

State of Michigan  
Department of Labor  
Michigan Employment Relations Commission

Act 312 Compusory Arbitration Panel

In the Matter of:  
City of Clawson,

Employer

and

MERC No: D87 C733

Labor Council, Michigan Fraternal  
Order of Police,

Labor Organization

Panel:

Gerald E. Granadier, Chairman of the Panel  
Joseph Fremont, City Delegate  
Brian J. Smith, Labor Delegate

PRELIMINARY STATEMENT

These proceedings were commenced pursuant to the provisions of the Act entitled "Compulsory Arbitration of Labor Disputes, Policemen and Firemen" being Act 312 of the Public Acts of 1969, as amended, of the State of Michigan. This decision and award is made and entered pursuant to the provisions of said Act 312, as amended.

This decision and award is adopted as the decision and award of the arbitration panel hearing this matter as indicated by those members of the panel whose signatures appear after each award, issue by issue.

It appears from the record that the parties commenced bargaining, proceeded to mediation conducted on January 21, 1988, April 7, 1988, and May 10, 1988, and thereafter the

*Clawson City of*

Labor Council, Michigan Fraternal Order of Police requested Arbitration under Act 312 which was received by the Michigan Employment Relations Commission on May 12, 1988. On May 25, 1988 the City of Clawson responded to the Labor Council's Petition for Arbitration.

Notice of appointment as Chairman of the Panel of Arbitrators was made by letter dated July 15, 1988. The Chairman then contacted the parties to schedule a Pre-Arbitration Conference. The parties, after numerous additional meetings attempting to resolve the outstanding matters, agreed to hold the conference on November 4, 1988 to set the parameters of the issues in dispute, schedule pre-hearing conferences, agendas, rules of procedure and other matters. At this meeting it was determined that the issues and sub-issues which were unresolved in bargaining and mediation and which the parties intended to submit to arbitration were as follows:

A. Union Issues

1. Pension Improvements
  - a. Final Average Compensation Multiplier -  
from 1.7% to 2.0%
  - b. Final Average Compensation - From FAC-5 to  
FAC-3
2. Post Traumatic Stress Syndrome Language
3. Vacation Buyout at Retirement

B. City Issues

1. Elimination of Longevity Payment

2. Standby language inclusion
3. Training Session cancellation language
4. Management Rights

The parties agreed and scheduled a formal arbitration hearing to be held on February 24, 1989 at MERC Offices in the City of Detroit. The Chairman indicated that he would consider, if the parties so desired, to attempt to assist the parties to resolve issues unresolved and outstanding. Accordingly the parties scheduled and held a meeting on November 30, 1988 at the Chairman's office. The following issues were resolved and shall be included in this award as stipulated by both the City and the Union:

1. Standby Language
2. Post Traumatic Stress Syndrome

At the hearing on February 24, 1989 the parties attempted further negotiations with the assistance of the Chairman. the entire day was devoted to such negotiations, however no further resolution of issues was able to be accomplished. Additional formal hearings were held on May 10, 1989 at MERC offices in Detroit and on May 20, 1989 at the City Attorney's office in Bloomfield Hills. It was agreed that exhibits were to be exchanged through the Panel Chairman. The Chairman received same and distributed to the appropriate parties.

It was further agreed that each that each party would submit its Last Best Offer on or about June 9, 1989 and that post hearing briefs would be submitted two week after

receipt of the last transcript. The Chairman received same and distributed to the appropriate parties.

The parties waived the time requirement for the issuance of the award due to the complexity of the matter, the volume of material and exhibits, the lengthy transcripts, the conflict of schedules and other matters.

#### STATUTORY MANDATE

Section 8 of Act 312 provides, in part:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The finding, opinions and order as to all other issues shall be based upon the applicable factors prescribed in Section 9..."

Section 9 of Act 312 provides:

"Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other

conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its finding, opinions and order upon the following factors, as applicable:

- (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."

Section 10 of Act 312 provides:

"A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute of charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration."

Consistent with the Supreme Court's directive in Detroit v DPOA. 408 Mich 410 (1980), the panel has, with respect to the issues (all being economic), adopted the last offer of settlement which more nearly complies with the applicable Section 9 factors.

#### DECISION

During these proceedings considerable testimony, numerous exhibits, and able argument were presented to the panel on each issue. We have studied the transcripts of testimony, evaluated the witnesses, studied the exhibits and the briefs and met to formulate and deliver our Decision. We have considered the mandate of the statute, and we base our Decision on the designated applicable factors set forth in Section 9 of Act 312, as amended and upon all competent, material and substantial evidence as presented.

The parties jointly submitted to the panel evidence of comparable communities which they believed were to be appropriately considered in the determining similar and dissimilar relationships to the City of Clawson. Those joint comparables are the following:

Auburn Hills  
Rochester

In addition, the City and the Union each introduced other governmental units which each wished the Panel to consider as comparable communities. The City's were:

Birmingham  
Ferndale  
Novi

The Union's were:

Berkley  
Beverly Hills  
Farmington  
Hazel Park

The parties compared wages, hours, conditions of employment, population, land area, department composition, officers, per square mile, officers per capita, state equalized valuation, per capita state equalized valuation, crime statistics, offenses per officer, taxes, per capita income, housing (median home value and households per square mile) and median household income, pension contributions by employers and employees, final average compensation multipliers, longevity payments, and vacation buyouts. It must be pointed out that the City's information was derived by questionnaire sent to the various communities. This panel gave consideration to this voluminous matter.

Testimony and evidence was introduced relative to overall compensation, the current economic climate, pension and retirement, actuarial and other general matters relating to the economics and history, both past and current, of the City of Clawson and its command officers and other employees.

Subsequent to the formal hearings and generally within the time constraints set by the Panel and the parties, the transcripts were received, the last best offers were submitted and the briefs were submitted. The Panel studied all the material submitted and held an executive session on July 21, 1989 to review and discuss its positions and prepare to draft this decision and award.

### AWARD

At the beginning of the formal arbitration hearings the parties stipulated that the new collective bargaining agreement would consist of the prior agreement as modified by the tentative agreements previously entered into and the modifications as set forth hereinafter in this arbitration award. The parties further stipulated that the contract term be three (3) years, running from July 1, 1987 to June 30, 1990.

The Employer and Labor Delegates requested that they be permitted to accept or reject the awards hereinafter set forth on an individual issue by issue basis. The Arbitration Panel determined that the members may do so by affixing their signature after the award on each issue and indicating the acceptance or rejection of each issue.

It would be redundant to set forth the arguments and evidence introduced by the parties on each of the issues hereinafter set forth. The parties brilliantly propounded their positions in great detail at the hearings and in their briefs. The Panel in each and every instance carefully, judiciously and conscientiously studied and reviewed all the materials produced and presented. Accordingly the following constitutes its Award on each issue:

1. Pension Improvements

- a. Final Average Compensation Multiplier-1.7% or 2.0%
- b. Final Average Compensation-FAC-5 or FAC 3



The Union proposes in its Last Best Offer that the Final Average Compensation Multiplier be increased from 1.7% to 2.0%; and that the method of computation for pension be modified from the highest 60 consecutive months of earnings divided by 5 (commonly referred to as FAC 5) to Final Average Compensation computed on the highest 36 consecutive months of earnings, divided by 3 (commonly referred to as FAC 3).

The City proposed in its Last Best Offer that the "status quo on any pension improvement for either the benefit or the final average compensation."

A thorough examination of the comparables, and a review of all the exhibits, briefs and testimony, both the City's and the Union's, reveals that many Communities have a multiplier of more than 1.7%. It would appear that this Union proposal (2.0%) is in the mainstream of the comparables.

Similarly the Union proposal to modify from FAC 5 to FAC 3 likewise appears to be in the mainstream of the comparables.

The cost to the City of Clawson is not to be overlooked. We shall attempt to at least partially deal with that matter later in this award.

The Panel is persuaded that the Union's proposals are supported by the competent, material and substantial evidence on the whole record. Accordingly having given due consideration to the applicable Section 9 factors the panel awards the Union's proposals on both Pension Improvement issues; i.e. increase multiplier from 1.7% to 2.0% and modify computation of Final

Average Compensation from FAC 5 to FAC 3.

ACCEPT

ACCEPT

REJECT

2. Post Traumatic Stress Syndrome Language.

The Parties stipulated "that during the term of this Bargaining Agreement, the City shall prepare as a supplement to its rules and regulations or policies, language covering post traumatic stress syndrome."

Accordingly the Panel incorporates within this award the above agreement of the Parties.

ACCEPT

ACCEPT

ACCEPT

3. Vacation Buyout at Retirement

The Union proposed in its Last Best Offer the following:

Vacation credits earned during the fiscal year beginning July 1 will be taken during the following fiscal year, and if not taken during that time, may be brought back at the City's option at the current rate of pay. An employee at his option, shall be entitled to a one time buy back, at his request, of accumulated vacation time or use it towards early retirement.

The City proposed in its Last Best Offer that the status quo be maintained on vacation buy back.

Nothing presented by the Union in its testimony, briefs or comparables is persuasive to this Panel that the current vacation buy back should be altered or modified. It appears to the Panel that the parties should appropriately deal with this matter in further collective bargaining if a change of any sort is to be

implemented. We believe the City is correct that this issue is one which benefits only one or two officers of the command unit. The City has dealt with this type of issue in the past and it is the Panel's opinion that it will deal with this in good faith in the future. The City delegate, Mr. Joseph Fremont has assured the Panel that the City will so act.

Accordingly, having given due consideration to the applicable Section 9 Factors and the competent material and substantial evidence on the whole record, the Panel is convinced that the City's proposal is appropriate. The Panel therefore awards the City's proposal on the issue of Vacation Buyout at Retirement.

ACCEPT

ACCEPT

REJECT

#### 4. Elimination of Longevity Payments

The City is in its Last Best Offer proposes a reduction in the present longevity of one-half of the existing percent to a level of 1%, 2%, 3%, and 4%.

The Union in its Last Best Offer proposes that the current longevity schedule remain status quo.

This issue should, by virtue of the City's proposal, be entitled Reduction of Longevity Payments.

While the Union is correct that no evidence was introduced that comparable communities have reduced longevity payments for its officers it did not seem to relate, as did the City, the contribution by officers in some of the comparable communities to

their pension program. When considering both these issues together, as a cost to the City and total remuneration to its employees, it is not inappropriate to look to the employees to partially fund their pensions. The overall cost to the City and the substantial increased pension benefits must, in the opinion of this panel, be partially offset by employee contribution. While no direct employee contribution is an issue here nevertheless the effect of a longevity reduction would as a practical matter have the same effect. The panel does not wish to imply herewith that it does not understand or empathize with the Command officers needs for a "living wage", but it does find that the Command officers, who are generally older and therefore closer to retirement, will benefit substantially more from the improvement in pension benefits than from the status quo of longevity payments.

Having given due consideration to the applicable Section 9 Factors and the competent material and substantial evidence on the whole record, the Panel is convinced that the City's proposal is appropriate. Accordingly the Panel awards the City's proposal on the issue of reduction of Longevity Pay.

ACCEPT

ACCEPT

REJECT

5. Standby Language Inclusion

The parties stipulated that the following language be included in this award:

When an officer receives a subpoena requiring that officer to appear in court for the purpose of giving testimony in a particular matter, and when that officer has been placed on standby time pursuant to the requirements of that subpoena, before the payment of any compensation hereunder, the Chief or his designee, shall first determine, by contacting the officer and the responsible prosecuting attorney, when the presence of that officer shall be immediately necessary. In the event of a dispute between the officer and the Chief or his designee, as to the necessity of standby time compensation or the immediate availability of the officer as a witness, the decision of the Chief shall prevail. Under no circumstance shall the decision of the Chief be such that the officer shall be placed in contempt of the order of the court for not appearing and testifying as required by the subpoena. The decision of the Chief or his designee on the availability of the officer to appear in court is subject to the provisions of the grievance procedure in the event the officer reasonably believes his presence is immediately required in court.

Accordingly the above stipulation regarding standby Language is incorporated within this award.

ACCEPT

ACCEPT

ACCEPT

6. Training Session Cancellation Language

This was an issue set forth by the City of Clawson, which subsequent to the initial stage of this arbitration was withdrawn by the City. Accordingly the Panel makes no award with respect to this issue.

ACCEPT

ACCEPT

ACCEPT

7. Management Rights

During the course of this arbitration the parties stipulated that the language regarding Management Rights contained in the

City of Clawson - Patrol unit contract shall be the language included within this award. Therefore the Panel, by reference to the Clawson Patrol Unit Contract, incorporates and awards the Management Rights Language contained therein.

ACCEPT *Gerald E. Granadier*

ACCEPT *Brian Smith*

ACCEPT *Joseph W. Fremont*

CONCLUSION

During these protracted and lengthy proceedings the Chairman was greatly aided by the advocacy and counsel of Mr. Jon H. Kingsepp for the City of Clawson Command Officers, and Mr. Kenneth Zatkoff for the City of Clawson Command Officers. Their excellent presentations at the hearings, cooperation in narrowing the issues, submission of exhibits and well prepared Briefs greatly aided the Panel in its study, review and preparation of this award. The Panel thanks those persons and the Chairman thanks Mr. Joseph Fremont and Mr. Brian Smith. It is sincerely hoped that this award leads to labor harmony and future successful collective bargaining.

Respectfully submitted:

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*AUGUST 1*  
Dated: ~~July~~, 1989