution to the pension plan of only

4%, and that total contribution would be reached in semi annual 1% steps from January 1, 1990, to July 1, 1991.

The Union proposal provides two distinct improvements in the pension or retirement plan. Pension plans of comparable communities with similar benefits provide for employee contributions of 5% or more.

Testimony at the hearing indicated that the Charlotte pension plan is presently overfunded, but the extent of the overfunding was not made totally clear.

The City would clearly have the ability to pay for these benefits, particularly in light of the new employee contributions, and other applicable factors support adoption of both City and Union proposals.

Language of both City and Union Article 17 proposals for the new contract are adopted in the following form:

ARTICLE 17 RETIREMENT

Each regular full-time employee, after six (6) months service with the City, shall become a member of the City's retirement system.

Effective January 1, 1990, the Retirement Plan B-1 shall be improved to include the F-55/25 waiver (fifty-five (55) years of age and twenty-five (25) years of service). Employees shall contribute up to one percent (1%) of their base wage to the retirement improvement and the City shall contribute the remaining costs of the improvement.

Effective July 1, 1990, employees shall

contribute two (2%) percent of their pay (calculated on the same payments to employees as the City's retirement contributions). Employee retirement contributions shall be made by appropriate payroll deductions.

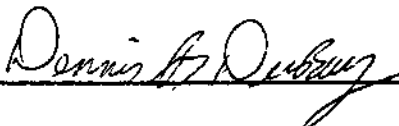
Effective January 1, 1991, the Retirement Plan B-1 F-55/25 shall be improved to the MERS B-2 Plan with the F-55/25 waiver. Employees shall contribute an additional one percent (1%) of their base wage to the retirement improvement and the City shall contribute the remaining costs.

Effective July 1, 1991, employees shall contribute four (4%) percent of their pay (calculated on the same payments to employees as the City's retirement contributions). Employee retirement contributions shall be made by appropriate payroll deductions.

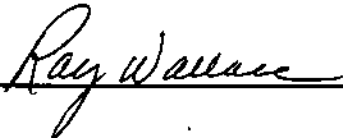
Both Proposals Approved



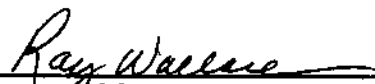
City Proposal Approved
Union Proposal Dissent



Union Proposal Approved
City Proposal Dissent



In view of majority decision, the adoption of language in the above form is approved.


Bruce A. Barton
Dennis B. DuBay
Ray Wallace

5. WAGES

The Union proposes the following wage schedule:

Effective July 1, 1989

Patrol Officer	Annual	Hourly
Start	20,267.10	9.7438
6 months	21,188.34	10.1867
1 year	22,880.83	11.0004
2 years	25,216.05	12.1231
3 years	27,594.11	13.2664
Detective	28,193.98	13.5548
Sergeant II	28,772.43	13.8329
Sergeant I	29,286.61	14.0801

Effective July 1, 1990

Patrol Officer	Annual	Hourly
Start	20,875.11	10.0361
6 months	21,751.89	10.4576
1 year	23,567.25	11.3304
2 years	25,972.53	12.4867
3 years	28,421.93	13.6643
Detective	29,039.80	13.9614
Sergeant II	29,635.60	14.2478
Sergeant I	30,165.21	14.5025

Effective July 1, 1991

Patrol Officer	Annual	Hourly
Start	21,501.36	10.3371
6 months	22,404.45	10.7713
1 year	24,274.27	11.6703
2 years	26,751.71	12.8613
3 years	29,274.59	14.0743
Detective	29,910.99	14.3802
Sergeant II	30,524.67	14.6753
Sergeant I	31,070.17	14.9375

All wages retroactive.

The Union proposal represents a three percent annual increase. The City counters with a two percent offer, phrased simply as follows:

<u>Effective</u> <u>July 1, 1989</u>	<u>Effective</u> <u>July 1, 1990</u>	<u>Effective</u> <u>July 1, 1991</u>
Two percent (2%) across the board increase	Two percent (2%) across the board increase	Two percent (2%) across the board increase

As might be expected, the City argues that two percent increases would keep Charlotte officers above the average paid by comparable communities. The Union argues that wage increases based on percentages should approximate the percentage increases of comparable department contracts.

Whether Charlotte police salaries, using as a criterion the top paid patrolman, are first or second among the comparables was contested depending on the way in which Ionia public safety officers should be considered. Either way, Charlotte salaries were above average and in most cases would continue to be so with either two percent or three percent annual increases. Because several contracts used for comparison do not extend to July 1991 salaries, there is no realistic way to determine rank among the comparables at that time no matter which last offer is adopted in this opinion.

Exhibits indicate that the three percent raise requested by the Union would retain patrolmen's status as best paid in terms of contract salary among the comparables, at least through 1990 and with respect to those comparable cities whose contracts are in place for July of this year. Two percent would rank Charlotte second.

Union exhibits indicate that Charlotte's top paid Sergeant in 1988 also ranked first in contract salary. It

would appear that an annual three percent increase would retain this rank, at least through 1990. (Although by only \$20.00 for that year.) Two percent would not do so.

The City has proposed an interesting argument. Exhibits indicate that previous increases in Charlotte police salaries, compiled over either a three year period or a ten year period, have exceeded the increase in the consumer price index. This is argued in support of the relatively minimal two percent annual wage increase offered at this time, which would not appear to match any similar increases in the consumer price index in the future.

The City also has presented exhibits which indicate that net direct cash payments and overall compensation payments to patrol officers rank highest among the comparable cities.

The City further refers to its recent defeats in election requests for additional revenue, although not claiming impoverishment.

After consideration of the entire record and of all applicable factors, the last best offer of the City of Charlotte on the issue of wages is adopted.

Approved:


Bruce A. Barton


Dennis B. DuBay

Dissent:


Ray Wallace

6. GRIEVANCE ARBITRATION SELECTION

Step 5 of the grievance procedure outlined in Article 28, Section 2 of the 1987 contract is as follows:

If at this point the grievance has not been resolved, the Union shall have the right to refer such grievance to arbitration within twenty (20) days after the answer of the City Manager.

The arbitration service to be used shall be mutually agreed upon between the City and Union.

The Union has requested that the second sentence be changed to "The parties shall use the Federal Mediation and Conciliation Service for the selection of an arbitrator for grievances and shall abide by its governing rules."

The City requests that the previous provisions be replaced as follows:

If at this point the grievance has not been resolved, the Union shall have the right to refer such grievance to arbitration, within twenty (20) days after the answer of the City Manager, by filing a demand for arbitration with the American Arbitration Association for arbitration under its rules. The Union shall, at the same time, serve a copy of the demand for arbitration upon the City.

The parties have stipulated that this is a non-economic issue, leaving the panel the opportunity to accept neither of the proposals. After consideration, the panel has decided unanimously to do so.

Some of the contracts of comparable communities utilize FMCS, some AAA. One utilizes the Michigan Employment Relations Commission. 1987 Charlotte language permits the City and the Union to utilize any available option rather than one specifically named in the contract because preferred by one or the other of the parties.

Testimony presented at the hearing did not clearly establish that one arbitration service is better than the other, although some questions were asked for that purpose.

The panel has considered the applicable factors and reached the conclusion that 1987 contract language should be retained.

Approved:


Bruce A. Barton


Dennis B. DuBay


Ray Wallace

7. VISION CARE

The Union has requested and the City opposes that a new optical plan be provided as an employment benefit by add-

ing the following language to the contract:

Section 1. Effective January 1, 1990, the City shall provide and pay the cost for a City self-insured vision care plan. The Plan shall pay up to Two Hundred (\$200.00) Dollars per year for costs incurred for vision care, such as, but not limited to, eye examinations, lenses, frames or other optical care. Employees shall be reimbursed for the actual costs up to a maximum of Two Hundred (\$200.00) Dollars per family. Employees must submit the actual bill to the City before being reimbursed.

Section 2. Effective July 1, 1990, the vision care plan shall be increased to Two Hundred Twenty-Five (\$225.00) Dollars.

Five of the ten comparable cities provide some vision care coverage, although at least two of the five combine it with dental coverage. The Parties each claim fifty percent supports their respective positions.

Use of every penny of this coverage by each of the seventeen Union members would cost the City \$3,825.00 per year, an amount which appears well within the ability of the City to pay. In view of the facts that the wage increase provided in this award will in all likelihood not keep pace with the cost of living, and that 4% of that wage increase will eventually not be reflected in the officer's pay checks because of contribution to pension benefits, this limited improvement in overall compensation does not appear unwarranted.

All applicable factors have been considered and the


Union request is adopted.

Approved:


Bruce A. Barton


Ray Wallace

Dissent:


Dennis B. DuBay

8. PAYDAY

At present, Charlotte Police Officers are paid weekly. The City asks that the following language be added to Article 27 of the contract:

Section ____: Payday

Effective July 1, 1990, the City may, upon ninety (90) days notice, change the payday from a weekly to a bi-weekly basis.

It was originally agreed that this is a non-economic issue. At the hearing, however, the City took the position that the panel should decide whether the issue was economic or non-economic. The Union retained its position that the question is a non-economic issue.

The panel must first determine whether the issue is economic or not. The negotiated salaries of police officers will not be affected by a change in the manner of payment, and the panel therefore determines the matter to be non-economic.

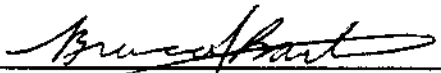
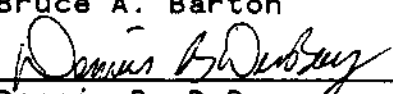
Testimony indicated that all city employees are presently paid on a weekly basis. Absent an express or implied contract provision or some inference of vested interest in the status quo, it would appear that the change to bi-weekly pay would be within the lawful authority of the City. Officers in comparable communities are in some cases paid weekly and in others bi-weekly. A summary introduced at the hearing simply stated that six of the 10 contracts do not reflect the period of payment.

In the event that the City determines that efficiency is best accomplished by paying all city employees on a bi-weekly basis, there would appear to be no compelling reason why police officers should not be paid on the same basis as everyone else. Accordingly, the panel majority determines that the following language shall be added to the contract as a new Section in Article 27:


Section ____: Payday

On or after July 1, 1990, the City may, upon (90) days notice, change the payday from a weekly to a bi-weekly basis, but shall not do so unless all full time employees of the city who were paid on a weekly basis prior to the change are also paid bi-weekly.

Approved:


Bruce A. Barton

Dennis B. DuBay

Approved as Non-Economic
Dissent as to final
determination:


Ray Wallace

9. LONGEVITY

Article 13 of the previous Charlotte Police Contract provides for payment of a longevity bonus on December 1 of each year to each full time employee with five or more years of service as of November 14. Employees whose service terminates between November 15 of any year and November 15 of the following year receive pro-rated payment.

Sections (A) and (D) of the 1987 Article are as follows:

(A) Longevity pay shall be computed on a percentage of the employee's regular annual base salary or wage, excluding overtime pay or premium pay. The percentage computation shall be made on that basic salary which an employee is being paid on the first regularly scheduled pay period of the fiscal year in which longevity pay is due....

(D) Longevity payment schedule:

<u>Continuous Service</u>	<u>Annual Payment</u>
5 years or more and less than 10 years	2.00% of annual wage
10 years or more and less than 15 years	3.00% of annual wage
15 years or more and less than 20 years	4.00% of annual wage
20 years and over	5.00% of annual wage
Maximum of \$1,250."	

The City proposes to change these sections to the following:

(A) Longevity pay shall be paid in an annual lump sum under the provisions of this Article....

(D) Longevity payment schedule:

<u>Continuous Service</u>	<u>Annual Payment</u>
5 years or more and less than 10 years	\$ 550
10 years or more and less than 15 years	\$ 800
15 years or more and less than 20 years	\$1,100
20 years and over	\$1,250
Maximum of \$1,250"	

This proposal was originally made by the City in order not only to stabilize longevity pay so that it would not automatically increase with each wage increase, but also to reduce labor costs. The schedule submitted at the hearing substantially decreased longevity pay which would be received by most if not all of the Union members.

The City's final offer of settlement, on the other hand, attempted to closely approximate the longevity pay now being received by the officers, although in some cases there would appear to be a small reduction. Under the new proposal, there would be no increases during the term of the contract, except those included in five year steps.

The goal of separating longevity increases from wage increases may be a worthwhile one. The proposed schedule, however, proposes neither logically progressive step increases nor payments which would not in some cases actually decrease longevity payments, although in most cases the decreases would be relatively small.

The City's proposal appears to be based on current

longevity pay to patrolmen rather than sergeants, who are also represented by the Union.

Considering all applicable factors, including but not limited to the interests and welfare of the public and the financial ability of the City, longevity schedules of comparable communities which were introduced at the hearing, overall compensation, and arguments on other factors introduced, the panel majority determines that the final position of the Union is approved and the longevity provisions of the 1987 contract will be retained.

Approved:


Bruce A. Barton


Ray Wallace

Dissent:


Dennis B. DuBay

10. HOSPITAL--MEDICAL INSURANCE

The City has proposed the following revision of portions of Section 1, Article 14, with respect to medical and dental coverage:

Section 1: The City will pay 100% of the premiums up to \$330.00 per month for single-person, two-person or full-family coverage of Blue Cross/Blue Shield MVF-2 with ML and \$2.00 prescription drug riders, or an equivalent plan, as the hospital, medical and surgical insurance plan for the employee....

Dental: The City will pay 100% up to
\$30.00 per month of the cost of Delta
Dental Plan or its equivalent.

The quoted language is found in the 1987 contract, except the two portions underlined above. Addition of those two portions is the City proposal opposed by the Union.

Hearing testimony supported the obvious fact that there have been substantial rate increases in health insurance costs affecting not only the City of Charlotte but all comparable cities. This economic factor is clearly a substantial consideration in the financial ability of the City of Charlotte to meet costs and in the overall compensation paid to its officers.

Review of health care coverage by comparable cities, however, gives no support to the City's request and strong support to the Union on this issue. Exhibits and testimony indicated that none of the comparable cities required that employees pay a portion of medical insurance costs. None has a cap on the premium the City pays. Plan details differ, but each appears to provide, as does Charlotte, full family hospital and medical coverage fully paid by the city.

Insurance benefits and premium payments offered by comparable cities for dental expenses appear to be more divergent including at least two cities which do not provide such insurance, but even here a majority provide fully paid full family coverage.

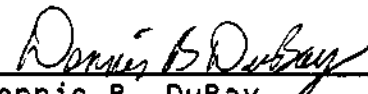
After review of all relevant factors, the Union position is adopted. No change will be made in the language of the contract on this issue.

Approved:


Bruce A. Barton


Ray Wallace

Dissent:


Dennis B. DuBay

11. GRIEVANCE PROCEDURE: STEP TWO

Step 2 of the grievance procedure included in the 1987 contract is as follows:

If the grievance is unresolved through the oral step with the immediate supervisor, the grievance shall be reduced to writing and shall be presented to the immediate supervisor who shall hold a meeting to discuss the grievance with the grievant and/or the Union President within five (5) days from the oral presentation.

The supervisor shall answer the grievance in writing within five (5) days of the meeting.


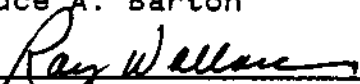
The City asks to add the following:

In the case of a grievance resulting from a disciplinary action, the grievant shall reduce the grievance to writing and present the written grievance to the supervisor originating the discipline. If the supervisor is not available within a five day period, the grievance shall be presented to the Chief.

In the case of a grievance not resulting from a disciplinary action, the grievance shall be reduced to writing and presented to the immediate supervisor.

Evidence disclosed at the hearing did not clearly distinguish between "immediate supervisor" and "supervisor originating the discipline." In fact, there was testimony that the immediate supervisor would be the one that would be aware of the grievance and would be best able to handle it. Contracts of comparable cities and other evidence and exhibits presented do not support application of the statutory factors to adopt the additional contract language requested. The panel majority therefore adopts the Union position that Step 2 will not be amended.

Approved:


Bruce A. Barton

Ray Wallace

Dissent:


Dennis B. DuBay

12. PERFORMANCE EVALUATION

Late in the year 1988, Chief Potter of the Charlotte Police Department developed and distributed a document referred to as a Productivity Assessment, to be completed by each officer at the end of his shift. Instructions for the completion of the document were distributed as "Special Order 49."

The City proposes to add a Section to the collec-

tive bargaining agreement as follows:

Section ____ Productivity Assessment

The Department shall implement the Department's productivity assessment plan set forth in Special Order 49 as amended November 1, 1988 (a copy of which is attached hereto as Attachment #6) which shall be incorporated into the contract as Appendix B.

For purposes of this proceeding, the Union has not contested the validity or invalidity of the assessment program, but strongly objects to its inclusion in the Collective Bargaining Agreement.

The productivity assessment proposed by Chief Potter does not appear to be an outline for the use of police discretion, but rather a time-management study, at least to the extent that it assigns numerical points to various weighted police functions, totals the points, and divides the totals by calculated "free patrol time." The result may be of value for planning purposes, as testified to at the hearing, but it also has the potential of being used as a basis for disciplinary actions.

Among the activities for which points are awarded are arrests, but there does not appear to be any consideration of convictions or of the manner or quality of the arrests. While this is only one of the activities for which points are awarded, it has been pointed out in criminal justice literature for many years that quantity of arrests is

not a valid measure of the quality of police performance. [1]

The contracts of comparable cities do not support the incorporation of a specific "productivity assessment" as a part of the contract, although several refer to "performance evaluations," either on a regular basis or for purposes of promotion. Similar language for "performance evaluation" for promotion purposes is already included in the Charlotte contract.

This opinion is not intended to be a criticism of Chief Potter or of the Charlotte Police Department for attempting to obtain a grasp of how police time is being utilized, since that is clearly a management function.

Absent clear evidence applicable through one or more of the statutory factors, however, this panel will not give the productivity evaluation contractual status. The City offer is denied, the position of the Union is adopted.

Approved:


Bruce A. Barton


Ray Wallace

Dissent:


Dennis B. DuBay

1. See, e.g., National Advisory Commission on Criminal Justice Standards and Goals, Report on Police, Recommendation 5.3, Commentary, pp. 151-152, LEAA, Washington (1973); American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Urban Police Function, Standard 10.1, pp. 277-281, ABA, New York (1973). The ABA publication in footnote 396 at page 278 also criticized the use of speed in disposing of police matters as a measure of police officer performance.

13. RETROACTIVITY

The remaining issue, labeled a joint issue at the pre-hearing conference, was not directly addressed in the exhibits or briefs of the parties. The Union requested a contract retroactive to July 1, 1989, the day following expiration of the previous contract. The City requested that the new contract not be retroactive.

Various portions of the last best offers, including the City's wage offer, appeared to be based upon or to imply retroactivity. Further, comparison with contracts from comparable communities made throughout the proceedings considered provisions for 1989 and 1990. Only one of the contracts exhibited at the hearing extends as far as June 30, 1992, which would be the ending date of this contract even if retroactive.

Some of the provisions determined earlier in this opinion and award include effective dates. If the contract were not retroactive, some of those dates would require or at least suggest adjustment. Otherwise, for instance, the pension contribution could take effect before the pay increase, resulting in reduction in take home pay, at least temporarily, as compared with the previous contract. This was not the intent of the panel.

Section 10 of Act 312 permits retroactivity of increases in rates of compensation or other benefits. Consid-

erations on issues determined earlier in this award suggest retroactivity. If the parties had been able to reach agreement before expiration of the previous contract, the new contract would have taken effect on July 1, 1989.

The purpose of Act 312 and the intent and effect of each of the relevant factors to be considered by the Panel support the determination that the effective dates of the contract resulting from this opinion and award be July 1, 1989, to June 30, 1992, and that is the decision of the majority of the panel.

Approved:


Bruce A. Barton


Ray Wallace


Dennis B. DuBay

VIII. CONCLUSION


As can be expected, the foregoing award in total will not entirely please either party.

As always, it is unfortunate that the parties were unable to settle differences before arbitration. In particular, the decision on the wage issue was a difficult one and should not be considered as a precedent of any kind.

In addition to the issue awards, it was agreed that the new contract will include the tentative agreements and letters of understanding reached before the hearing and introduced among the hearing exhibits.

The Panel Chairperson wishes to thank and commend all participants for their competent and professional presentations. It was obvious that exhibits presented by both sides were carefully researched and thoughtfully prepared. Witnesses were direct and candid, and attorneys and panel members represented their respective interests both courteously and logically.

Dated: March 30, 1990



Bruce A. Barton
Impartial Arbitrator and
Panel Chairperson