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STATE OF MICHIGAN
COMPULSORY ARBITRATION

ACT 312

CITY OF CLIO
Clio-Vienna Police Department
and
Police Officers Labor Council

Case No. L91J-0050

OPINION AND AWARD
Sheldon H. Adler
Impartial Chairperson

Raymond Wallace
Union Designee

DISSENTING OPINION
Merle W. Grover
Employer Designee
May 18, 1994

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STATE OF MICHIGAN
EMPLOYMENT
ARBITRATION
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STATE OF MICHIGAN
COMPULSORY ARBITRATION

In the Matter of:

CITY OF CLIO VIENNA
CLIO-VIENNA POLICE DEPARTMENT-

Arising pursuant to Act 312,
Public Acts of 1969, as amended

-and-

Case No. L91J-0050

POLICE OFFICERS LABOR COUNCIL
(Full Time Patrol Officers)

* * * * *

ARBITRATION OPINION AND AWARD

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APPEARANCES

For the Compulsory
Arbitration Panel:

Sheldon H. Adler, Impartial Chairperson
Merle W. Grover, Employer Designee
Raymond Wallace, Union Designee

For the Employer:

Grover and Associates, Inc.
By: Merle W. Grover

For the Union:

John A. Lyons, P.C.

DATES

Pre-hearing:

March 3, 1994

Hearing:

April 25, 1994

Executive Session:

April 25, 1994

BACKGROUND

On June 25, 1991, the eight member full time patrol officers of the Clio-Vienna Police Department filed for compulsory arbitration pursuant to Act 312, Public Acts of 1969, as amended.¹ Attached to the petition was a list of 13 issues designated as Union issues and 17 designated as City issues. The petition further reflected that on May 16, 1991, a single mediation session was held and lasted four hours.

On November 1, 1993, I was appointed the Impartial Chairperson and subsequently, placed in motion the proceedings which culminated in the hearing of April 25, 1994.

At the time of the pre-hearing session, which occurred on March 3, 1994, the parties informed the Chairperson that the relationship between the City of Clio and the Township of Vienna, whereby a joint Department had existed for 16 years, was ending. The ultimate result would be that as of June 30, 1994, the Clio-Vienna Police Department would cease to exist and the Collective Bargaining Agreement covering the full time officers would, by necessity, expire. Following that, all of the issues except for wages for the years 1991-92, 1992-93 and 1993-94 were no longer to be considered and had been resolved. I was informed that unless some major change took place, the only decision the Panel would have to make would be wages for the years 1991-91, which would have become effective July 1, 1991; wages for 1992-93, effective July 1,

¹At the time of the hearing there were only five members affected. This is presumably as a result of a restructure of the Department, which occurred in the interim.

1992; and wages for 1993-94, effective July 1, 1993, were the only issues.

The Employer's and Union's last best offer are attached as Exhibits A and B respectively. Notwithstanding the fact that the only issues to be resolved were wages as above explained, the Panel must by necessity, apply the following factors in reaching its award. It is not, however, necessary that the Panel afford the same weight to the factors according to City of Detroit v DPOA, 498 Mich 410; 294 NW2d 68 (1980).

- (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 these 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 the 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 proceeding.

- (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 the private employment.

Both parties have submitted last best offers and I will, without compromise, select one of those offers for each issue.

DISCUSSION

Although there was no testimony at the hearing on April 25, 1994, Exhibits were submitted and received without objection and the parties' representatives did present arguments. Each 312 Arbitration is unique for many reasons, and this arbitration is no exception to that rule. We are dealing here with not only retroactive pay increases, but pay increases for parties whose positions will cease to exist in a little over a month after this award is received.

The bargaining history of these parties is worthy of some mention and is as follows: The existing Collective Bargaining Agreement expired on June 30, 1991. The Employer, in February of 1991, requested that negotiations begin as soon as possible so that the Employer's budget could be set. In April of 1991, the Union proposed a new contract and that proposal consisted of 13 demands. At approximately that time, the Employer had begun a procedure to reconstruct the Department by adding a level of Supervisory Sergeants. Apparently, the result of the proposed restructure and

its affect on the Union and its members, prompted the Patrol Officers to file an unfair labor practice charge against the Department. This occurred in August of 1991. The charge alleged unfair labor practices as early as October of 1990. Negotiations, according to the Employer, from that time forward came to a screeching halt. Nothing occurred with regard to the new contract for the remainder of 1991, for all of 1992 and for a good portion of 1993. I was appointed as Chairperson of the Panel on November 1, 1993. The decision and recommended order of the Administrative Law Judge for the unfair labor practice charge was mailed on November 29, 1993.

Between February 3 and February 24, 1994, the bargaining representative for the Union, was notified officially that the Collective Bargaining Agreement between the parties covering full time officers, would expire as of June 30, 1994, as a result of the contract between Vienna Township and the City of Clio for law enforcement protection not being renewed.

As stated previously, this Chairperson feels that background is of necessity to part of this discussion.

COMPARABILITY

The Union has submitted as Exhibit 6, wages for the contiguous communities of:

Flushing Township,

Genesee Township,

Montrose,

Mt. Morris Township,

Genesee County,
Michigan State Police,
Saginaw County, and
Tuscola County,

providing their top wages for the years 1991, 1992 and 1993. The applicable patrol officers affected by this arbitration, are all at top wage scale and therefore, only top wages need be considered.

The Employer objected to the comparables, voicing their opinion that the situation as it stands, make those comparables inappropriate and submitted the contract it has with part time officers and sergeants as its comparables for the period.

ISSUE 1A

WAGE INCREASE 1991-92

The Patrol Officers affected have had no wage increase since the July 1, 1990, increase to \$26,357.00 and have therefore, earned no more than that since July 1, 1990. The Employer's final offer is for no increase for the year 1991-92.

The Union's last offer is for an increase of \$2,143.00, which represents an 8.13% increase. The Employer argues that no negotiations took place during that period of time and the City was therefore, unable to budget for an increase, being hamstrung as a result of the Union's failure to attempt to negotiate a settlement. The Union argues that during this period of time there had been an increase in the cost of living; the contiguous communities had received wage increases and notwithstanding, the other police employees had received wage increases during this period of time.

DISCUSSION

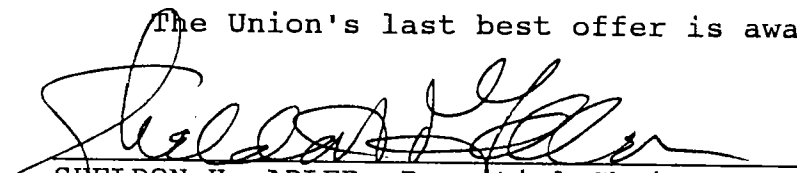
The evidence indicates that wage increases were given to other employees in the City during this period of time, including other police department employees. The external comparables provided by the Union reveal wage increases for the comparable communities of between 2.9% and 7% for the years 1991-92, as they compare. We have considered the issues and the factors as mandated by Section 9 of Act 312 and have applied them as best we can to the circumstances of these two parties. The Employer has not argued that they do not have the ability to pay, but have argued that a refusal to negotiate created a hardship within the City with regard to budgeting. There is no question that there was a cost of living increase during the period of time affected and comparable communities, which are contiguous to this community, did negotiate wage increases.

SUMMARY

Based on the above, the Union's last best offer on wages for the year 1991-92, should be accepted. Therefore, the officers affected would receive an increase in wages in the amount of 8.13% or \$2,143.00, effective July 1, 1991.

AWARD - ISSUE 1A - WAGES

The Union's last best offer is awarded.



SHELDON H. ADLER, Impartial Chairperson

Dated: 5/6, 1994

Merle W. Grover

MERLE W. GROVER, Employer Designee

Concur: _____ Dissent: X (See Opinion)

Dated: May 18, 1994

Raymond Wallace

RAYMOND WALLACE, Union Designee

Concur: GPS Dissent: _____

Dated: May 10, 1994

ISSUE 1B

The Union's last best offer for the years 1992-93 is an increase in the amount of 4.3%, which would equal \$1,250.00, making the wage rate for that year, \$29,750.00.

The Employer's final offer for the year 1992-93 is for no increase.

DISCUSSION AND SUMMARY

Based on the above and based on the same reasoning as explained in the discussion of Issue 1A, the Union's last offer on wages for the year 1992-93, should be accepted. Therefore, the officers affected would receive an increase in wages in the amount of 4.3% or \$1,250.00, effective July 1, 1992.

AWARD - ISSUE 1B - WAGES

The Union's last best offer is awarded.

Sheldon H. Adler

SHELDON H. ADLER, Impartial Chairperson

Dated: 5/6, 1994

Merle W. Grover

MERLE W. GROVER, Employer Designee

Concur: _____ Dissent: X (See Opinion)

Dated: May 18, 1994

Raymond Wallace
RAYMOND WALLACE, Union Designee
Concur: Yes Dissent: _____

Dated: May 10, 1994

ISSUE 1C - WAGE INCREASE 1993-94

The Employer's final offer for the year 1993-94 is for 10%, which would raise the base pay of officers for that year from \$26,357.00 to \$28,992.00.

The Union's last offer for the year 1993-94 is an increase of 4%, which would amount to \$1,250.00, raising the wages from \$29,750.00 to \$31,000.00.

DISCUSSION

The only difference in the Employer's reasoning is that the Employees should receive a raise and since there was discussion in the final year of the contract and what they claim to be negotiations, the Employer is willing to pay a 10% raise for that year only.

The Union rejects that argument and argues the same as they did for issues 1A and 1B.

SUMMARY

Based on the above, the Union's last best offer on wages for the year 1993-94 should be accepted. Therefore, the officers affected would receive an increase in wages of 4% or \$1,250.00, effective July 1, 1993, making their annual wage for that year \$31,000.00.

AWARD - ISSUE 1C - WAGES

The Union's last best offer is awarded.

Sheldon Adler

SHELDON H. ADLER, Impartial Chairperson

Dated: 5/6, 1994

Merle W. Grover

MERLE W. GROVER, Employer Designee

Concur: _____ Dissent: X

Dated: May 18, 1994

Raymond Wallace

RAYMOND WALLACE, Union Designee

Concur: go Dissent: _____

Dated: May 10, 1994

**STATE OF MICHIGAN
COMPULSORY ARBITRATION**

In the Matter of:

CITY OF CLIO
CLIO - VIENNA POLICE DEPARTMENT-
-and-
POLICE OFFICERS LABOR COUNCIL

Arising pursuant to Act 312
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APPEARANCES

For the Compulsory
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Sheldon H. Adler, Impartial Chairperson
Merle W. Grover, Employer Designee
Raymond Wallace, Union Designee

For the Employer:

Grover and Associates, Inc.
By: Merle W. Grover

For the Union:

John A. Lyons, P.C.

DISSENTING OPINION

The Employer Designee, Merle W. Grover, hereby respectfully dissents from the majority opinion written by Sheldon H. Adler, the Impartial Chairman.

This case should go down as a classic study for professors, legislators, labor relation students, etc. as an example of Act 312 Arbitration gone amuck.

BACKGROUND

The Clio-Vienna Police Department is composed of three bargaining units. The four sergeants who are represented by AFCSME. The FOP who represents four full time patrolmen, who are the petitioners in this case. The part time patrolmen, who vary in number from eight to twelve part time officers are also represented by AFCSME.

The City proposed several dates to the FOP by letter dated February 12, 1991 to begin negotiations. The city stated in its letter;

"Due to the fact that the City needs to have its budget prepared and available to the public by the first of May, and the City of Clio desires to modify the contract, it is requested that the City of Clio and the Fraternal Order of Police began at once to negotiate the new contract." The city proposed six dates from March 6 to April 17 (Employer Exhibit A).

As stated in the Union petition for Arbitration they were only able to meet on one date for negotiations for four hours and that was May 16, 1991. Evidently, they were too busy to meet again because they filed for Arbitration some six weeks later without finding the time for an other negotiating session.

The FOP filed a petition for 312 arbitration with the Michigan Employment Relation Commission on June 25, 1991, five days before the contract expired on June 30, 1991 (See attached Exhibit C). The petition listed over thirty issues to be resolved. While the union states in their petition that they only had thirteen issues to be resolved yet it took them twenty-one pages to spell out how they wanted these changes made in the contract. (Employer Exhibit B). The City had the additional 17 issues to be resolved.

The petition in section 5a (Dates and Duration of meetings) admits the parties had only one meeting which lasted for four (4) hours).

As incredible as it may seem, there had been only been one four hour negotiations session between the parties, yet the State of Michigan processed their 312 petition and provided a list of arbitrators on July 16,1991.

There has never been a face to face bargaining session between the parties since May 16,1991 and for almost three years the Union has refused to meet face to face with the employer and try to resolve these thirty issues. The other two police bargaining units represented by AFSCME met and resolved all their differences with the employer.

On July 31, 1991, the City attempted to put pressure on the Union to bring them to the bargaining table by sending a status report from the city administrator to all patrolmen which stated in part (See attached Exhibit D)

" I feel it is extremely unfortunate that negotiations have been stopped over one issue, but there is nothing we can do to force the FOP to bargain in Good Faith and try to resolve the other issues without wasting the states time in attempting to assign an arbitrator to resolve issues that have never been negotiated.

While we regret the delay, it is our position, and has always been our position, that we stand ready to meet and negotiate in Good Faith with the FOP over the unresolved issues. If they cannot be resolved by Good Faith negotiations then they should be submitted to mediation and if need be 312 arbitration.

It is unfortunate that you do not have a new contract, but we cannot force the FOP to negotiate in good Faith."

The Union, upset that the City would have the audacity to communicate directly with it's members immediately filed a ULP saying that the employer violated the law by making direct contact with their members and sat back to pout for the next two and one-half years while MERC processed their claim. (The City was unable to get the Union to the bargaining table for a face to face meeting during this period of time however MERC finally dismissed the ULP as frivolous). MERC Case No. C91 H-200, Employer Exhibit F which states in part;

" As for the July 31,1991 letter to the employees by the City, I find no threats or coercive statements therein, and there is nothing to indicate that it was designed to evade the Employer's bargaining obligation toward the FOP. On the contrary, the City laments in the letter what it considers to be the refusal of the FOP to bargain with it." (bolding added)

The Union representatives finally stirred from their slumber on February 3, 1994, when Mr. Ray Wallace sent the following letter to the City (Union Exhibit 1)

"Dear Mr. Atkins,

It has come to my attention that the Township of Vienna has given the City of Clio notice that the Township **will not** renew the contract between the Township and the City for Law Enforcement protection.

I have also been advised by the Vienna Township Supervisor, Mr. Veral Newman (per my request for information) that the Township has reached a tentative Agreement with the Sheriff's Department for Law Enforcement protection.

I am concerned about the present officers in the department that represented by the Police Officers Labor Council and the impact that this situation may bring to the bargaining unit. (This bolding added)

Please advise me of the City's plans for the officers represented by the Police Officers Labor Council due to the Township's actions.

I await to hear from you on this most important matter."

This letter was answered some two-three days after receipt by the City Administrator Mr. Atkin on February 7, 1994.(Union Exhibit 1)

" Dear Mr. Wallace:

The City of Clio has just recently been advised of the intent of Vienna Township.

The City of Clio's biggest concern is the Police Officers that this will effect.

The City is to meet with the Genesee County Sheriff's Department to discuss the possible transfer of the Officers to the Sheriff's Department. When we are able to get some assurance of the future of these officers, we will be contacting all three unions that represent our Department.

Please be assured that the contract between Clio and Vienna Township will expire on June 30, 1994.

We will let you know as soon as possible."

While the Union had shown very little concern for the City's economic problems they now became aware that the department would cease to exist on

June 30, 1994 and awaking from their deep sleep they mobilized their forces and sprung into action.

Since the thirty issues petitioned for arbitration in June 1991 no longer had any real significance the Union requested that the Act 312 hearing be limited to one issue--- **m o n e y** .

This lead to the Act 312 hearing on April 25, 1994, where both sides made their last best offer.

The city made the following last best offer based on cost-of-living increases, settlements with the two other Police Unions and the fact that the FOP made no attempt to bargain across the table since May 16, 1991.

| | | |
|---------------------|---------------------|---------------------|
| Effective 7/1/91 | Effective 7/1/92 | Effective 7/1/93 |
| First year 0% | Second Year 0% | Third Year 10% |

The City's offer provides an increase that exceeds the cost-of-living increase by 1.7% for the three year period (based on attached Union Exhibit 4); 2.6% plus 3.2% plus 2.5% for a total of 8.3% over the three years. This offer is effective two-thirds of the way through the three-year period, July 1, 1993. This offer is also in line with the settlements of the other two Police Unions (based on attached Employer Exhibit G).

The Union Made the following last best offer:

| | | |
|------------------|-------------------|------------------|
| First year 8% | Second Year 4% | Third Year 4% |
|------------------|-------------------|------------------|

The arbitrator stated he choose the Union's position for each of the three years based on three factors, (1) the comparables submitted by the Union, (2) cost

of living increases, and (3) the fact that the City failed advance the argument that they did not have the ability to pay.

COMPARABLES

An examination of Union Exhibit No. 6 which is attached to this Dissenting Opinion should convince any reader that the comparables referred to by the arbitrator on Page 7 of his decision is a "joke." For anybody to view this document as containing valid "comparables" would cause one to believe that they were at least half a bubble out of plumb.

It should be noted in 312 arbitrations as well as any other arbitration, the petitioner has the burden of proof in establishing that their proposed comparables are valid. They can be considered by the 312 arbitrator only if they are in fact valid comparables.

As was quoted in the majority opinion on Page 3, the Panel **must, by necessity**, apply the factors listed in Section 9 of Act 312. As was noted by the arbitrator the panel does not have to give the **same weight** to all the factors but it must consider all the factors listed.

The law does not allow a comparison of only the top wages from different police units, it says the comparison must include:

(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 the public employment in comparable communities

The statute, itself, recognizes that it is impossible to make a valid comparison of wages without examining the other factors such as hours and conditions of employment.

First, it is incumbent on the Union to establish that they are using "comparable communities".

Union Exhibit 6 does not provide a scintilla of evidence to show that the communities named in the exhibit are **comparable communities**. While the law does not state what evidence is necessary to establish this criteria, one certainly has to compare such things as the size of the communities, the size of the police force, the financial structures of the communities, the areas to be patrolled, the taxes levied, any special elections by the communities to obtain special tax revenues, any Federal and State grants among other things.

Second, the law does not say to compare just wages but to compare "wages, hours, and conditions of employment." To compare wages without looking at the other factors, is useless. If other police departments allow such conditions as split shifts that would be a significant factor. If other units required patrolmen to rotate shifts each week, month or year, that too would be an important element in making comparisons. If the other police departments did not have shift Sergeants to supervise each shift and the patrolmen must make their own decisions, it would be important for the arbitrator to evaluate this fact.

It is important to find out what differences exist in the hiring qualifications of comparable cities. Is there different requirements as to the formal education required, i.e. High School graduate, Junior College courses, Associated Degrees required, and do these factors impact the pay received by officers working in other cities?

Third, to compare just the "top wages" without knowing how long it takes a patrolmen to get to the top is also useless. We know by the employers "Final Offer" that it takes six years to reach the top of the pay scale in Clio-Vienna, but no evidence has been provided by the petitioner as to how long it takes to reach the top of those scales presented in their exhibit 6; is it two years? is it five years? is it nine years? or even twelve years? Without this information how could any valid conclusion be reached?

The arbitrator stated in his opinion on Page 7, "The external comparables provided by the Union reveal wage increases for the **comparable communities** of between 2.9% and 7% for the years 1991-92, as they compare," (bolding added), and "There is no question that there was a cost of

living increase during the period of time affected and **comparable communities**, which are contiguous to this community, did negotiate wage increases" (bolding added)

I would challenge the above statements and ask the Arbitrators to show me any evidence in the exhibits or on the record that they are **comparable communities**. Yet they state they rest their award on the bases of these comparables !! **It is incumbent on the Petitioner to provide the necessary evidence from which valid conclusions can be determined.**

As worthless as Union Exhibit 6 is, it is interesting to note that by the exhibit itself, on July 1, 1991 the Clio-Vienna Police Officers actual pay of July 1, 1990 which was \$26,357 exceeded, on July 1, 1991 two of the four police departments pay schedules claimed by the Union to be comparable, i.e. Flushing and Mt. Morris Twp.

In addition to subparagraph (d) of Section 9 (Comparison of wages etc.), the Panel must also consider the requirements of subparagraph (f) in reaching its conclusions. It is incumbent on the petitioning party to provide this information or else any wage information, even if it was valid which it is not in this case, will have no meaning whatsoever. Subparagraph (f) states the Panel must consider:

(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."

Granted, under the law, the panel does not have to give all the above factors equal weight to all factors but it does require that the above factors be **considered** as a group because there is no way to compare wages and ignore the cost of other fringe benefits like those listed in subsection (f). In this case, there was no consideration of the fringe benefit cost to the "**direct wage compensation**" as required by the statute.

Clio-Vienna Police Union Settlements

Once again referring to page 3 of the majority opinion which quotes Section 9 of Act 312 for factors required to be considered, one finds subparagraph (h) as one of those factors. Subparagraph (h) states as follows:

(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 the private employment.

This case presents a unique situation that probably has never existed before and probably will never happen again in finding comparables that actually are valid and should be considered by the arbitrator in making an award.

The arbitrator conveniently slid by the set of comparables offered by the City in determining what are appropriate or proper wage increases for this three-year period. As incredible as it may seem, under the rules and decisions of Michigan's Public Employment Collective Bargaining Statute, the tiny police department of Clio, Michigan, has been broken up into **three bargaining units**. As has been previously noted, this Police Department of twelve to fifteen individuals has one bargaining unit consisting of four sergeants represented by AFSCME; a second bargaining unit consisting of eight to twelve part-time patrol officers also represented by AFSCME; and the third bargaining unit, consisting of four regular full-time patrolmen represented by the FOP.

During the three year period while the petitioner refused to sit down and bargain with the employer across the table, two of the other police department bargaining units negotiated and reached collective bargaining agreements through voluntary collective bargaining and good faith negotiations.

These two units, after reviewing all of the circumstances surrounding the City of Clio's ability to function and maintain its budget and its obligation to the taxpayers, reached a settlement which the leadership returned to the bargaining unit members and recommended those settlements as fair, and requested the membership to ratify the agreement. In both of these two bargaining units, the contracts were ratified by their membership as a result of free, open and good faith bargaining.

If there **ever** has been comparables that shed light on what a valid settlement should be, it would be the present situation that covered two other units in the **same locality with the same police department, covering the same period of time** who reached a settlement with their employer.

In the one bargaining unit represented by the part-time police officers Union, commencing with the expiration in June 1992 of their three year agreement the settlements were approximately 2% First Year, 5% Second Year, and 3% Third Year, or a total percentage of 10% for the three years. (See Attached Employers Exhibit G)

In reaching a settlement for the sergeant's unit, there is nothing to make a comparison for the first year since that is the first year that the sergeants, who for the first time, were actually given supervisory authority over the regular and part-time patrolman. But, for the second and third year of that collective bargaining agreement, the following percentages were negotiated by the Union and ratified by the membership after free and open bargaining. The settlements for the second and third year were approximately 3.33% percent (1992-1993), and 3.23% percent (1993-1994).

The "Impartial" arbitrator suppressed these relevant facts by making a vague reference to the raises granted, "to other employees in the City during this period of time, including other police department employees," while ignoring the actual percentages in the settlements.

ABILITY TO PAY

Section (c) of Act 312 requires to arbitrator to consider the following:

(c) The interest and welfare of the public and the financial ability of the unit of government to meet the cost.

Interestingly enough the law does not simply state that it is necessary to establish the City's ability to pay but he must also consider the welfare of the community, nor does it say that the ability to pay is established when the employer does not plead "inability to pay" as inferred by the arbitrator on page 7 of his opinion and award.

The arbitrator raised the issue that the City did not claim they were unable to pay the award. He seems to assume that if, in fact, the City does have the ability it, in fact, should pay with little regard to the welfare of the community.

The "ability to pay" is a fairly fictitious argument advanced in many occasions in the public sector both in 312 cases but also "Fact-Finding" involving other public employees. The public employer, in almost all cases, can usually be found to have the "ability to pay" because, in fact, the municipalities priorities are changed by the award of the arbitrator to allow the payment for that small segment being granted the award at the expense of other employees or materials needed by the municipality.

In the instant case, the arbitrator raised the issue that the Employer did not make a claim for inability to pay the additional 8% increase for the first year of this three year period for the four patrolmen from its 1993-94 Budget (even though it was for Fiscal Year 1991-1992)

It seems ludicrous that the arbitrator would expect the Employer Representative to present evidence with a straight face that it is impossible for the City of Clio to pay these four individuals an additional 8% in addition to their previously received paychecks. This is being paid out of the 1993-1994 budget; however it should be remembered that this amount, (approximately \$8500.00) would be carried over for each of the next two years (totaling approximately \$26,000, for the three year period) along with the additional two (four percent increases) so generously awarded by the arbitrator.

Not having to be concerned about other employees is a luxury enjoyed by the arbitrator but not the city. It should be noted that within this bargaining unit we are only talking about four regular patrolmen of the normal ten to sixteen man contingent operated in the City of Clio, and that gives no consideration for employees in the central office or the DPW.

It should be remembered that there was no evidence presented in the record or exhibits that established that the city had the ability to pay; it was inferred by the arbitrator who at the same time made no reference about being concerned about the welfare of the community which is also required by Section 9.

These "ability to pay" claims are usually raised in the context for one bargaining unit in a total school district or municipality. Given the fact that arbitrators can and do, in effect with their awards, change the priorities of the municipality, from those established by the elected officials, it is almost impossible to claim that there is no money available; it just requires that some other priority established by the municipality is to be abandoned.

However the law does in fact require the welfare of the municipalities to be considered at the same time as the ability to pay, but most arbitrators conveniently ignore this requirement and focus their decision on the ability to pay as was done by the arbitrator in this case.

In considering **the welfare of the community** I have to wonder what would have happened in 1991 if the city had given these four patrolmen 8% at that time out of the 1991-1992 Budget and at the same time told the rest of the police department employees their settlements for 1991-1992 were adequate?

CONCLUSION

If the reader is convinced that I am correct concerning the uselessness of the comparables relied on by the majority in their opinion, but believes we still have to reach a decision, then we have to reach that decision based on whatever valid evidence was presented.

The only choice available for the first year is either 8% the Union's Proposal or 0% the City's Proposal.

The only choice available for the second year is either 4% the Union's Proposal or 0% the City's Proposal.

The only choice available for the third year is either 4% the Union's Proposal or 10% the City's Proposal.

A close evaluation of the two parties "last Best Offer" virtually dictates that the only real choice is for the Arbitrator to accept either the City's complete proposal or the Unions complete proposal for all three years. If that is true, and I believe it is, then the test should be which one comes closest to being fair to the officers and considers the welfare of the community?

It does not take a rocket scientist to realize that both the settlements of the other two bargaining units at the Clio-Vienna Police Department and the Cost-of-Living increases result in annual increases of 2%-3% each of the three years or a total of 8%- 10% for the three year period.

If one elected to take the entire Union Proposal as did the Arbitrator it rewards the Union with a total of 16% for the three year period!! Just what facts, contained in the record and exhibits, justify this conclusion? If the city paid that kind of increase to all its employees do you honestly believe that any of the members of the City council would have been reelected by the taxpayers? Can one honestly believe that there has been any Michigan community, absent some extraordinary circumstances, that granted 16% over three the last three years?

Act 312 requires the welfare of the public employer to, at least, be considered! In my opinion the majority opinion shows a wanton and reckless disregard for the City's welfare.

When there is one "last best offer" available that comes close to being "fair" to both the employees and the City, even if you feel the Union's inexcusable conduct in this case should have no bearing in the award, then that alternative must be selected.

There is no doubt that the City's Last Best Offer reflected the City's disdain for this Union's conduct when compared to other Unions that negotiate for Clio employees. Nevertheless, the offer provides for a 10% increase at the end of two years when the Cost-of-Living increase (January 1991-January 1993 Union Exhibit 4 Attached hereto) had only increased 5.8%. The total Cost-of-Living increase for the three year period (January 1991 to January 1994) was 8.3%, almost 2% less than the City's offer which would be effective on July 1, 1993. **This offer of a 10% increase squares with the evidence presented at the hearing while a 16% increase defies all logic.**

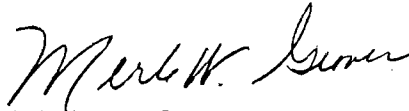
After thirty years of bargaining in the private and public sector it is impossible for me to understand the Arbitrator's decision which rewards this Union with an 8% increase at the start of the three year period and a total of 16% for the three year period based on the record.

I do not believe that the two arbitrator's decision complies with the mandate of Act 312; if for no other reason alone, their decision rests on comparables that do not meet the requirements of Section 9, of Act 312. I request that MERC appoint a new arbitrator to conduct a proper hearing in this case in accordance with the requirements of Act 312.

Many Michigan citizens believe that compulsory arbitration such as Act 312 should be expanded to cover other public employees, such as school teachers. I would strongly suggest that those citizens study this Opinion and Award as an example of how Arbitrators in Michigan can and do actually apply the provisions of Act 312. If this case is what the legislature had in mind when

they passed the law, and what the Michigan Employment Relations Commission feels is a legitimate implementation of that law then I can only say, that I sincerely hope that somewhere in heaven--**pity will be taken on the poor Michigan taxpayers.**

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Merle W. Grover".

Merle W. Grover

Employer Designee

ALICE L. BOYSE
Mayor

505 WEST VIENNA STREET
CLIO, MICHIGAN 48420

TELEPHONE 686-5850
Area Code 313

GEORGE N. ATKIN, JR.
City Administrator

ALICE E. GRIGAR
Clerk-Treasurer

February 12, 1991

Fraternal Order of Police
Dale Maxfield, Steward

RE: Negotiations

Dear Dale:

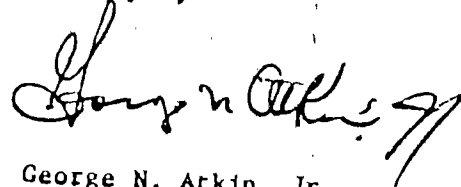
The contract between the City of Clio and the Fraternal Order of Police expires on July 1, 1991. Due to the fact that the City needs to have its budget prepared and available to the public by the first of May, and the City of Clio desires to modify the contract, it is requested that the City of Clio and the Fraternal Order of Police begin at once to negotiate the new contract. I have enclosed several dates, taking into the consideration you need some time to talk to your men.

March 6, 13, 20

April 3, 10, 17

Please let me know as soon as possible, before the calendar gets filled.

Thank you,



George N. Atkin, Jr.
City Administrator

GNA:mgk

CC: Ray Wallace



PETITION FOR ARBITRATION
MICHIGAN DEPARTMENT OF LABOR
Employment Relations Commission (MERC)

MEDIATION CASE NO.

L 91 J-0050

MEDIATOR

Judith Rhode

AUTHORITY : P.A. 312 OF 1969, AS AMENDED
COMPLETION: MANDATORY
PENALTY : CASE WILL NOT BE OPENED WITHOUT
USE OF THIS FORM

THE DEPARTMENT OF LABOR WILL NOT DISCRIMINATE
AGAINST ANY INDIVIDUAL OR GROUP BECAUSE OF RACE,
SEX, RELIGION, AGE, NATIONAL ORIGIN, COLOR, MARITAL
STATUS, HANDICAP, OR POLITICAL BELIEFS.

INSTRUCTIONS: PETITIONER SHALL CAUSE THE ORIGINAL PETITION TO BE SERVED ON THE OTHER PARTY OR ITS
REPRESENTATIVE, AND (4) COPIES AND A PROOF OF SERVICE SHALL BE FILED WITH MERC.

| | | | | | |
|--|--------------|-------------------|--|-------|---------------|
| 1. EMPLOYER NAME Clio-Vienna / Mr. George Atkins City Administrator | | | 1a. CHOSEN DELEGATE PER SECTION 4 OF ACT 312 (OMIT IF NOT KNOWN) | | |
| ADDRESS (STREET NO. AND NAME) 505 W. Vienna Road | | | NAME | | TELEPHONE NO. |
| CITY Clio- Vienna | STATE MI. | ZIP CODE 48420 | ADDRESS (STREET NO. AND NAME) | | |
| TELEPHONE NO. (INCLUDE AREA CODE) (313) 686-5850 | | | CITY | STATE | ZIP CODE |

| | | | | | |
|--|--------------|-------------------|--|--------------|---------------------------------|
| 2. NAME OF LABOR ORGANIZATION Labor Council MI. Fraternal Order of Police | | | 2a. CHOSEN DELEGATE PER SECTION 4 OF ACT 312 (OMIT IF NOT KNOWN) | | |
| ADDRESS (STREET NO. AND NAME) 667 E. Big Beaver, Suite 205 | | | NAME Raymond Wallace | | TELEPHONE NO. (517) 487-6349 |
| CITY Troy | STATE MI. | ZIP CODE 48083 | ADDRESS (STREET NO. AND NAME) 1919 N. East Street | | |
| TELEPHONE NO. (INCLUDE AREA CODE) (313) 524-3200 | | | CITY Lansing | STATE MI. | ZIP CODE 48906 |

| | | |
|--|--|-------------------------------------|
| 3. UNIT DESCRIPTION The Bargaining Unit shall consist of all full-time Officers of the Clio-Vienna Police Department, exclusive of the Chief of Police, the Assistant Chief of Police, and the Secretary of the Police Department. | NO. OF EMPLOYEES IN UNIT 8 | CONTRACT EXPIRATION DATE 6/30/91 |
| | DATE OF CERTIFICATION OF REPRESENTATIVE ISSUED BY THE MICHIGAN EMPLOY- MENT RELATIONS COMMISSION IN | |
| | CASE NO. | |
| DATE | | |

4. THE PETITIONER HAS ENGAGED IN GOOD FAITH BARGAINING AND MEDIATION, AND THE PARTIES HAVE NOT SUCCEEDED IN RESOLVING THE DISPUTED MATTERS.
THE FOLLOWING IS A STATEMENT OF ANY UNRESOLVED ISSUES IN DISPUTE AND THE FACTS RELATING THERETO:

(See Attached Sheet)

| | |
|--|--|
| 5. NO. OF MEDIATION MEETINGS HELD One (1) | 5a. DATES AND DURATION OF MEETINGS 5/16/91 Four (4) hours |
|--|--|

6. I DECLARE THAT I HAVE READ THE ABOVE PETITION AND THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

| | | |
|--------------------------------|--|---|
| SIGNATURE Richard R. Weiler | ADDRESS 667 E. Big Beaver, Suite 205 Troy, MI. 48083 | TELEPHONE NO. (INCLUDE AREA CODE) (313) 524-3200 |
|--------------------------------|--|---|

| | | |
|---------------------------------------|---|-----------------|
| SIGNATURE <i>Richard R. Weiler</i> | FILED BY <input type="checkbox"/> EMPLOYER <input checked="" type="checkbox"/> UNION | DATE 6/25/91 |
|---------------------------------------|---|-----------------|

#4.

UNION ISSUES

1. Agreement
2. Article #2 City Security
3. Article #4 City Rights
4. Article #5 Grievance Procedure
5. Article #6 Hours or Work and Overtime
6. Article #7 Seniority
7. Article #12 Holidays
8. Article #13 Vacations
9. Article #21 Rules and Regulations
10. Article #26 S. & A., Life, Hospital, Medical Insurance
and Retirement
11. Article #33 Terms of Agreement
12. Article #34 Wages
13. Retroactivity

CITY ISSUES

- | | |
|--|---|
| 1. Article 1. Recognition | 10. Article 17. Fire Arms |
| 2. Article 4. City Rights | 11. Article 23. Workers Compensation |
| 3. Article 5. Union Bargaining Committee | 12. Article 24. Equipment |
| 4. Article 7. Grievance Procedure | 13. Article 25. Court Time |
| 5. Article 8. Disapline and Discharge | 14. Article 26. S.& A., Life, Hospital, Medical Insurance and Retirement |
| 6. Article 9. Overtime | 15. Article 28. Milage |
| 7. Article 10. Seniority | 16. Article 29. Promotions |
| 8. Article 13. Vacation | 17. Article 33. Terms of Agreement |
| 9. Article 16. Supplemental Employment | |



CITY OF CLIO

"A Friendly Progressive City"
Genesee County, Michigan

ALICE L. BOYSE
Mayor

505 WEST VIENNA STREET
CLIO, MICHIGAN 48420

TELEPHONE (313) 686-5850
FAX (313) 686-0627

GEORGE N. ATKIN, JR.
City Administrator

ALICE E. GRIGAR
Clerk Treasurer

PATROLMEN NEGOTIATION PROGRESS July 31, 1991

To All Full-Time Clio-Vienna Patrolmen:

I am sending this letter to update you on the status of negotiations or, rather lack of negotiations, with the FOP.

There have been no meetings held with your representatives since May 16, 1991, when the state mediator was present for a four-hour meeting held on that date.

As you know, some thirty issues have been identified in the contract negotiations between the City and the FOP for negotiation.

The vast majority of these issues have never been discussed between the parties and there has been no attempt to reconcile any of the differences in most of the issues.

The primary issue at odds, at the present time, is the demand from the FOP that they represent the sergeants (who are supervisors) without any attempt on the part of the FOP to provide some kind of documentation or signature cards establishing their right to represent these supervisors.

Since the City refused to bargain on this issue without adequate documentation, the FOP broke off the meetings and on June 25, filed a petition for arbitration with the State of Michigan. This petition alleges over thirty-three areas of dispute; again, most of which have not been discussed.

Subsequent to the filing of this petition, the City has received evidence that the sergeants desire to be represented by another Union and in order to resolve this conflict, the City has filed a petition with the State of Michigan requesting an election to make a determination of this issue.

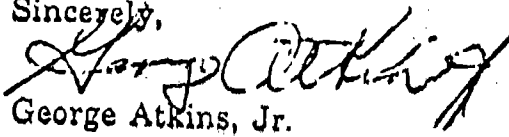
I feel it is extremely unfortunate that negotiations have been stopped primarily over one issue, but there is nothing we can do to force the FOP to bargain in Good Faith and try to resolve the other issues without wasting the state's time in attempting to assign an arbitrator to resolve issues that have never been negotiated.

Page 2
July 31, 1991

While we regret the delay, it is our position, and has always been our position, that we stand ready to meet and negotiate in Good Faith with the FOP over the unresolved issues. If they cannot be resolved by Good Faith negotiations, then they should be submitted to mediation and if need be, 312 arbitration.

It is unfortunate that you do not have a new contract, but we cannot force the FOP to negotiate in Good Faith.

Sincerely,

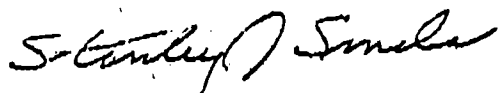
A handwritten signature in cursive script, appearing to read "George Atkins, Jr.", written in dark ink.

George Atkins, Jr.

GA

8-1-91

This letter was stapled to all the full time Clio-Vienna police department payroll checks on 8-1-91.



Stanley J. Smela F.O.P. Steward
Clio-Vienna P.D.

G

CLIO-VIENNA POLICE DEPARTMENT
PAY RAISE HISTORY

PART-TIME OFFICERS

| | | |
|---------|-------------|-----------------------------------|
| '91-'92 | 4% = \$9.00 | (Last year of a 3 year contract) |
| '92-'93 | 2% = \$9.18 | (First year of a 3 year contract) |
| '93-'94 | 5% = \$9.64 | |
| '94-'95 | 3% = \$9.93 | |

NOTE: The part-time and full-time contracts off set by one year. The comparable years are '91,2,& 3.

SERGEANTS

| | | |
|--------------------|------------------|------------------------|
| '92-(1st 6 months) | 4.25% = \$30,000 | (New contract, AFSCME) |
| '92-'93 | 3.33% = \$31,000 | |
| '93-'94 | 3.23% = \$32,000 | |

NOTE: Sergeants negotiated for dollars in their first contract and not a specific percentage raise. The only negotiated percentage was the 5% above patrol clause.

FULL-TIME PATROL WAGE SCALE

| OLD CONTRACT BASE | 2% '91-'92 | 3% '92-'93 | 5.5% '93-'94 |
|-------------------|------------|------------|--------------|
| 0-1yr \$17,500 | \$17,850 | \$18,386 | \$19,397 |
| 1 yr \$18,000 | \$18,360 | \$18,911 | \$19,951 |
| 2 yr \$19,500 | \$19,890 | \$20,487 | \$21,614 |
| 3 yr \$23,000 | \$23,460 | \$24,164 | \$25,493 |
| 4 yr \$24,000 | \$24,480 | \$25,214 | \$26,601 |
| 5 yr \$25,000 | \$25,500 | \$26,265 | \$27,710 |
| 6 yr + \$26,357 | \$26,884 | \$27,691 | \$29,214 |

ARTICLE XV

WAGE SCALES

Section 1:

The Employer shall pay wages to the employees in the following manner:

| | 1992-93 | 1993-94 | 1994-95 |
|---------|---------|---------|---------|
| Level 1 | 6.62 | 6.95 | 7.16 |
| Level 2 | 6.89 | 7.24 | 7.46 |
| Level 3 | 7.46 | 7.83 | 8.07 |
| Level 4 | 8.05 | 8.45 | 8.70 |
| Level 5 | 8.61 | 9.04 | 9.31 |
| Level 6 | 9.18 | 9.64 | 9.93 |

Section 2: Overtime

a. The hours worked in any one shift shall be determined by the full-time officer's contract irrespective of the time of day. Overtime will be paid at $1\frac{1}{2}$ times the regular rate for time in excess of the maximum.

b. Hours worked in excess of the maximum as result of shift changes will be paid at their regular rate.

c. All other overtime will be paid in accordance with the "Fair Labor Standards Act".

Section 3. The City shall compensate the employees for unused sick and/or personal leave days at their regular rate. Such compensation shall become due and payable at the end of their seniority year and shall not be accumulated thereafter.

ARTICLE XXV MILEAGE ALLOTTED

Section 1. Employees shall be reimbursed for the use of a personal vehicle on authorized City business at a rate established by City policy.

ARTICLE XXVI TERMS OF AGREEMENT

Section 1. This Agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least ninety (90) days prior to the termination date that it desires to modify this Agreement. In the event such notice is given, negotiations shall begin at mutually agreed date and time. If such notice is given, this Agreement shall continue in full force until such time a new Agreement is executed.

Section 2. Special meetings between the City and the Union may be held at any time either party submits a written request to the other party. Such request must specify the item or items to be discussed and no other business except that set forth in the request shall be discussed at such meetings.

Section 3. This Agreement shall become effective when ratified by both parties and shall terminate on June 30, 1994.

ARTICLE XXVII WAGES

Section 1. Wages for Sergeants will be as follows:

- Not less than 5% above the current contract pay scale for
- the Senior patrolman of the Clio-Vienna Police
- Department, or as listed below, whichever is the greater.

| | |
|--------|----------|
| 1-1-92 | \$30,000 |
| 7-1-92 | \$31,000 |
| 7-1-93 | \$32,000 |

Section 2. Sergeants assigned to investigations will receive \$1,000.00 per year clothing allowance, paid quarterly.

Patrol sergeants uniforms and cleaning will be provided.

ARTICLE XXVIII TERMINATION OF EMPLOYMENT

Section 1. Upon termination of employment with the Clio-Vienna Police Department, employees will be paid accrued vacation and sick and/or personal leave days benefits only to the date of termination. For example, if an employee works four (4) months after his seniority date, he will be compensated for 1/3 of the vacation and sick and/or personal leave days he has earned for the following seniority year.

Section 2. The employee will also be paid for unused vacation and sick and/or personal leave days he had earned during the previous seniority year.

ARTICLE XXIX VALIDITY

Section 1. In the event that any Article or Section of this Agreement shall be declared to be invalid or illegal, such declaration shall in no way affect the validity or legality of the other Sections or Articles. Any such Section declared invalid or illegal shall be re-negotiated to conform to the then current law.

ARTICLE XXX AMENDMENTS

Section 1. It is understood and agreed that this Agreement may be amended or modified upon mutual agreement between the City and the Union.



JOHN ENGLER, Governor

DEPARTMENT OF LABOR

LOWELL W. PERRY, Director

F
BUREAU OF EMPLOYMENT RELATIONS
STATE OF MICHIGAN PLAZA BUILDING
1200 SIXTH AVENUE - 14TH FLOOR
DETROIT, MICHIGAN 48226
TEL. (313) 256-3540
FAX. (313) 256-3090

November 29, 1993

Merle W. Grover
Grover & Associates, Inc.
314 West Genesee Avenue
Saginaw, MI 48602

Kenneth W. Zatkoff, Atty.
John A. Lyons, P.C.
675 E. Big Beaver Road, Suite 105
Troy, MI 48063

Dear Sir/Madam:

RE: Clio-Vienna Police Department, City of Clio
Case No. C91 H-200

Enclosed please find the Decision and Recommended Order of the Administrative Law Judge in the above-captioned matter.

Pursuant to Section 16 of Act 336 of the Public Acts of 1947, as amended, any party to the proceedings may file written exceptions to this Recommended Order with the Michigan Employment Relations Commission, at the above address or at the Commission's office located at 201 N. Washington Square, P.O. Box 30015, Lansing, Michigan 48909. Exceptions in this case must be received at a Commission office by the close of business on December 22, 1993. An original and four copies of the exceptions must be filed with the Commission and a copy served on the opposite party or parties. A statement of service must accompany the exceptions.

If exceptions are filed, cross exceptions or a brief in support of the Administrative Law Judge's Decision and Recommended Order may be filed by any other party within 10 days of the date of mailing or other service of the exceptions.

If no exceptions are filed within the above period, or within such further period as the Commission may authorize, the Recommended Order will become the Order of the Commission.

Very truly yours,

BUREAU OF EMPLOYMENT RELATIONS

Shlomo Sperka, Director
SS/lis

Enclosure

cc: City of Clio, P.D.
Richard R. Weiler, Richard R. Weiler
Ray Wallace
AFSCME, Local 3584-04, and AFSCME, Kevin Bramlet

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CLIO-VIENNA POLICE DEPARTMENT,
CITY OF CLIO,
Public Employer-Respondent

- and -

Case No. C91 H-200

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE (FOP),
Labor Organization-Charging Party

APPEARANCES:

Grover & Associates, Inc., by Merle W. Grover, for Public Employer
John A. Lyons, P.C., by Kenneth W. Zatkoff, Atty, for Charging
Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This matter was heard at Detroit, Michigan on April 2, 1992, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to a complaint and notice of hearing dated August 28, 1991, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCLA 423.216, MSA 17.455(16). Based upon the record, including the briefs filed by June 24, 1992, the undersigned makes the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

Charge and Background Matters:

The unfair labor practice charge was filed on August 8, 1991, by the Union, FOP, the bargaining representative of a bargaining unit of police officers in the Clio-Vienna Police Department. The department provides police services for the City of Clio and the Township of Vienna under the hegemony of the City. The charge alleges that the Respondent City violated its bargaining and other obligations under PERA by a number of incidents beginning in approximately April 1990. The major allegations that were the subject of the hearing relate to Respondent's alleged refusal to negotiate for sergeants in the FOP unit, and the issuance of a communication directly to unit members on August 1, 1991.

On September 17, 1991, Respondent filed an answer to the charge, contending that most of the preliminary incidents were barred by the six months limitation period under Section 16(a) of PERA. As for the allegations litigated at the hearing, Respondent admitted the underlying facts but denied the legal conclusions of a violation of PERA. The FOP filed an amendment to its charge on February 3, 1992, alleging that the City had on November 14, 1991, notified it that recognition for the classification of sergeant in the FOP unit had been granted to another labor organization. The undersigned notified the parties by letter that the labor organization granted recognition must be named and served prior to the hearing. This was not done, but at the hearing the organization granted recognition was revealed to be Local 3584-04, American Federation of State, County and Municipal Employees (AFSCME). This organization was notified by the undersigned of the hearing and issues by letter dated April 6, 1992, with copies of relevant pleadings.

The only response from AFSCME was to forward on April 30, 1992 copies of the four authorization cards signed by the sergeants on July 1, 1991 on its behalf. The signing of these cards had been discussed on the record at the hearing, but the date of signing was unavailable. By letter dated May 11, 1992 the parties were notified that the copy of the signed authorization cards would be admitted into the record as an exhibit, absent any objection. No objection to the document was received.

Factual Findings:

For some years the FOP has been the collective bargaining representative of a nonsupervisory unit of police officers of the Clio-Vienna Police Department with the City of Clio acting as the Employer. The department provides police services for both the City and the Township divided into two districts, one a 12 square mile area and the other a 24 square mile area. Each area is assigned its own patrol car for routine policing purposes.

The most recent contract covering the unit ran from July 1, 1988 through June 30, 1991. The recognition clause of the contract states that it covers all "full-time officers", excluding the chief, assistant chief, and secretary. During the events involved herein there was no assistant chief. The contract provides that the ranks of sergeant and detective receive an additional stipend, and there is an article dealing with promotional procedure above the rank of patrol officer.

At the time of the events leading to this charge the department was composed of the chief and eight full-time officers, including one detective and a second detective on loan to an auto theft detail not located in the department and paid for by the State. There were also eight regular part-time officers, out of an authorized 12 such officers, who substitute for the full-time

officers on weekends and their days off. For reasons not explained in the record these part-time officers are not included in the FOP unit, but they are covered by some type of contract with the Employer. At that time the only recognized supervisor over the entire department was the chief.

In the early part of 1990 the chief of police decided he wanted to restructure the department and add one or two positions at the sergeant level in addition to the two existing detective positions. The chief testified that he wanted to have a separate bargaining unit of sergeants "for the purposes of discipline and other matters." He also testified he did not want to have to retest the two detectives who had just gone through the procedure under the contract. After discussing the matter with the City administrator and council, the chief sent the Union the following letter on May 4, 1990:

I am anticipating the creation of one or two Sergeants positions within the Police Department.

Before I can take any action I need to make some changes in the promotional procedure section of the contract and possibly some other changes. Two that come to mind are compensation and administrative input (percentage).

Please consider these and any other concerns your union may have and we will get together the week of May 14th.

After the above request the parties engaged in negotiations which led to a letter of agreement dated September 4, 1990, amending the collective bargaining agreement. The letter of agreement modified the contract articles dealing with overtime, promotional procedure, and wages, all in regard to the sergeant classification. Under this agreement the Employer was permitted to designate the two existing detectives as detective sergeants. On the same date the City Commission created two new patrol sergeant positions and provided for posting the positions under the terms of the contract. The posting made reference to "supervisory duties" without elaboration, and referred to the position "as supervisor or reporting officer", again without elaboration. The conclusion of the posting stated, "The incumbent reports directly to the Chief of Police, and as needed performs the duties of, and administers the authority of the position of Chief of Police."

The six full-time patrol officers took the examination, and two of them were promoted by the chief to sergeant on November 7,

1990. The two new sergeants were assigned as patrol supervisors of the second and third shifts, and the detective sergeant was placed in charge of the day or first shift. The fourth sergeant remained on the auto theft detail throughout this proceeding. According to the Employer, all of the sergeants are supervisory employees with the authority to discipline or suspend other officers, monitor and evaluate job performance, carry pagers and attend supervisory staff meetings, and handle all scheduling without the approval of the chief, including authorization of overtime and days off. Examples of discipline of both full and part-time officers were placed into the record by the Employer. With respect to hiring of new officers, the sergeants investigate, process, and evaluate all applications, including a "ride-along" in a patrol car, and then make a recommendation to the chief. The chief testified that he follows this recommendation after a short interview with the applicant.

According to the City, during the 1990 negotiations leading to the letter of agreement it was understood by the parties that the sergeants were to be supervisory employees, and that at the end of the present contract in 1991 the sergeants would be taken out and placed into a separate unit. Despite this understanding, a dispute arose between the nonsupervisory officers and the sergeants in December 1990 relative to whether sergeants were subject to the contract in regard to shift preference by seniority. When grievances were filed on the issue of shift starting times between a sergeant and a patrol officer, the parties clashed over the question of whether the sergeants were still covered by the contract. The grievances ultimately went to arbitration, which was won by the Union in an opinion dated October 24, 1991. The arbitrator held that the letter of agreement did not modify the recognition and shift preference by seniority clauses, so the sergeants were still covered by the contract to that extent, while at the same time he took notice of the fact that their unit status was pending before this Commission.

The City wrote to the Union steward on February 12, 1991 requesting negotiations on the contract expiring on July 1. The City noted that it wished to modify the contract, and that it wished to enter into negotiations at once because it had to have its budget prepared by the first of May. The first meeting of the parties was held on March 6, at which time they discussed and agreed upon the recognition of two units, a nonsupervisory unit of police officers, and a supervisory unit of sergeants. The Employer, however, would not agree with the demand of the Union that the two units be covered by one and the same contract. This adamant demand by the Union ultimately led to the breakdown of the negotiations and the disaffection of the sergeants, who later turned to AFSCME for representation. The Employer also began asking the Union to prove its representative status among the sergeants, even though it continued to negotiate with the FOP in their regard until AFSCME appeared on the scene.

The parties met again on March 13, with the City insisting that it would not negotiate regarding the sergeants if they were under the same contract as the patrol officers. The City argued that the sergeants had power to discipline and would be the first step in the grievance procedure. The Union insisted that one contract must cover all the officers, and if the Employer wanted the split unit it should file a unit clarification proceeding. A third meeting was held in April without any progress on this issue, though the parties did continue to negotiate regarding the patrol officers. The sergeants agreed with the Employer's demand for a separate unit with a separate contract, and this division led to problems within the bargaining unit. Mediation was requested and such a meeting was held on May 16. The impasse over the two contract issue led to the Union filing a request for Act 312 arbitration in the combined unit on June 26, 1991.

The four sergeants signed cards on July 1, 1991, authorizing AFSCME to represent them for purposes of collective bargaining. This led to the filing by AFSCME on July 18 of a petition for election in Case No. R91 G-162, and a similar petition by the Employer in Case No. R91 G-166 on July 22. Both petitions were administratively dismissed on August 21 because of the Act 312 bar after objection by the FOP to their processing. The Employer continued to collect agency shop dues from the sergeants on behalf of the FOP until it entered into a contract with AFSCME. Notice of the voluntary recognition of AFSCME was given to the FOP by a letter from the City administrator dated November 14, 1991. A collective bargaining agreement covering the sergeants was entered into by the City and AFSCME Local 3584-04, Council 25, effective January 1, 1992. A protest by the FOP relative to the implementation of the shift assignment award of the arbitrator was rejected by the City by letter dated December 5, 1992, in which it again noted the sergeants were not in the FOP unit and that recognition had been granted to AFSCME in a separate supervisory unit.

On July 31, 1991 the City administrator attached a letter to the paychecks of the employees issued on August 1 to update them on "the status of negotiations, or rather lack of negotiations, with the FOP." The letter summarized negotiations from the Employer's point of view, noting that some 30 issues remained on the table from the last meeting on May 16; that a majority of these issues had not been discussed by the parties; that the primary issue related to the representation of the supervisory sergeants and the refusal of the FOP to document its representative status; that in view of the refusal of the City to bargain regarding the sergeants without such documentation the FOP broke off negotiations and filed the petition for arbitration; that subsequently the City received evidence that the sergeants wished to be represented by another labor organization and the City was petitioning the State for an election; that the FOP was not bargaining in good faith and was wasting the State's time in arbitrating issues that had not been

negotiated; and that the Employer regretted the delay and stood ready to negotiate in good faith with the FOP.

Discussion and Conclusions:

For its proposition that the Employer has violated PERA in this case, the FOP in its brief relies on the allegation that the four new sergeant positions created in November 1990 are not supervisory and remained part of its unit. If this is so, then the Employer's insistence on a separate unit and the recognition of AFSCME as the bargaining agent of that unit clearly violated PERA. Curiously, neither party explicitly delineated this as the issue during the factual development of this case. While the Employer intended from the start to make the sergeant positions supervisory, it agreed to leave them in the unit until negotiations on the new contract in the Spring of 1991; and it muddled the waters at that time by asking the FOP for documentation of its representative status over the sergeants. Obviously, it had no right to ask an incumbent union to prove its representative status, which is presumed to continue absent circumstances that do not exist in this case. The request for such proof of representative status, however, was not insisted upon by the Employer as a condition of recognizing the FOP as the bargaining agent of the sergeants in a separate supervisory unit, since recognition of the FOP continued at least until the Employer was confronted with the demand for recognition by AFSCME.

The FOP on its part had in March, 1991 reached agreement with the Employer on recognizing it as the bargaining agent for two separate units, one of patrol (nonsupervisory) officers and a second of sergeants, with at least the implicit understanding that the sergeants were a supervisory unit. The entire agreement fell apart due to the stubborn and inexplicable position of the FOP that it would not accept separate contracts for the two units but both units must be included in one document. The only hint in the record as a reason for this position was the dispute in December, 1990 over the assignment of shift hours by strict seniority, which hampered the Employer in its assignments of sergeants separate from the patrol officers. Given the position of the Commission that where the same labor organization represents both supervisory and nonsupervisory units of the same employer the units must be separately administered, the position of the Employer that there must be separate contracts is reasonable, assuming the sergeants are supervisors. See Southfield Public Safety, 1993 MERC Lab Op 36, 42; Wayne County, 1991 MERC Lab Op 219, 222, 226. Thus, the FOP had in its grasp representative status over two units that it had already agreed were appropriate until its insistence on a single contract led to the breakdown of negotiations and the disaffection of the sergeants in July, 1991 to another bargaining agent. In effect, the FOP by its stance on separate contracts managed to snatch defeat out of the jaws of victory and ignores its earlier agreement on separate units.

The question of supervisory status of shift supervisors in small police departments has always been a difficult and thorny one for the Commission. Compare, most recently, Blissfield Police Dep't, 1988 MERC Lab Op 528, 530-531, where supervisory status was found, with City of Woodhaven, 1989 MERC Lab Op 701, 703, and Jonesville Police Dep't, 1989 MERC Lab Op 513, 516, where supervisory status was not found. Since shift supervisors almost always work their shift the same as nonsupervisory officers, there is not much in their usual duties to distinguish them from the employees they supervise. The question becomes whether an employer has in fact delegated such authority to the classification in question so that it can effectively and responsibly direct other employees and have at least a limited affect on their wages, hours, working conditions, or tenure of employment. I find that in this case such authority has been delegated to the sergeant classification by the Employer, and that the sergeants are supervisory employees. Southfield, supra, 41-42.

The sergeants have been delegated authority to do the initial screening for employment of new officers, who are referred to the chief only after their application has been investigated and they have had a "ride-along" with a sergeant. The sergeants make up the work schedule, may and have disciplined employees, grant time off, and in general are in charge of their particular shift. The fact that one of the sergeants is on the auto theft detail away from the department does not negate the fact that he possesses the same authority as the three other sergeants. Should he return to the department and there be any doubt as to whether his assignment is supervisory in nature, Charging Party can always file a timely petition for unit clarification to resolve the matter. The FOP objection on the basis of the ratio of supervisors to nonsupervisors does not take into consideration the at least eight regular part-time officers who must be counted for such purposes. Thus, the chief and four sergeants, five supervisors in all, must be balanced against not only the four remaining full-time officers, but also the eight regular part-time. While five supervisors in an operation of 17 or so employees may be somewhat high, the situation of the police chief being the only supervisor over the entire department represents the opposite extreme, especially in a paramilitary operation functioning around the clock on three shifts, seven days a week, covering a 36 square mile area divided into two districts.

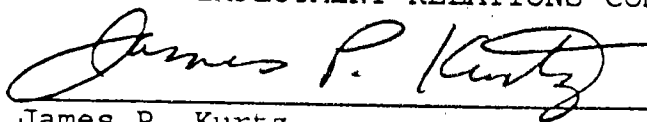
In conclusion, I find that the sergeants are supervisory employees, and that the Employer did not violate its bargaining obligation under PERA by insisting on a separate contract with the FOP to cover said unit. I further find that the Employer was not responsible for the sergeants turning to AFSCME for representation after the breakdown in negotiations with the FOP. Therefore, the Employer legitimately recognized AFSCME as the bargaining agent of the supervisory sergeants based on their show of interest. As for the July 31, 1991 letter to the employees by the City, I find no

threats or coercive statements therein, and there is nothing to indicate that it was designed to evade the Employer's bargaining obligation toward the FOP. On the contrary, the City laments in the letter what it considers to be the refusal of the FOP to bargain with it. In any event, it is not the function of this agency to censor or police the propaganda of the parties issued in connection with their disputes. Melvindale-Northern Allen Park P.S., 1992 MERC Lab Op 400, 408. Accordingly, I recommend that the following order issue:

ORDER DISMISSING CHARGES

Based upon the findings of fact and conclusions of law set forth above, the charges in this matter are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



James P. Kurtz
Administrative Law Judge

DATED: NOV 29 1993

POLICE OFFICERS LABOR COUNCIL

February 3, 1994

Mr. George Atkins
City Manager
505 W. Vienna
Clio, Michigan 48420

RE: Vienna Township contract with Sheriff's Department.

Dear Mr. Atkins,

It has come to my attention that the Township of Vienna has given the City of Clio notice that the Township will not re-new the contract between the Township and the City for Law Enforcement protection.

I have also been advised by the Vienna Township Supervisor, Mr. Veral Newman (per my request for information) that the Township has reached a tentative Agreement with the Sheriff's Department for Law Enforcement protection.

I am concerned about the present officers in the department that represented by the Police Officers Labor Council and the impact that this situation may bring to the bargaining unit.

Please advise me of the City's plans for the officers represented by the Police Officers Labor Council due to the Township's actions.

I await to hear from you on this most important matter.

Sincerely,

Ray Wallace

Ray Wallace
1919 N. East Street
Lansing, Mi. 48906
517-487-6349

cc D. Maxfield
neg file ✓

667 E. Big Beaver
Suite 205
Troy, MI 48063
(313) 524-3200



CITY OF CLIO
"A Friendly Progressive City"
Genesee County, Michigan

ALICE L. BOYSE
Mayor

505 WEST VIENNA STREET
CLIO, MICHIGAN 48420

TELEPHONE (313) 686-5850
FAX (313) 686-0627

GEORGE N. ATKIN, JR.
City Administrator

ALICE E. GRIGAR
Clerk-Treasurer

FEB 08 1994
FEB 09 1994

February 7, 1994

Ray Wallace
1919 N. East St.
Lansing MI 48906

Dear Mr. Wallace:

The City of Clio has just recently been advised of the intent of Vienna Township.

The City of Clio's biggest concern is the Police Officers that this will effect.

The City is to meet with the Genesee County Sheriff's Department to discuss the possible transfer of the Officers to the Sheriff's Department. When we are able to get some assurance of the future of these officers, we will be contacting all three unions that represent our Department.

Please be assured that the contract between Clio City and Vienna Township will expire on June 30, 1994.

We will let you know as soon as possible.

Sincerely,

George N. Atkin, Jr.
City Administrator
City of Clio

GNA/jae



CITY OF CLI
"A Friendly Progressive City,"
Genesee County, Michigan

505 WEST VIENNA STREET
CLIO, MICHIGAN 48420

TELEPHONE (313) 686-5850
FAX (313) 686-0627

ALICE L. BOYSE
Mayor

GEORGE N. ATKIN, JR.
City Administrator

ALICE E. GRIGAR
Clerk-Treasurer

February 24, 1994

Police Officers Labor Council
667 E. Big Beaver
Suite 205
Troy MI 48083

ATTN: Ray Wallace

RE: Bargaining Agreement

Dear Mr. Wallace:

Effective June 30, 1994, at midnight, the Clio-Vienna Police Department will cease to exist; therefore, the Collective Bargaining Agreement covering the full-time officers will, by necessity, expire.

Sincerely,

George N. Atkin, Jr.
City Administrator
City of Clio

CNA/jae

CC: Dale Maxfield

COST OF LIVING

| | | | |
|------------|-------|------------|------|
| 1990 (Jan) | 127.4 | | |
| 1991 (Jan) | 134.6 | | |
| | | % increase | 5.7% |
| 1992 (Jan) | 138.1 | | |
| | | % increase | 2.6% |
| 1993 (Jan) | 142.6 | | |
| | | % increase | 3.2% |
| 1994 (Jan) | 146.2 | | |
| | | % increase | 2.5% |

Source: CPI-U U. S. Cities Average
All Urban Consumers
1982-84 Survey of Consumer Expenditures
(1982-84 = 100)

CLIO VIENNA
Act 312

Union Ex. _____

BASE WAGE
TOP PAID PATROLMAN
(1991)

| <u>Jurisdiction</u> | <u>Jan. 1</u> | <u>July 1</u> |
|---------------------|---------------|---------------|
| Flushing Twp. | 25,000 | 26,000 |
| Genesee Twp. | 30,867 | 30,867 |
| Montrose | 23,847 | 25,278 |
| Mt. Morris Twp. | 29,315 | 29,315 |
| Clio Vienna | 26,357 | 26,357 |

For information:

| | | |
|-------------|--------|--------|
| Genesee Co. | 34,910 | 34,910 |
| MSP | 36,268 | 36,268 |
| Saginaw Co. | 30,434 | 30,434 |
| Tuscola Co. | 24,224 | 24,848 |

Source: Collective Bargaining Agreements

CLIO VIENNA
Act 312

Exhibit ____

BASE WAGE
TOP PAID PATROLMAN
(1992)

| <u>Jurisdiction</u> | <u>Jan. 1</u> | <u>July 1</u> |
|---------------------|---------------|---------------|
| Flushing Twp. | 26,000 | 27,040 |
| Genesee Twp. | 31,793 | 31,793 |
| Montrose | 25,278 | 26,794 |
| Mt. Morris Twp. | 30,634 | 32,166 |
| ----- | ----- | ----- |
| Clio Vienna | 26,357 | 26,357 |
| ----- | ----- | ----- |
| For information: | | |
| Genesee Co. | 36,163 | 36,163 |
| MSP | 37,709 | 37,709 |
| Saginaw Co. | 32,582 | 32,582 |
| Tuscola Co. | 24,848 | 24,848 |
| ----- | ----- | ----- |

Source: Collective Bargaining Agreements

CLIO VIENNA
Act 312

Union Ex. _____

BASE WAGE
TOP PAID PATROLMAN
(1993)

| <u>Jurisdiction</u> | <u>Jan. 1</u> | <u>July 1</u> |
|---------------------|---------------|---------------|
| Flushing Twp. | 27,040 | 27,310 |
| Genesee Twp. | 32,747 | 32,747 |
| Montrose | 26,794 | 26,794 |
| Mt. Morris Twp. | 32,166 | 34,660 |
| ----- | | |
| Clio Vienna | 26,357 | 26,357 |
| ----- | | |
| For information: | | |
| Genesee Co. | 36,163 | 36,163 |
| MSP | 37,709 | 37,709 |
| Saginaw Co. | 32,582 | 32,582 |
| Tuscola Co. | 24,848 | 25,368 |
| ----- | | |

Source: Collective Bargaining Agreements



TO PROTECT
AND SERVE

CLIO-VIENNA POLICE DEPARTMENT

505 WEST VIENNA STREET
CLIO, MICHIGAN 48420

• ADMINISTRATIVE (313) 686-5010

• FAX (313) 686-0627

• POLICE SERVICES 911

CHIEF DALE W. MOORE

CITY OF CLIO

FINAL OFFER

FULL-TIME PATROL WAGE SCALE

| OLD CONTRACT BASE | 0% '91-'92 | 0% '92-'93 | 10% '93-'94 |
|-------------------|------------|------------|-------------|
| 0-1yr \$17,500 | \$17,500 | \$17,500 | \$19,250 |
| 1 yr \$18,000 | \$18,000 | \$18,000 | \$19,800 |
| 2 yr \$19,500 | \$19,500 | \$19,500 | \$21,450 |
| 3 yr \$23,000 | \$23,000 | \$23,000 | \$25,300 |
| 4 yr \$24,000 | \$24,000 | \$24,000 | \$26,400 |
| 5 yr \$25,000 | \$25,000 | \$25,000 | \$27,500 |
| 6 yr + \$26,357 | \$26,357 | \$26,357 | \$28,992 |

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
ACT 312 COMPULSORY ARBITRATION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,

Union,

-and-

MERC Act 312
Case No: L91 J-0050

CITY OF CLIO VIENNA,

Employer.

UNION'S LAST BEST OFFER

ARTICLE XXXIV - WAGES:

Top Pay

1st year: 1991-92 - effective 7/1/91 - \$28,500 (12.8%)

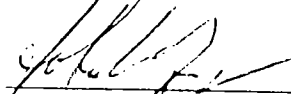
2nd year: 1992-93 - effective 7/1/92 - \$29,750 (4.3%)

3rd year: 1993-94 - effective 7/1/93 - \$31,000 (4.2%)

This offer is based on:

1. P. 25 of the Collective Bargaining Agreement, Article XXXIV, Wages, Section 3. Sergeants were paid \$30,000 (1/1/93), \$31,000 (7/1/92) and \$32,000 (7/1/93).
2. The fact that this is the final payroll for the Employer, and in effect the last checks for the employees.

Respectfully submitted,



John A. Lyons (P16901)
Attorney for Union
675 E. Big Beaver, Ste. 105
Troy, MI 48083
(810) 524-0890

Dated: April 25, 1994