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

In the Matter of the Act 312
Arbitration Between:

CITY OF DEARBORN

MERC CASE NO. D90 G-1067

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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Dearborn, City

ARBITRATION PANEL'S FINDING OF
FACT, OPINION AND AWARD

APPEARANCES:

FOR THE CITY OF DEARBORN:

FOR POLICE OFFICERS ASSOCIATION
OF MICHIGAN:

Richard F. Cox, Personnel
Director

William Birdseye, POAM

This is an interest arbitration panel pursuant to Act 312 of Public Acts of 1969, as amended, MCLA 423.231. Gary Pushee is the Delegate of the Police Officers Association of Michigan (POAM). Richard Cox is the Delegate for the City of Dearborn. George T. Roumell, Jr., the undersigned, is the selected neutral Chairman.

The City and POAM Delegates have waived signature to this Opinion. They have agreed, with the concurrence of the parties, that the neutral Chairman's signature will represent the majority opinion of the Panel. At the end of the Opinion, the Chairman will indicate the concurrence and the dissent.

The City's employees are represented by several Unions. There are also unrepresented employees. Teamsters Local 214

represents the general employees (Operative Unit) as well as a Clerical Unit. There is a Supervisory, Technical and Professional Employees Union of the City of Dearborn, a Nurses Unit, and an Executive and Administrative Unit Salaried Plan (unrepresented). In addition, the Police Officers Association of Michigan represents the uniformed members of the Police Department.

For some period of time the Dispatchers and Radio Operators employed in the Police Department were represented by a union, unaffiliated with any of the other City unions, including the POAM, which had its own Collective Bargaining Agreement. Some time prior to the current negotiations, the Dispatchers and Radio Operators were accreted to the POAM non-supervisory bargaining unit.

The various collective bargaining agreements between the City and the Unions representing its employees were expiring on June 30, 1990, necessitating the City to bargain with the various Unions in an effort to reach successor agreements. Because of the accretion of the Dispatchers to the POAM Unit, the City and the POAM agreed in part:

The parties recognize that the contract shall remain designated as Part I covering non-supervisory police and Part II covering Police Dispatchers and Radio Operators.

However, the parties hereby agree to separate the process of collective bargaining including mediation and petition of Act 312 for Parts I and II as referenced above.

In August, 1990, the City and the POAM reached agreement as to the non-supervisory police, namely, Part I. Among the Agreements the POAM reached on behalf of the

non-supervisory police was a change in longevity. Prior to the 1990-92 Agreement, the police longevity provided:

ARTICLE XXXVII
LONGEVITY PAY

37.1: The Longevity Pay Schedule for Police employees in this unit shall be as follows through November 30, 1987 for payment in December, 1987:

<u>Years of Service Completed</u>	<u>Amount of Longevity Pay</u>
5 through 9 years	\$250.00
10 through 14 years	350.00
15 through 19 years	450.00
20 through 24 years	550.00
25 years and over	650.00

Effective December 1, 1987, for payment in December, 1988, and annually thereafter, the longevity pay schedule shall be as follows: (this schedule applicable to active employees on the payroll as of the date of the Act 312 Arbitration Award, June 21, 1989)

<u>Years of Service Completed</u>	<u>Amount of Longevity Pay</u>
5 through 9 years	\$400.00
10 through 14 years	500.00
15 through 19 years	600.00
20 through 24 years	700.00
25 years and over	800.00

As a result of the 1990 negotiations, the City agreed to convert from a flat rate amount for longevity to a percentage amount.

Thus, the 1990-92 Police Agreement provided:

37.1 Effective December 1, 1990 for payment in December, 1990, the Longevity Pay Schedule for Police employees in this unit shall be based on the percentage rate on the maximum base rate of Twenty-two Thousand Five Hundred dollars (\$22,500) in accordance with the formula below.

Effective December 1, 1991 for payment in December 1991, and annually thereafter, the percentage shall be computed on the maximum base rate of Twenty-five

Thousand Dollars (\$25,000) in accordance with the formula as follows:

<u>Years of Service Completed</u>	<u>Percentage</u>
5 through 9 years	2.0%
10 through 14 years	4.0%
15 through 19 years	6.0%
20 years and over	8.0%

The 1990-92 Agreement with the non-supervisory police was effective July 1, 1990. The longevity provisions were effective in the year the Agreement became effective, namely, in 1990. Following tradition with the police, the longevity payments were made in December of each year.

The non-supervisory police agreement was the first agreement reached by the City with any of the Unions representing its employees. The change in the police agreement from a flat rate to a percentage rate in calculating longevity payments raised questions with other bargaining units who apparently were seeking a similar provision, which the City was resisting.

Prior to 1990, the Local 214 Agreement for the Operative Unit, as did the police Agreement, provided for a flat sum payment of longevity. This payment schedule was as follows:

<u>Years of Service Completed on Anniversary Date</u>	<u>Amount of Longevity Pay</u>
5 through 9 years	\$421.00
10 through 14 years	454.00
15 through 19 years	487.00
20 through 24 years	521.00
25 years and over	650.00

With the exception of the 5 through 9 year category, by 1987 the police flat payment was higher than the Local 214 Operative Unit

payment.^{1/} As with the police, the 214 Operative Unit longevity payment was made on or about December 1 of each year.

The other bargaining units had the same flat rate payment schedule as did Teamsters 214 except that the Clerical Unit payments were based upon the employee's anniversary date as was the case with the Nurses' Unit.

Similarly, the Dispatchers and Radio Operators unit, then represented by an independent union, had the same longevity payments as represented by the Teamsters 214 Agreements and other Agreements that the City had with Unions representing its employees. The Dispatchers' contract provided for payment on the anniversary date. The only difference in the Dispatchers' Agreement was that, unlike the other Agreements, there was no provisions for longevity for persons having over 25 years of service with the City.

The City reached tentative Agreements prior to November 7, 1990 with the Local 214 units and other bargaining units on all issues, including longevity. Responding to these Unions' demand that they receive an increase in longevity as a result of the police contract, the City agreed with said Unions to increase the longevity payments based upon a flat amount, provided that the increase would be effective either July 1 or December 1, 1991, the second year of the respective Agreements. Thus, all of the bargaining units other than police, except the Dispatchers, effective the second year of the respective

^{1/} There may have been a time when the 214 Operative Unit had a higher flat rate payment because of taking effect prior to December 1, 1987 when the police increase took effect.

Collective Bargaining Agreements, in 1991, reached the following agreement as to longevity:

<u>Years of Service Completed on Anniversary Date</u>	<u>Amount of Longevity Pay</u>
5 through 9 years	\$ 500.00
10 through 14 years	700.00
15 through 19 years	900.00
20 years and over	1,100.00

The time for payment varied in each Agreement, depending on whether the unit had a December 1 payment tradition or an anniversary payment tradition.

Bargaining with the Dispatchers occurred at two meetings, namely, on October 3, 1990 and November 7, 1990.

Though agreements had been reached by November 7, 1990 with the other bargaining units as described above, these agreements were tentative and had not been ratified by the respective union memberships. At the Dispatchers' November 7, 1990 negotiation meeting, the issue of pensions, longevity, life insurance, dental increase, swimming pool passes, compensatory time, holiday pay and wages were discussed.

Agreement was reached at the November 7, 1990 meeting on all of these issues with the Dispatchers following the economic pattern that had been set with the various bargaining units, other than the non-supervisory police. The Dispatchers acknowledge that they agreed to the same flat rate increase as to longevity as had the other non-police bargaining units.

Whereas police had received wage increases of 4% for each of the two years of the Collective Bargaining Agreement, July 1, 1991 - June 30, 1992, the Dispatchers received a 4% increase the first year of the contract commencing July 1, 1990

and in the second year the Dispatchers received no wage increase. In lieu of no wage increase in the second year, the pension contribution of about 3% that the employees had paid was, commencing July 1, 1991, to be paid by the City.

This was the same economic package which had been tentatively agreed to and eventually ratified by the other bargaining units. The package came about because the general employees, including the Dispatchers and Radio Operators, are in the same pension plan, where as the police are in a different pension plan. There is no dispute that the agreement reached on November 7, 1990 intended to follow the pattern set with the City bargaining units other than the non-supervisory policy unit.

At the conclusion of the November 7, 1990 negotiations with the Dispatchers, City Personnel Director Richard Cox was summarizing the tentative agreement reached by reading from the tentative agreement that had been reached with other bargaining units for the economic terms were similar or identical. Mr. Cox believed that when he read the provisions as to longevity pay, he stated that the increase would be effective July 1, 1991, it being recognized that the Dispatchers followed an anniversary date payment for longevity.

Representatives of the POAM maintain that the July 1, 1991 date was not mentioned. They acknowledge that the new flat rates for longevity were mentioned, to which they tentatively agreed, as well as the economic pattern set with the bargaining units other than the non-supervisory police.

The City urged the POAM to ratify the contract as quickly as possible because the City apparently wanted to have one ratified contract to encourage the membership of the other units to ratify their respective tentative agreements.

The POAM obliged and ratified the agreement the next day, November 8, 1990. At ratification, the membership were under the impression that the longevity payment would be effective July 1, 1990.

The record reveals that the City, on November 7, 1990, prepared a summary of the agreed to terms. There was a minor change made on November 8, 1990. This summary as to longevity provided:

Effective July 1, 1991 the Longevity pay schedule shall be as follows:

<u>Years of Service Completed on Anniversary Date</u>	<u>Amount of Longevity Pay</u>
5 through 9 years	\$ 500
10 through 14 years	700
15 through 19 years	900
20 years and over	1,100

According to Jeanette Day, Assistant City Personnel Director, when the summary was ready on November 8, 1990, she called over to the Police Department and asked for a messenger to come over and pick up the summary. This was done during the business day. A messenger did come. There was a suggestion that the then President of the POAM had acknowledged that he had a copy of the summary before the ratification.

In any event, the ratification occurred in the early evening of November 7, 1990. It was acknowledged that the

membership ratified all items on the summary that had been prepared by the City except the effective date of the increased longevity.

A dispute developed between the parties when the City believed that the increased longevity was effective July 1, 1991 whereas the Dispatchers Unit of the POAM believed that the effective date was July 1, 1990.

Both parties acted in good faith in this matter. The City, believing that as to the Dispatchers it was adopting the economic package that it had reached tentative agreement with the other bargaining units concluded that the longevity increase effective date was July 1, 1991 and believed that this was mentioned at the November 7, 1990 bargaining table. The City's belief is buttressed by the fact that the summary sheet forwarded to the Police Department on November 8, 1990 indicated that the effective date was July 1, 1991. However, the notes taken by the City's representative responsible for note-taking at the bargaining table, made no mention of the July 1, 1991 date.

POAM representatives at the bargaining table believed that the effective date was July 1, 1990 because they maintain the July 1, 1991 date was not mentioned and they were aware of the non-supervisory police effective date. This belief was conveyed to the membership at the ratification meeting on the evening of November 8, 1990. The Dispatchers believed that because of their affiliation with the POAM, and the nature of their work, that some aspects of the police contract would be translated to their contract, including the fact that the longevity increases, as was the case with the police, would be

effective the first year of the Collective Bargaining Agreement.

Subsequently, when the dispute as to the longevity effective date arose, the parties engaged in mediation and thereafter reached impasse as to the effective date of the longevity increases, invoking the Act 312 process.

There is a basic difference between Dispatchers/Radio Operators on the one hand and general City employees on the other hand in that the Dispatchers work in the Police Department with hours based upon a 24 hour a day, seven day a week, operation. Because of this relationship to police work, by law, the Dispatchers have the opportunity to have a bargaining dispute that has reached an impasse resolved by Act 312 proceedings.

The statutory criteria set forth to be used by an Act 312 arbitration panel in arriving at its award is set forth in Section 9 of Act 312, which in part, as relevant here, reads:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

* * *

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(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.

* * *

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Subsection (h) is the so-called "catch all", referring to criteria that fact finders sometimes follow. Among the criteria used by fact finders is the bargaining history between the parties, both current and in the past. Fact finders also use a criteria sometimes referred to as the "art of the possible". What this means is that the fact finder attempts to recommend a settlement based upon practical considerations, a settlement that might, because of the practicalities, be accepted by the parties.

There is no question that prior to being accreted to the POAM the Dispatchers had a bargaining history indicating that their contracts usually reflected the pattern set by other bargaining units in their negotiations with the City.

Even in the 1990 negotiations, the Dispatchers tend to follow the bargaining history of the other bargaining units as to economics. Examples are the wage pattern, the pension contribution issue and the flat increase in the amount as to longevity payment.

Despite this general bargaining history, the POAM argues that there were several items that the Dispatchers obtained in the current Agreement which were similar, if not identical, to that obtained by the police officers. One in particular stands out.

Because of the seven day, 24 hour a day operation, some Dispatchers worked on given holidays, others because of the schedule did not. Dispatchers worked the same schedule as police officers -- seven days on, two days off, seven days on and then five days off. Due to this schedule, there was confusion as to the method of paying Dispatchers for holiday pay.

Unlike general and clerical employees who normally would not be scheduled for holiday pay, Dispatchers, by the nature of their schedule, could be, as a matter of course, scheduled to work holidays. Thus, there was a different relationship to holidays and holiday pay as between general/clerical employees and Dispatchers. The Dispatcher relationship to holiday pay was similar to the police relationship. For this reason, the Dispatchers received the same holiday pay provisions as did the non-supervisory policy, which was different than the other bargaining units.

Though the bargaining history does seem to suggest that as to economics the Dispatchers followed the pattern of bargaining units other than the non-supervisory police, there were items, because of the Dispatchers' involvement in police work, that required that their Collective Bargaining Agreement have similarities to the police agreement such as holiday pay and hours of work. This is an indication that some of the

bargaining history was directly related to the non-supervisory police negotiations.

Because there was a bargaining relationship that has some basis in the negotiated pattern as to general and clerical employees and other City employees, and a history that establishes some relationship to the bargaining with non-supervisory policy, the Chairman must consider the "art of the possible" criteria in resolving the dispute here.

Though the City did not intend to provide an economic package for the dispatchers greater than provided for the other non-police units, the alleged tentative agreement reached between the City and the Dispatchers on November 7, 1990, at least as far as the Dispatchers were concerned, included another similarity to the police, namely, that the increased longevity payments would begin in the first year of the Agreement, not the second as with the other bargaining units. While obtaining ratified agreements from the other bargaining units, the City, after further bargaining and through mediation, was not able to obtain agreement on the longevity effective date with the Dispatchers.

If this was a question of the Dispatchers maintaining they should receive the same longevity payment as the police, the "art of the possible" would not dictate granting such a request for the only reason the police received a difference in longevity pay was because of comparables which apparently do not exist as to the Dispatchers or other City employees. Or if the Dispatchers were attempting to get the same wage increases as the police, then the "art of the possible" would not favor the

Dispatchers because of the internal comparables as well as the external comparables.

But once an impasse had been reached on the effective date of longevity payments where the Dispatchers have had a history based upon bargaining with the general units in the City as well as with the police unit, then the "art of the possible" causes the Chairman to recognize that as a practical matter it is reasonable for the Dispatchers to conclude that the effective dates in their Agreement would be identical on various issues as was in the police Agreement.

This follows because of the relationship between the Dispatchers and non-supervisory police bargaining units as to some aspects of economics such as the holiday pay issue and scheduling.

If providing that the effective date of the Dispatchers' longevity would be July 1, 1990 did not involve a modest cost, then the Chairman would have concluded that even applying the "art of the possible" criteria would not support such an award. The Dispatchers involved only a few employees, which therefore kept the cost as to the effective date of longevity modest. If more employees were involved, such as most if not all of the employees of the City, the cost would prohibit the award that follows.

In reaching the result that follows, the Dispatchers should understand that, generally speaking, as to economics their bargaining history is more in line with that of City bargaining units other than non-supervisory police. It may be that in the future the Dispatchers cannot rely on Act 312 to avoid recognizing this pattern and the impact of the pattern on

potential settlements with the Dispatchers.

So that all will understand, the Dispatchers cannot count on falling back on Act 312 to break a pattern absent some justification for doing so. The City employees, who do not have the advantage of Act 312, should not dispare with this proceeding and the Award that follows, nor should the City, because but for the settlement with the police, it is doubtful that the City would have even considered the economic package upon which it reached agreements with all of the other bargaining units, including the Dispatchers. It was only because of the relationship as to some of the economic items (hours and holiday pay) that the "art of the possible" would require the Award that follows. But, the "art of the possible", to repeat, may not exist in a future situation for the reasons just discussed.

The Award that follows is based upon the above analysis. The Chairman is authorized to state that the City delegate, Richard Cox, dissents from the Award and the rationale of the Opinion. The Chairman is also authorized to state that the POAM delegate, Gary Pushee concurs in the Opinion and Award.

A W A R D A N D O R D E R

It is ordered that the Collective Bargaining Agreement between the POAM on behalf of the Dispatchers and the City of Dearborn for 1990-92 as to longevity shall read as follows:

LONGEVITY (ARTICLE XXVIII)

Effective July 1, 1990, the Longevity pay schedule shall be as follows:

Years of Service Completed
on Anniversary Date

Amount of
Longevity Pay

5 through 9 years
10 through 14 years
15 through 19 years
20 years and over

\$ 500
700
900
1,100

George T. Roumell, Jr.
GEORGE T. ROUMELL, JR.
Chairman

June 3, 1991