

1293

**State Of Michigan  
Department of Consumer and Industry Services  
Employment Relations Commission**

**ARBITRATION OPINION AND AWARD**

In the matter of the arbitration between:

**CITY OF THREE RIVERS  
and  
POLICE OFFICERS LABOR COUNCIL**

MERC Act 312  
Case Number: L00A-9007

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Panel Chairperson: C. Keith Groty, Arbitrator  
Employer Representative: Joseph Bippus  
Union Representative: James Quinn

**Appearances:**

**Employer**

John R. McGlinchey  
Oscar William Rye  
Patricia Seekman  
Earl Stark

**Union**

Mark P. Douma  
Nancy Siccone  
James Quinn  
Deborah Clawson

Pre-Hearing Conference Held, June 25, 2001

Hearing Held: December 11, 2001

Last Best Offers Exchanged: January 11, 2002

Post Hearing Briefs Filed: March 4, 2002

Notice was received by the Chairman on June 4, 2002 that the parties had reached agreement that the award in this case would be binding, also, upon the Supervisor Unit in Case Number L00 A-9014.

**Statement of the Issues**

Annual wage increases for each of three (3) years beginning May 1, 2000

Pension

Employer Rights

Grievance Procedure

Shift Assignments

Personnel File Access

Holidays

Sick Leave

Departmental Equipment

Payout of Sick Leave on Termination

Promotions, Letter of Understanding

**Issues Settled or Withdrawn**

Payout of Sick Leave on Termination - Withdrawn by the Union

Eliminating Health Care Premium Cost Sharing - Withdrawn by the Union

Retiree Health Care - Withdrawn by the Union

Promotions, Letter of Understanding - Acceptance of the Employer's

Proposal by the Union

Wages - Settlement of Percentage Increase For Each of the Three

Years

Department Equipment - Acceptance of the Employers Proposal by the

Union

## **Unsettled Issues**

Whether persons who have left the bargaining unit prior to the settlement of this award are eligible for the retroactive pay increases.

Whether the pension plan should be increased.

Whether the employer's proposed language for the employer's rights clause should be adopted.

Whether the employer's proposed language for modification of the grievance procedure should be adopted.

Whether the employer's proposed changes in the shift assignment language of Article XI, Sections C and Section E should be adopted.

Whether the employer's proposed language concerning personnel files should be adopted in Article XIII.

Whether the employer's proposed language on holidays should be adopted in Article XV.

Whether the employer's proposed language on sick leave should be added to Article XVII.

## **Economic and Non-Economic Issues**

The Panel finds the following issues to be economic:

- 1) Persons to be covered by the wage increase agreement;
- 2) Pension plan adjustments;
- 3) Holiday pay.

The Panel has determined that the following issues still in dispute are non-economic:

- 1) Proposed language for management's rights;
- 2) Proposed changes in the grievance procedure;
- 3) Shift assignments;
- 4) Access to personnel files;
- 5) Sick leave language modification;

### **Comparable Communities**

The parties reached agreement prior to hearing that the following communities would be used for comparables: Charlotte, Dowagiac, Eaton Rapids, Grand Ledge, Hastings, Hillsdale, and Otsego.

### **Positions of the Parties**

Issue: Applicability of Wage Increase

While the parties have reached a mutual agreement on wage increases of three (3) percent each year for three years effective May 1, 2000, it is still disputed as to whether this increase is applicable to persons who have left the bargaining unit since May 1, 2000.

Employer - The Employer believes the increase should only apply to those persons still within the bargaining unit as of the date of this award.

Union - The Union believes that any bargaining unit member who worked on or after May 1, 2000 should receive the increase retroactively whether they are still in the bargaining unit or not on the date of this award.

Issue: Pension Multiplier

Employer – The Employer's last best offer on the pension multiplier is to maintain the status quo.

Union – The Union seeks to increase the pension multiplier from a MERS B-2 benefit plan to a MERS B-4 benefits plan. In effect, this increases the multiplier from two (2) percent of the member's final average compensation multiplied by years and months of credit service to a multiplier of 2.5%. In addition, the Union proposes that none of this increase cost be passed on to the employee but be assumed by the Employer.

Issue: Holidays

Employer – The Employer is proposing to modify holiday pay in two respects. The first modification is to pay employees their regular rate of pay when scheduled to be off with pay on holidays. Currently, the contract requires the city to pay double time to an employee who is scheduled off on a holiday.

The second proposed modification is to pay employees who work on a holiday double-time rather than triple time.

Union – The Union's last best offer is to maintain the status quo of the existing contract.

Issue: Management's Rights

Employer – The Employer proposes to replace Article I of the current contract language with the following:

Section I – The Employer reserves and retains, solely and exclusively, all rights to manage and direct its workforce and shall have the sole and exclusive right to manage its department and divisions in all of its operations and activities. Among the rights of management, included only by way of illustration and not by way of limitation, is the right to hire; the right to determine all matters pertaining to the services to be furnished and the methods, personnel, procedures, means, equipment, and machines required to provide such service; to determine the nature and number of facilities and departments to be operated and their location; to establish classifications of work and the number of personnel required; to direct and control operations; to discontinue, combine, or reorganize any part of all of its operations; to maintain order and efficiency; to study and use improved methods and equipment and outside assistance either in or out of the employer's facilities; to adopt, modify, change or alter its budget; and in all respects to carry out the ordinary and customary functions of management. The Employer shall also have the right to promote, assign, transfer, suspend, discipline, demote, discharge, lay-off and recall personnel; to establish, amend, supplement or delete work rules and fix and determine penalties for violations of such rules; to make judgments as to ability and skill of employees; to establish and change work schedules; to provide and assign relief personnel; to schedule overtime, to continue and maintain its operations as in the past, or to modify or eliminate same, provided, however, that these rights shall not be exercised in violation of any specific provision of this agreement. The Employer retains the sole and exclusive right to establish and

administer without limitation, implied or otherwise, all matters not specifically and expressly limited by this agreement.

## Section II – Delegations

No policies or procedures covered in this agreement shall be construed as delegating to others or as reducing or bridging any of the authority conferred on the Employer by state law, or by the constitution by the State of Michigan or the United States of America.

Union – The Union proposes to maintain the present language concerning management rights found at Article I in the contract.

### Issue: Grievance Procedure

Employer – The Employer proposes to add the following section to Article VIII, Grievance Procedure:

Section 6 – Election of Remedies – When remedies are available for any complaint and/or grievance of an employee through any administrative, judicial or statutory scheme or procedure, in addition to the grievance procedure provided under this contract, and the employee elects to utilize the statutory or administrative remedy, the Union and the affected employee shall not process the complaint through any grievance procedure provided for in this contract. If an employee elects to use the grievance procedure provided for in this contract and, subsequently, elects to utilize the statutory or administrative remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited.

Union – The Union rejects the Employers proposal to add language to the grievance procedure.

Issue: Shift Assignments and Scheduling

Employer – The Employer proposes to amend Article XI, Section 5 C and Section 5 E as follows:

- C. Employee shift preferences shall be granted by the Employer in its discretion. The Chief of Police can assign probationary employees to any shift.
- E. Shift assignments may be changed for short periods of time to facilitate the needs of the employees or the Department caused by emergencies requiring the mobilization of the entire Department, vacations, sick leave, temporary shortages of personnel, natural or man-made emergency situations, scheduled events such as parades, carnivals, homecoming or for collective and/or individual problems providing no change of regular shift assignment is made for longer than two (2) twenty-eight (28) day schedule, each twelve (12) months per employee.

Any other shift assignment change shall be made for no more than four (4) workdays.

Union – The Union rejects the Employers proposed changes to the existing contract.



Issue: Personnel Files

Employer – The employer proposes to add the following statement to Article XIII, General, Section 16:

The secretary to the Chief of Police shall have access to the personnel files.

Union – The Union rejects the Employers proposal to add additional language to this Article.

Issue: Sick Leave

Employer – The Employer proposes to add the following sentence to Article XVII, Sick Leave, Section 7: Employees will be required to submit a report from a doctor, upon request from the Police Chief or City Manager following an illness or injury indicating that he/she is physically able to do work available, prior to his/her return to active work. *The Employer may also require a note from a doctor from an employee if sick time abuse is suspected.*

The Employer proposes to add the last sentence.

Union – The Union rejects the Employer's proposal of the additional language.

## Opinion and Award

### Wage Retroactivity and Eligibility

In their final best offers, the parties offered identical settlements of 3 percent for each of the three years of the contract effective May 1, 2001. Therefore, the increase amounts and the effective dates are settled.

The Employer proposed, however, that the retroactivity apply only to employees who are still employed on the date of the Panel's award. The Union disagrees and believes that all members of the bargaining unit, during the period covered by the award, should be eligible for the appropriate increases. No evidence was presented to show that persons had left the bargaining unit since the expiration of the last contract and, therefore, making them ineligible as proposed by the Employer. Since no evidence was presented to support the exclusion, the Panel majority adopts the normal and customary practice of retroactivity, and makes those who were employed on the date of each effective increase eligible for those increases whether they are still members of the bargaining unit or not at the date of this award.

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )


Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☐ ) Dissent ( ☒ )

James Quinn Date July 24, 2002  
James Quinn, Panel Union Representative Concur ( ☒ ) Dissent ( ☐ )


## Opinion and Award

### Pension Multiplier

This issue is the major economic issue pending before the Panel since the parties through their own last best offers have settled the wage increases. While the Employer wishes to keep the status quo, the Union proposed to increase the plan from a MERS B-2 to a MERS B-4 benefit program which not only increases the retirement benefit multiplier but raises the issue of whether the Employer or the Employees should bear some or all of the costs of this improvement. While there is strong evidence in support of the Union's position when based on comparables both internally and externally, the Arbitration Panel is left without adequate economic data to understand the cost impact of the change and the overall compensation impact on this bargaining unit and its comparables. Without this information the Panel majority cannot reasonably apply the factors found in Section 9 of Act 312. Therefore, the majority adopts the Employer's last best offer and maintains the status quo in the Pension Multiplier as found in the existing contract.

  
C. Keith Groty, Arbitrator, Panel Chairperson      Date July 25, 2002  
Concur ( ) Dissent ( ☒ )

  
Joseph Bippus, Panel Employer Representative      Date 8-1-02  
Concur ( ☒ ) Dissent ( )

  
James Quinn, Panel Union Representative      Date July 26, 2002  
Concur ( ) Dissent ( ☒ )

## **Opinion and Award**

### **Holidays**

The Employer has proposed that the holiday clause at Article XV be modified in two aspects: 1) to pay persons who are scheduled off on a holiday their regular rate of pay rather than double-time; 2) to pay employees who work on a holiday double-time rather than triple-time. The Union rejects this proposal as a reduction in benefits.

The Employer defends its proposal by pointing to comparable communities. Only one of the comparables has the same pay plan as does the Employer. Further, the Employer provides one-and-a-half (1.5) more holidays per year than the other comparable employers. Based on these comparables, the Employer believes that the benefits provided by this section are excessive.

While this benefit appears to be more generous compared to the comparable contracts, this is a section of compensation which has been previously negotiated and for which there is no basis other than the comparables for reducing as a part of the total compensation. No history has been presented to show a quid pro quo for the inclusion or exclusion of this provision. Like the Retirement Multiplier issue, the major finds insufficient evidence has been submitted to demonstrate the economic impact or the economic justification for removing this provision from the contract. Therefore, the Union's position of maintaining the status quo within the present agreement is adopted.

## Opinion and Award (continued)

### Holidays

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☐ ) Dissent ( ☒ )

James Quinn Date July 26, 2002  
James Quinn, Panel Union Representative Concur ( ☒ ) Dissent ( ☐ )

## Opinion and Award

### Managements Rights

The Employer proposes to replace the present Article I contract language with a new comprehensive employer rights clause. The Employer argues that the present Managements Rights clause is "an extremely limited statement of managerial rights." It points to management's rights provisions in other contracts in the comparable cities as being "far closer" to the Employer's proposed language than current contract language. No evidence was presented, however, of occurring problems because the language of the present contract is inadequate. Reference was made to possible conflicts and issues that might arise in the interpretation of employee scheduling. The Panel majority finds, however, no justification to so radically replace the clause in the existing labor agreement with one that has been written exclusively by management and is so comprehensive in scope that its impact is not easily determined. Therefore, the Panel majority adopts the status quo position of the present contract language.

## Opinion and Award (continued)

### Managements Rights

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☐ ) Dissent ( ☒ )

James Quinn Date July 26, 2002  
James Quinn, Panel Union Representative Concur ( ☒ ) Dissent ( ☐ )

## Opinion and Award

### Grievance Procedure - Election of Remedies, Article VIII

The Employer proposes to add a section to Article VIII, grievance procedure, to limit a grievant to an election of remedies. The Union rejects this addition to the contract.

It is fundamental in labor relations that the contractual agreement is between the Union as agent of the Employees and the Employer. It is the Union's right to take matters through the grievance procedure to protect not only the rights of individual employees but also the bargain between the Employer and the Union set forth in the contract.

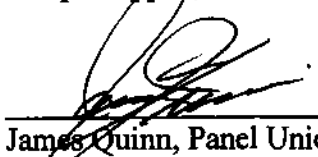
While the proposed language is termed "election of remedies", in fact it is not an election of remedies but an election of process. The remedies from these various processes can be, in fact, very distinct and not necessarily available from one procedure to the other. Remedies an employee may have in other jurisdictions, such as courts and administrative tribunals, are separate and distinct from the right

of the Union to pursue grievances through the grievance procedure. While the Union may choose to pursue a discharge or discipline case through the grievance procedure on behalf of an employee, it is the employee's option to pursue the matter through other channels. Like the Employer, the Union is not immune to actions by the employee in other procedures to answer an employee complaint that their statutory or administrative rights have not been protected. These are separate procedures using separate tribunals and using separate standards for adjudication. While it may be onerous for the Employer to defend cases in different jurisdictions arising out of the same set of facts, the matters before those jurisdictions, while similar, are distinct and should not be confused. Therefore, the majority rejects the Employer's proposal for the inclusion of the election of remedies clause.

#### Grievance and Procedures – Election of Remedies

  
C. Keith Groty, Arbitrator, Panel Chairperson      Date July 25, 2002  
Concur ( ☒ ) Dissent ( ☐ )

  
Joseph Bippus, Panel Employer Representative      Date 8-1-02  
Concur ( ☐ ) Dissent ( ☒ )

  
James Quinn, Panel Union Representative      Date July 26, 2002  
Concur ( ☒ ) Dissent ( ☐ )

## **Opinion and Award**

### Shift Assignments and Scheduling – Section 5C

The Employer proposes two amendments to Article XI at Section 5C and Section 5E. In Section 5C, the Employer proposes that shift preferences be granted at the Employer's discretion. Further, that the Chief of Police can assign probationary employees to any shift. Both these positions are rejected by the Union.

The Employer argues that there is a need to mix probationary officers with more experienced officers so that all the non-experienced officers do not end up on the same shift. While the Employer does not reject shift preference by seniority, it is seeking to limit assignment by shift preference by seniority in order to mix probationary employees with more senior employees.

The Union questions whether this matter is properly before the Arbitration Panel because it had not been submitted to mediation prior to submission to the 312 Arbitration Panel. In rebuttal, the Employer points to the testimony of Mr. Quinn that the Employer did propose changes to the language during bargaining but not the expressed language as set forth in the Employer's position before the Panel. The Employer argues that the applicable ruling in the City of Manistee vs MERC 168 Mich App 422 (1988) held that the parties do not have to bargain to impasse over a subject subsequently brought to Act 312 arbitration.

The majority of the Panel agrees that this issue is properly before the Panel and awards as follows: 1) that the language offered by the Employer be modified at Article XI, Section C so that it reads "employee shift preference shall be granted by the Employer on the basis of seniority except that said preference shall not interfere with the effective operation of the police department. The Chief of Police



can assign probationary employees to any shift without respect to the seniority of other employees.”

#### Shift Assignment and Scheduling – Section 5C

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☒ ) Dissent ( ☐ )

James Quinn Date July 26, 2002  
James Quinn, Panel Union Representative Concur ( ☐ ) Dissent ( ☒ )

#### Opinion and Award

##### Shift Assignment and Scheduling – Section 5E

The Employer proposes to amend Article XI, Section 5E to include the word “two” before the words *28 day schedule* and “four” before the words *working days*. The Union rejects this proposal and argues that this matter was never properly before the Panel since it was not a subject in negotiation and mediation prior to its submission. For the reason state in the discussion of the Shift Assignments and Scheduling, proposal Article XI, Section 5C, the majority of the Panel finds that this is properly before the panel. The majority also finds that there is no clearly stated reason for these changes supporting their adoption. Therefore, these changes are rejected and this section stands unamended.

## Opinion and Award (continued)

### Shift Assignment and Scheduling

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☐ ) Dissent ( ☒ )

James Quinn Date July 26, 2002  
James Quinn, Panel Union Representative Concur ( ☒ ) Dissent ( ☐ )

## Opinion and Award

### Employee Personnel File

The Employer proposes to amend Article XIII, General, Section 16, to permit the secretary to the Chief of Police to have access to personnel files of bargaining unit members. This proposal is rejected by the Union as a possible breach of confidentiality by a person who is not a member of the bargaining unit.

The majority of the Panel adopts the Employer's proposed language which states, "The secretary to the Chief of Police shall have access to the personnel files." to be added to Article XIII, General, Section 16, as a reasonable need of the Employer for the efficient and convenient operation of the Employer's business. The issue of confidentiality should not preclude the Chief and his secretary from administering these files on the behalf of the Employer. If the secretary is instructed that these files must be handled confidentiality and the secretary breaches that directive, the remedy is within the power of the Employer to administer discipline up to and including discharge for such violation. Simply the

potential of a confidential breach or the fact that the employee is not a member of the bargaining unit should not interfere with the efficient conduct of the Employers business.

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☒ ) Dissent ( ☐ )

James Quinn Date July 16, 2002  
James Quinn, Panel Union Representative Concur ( ☐ ) Dissent ( ☒ )

## **Opinion and Award**

### Sick Leave

The Employer proposes to add a sentence to Article XVII, Sick Leave, Section 7, as follows: "the Employer may also require a note from a doctor for an employee if sick time abuse is suspected." The Union rejects this proposal.

The Employer wishes to clarify the need to obtain medical verification from an employee if sick time abuse is suspected. The Union argues that the current language allows the Employer to require a report from a physician prior to allowing an employee to return to work after an illness or injury. It is argued that this language provides the necessary authority for the Employer to monitor sick time abuse. Further, the language is flawed for not being specific in setting forth the requirement for a doctor's note before or after the use of sick time.

The majority of the Panel believes the present language, which allows the Employer to require an employee to submit a report from a physician prior to

returning to work, adequately provides the authority being sought by the proposed language. The Employer, if it suspects an employee is abusing sick time, can notify the employee prior to the use of additional sick time or before the return from the use of sick time that they must present a report from a physician justifying a need for the use of sick time.

#### Sick Leave

C. Keith Groty Date July 25, 2002  
C. Keith Groty, Arbitrator, Panel Chairperson Concur ( ☒ ) Dissent ( ☐ )

Joseph Bippus Date 8-1-02  
Joseph Bippus, Panel Employer Representative Concur ( ☐ ) Dissent ( ☒ )

James Quinn Date July 26, 2002  
James Quinn, Panel Union Representative Concur ( ☒ ) Dissent ( ☐ )

## Summary of Award

The Panel Awards as follows:

- Wage Retroactivity and Eligibility

Those who were employed on the date of each effective increase are eligible for those increases whether they are still members of the bargaining unit or not at the date of this award.

- Pension Multiplier

The majority adopts the Employer's last best offer and maintains the status quo in the Pension Multiplier as found in the existing.

- Holidays

The Union's position of maintaining the status quo within the present agreement is adopted.

- Managements Rights

The Panel majority adopts the status quo position of the present contract language.

- Grievance Procedure

The majority rejects the Employer's proposal for the inclusion of the election of remedies clause.

## Award Summary (continued)

- Shift Assignments and Scheduling –Section 5C

The majority of the Panel agrees that this issue is properly before the Panel and awards as follows: 1) that the language offered by the Employer be modified at Article XI, Section C so that it reads “employee shift preference shall be granted by the Employer on the basis of seniority except that said preference shall not interfere with the effective operation of the police department. The Chief of Police can assign probationary employees to any shift without respect to the seniority of other employees.”

- Employee Personnel File

The majority of the Panel adopts the Employer’s proposed language which states, “The secretary to the Chief of Police shall have access to the personnel files.” to be added to Article XIII, General, Section 16.

- Sick Leave

The majority of the Panel believes the present language, which allows the Employer to require an employee to submit a report from a physician prior to returning to work, adequately provides the authority being sought by the proposed language.