

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION

---

In re Act 312 Arbitration:  
CITY OF MT. CLEMENS,  
Employer

-and-

Case No. D98 A-0038

POLICE OFFICERS LABOR COUNCIL,  
Union

---

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION  
SALE OF OFFICE  
OCT 15 11:11 AM '98

FINDINGS OF FACT, OPINION, AND ORDER

Background

Police Officers Labor Council (hereafter POLC) is the bargaining agent for patrol officers in the Mt. Clemens police department. Its previous collective bargaining agreement covered the period July 1, 1994, through June 30, 1998. On October 15, 1998, the Union petitioned for mandatory arbitration pursuant to Michigan Public Act 312 of 1969, MCL 423.231 et seq. The Michigan Employment Relations Commission on November 16, 1998, appointed Maurice Kelman as impartial arbitrator and chairman of the arbitration panel. The parties thereafter requested that the Act 312 proceeding be held in abeyance while bargaining resumed. By March 1999 agreement had been reached on all but one the Union's issues, viz., restoration of a \$1 daily gun allowance. The City of Mt. Clemens submitted to arbitration an issue of its own via its March 19 answer to the Union's 312 petition. The Employer proposed adding language to preclude the use of vacation time during the annual July 4th and Family Festival celebrations.

At a pre-hearing conference on March 24 the parties stipulated that both unresolved issues were economic in nature and thus subject to the last best offer procedure of section 8 of Act 312, MCL 423.238. A schedule was established for exchange of lists of proposed

comparable communities, exhibits, and witness lists. The parties also designated their delegates to the arbitration panel: Mr. Lloyd Whetstone, POLC field Representative, for the Union; Ms. Lauren A. Wood, Assistant Mt. Clemens City Manager, for the Employer.

The evidentiary hearing was conducted on July 12, 1999, at the law office of the Employer's attorneys, Freeman McKenzie, 75 N. Main Street, Mt. Clemens. Counsel for the Union was Timothy J. Dlugos, Esq. Counsel for the Employer was Kenneth Scherer, Esq. The proceedings were transcribed by Tamara O'Connor of Dolman & Associates. The record comprises a series of documentary exhibits together with the testimony of four witnesses:

Nancy Ciccone, POLC Research Analyst

Mark Masters, Patrol Officer/Union Vice-President

Lauren Wood, Asst. City Manager

Michael Lubeckyj, Chief of Police

Pursuant to arrangements made at the July 12 hearing the parties' last offers were exchanged on September 3. Counsel stipulated in writing that "the parties to this proceeding mutually agree to waive the thirty (30) day time limit prescribed in 1969 Mich. Pub. Act 312, Sec. 8 (MCL 423.238) for issuance of the arbitration panel's written findings of fact and opinion."

#### Statutory Framework

Resolution of the issues in dispute is governed by Section 9 of Act 312, MCL 423.239:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

There is no question that both the Union and the Employer proposals at issue here, if upheld by this panel, are within the lawful authority of the Employer to adopt. The other applicable Section 9 factors will be addressed in the course of this opinion, the panel being mindful that it has the responsibility to "make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case." City of Detroit v. DPOA, 408 Mich. 410, 484 (1980).

Comparables

The identification of "comparable communities" for purposes of statutory factor (d) is in controversy. There have been no prior Act 312 awards involving this bargaining unit or the two sister POLC units of sergeants and of lieutenants in the Mt. Clemens Police Department. An Act 312 proceeding was initiated by patrol officers in 1994 but a new four year agreement (1994-1998) was negotiated without pursuing the arbitration. There is, then, no determination of communities comparable to Mt. Clemens by a previous arbitration panel. In connection with the aborted 1994 arbitration petition, however, the parties jointly developed a list of seven comparable southeastern Michigan cities:

Auburn Hills  
Birmingham  
Clawson  
Harper Woods  
Hazel Park  
Riverview  
Woodhaven

In the present proceeding the Union argues for the same seven comparables plus Ferndale, which both parties now accept as a comparable community. The Employer asked the panel to consider only Clawson, Harper Woods, and Hazel Park in addition to Ferndale. Excluded from its submission are Auburn Hills, Birmingham, Riverview and Woodhaven.

The City rejects as comparable other localities that are 50% above or below Mt. Clemens on one or more of three factors -- state equalized value (SEV), population, and number of patrol officers -- and also excludes an otherwise comparable city that is more than 20 miles from Mt. Clemens. The distance factor rules out Auburn Hills (23.47 miles away), Riverview (42.32 miles) and Woodhaven (42.82 miles), though Ferndale (at 20.33 miles) is retained on the

Employer's list. The more-than-50% variance disqualifies Auburn Hills for both SEV reasons (\$1.120 billion versus Mt. Clemens' \$324 million) and geographical size (17.5 square miles versus Mt. Clemens' 4.2). The Employer rejects Birmingham as a comparable because of its \$1.293 billion SEV.

The fact remains, however, that all eight municipalities put forward by the Union as comparable communities are within the Employers' plus-or-minus 50% range for population and all are situated in the tri-county Detroit metropolitan area. Those are the most salient features for comparison purposes and are reason enough for selecting them as comparables for collective bargaining and arbitration purposes. The suggested 20 mile radius involves purely arbitrary linedrawing, as the City acknowledged at the hearing. The greater Detroit labor market is not so narrowly confined; indeed, Mt. Clemens no longer requires local residency for police personnel nor does it impose any proximity requirement such as living no farther than twenty miles from the work place.

A separate, ultimately compelling reason for adopting the Union's set of eight comparables is that all are communities which these parties now or in the past have jointly accepted for comparison purposes. Because it is advisable to spare future negotiators the complication of recurring disputes over relevant comparables, other Act 312 arbitrators have ruled that the parties' previously adopted or adjudicated list of comparables should remain in force in the absence of a demonstrated change in demographics or other relevant features. No such change since 1994 having been suggested by the Employer, the finding of the panel is that the comparison communities for Mt. Clemens are Auburn Hills, Birmingham, Clawson, Ferndale, Harper Woods, Hazel Park, Riverview, and Woodhaven.

Issue #1: Gun Allowance

The Union's last offer proposed adding to the recently negotiated 1998-2001 agreement the following provision as paragraph (F) of Article XIX (Clothing, Gun and Equipment Allowance):

Each employee shall receive one (\$1.00) dollar per day for a gun allowance. This allowance shall be paid semi-annually, in advance in the amount of One Hundred Eighty Two Dollars and Fifty Cents (\$182.50) no later than July 31 and January 31. In the event of separation from service or non-observance of requirements of this paragraph, work periods of less than a full year for earning this allowance shall be prorated.

The Employer's last offer is "to keep the current contract language, which does not provide for a gun allowance."

Until 1987 all police personnel in Mt. Clemens, patrol and command officers alike, received a \$1 per day gun allowance. There is no record of its original rationale, but the gun allowance may have been understood as a corollary of the policy that required all officers to carry their department-issued sidearms off duty as well as during work hours. That requirement was abandoned in 1985, quite possibly to reduce the city's exposure to lawsuits resulting from off-duty incidents. When new collective bargaining agreements were negotiated in 1987, the patrol officers and sergeants agreed to give up their gun allowances - a concession that was at least partly a quid pro quo for the City's elimination of the residency requirement for police employment. The lieutenants, however, were not obliged to surrender their gun allowance, perhaps because The Employer chose to re-rationalize the benefit as simply a perquisite of rank. ( Apart from the Chief, there is no rank in the Mt. Clemens Police Department higher than lieutenant).

The patrol officers have been without a gun allowance for their last three contracts. The sergeants managed to regain the allowance in their 1994-1998 agreement. The City agreed to the restoration when bargainers for the sergeants unit acceded to a City proposal for a new promotion/evaluation system. POLC pitches the demand on behalf of patrol officers entirely on the basis of "internal equity." None of the eight comparable cities pays a gun allowance, so that comparisons clearly favor the Employer's nay-saying. Mt. Clemens officers incur no out-of-pocket costs in connection with their department-issued weapons and ammunition; if they choose to acquire a second hand gun at their own expense, that is their option. The Union nevertheless contends that it is discriminatory to deny patrol officers a benefit that once was theirs and is currently enjoyed by the higher ranks.

There is, to be sure, an historical equivalence as to most wage increases and fringe benefits in the contracts of all three bargaining units in the Mt. Clemens police force. The latest settlements, as an example, provide the same 3% wage increases and the same \$50 increase in uniform allowances. But the parallelism also has exceptions. For instance, the 1994-98 agreements called for three annual 3% salary improvements and one 4% increase. The 4% came in the third year for patrol officers but in the second year for sergeants. In the current round of bargaining, sergeants won a new benefit - inclusion of optical coverage for sergeants enrolled in the Traditional Blue Cross Plan - that was not replicated for either patrol or lieutenants. And, of course, patrol's claim for identical fringes is seriously undercut by the twelve-year, three successive contracts hiatus with respect to gun allowances. The history of collective bargaining in Mt. Clemens, in other words, is as much an argument against perfect uniformity of benefits for all ranks as it is an argument for parity of treatment.

Although a restored gun allowance for patrol officers would not be a budget buster, the cost to the city is not negligible. With twenty four budgeted patrol positions, a \$1 daily gun allowance adds up to \$8,760 annually and to \$26,280 over the life of the new three year agreement. For patrol officers the gun allowance would equate to a wage hike of an additional 0.8 to 1.0%, depending on the officer's pay grade. There was no showing in this proceeding that Mt. Clemens officers are underpaid in the comparative sense and therefore appealing candidates for more non-wage forms of compensation. Nor was it suggested that the lack of a gun allowance has created any discernible morale problem within the work force. The average length of service for incumbent patrol officers is 8.28 years. Hence the twelve year absence of the gun allowance is a fact of life for younger officers and something to which veteran officers have long since adapted.

Because it lacks a counterpart in the comparable communities and because it has no intrinsic justification in the Mt. Clemens police department other than as a perk of command rank, a majority of the panel concludes that the status quo should prevail on the subject of gun allowances.

#### Issue #2: Restricting Vacation Schedules

The Employer's last offer seeks to add a new paragraph Q to Article XII (Vacations), stating:

"All vacations must receive the prior approval of the Chief of Police."

The Unions last position is "that no new provision be added to Article XII."



(It should be noted that the City's settlements with police lieutenants (February 10, 1999), and police sergeants (May 4, 1999), both represented by POLC, contain a provision by which those parties agree to be governed by this panel's disposition of the vacation issue.)

Depending on his or her seniority, a Mt. Clemens patrol officer earns 10 to 30 days of annual vacation. Summertime is when most officers, particularly those with school age children, prefer to take their vacations. Paragraph (N) of Article XII assures that the department will never be depopulated by vacations. It provides:

Selection of vacations shall be made on the basis of seniority for the duration of the calendar year to the extent that not more than two (2) from each shift nor more than three (3) uniform patrolmen overall shall be on vacation concurrently. Selection shall be indicated as the "Vacation Schedule", which shall be posted on or before January 1 of each year. Seniority selection preference shall prevail through April 30 of each year.

Along with the three-patrolmen limitations, the companion units' contracts restrict the number of vacationing command officers to a total of four at any given time.

The proposal before the panel that all individual vacation schedules in the police department be under the Employer's control originated with Chief Lubeckyj. His concern related specifically to two public events staged every summer in Mt. Clemens: the Independence Day Fireworks (held on the Friday closest to July 4) and the Family Festival Fireworks (held on the last Saturday of August). Those events attract crowds in excess of 40,000 to Mt. Clemens, a city whose resident population is 18,000.

The Department has five lieutenants, five sergeants, and twenty four budgeted patrol positions. In the summer of 1999, however, there were in fact only 17 patrol officers employed in the department, two of whom were on leave status. Three of the active patrol officers were

on vacation at the time of the fireworks events, as were four lieutenants and sergeants. To assist his remaining 12 patrol officers and six commanders, Chief Lubeckyj contracted for the services of 29 officers of various ranks from neighboring police agencies: Macomb County Sheriff, City of Roseville, Chesterfield Township, Clinton Township. The borrowed officers were paid by Mt. Clemens at time and a half at their individual wage rates.

Given the unusual policing needs of the fireworks events, the City will always have to procure extra officers from other departments. Still, Chief Lubeckyj believes that his own personnel provide a qualitative advantage that he cannot duplicate with outsiders. He testified as follows:

They [Mt. Clemens Officers] are familiar with the city, number one. They are familiar with departmental policies, procedures, city ordinances.

Also they are familiar with the populous [sic]. They would be able to identify people that might be problems or might not be problems as opposed to somebody coming in from let's say Roseville who doesn't deal with our people. (tr. p. 58)

In its first formulation the City's proposal was "restricting time off during the July 4th and Family Festival weeks for all officers." (Employer's March 19, 1999, response to Union's petition for arbitration). The proposal transmogrified in the City's last offer of July 22 to "all vacations must receive the prior approval of the Chief of Police." The Employer's brief offers no explanation for the shift to open-ended control over vacation schedules except to reference the "general discretion" provisions contained in the police contracts of five of the eight comparable communities. The Clawson agreement, for example, states: "The City shall determine the number of officers who will be permitted to be on vacation at any given time." Ferndale's contract provides: "Vacations will, as far as possible, be granted at times most desired by employees but the final right to the allotment of vacation periods is reasonably

reserved to the employer in order to assure the orderly operation of the City". Scheduling discretion is also retained by the employer in Auburn Hills, Hazel Park, and Riverview. On the other hand, Mt. Clemens is in the company of Birmingham and Woodhaven, cities which, while restricting the total number of simultaneous vacations, do not give management the liberty to rule out all use of vacation time on a given day, save for emergencies.

In the final analysis, the issue is not resolvable by reference to comparables. Whether in the expanded or in the more limited original version, the City's proposal has not been sufficiently justified on the merits, in the opinion of a majority of this panel. The need for outside police manpower to augment the local police force at the City's two summer fireworks events is inescapable and would not be obviated by canceling all police vacations on those dates. Even if the entire complement of Mt. Clemens officers had been on duty this summer - 17 patrol officers, 5 sergeants and 5 lieutenants - it still would have been necessary to import twenty or more officers from other departments. Moreover, the vacation-related absence of seven Mt. Clemens officers from the 1999 fireworks (3 patrol and 4 command) would have been fully offset had the department actually been at its budgeted strength of twenty four patrol officers. As the Chief testified: "We went understaff in January of this year and we have been going progressively since that time further and further down." (tr. p. 64).

The panel is advised that since the hearing in July, new recruits have brought the current number of patrol officers to 20 or 21, and it is anticipated that another five will be in place by January 2000, including two officers funded with federal grant money. But even when all budgeted patrol positions are filled, the Mt. Clemens Police Department remains thinly staffed when compared to counterpart communities. If one considers only the four other cities the

Employer chose as comparables - Clawson, Ferndale, Harper Woods, and Hazel park - it appears that Mt. Clemens ranks next to last in ratio of patrol officers to population, next to last in total police department budget, next to last in police spending in relation to SEV, and dead last in officers per square mile. These figures indicate that a larger police force rather than further restrictions on vacation schedules is the remedy for the Chief's concerns.

Also contributing to the panel majority's rejection of the City's proposed change is the financial loss as well as the considerable personal hardship it would impose on patrol officers who would otherwise be entitled to take vacations during the fireworks events. Patrol officers work a six-and-two schedule, i.e., they are on duty for six consecutive days followed by two days off. With periodic adjustments the work schedule averages out to 40 hours a week over the course of a year. The collective bargaining agreement takes account of the standard work schedule with a special provision, Article XII, Paragraph (O):

Those employees assigned to shift duty, otherwise referred to as "six-on-two-off" shifts, may select that period of six (6) consecutively scheduled work days within the work schedule to be considered as their vacation week and shall, in such instance, have five (5) vacation days deducted from their current vacation entitlement. Accumulative days off shall not be given in advance in order to circumvent this section.

A requirement to work on the Friday proximate to Independence Day and on the last Saturday of August in many cases makes it impossible for patrol officers to schedule a July or August vacation that corresponds to a regular six day work shift. The result would be a loss of the bonus vacation day promised by the current and previous contracts. Conversely, to gain the benefit of paragraph (O), officers would have to forgo sizable portions of July and August when planning their vacations. Competition for the remaining blocks of summer vacation time would become even more intense, given the quota of three patrol officers on vacation concurrently.

Lower seniority officers might lose all chance for a meaningful family vacation while their children are out of school.

Although the City's proposal has been characterized as an economic issue, the extent to which it would produce cost savings is uncertain. Some of the non-Mt. Clemens officers who volunteer to work at the fireworks festivals may come at a higher pay rate than an indigenous patrol officer, but the City has not computed the difference or projected a total figure for the pay differentials. The author of the City's proposal was not a fiscal official but the Chief of Police, and his was not a dollars-and-cents argument but a desire to deploy as many experienced Mt. Clemens officers as he can when the City is thronged with festival goers. While the Chief's preference is not baseless, the City has not demonstrated that the public safety has been or would be compromised by continuing to honor the long established vacation provisions of its contracts with POLC. In the context of a department at its budgeted level of staffing, the patrol unit's allotment of three concurrent vacation leaves is compatible with the requirements of public safety during the well attended civic festivities.

A majority of the panel remains unpersuaded that the Employer's proposal has sufficient merit to justify the severe curtailment of officers' hard-earned vacation rights.

#### ORDER

1. With respect to the Union's proposal for restoration of a \$1 per day gun allowance, the panel adopts the Employer's last offer: no change in the contract.
2. With respect to the Employer's proposal that all vacation schedules must receive prior approval by the Chief of Police, the panel adopts the Union's last offer: no change in the contract.

*Maurice Kelman*

---

Maurice Kelman, Chairman

*Lauren Wood*

---

Lauren Wood, Employer Delegate,  
concurrs as to Order #1, dissents as to Order #2

*Lloyd A. Whetstone*

---

Lloyd Whetstone, Union Delegate,  
concurrs as to Order #2, dissents as to Order #1

Dated: October 12, 1999