

6/17/75 ARB

Clawson, City of

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of an Arbitration
between
The City of Clawson
and
Clawson Police Association

Under Michigan
Public Act 312

The Panel of Arbitrators consisted of:

J.R. Dempsey, S.J. appointed by M.E.R.C.
Stephen Answers Esq - appointed by the City
Mark E. Reizen Esq - appointed by the Police Offices ✓

The panel after completing hearings met on June 17, 1975 in the City Hall of Clawson and agreed on the following decision written by the Chairman with a vote of 2 to 1 on the various issues.

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~~AUG 3 1976~~

The panel of arbitrators was appointed by the Michigan Employment Relations Commission in a letter dated Oct. 10, 1974. The first meeting of the parties took place on Nov. 5, 1974. At that time the panel requested the parties to determine the issues that had already been settled between them and what were the issues they wished to submit to the panel. The next meeting of the parties before the panel took place on Jan. 27, 1975. At this time it was agreed that depositions would be taken on the issue of residency and offered to the panel in evidence at an appropriate time. Depositions were taken on Feb. 20, March 12, March 26, and April 17 which were directly delivered to the panel.

Meetings of the parties before the panel then occurred on April 7, April 12, and finally on April 19. The last two meetings were held on Saturday in an attempt to expedite the hearings.

The issues submitted to arbitration were 1. wages and salaries for the 74, 75 & 76 contract (fiscal) years, 2. dental insurance plan in the fringe benefit area and 3. residency. These were submitted to the panel as final best offers in letters dated April 25, 1975. Copies of these letters will be included in this opinion as appendices.

In making his decision the chairperson of the panel will first address himself to the issue of residency as non-economic issue. This issue, of course, has been brought before the courts. The chairperson will, however, confine himself to the issues and arguments raised by the parties in this case.

The first issue is the issue of jurisdiction in matters of residency. The city's position on residency stressed three factors. The city maintained that residency is a mandatory subject of collective bargaining under the law and there is no authority which supports a determination that arbitration pro-

ceedings are a continuation of the collective bargaining process. Therefore there is no authority which permits a ruling on the issue of residency by the panel.

The Association for its part claimed that Public Act 312 under which this arbitration arose clearly says that the panel has the authority to deal with issues which are properly within the definition of "conditions of employment" (P.A. 312, sec. 9).

The chairperson believes that residency is a condition of employment as intended by PA 312, and no court at this time has ruled otherwise. Moreover it is a job-related condition as the city itself pointed out during the hearings. Moreover both the City and the Association voluntarily submitted residency as one of the three issues for this panel to hear.

Arguing for the present rule of residency within the city limits of Clawson, the city admitted some validity to the objections raised against the rule but insisted that the valid considerations behind the requirement outweighed arguments to the contrary. These considerations are: 1. the special relationship between the policeman and the community which includes creation of a feeling of security in the community; 2. efficiency of operation in emergency situations such as snow storms and other natural disasters whose suddenness and magnitude are relatively unpredictable.

For its part, the association admitted that there is some validity to the efficiency argument but that restriction to the 2.4 square miles of the City of Clawson was unreasonably and unnecessarily restrictive. Some officers have received harassment from their neighbors. This has produced great stress for their families at times. Some officers would prefer for economic and social reasons to live a distance from the scene of their work. As a reasonable compromise the association proposed that the residency requirement be broadened

to include residency in Oakland County.

In the opinion of the chair, the present arrangement of requiring residency in the City of Clawson of all police officers fails to meet the test of a reasonable balance between the interests of the city and the police officers. Clawson is only 2.4 square miles in area. To require residency within that area is an overemphasis on availability for professional work in times of emergency. Moreover the concept of friendly officers living in the neighborhood seems to be no longer acceptable to a number of citizens of Clawson. The city now should be willing to accept the professionally dedicated officer who is reasonably close to his work.

Availability of the professional and dedicated police officer for overtime duty in an extreme emergency is controlled mainly by the availability and use of the telephone as was pointed out in the hearings. But it is also greatly influenced by the geographical distance and travel time factors.

In striking a reasonable compromise between the interests of the city and the officers, there is another important consideration - the fact that very probably all the officers will not be equally close geographically to headquarters. To take an extreme example if Oakland county were the limits of residency some officers could be 33 miles and 60 minutes away. There might be a tendency to call the nearer officers more frequently than the more distant. To limit this problem as well as to strengthen the claims of the city for its legitimate needs, the chairman sets a 15 mile radius around the city as the limit of residency. This radius includes a great variety of home choice and insures good roads.

The second issue is wages. The association has asked for an 8% increase each year during the fiscal years of 74, 75, and 76. Their first argument

centers on motivation. Clawson is not a nice place to work because of few if any opportunities for promotion, unsympathetic citizenry, and lack of a favorable relationship between the patrolman and the command officers. These circumstances make money a major motivation factor toward the ever increasing demands for highly professional work among patrolmen. Other related arguments include increasing crime and a decreasing number of officers, the rising cost of living as reflected in the 11.6 per cent increase in the consumers price index in Detroit, and the comparability of the wages in Clawson to those paid in the surrounding communities. Clawson is the lowest paid city according to the association statistics. Finally the association pointed out items in the budget which would be made available for wages including a net surplus of \$153,000 in the 1973-74 budget. The city for its part denied the comparability of the figures used to indicate wages paid in surrounding communities and in Clawson. There is a different fringe benefit package and a different system of payment for time not worked (eg. holidays) in the various communities. Moreover the city emphasized that its tax base was not comparable to many of the surrounding communities and that its budget was already under strain requiring the layoff of some employees. Federal funds allowed the return of at least one employee however.

The city also suggested that the salaries of the police officers have increased about 150% in the last ten years. The next highest percentage increase for non-police employees was 120% in the same period. Many classifications had increased less than 100%.

The law of the state of Michigan requires that the panel shall base its findings, opinions and order upon the following factors as applicable

- 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.
 - 1. in public employment in comparable communities
 - 2. in private employment in comparable communities
- e. the average consumer prices for goods, services commonly known is 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 hospital benefits, the continuity and stability of employment, and all other benefits received
- 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...

The panel in its order in this case therefore must take into consideration many factors including the interests and welfare of the public, ability to pay, stability of employment, comparability or consistency with other employees external to Clawson city government and comparability to other Clawson city employees. The law itself does not determine the relative weight of each of these factors. It merely says that the panel shall base its findings on these factors as applicable for the resolution of the dispute and choose that last offer of settlement which more nearly complies with the applicable settlement.

Some facts seem clear to the chairperson which point to a reasonable basis for the resolution of this dispute. First, the budgeted increases in salary for the non-police personnel are in the range of 4%-5% for 1975-76

budget year. The command officers association has reached a tentative agreement pending this arbitration equal to the city officers of 7%-6.5%-5.61% for the 3 years involved. The total police budget relative to the total budget in Clawson in 1975-76 is 24.5%. This is above the average for many surrounding communities. Finally total salaries in Clawson over a ten year period have gone up 115%. Police salaries have increased 250%. There is no doubt that the City of Clawson has assigned one of its highest priorities to the increase of police salaries. It continues to do in that it offers between 4-5% to non police employees and an average of 6% to police. The question is whether it should make more of an effort as the association asks. The chairperson does not think so.

There is no doubt that police work has increased in complexity, frequency and danger not only in Clawson but everywhere. There is no doubt that the cost of living increases have evaded the real wages of not only the Clawson police but almost everyone. But the question the chairperson must face is should he order the city to do almost twice as much to protect the base wages of the police in 1975-76 budget year as those of the other city employees. He does not see any convincing reason for this. In fact there are many strong reasons, especially involving the public interest, for the opposite.

First the police department is already reduced in size since 1970. According to the association brief, the department is short two men. In percentage terms, the association states on page 8 of its Brief "The patrol force, based upon these statistics, which are the city's statistics is down 23.63 percent. When considering this with the increased crime rate of Part I, crimes rose 30 percent, we can see what effect this must have on an officer". Thus the patrol force is down when crime is up. Anything that would prevent the city from

reversing these percentages is not in the general interest of the City of Clawson.

The chairperson does not intend to order a wage increase which might give the city a reason to continue the deficiency in the number of police officers and/or to reduce the police protection of the people in Clawson in the face of "a rising crime rate". The testimony and the reading of the city's budget give some reality to this threat, also the obvious hesitancy of the city to replace officers is even more persuasive.

The chairman, moreover, finds at least three supporting pieces of evidence for his decision that raising salaries beyond the city's offer will have manpower implications for the public. First, the budget of 75-76 already contains manpower shortages and the threat of further curtailment was made by the city in its post-hearing brief.

Second, that the association is conscious of this latter situation to some extent is at least implied by the statements of Mr. Rentrop during the hearings. After a question by Mr. Rentrop, representing the association, about the two-man shortage and the answer by Mr. Hermoyian the City manager, Mr. Andrews one of the panel said,

"Father, is the union suggesting that if the city doesn't hire two additional people we give them the thirty thousand dollars?" Mr. Rentrop said, "Exactly, that's exactly what I am suggesting." (Hearing April 19, 1975 p. 129)

Third, economic logic supports the implications of this testimony. There is a tendency for employment to be reduced when wages are raised, all other things being equal.

Finally, the order of the chairperson to modify the residency rule would in his opinion put some additional manpower availability strain on the department.

Experience will tell how much. So to give an order which might reduce availability of manpower and at the same time giving an order which might increase the need of manpower would not be reasonable.

Aside from these internal considerations the hearings developed no persuasive external conditions for the chairperson to order the city to accept the 8% increase for the policemen. The parties in the hearing of Jan 27 on pages 8ff agreed to submit stipulated comparisons of wages and related items prevailing in neighboring communities. This was not done. Both parties submitted their own figures. Each set favored the position of the party submitting them. Moreover, no references were given as to the source of the figures. The chairperson was not able to draw any firm conclusion from these statistics.

The association argued in the hearing and in its post-hearing brief that the city had the ability to pay without making manpower changes. The representative of the police officers pointed to the \$153,000 surplus in the 1973-74 budget and such items in the 1975-76 budget as:

unallocated.....	\$11,000
capital improvement fund....	\$75,000
contingency fund.....	\$50,000

The city answered the first argument about the surplus by showing that there was no cash carried forward into the 74-75 budget let alone the 75-76 budget. The chairperson agrees that the 73-74 budget is not relevant at this time (1975) to wages in the subsequent budgets. There is no audited budget for 74-75 as yet and the proposed budget of 75-76 does not show a surplus. To pay the Association's demand of 8% for 74, 75 and 76, the city would have to make available out of its 75-76 budget 1% beyond its budgeted police salary item for retroactivity into 74-75 budget year. It would have to pay an additional 1.3% for "roll-up items" such as additional costs for retirement, workman's compensation and

longevity pay. Moreover, increased base pay would also increase payments for overtime, court time, paid holidays and standby time. These roll-up items would increase considerably as the 8% increase was put into the base wage for 3 consecutive years.

Good management of physical resources and good accounting principles would not allow for the elimination of or serious erosion of such items in the budget as the contingency fund and/or the capital improvement fund.

The suggestion in the Association's brief that the city continue the two man shortage in the police department and spread the \$32,000 saved among the remaining officers is unacceptable in the light of the interests and welfare of the public.

The chairman, therefore, can find no conclusive arguments regarding ability to pay on either side, considering ability to pay as a separate argument. This is true partially because as both the law and the conduct of municipal finances indicate "the interests and welfare of the public and the financial ability of the unit of government to meet those costs" are so closely intertwined.

The final issue is the dental plan. The actual dollar cost of the city's offer and the association demand is approximately the same. The chairman does order that the association's proposed dental plan be accepted with its starting date of July 1, 1975. The benefit coming to the members of the association by this early starting date clearly outweigh any inconvenience the city might have in beginning this program.

So far the chairman has looked at the issues in this dispute one by one and made his decision on each. A further reinforcement of his decisions is found when one considers this dispute between the city and the police officers as an

Signatures signify acceptance by other panel members.

1. Residency

Association offer

~~Handwritten signature~~

city offer

city offer
[Signature]
 present

Chairman's position

J. E. Gempso
Waukegan, Ill.

2. Wages

Association offer

Wendy (Miss)

City offer

J. Radomski &
J. Chodak

3. Dental plan

Association offer

J. P. Dampier
Member

City offer

Andrew
missed

Univ. last best offer
Dempsey, Fr. Joseph

Clawson

City of

GAGE, BRUKOFF, DUBIN & SIUDARA
ATTORNEYS AND COUNSELORS
700 TRAVELERS TOWER
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RICHARD A. LENTER
JOHN J. DEVINE, JR.
RUSSELL J. MARTIN
W. RALPH MUSGROVE
RICHARD A. SOLOMON
JOHN E. BERAS
JEFFREY T. STEWART
WILLIAM A. ROY
JOHN A. MACNEAL

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353-5454 (SOUTHFIELD)

TELEX 23-0409

April 25, 1975

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

Reverend Joseph R. Dempsey, S.J.
University of Detroit
4001 West McNichols Road
Detroit, Michigan

Re: City of Clawson and Clawson Police
Officer Association Arbitration

Dear Father Dempsey:

Enclosed please find the Association's last best offer on the issues of residency, wages and dental benefits.

The last best offer is set forth in contract language and is consistent with the contract format which has been used throughout this Arbitration proceeding.

Wage salary rates between each level are set forth and do not represent any change in differential between years of service over what presently exists under the 1973-74 contract.

The proposal as set forth by the Association constitutes an eight percent increase for each of the next three fiscal years commencing July 1, 1974.

I wish to thank you for your consideration of this last best offer.

Very truly yours,

GAGE, BRUKOFF, DUBIN & SIUDARA


Gary R. Rentrop

GRR:go

19. Salaries: The base annual salary rates for the 1974 fiscal year are as follows:

<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>	<u>18 Mos.</u>	<u>24 Mos.</u>	<u>30 Mos.</u>	<u>36 Mos.</u>
13,854		14,117	14,355	14,667	14,973	15,256

Whenever necessary to determine base hourly rates, the foregoing base salary shall be divided by 2080 hours. The foregoing base annual salary rates are retro-active to July 1, 1974. The amount of retro-activity shall be paid by separate checks to the officer on or before thirty days from conclusion of the settlement or award.

The base annual salary rates for the 1975 fiscal year are as follows:

<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>	<u>18 Mos.</u>	<u>24 Mos.</u>	<u>30 Mos.</u>	<u>36 Mos.</u>
14,962		15,246	15,503	15,840	16,170	16,476

The base annual salary rates for the 1976 fiscal year are as follows:

<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>	<u>18 Mos.</u>	<u>24 Mos.</u>	<u>30 Mos.</u>	<u>36 Mos.</u>
16,159		16,465	16,743	17,107	17,463	17,794

Residency: There shall be no requirement for a Patrolman covered by this agreement to live within the City limits of Clawson and may reside anywhere within the county limits of Oakland County.

Dental Insurance Rider: The City agrees to provide a type of dental expense coverage to its Patrolmen and dependants (spouse and eligible children), said coverage not to exceed a cost of One Hundred Sventy Five (\$175.00) Dollars per year to the City. Limits of coverage shall be as may be imposed by the insurance carrier. Dental insurance coverage shall go into effect July 1, 1975.

Dempsey, Fr. Joseph

ANDREWS & DRURY
ATTORNEYS AT LAW
380 NORTH MAIN STREET
CLAWSON, MICHIGAN 48017

STEVEN N. ANDREWS
DENNIS C. DRURY

April 25, 1975

TELEPHONE
588-6137
588-7900

Clawson

City of

Reverend Joseph R. Dempsey, S.J.
University of Detroit
4001 West McNichols
Detroit, Michigan 48221

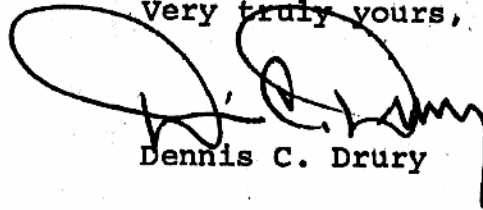
RE: Clawson Police Officer's Association -
City of Clawson Arbitration Hearings

Dear Reverend Dempsey:

Enclosed herewith you will please find the
Last Best Offer of the City of Clawson relative to
the above-captioned matter.

If you have any questions relative to the
enclosed, please do not hesitate to contact this office.

Very truly yours,



Dennis C. Drury

DCD/ts
Enclosure

Certified Mail #341574
Return Receipt Requested

IN THE MATTER OF THE ARBITRATION HEARING BETWEEN THE
CITY OF CLAWSON AND THE CLAWSON POLICE OFFICERS' ASSOCIATION

LAST BEST OFFER BY THE
CITY OF CLAWSON

The following constitutes the "last best offer" from the City of Clawson as to the issues submitted for consideration to the arbitration panel:

SALARY, DURATION OF CONTRACT:

The City of Clawson offers a three (3) year contract commencing July 1, 1974 and terminating June 30, 1977 with the following salary increments:

<u>Fiscal Year</u>	<u>Percentage Increment Over Prior Year</u>	<u>Base Salary After Three Years Service</u>
1974-75	7% <i>Winston</i>	\$15,115.00
1975-76	6.5%	\$16,097.00
1976-77	5.61% <i>Winston</i>	\$17,000.00

The entire salary schedule offered by the City of Clawson is annexed hereto, incorporated herein, and made a part hereof.

The City of Clawson offers to pay fiscal year 1974-75 salaries retroactive to July 1, 1974 as set forth in the annexed schedule.

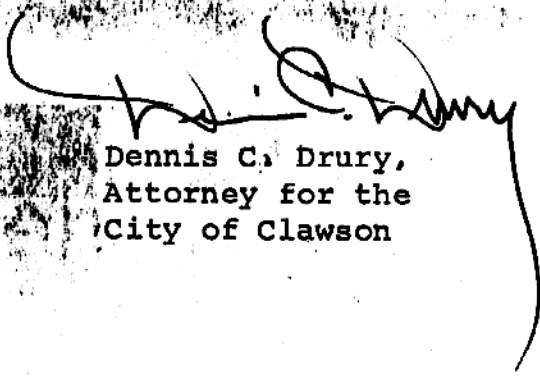
FRINGE BENEFITS:

The City of Clawson offers to contribute toward the cost of a dental insurance plan as set forth by the Clawson Police Officers' Association in Proposal A, effective on the 1st day of July, A.D., 1976. The contribution by the City to be in an amount equal to the cost of the premium for the individual patrolman or One (1%) percent of the patrolman's base pay, whichever amount is the lesser. Maximum contribution by the City to be One Hundred Sixty and 97/100 (\$160.97) Dollars for a patrolman with more than Three (3) years service.

RESIDENCY:

The City of Clawson makes no offer to alter the existing requirement that patrolmen live within the City of Clawson and maintains the position that the Arbitration Panel does not have jurisdiction to render a decision on the subject matter.

Respectfully submitted,


Dennis C. Drury,
Attorney for the
City of Clawson

ANDREWS & DRURY
ATTORNEYS AT LAW
380 NORTH MAIN ST.
CLAWSON, MICH. 48017

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CITY OF CLAWSON PROPOSED SALARY SCHEDULE

TIME IN SERVICE

FISCAL YEAR	START	6 MONTHS	12 MONTHS	18 MONTHS	24 MONTHS	30 MONTHS	36 MONTHS
1974-75	\$13,469.00	\$13,726.00	\$13,987.00	\$14,222.00	\$14,532.00	\$14,832.00	\$15,115.00
1975-76	\$14,344.00	\$14,618.00	\$14,896.00	\$15,146.00	\$15,477.00	\$15,796.00	\$16,097.00
1976-77	\$15,149.00	\$15,438.00	\$15,732.00	\$15,996.00	\$16,345.00	\$16,682.00	\$17,000.00