

1959

STATE OF MICHIGAN
DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION
BETWEEN:

CITY OF GIBRALTAR (Employer)

-and-

POLICE OFFICERS ASSOCIATION OF
MICHIGAN (Union)

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

MERC Case #D90 B-0351

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
JUL 16 1969
JUL 16 1969
JUL 16 1969

ARBITRATION PANEL:

NEUTRAL CHAIRPERSON

Mario Chiesa

UNION DELEGATE

William Birdseye

EMPLOYER DELEGATE

Joseph W. Fremont

FOR THE UNION:

William Birdseye
Business Representative
and Ann Maurer, Labor
Economist
Police Officers Assn. of
Michigan
28815 W. Eight Mile Road
Suite 103
Livonia, Michigan 48152

FOR THE EMPLOYER:

Logan, Huchla and Wycoff
By: Charles E. Wycoff
and Ruth Okun
13900 Sibley Road
P. O. Box 2148
Riverview, Michigan 48192

FINDINGS OF FACT, OPINION AND ORDER

INTRODUCTION

The petition for arbitration is dated August 13, 1990. The Chairperson was appointed via a communication from MERC dated October 25, 1990. A pre-hearing conference was conducted on January 16, 1991. The parties waived all of the time limits contained in the statute and the regulations. The hearing was conducted on July 8, August 7 and December 18, 1991. The parties filed their last offers of settlement on the final day of hearing. An executive session was held by the panel and these findings of fact, opinion and order are being issued as soon as possible thereafter.

In addition to a transcript generated at the hearing, there were several exhibits. The record was painstakingly examined and analyzed.

ISSUES

The issues presented to the arbitration panel relate to the Collective Bargaining Agreement which is dated 7/1/90 to 6/30/93. Except for the three issues submitted to this panel, all other disputes were settled and the understandings of the parties are displayed in Joint Exhibit 2. Joint 2 is the Collective Bargaining Agreement, absent specific provisions relating to the issues in question.

The three issues presented to the panel are: Wages, Pension and Vacation.

To be more specific, the wage issue involves a dispute of the top salary rate to be paid patrol officers and the rate for lieutenants and sergeants as of July 1, 1990, July 1, 1991 and July 1, 1992. It is noted that there are two salary tracks for patrol officers, one for those hired before 7/1/87 and one for those hired after 7/1/87. However, the top rate, the only rate in issue, is identical for both classes of patrolman. There is one rate for lieutenant and one rate for sergeant.

The retirement issue involves questions relating to the pension multiplier, the number of years used in the formula, as well as the factors included in final average compensation. It will become clear when the last offers of settlement are examined.

The last issue relates to vacation benefits. Currently there is a distinction in the contract between vacation for so-called new employees and at that time individuals known as existing employees. The Union seeks to eliminate the distinction.

LAST OFFERS OF SETTLEMENT

Each of the issues was characterized as economic. Thus, the panel is required to adopt the last offer of settlement which more nearly complies with the applicable factors prescribed in Section 9 of the statute.

The first issue involves wages. Effective January 1, 1990 lieutenants had a base wage of \$35,610.01. Sergeants were paid \$32,973.66, and the top paid patrolman was receiving \$30,816.64.

The Union's last offer of settlement seeks a 4% increase for each of the three years of the contract. This means that as of July 1, 1990, a lieutenant's base rate would be \$37,034.41. A sergeant's base rate would be \$34,292.61, while a patrolman's top rate would be \$32,049.31. As of July 1, 1991, a lieutenant's rate would be \$38,515.79. A sergeant's rate would be \$35,664.31, while a top patrolman would receive \$33,331.28. As of July 1, 1992, a lieutenant would receive \$40,056.42. A sergeant would receive \$37,090.88, while a patrolman would receive \$34,664.53. There is full retroactivity.

The Employer's last offer of settlement is to increase the salary rates in question 3% as of 7/1/90, 3% as of 7/1/91 and 3% as of 7/1/92. Thus, the rates on July 1, 1990 would be \$36,678.31 for a lieutenant, \$33,962.87 for a sergeant, and \$31,741.14 for a top paid patrol officer. Effective July 1, 1991 those figures would be \$37,778.66, \$34,981.76, and \$32,693.37. Effective July 1, 1992 a lieutenant would receive \$38,912.02, a sergeant \$36,031.21, and a top paid patrol officer \$33,674.18. There is full retroactivity.

Currently the Collective Bargaining Agreement does not contain any language regarding the pension multiplier. However, the multiplier provides for 2% of average final compensation times the first 25 years of service, plus one percent of final average compensation times years of service in excess of 25 years. Retirement is allowed at age 60 regardless of service, or 25 years of service regardless of age. Apparently the benefit is also based on three of the last ten years.

The Union's last offer of settlement reads as follows:

"Effective July 1, 1990 the pension multiplier will be two and one-half (2.5%) percent of average final compensation times the first twenty-five (25) years plus one (1.0%) percent of average final compensation times years of service in excess of twenty-five (25) years."

The Employer's last offer of settlement reads as follows:

"B. A 'new' pension to be same as old except:

1. Multiplier increases from 2.0 to 2.25% over 1st 25 years of employee's service.

2. Definition of final average compensation is changed in two ways:

a) Best 3 out of last 4 years.

b) Included in compensation is only: base wages, overtime, longevity and shift premium.

"Each employee retiring between 7/1/90 and 12/31/92 would have the option of having the above 'new' pension apply or having the old pension apply. Those retiring after 12/31/92 would not have this option, but would be under the above 'new' pension provisions."

The last issue relates to vacations. As I previously indicated, there are different vacation provisions for those employees known as "new" employees. The Union's last offer of settlement reads as follows:

"16.2: Vacation shall be governed by the provisions of Article XXVI, Vacations."

The Employer's position is to maintain the status quo. Thus, the current vacation benefits would remain unchanged.

SECTION 9 FACTORS

As previously indicated, the issues involved in this dispute are economic in nature and, thus, pursuant to Section 8 of the Act, the panel shall adopt the last offer of settlement which, in its opinion, more nearly complies with the applicable factors prescribed in Section 9. Section 9 of the Act contains a litany of factors upon which the panel must base its findings, opinions and order. Those factors appear as follows:

"(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."

Of the factors presented above, one area which customarily provokes the most disagreement between the parties is that which deals with the concept of comparable communities. Parties often spend a substantial amount of time, as they have here, litigating the question of what communities should be considered comparable to the community involved in the arbitration for the purposes of resolving the dispute.

There is no guidance in the statute regarding the definition of a comparable community and, in fact, experience has suggested that any rigid guidelines would not be an aid in resolving disputes, but would cause difficulties and be counterproductive.

One of the questions is: What criteria should be utilized to determine which communities are comparable to the one involved in the arbitration? Arbitrators have written numerous decisions outlining what they think the applicable formula may be. While each decision adds something to the analysis, oftentimes the pronouncements reflect views and perceptions which should be applied only in the circumstances from which they arise.

The community involved in this dispute, Gibraltar, also being the Employer, is a city with a 1987 population of approximately 4,297. It occupies 4.35 square miles and its citizens enjoyed a 1987 per capita income of \$15,281. The total 1990 SEV was

\$65,526,290. Its total general fund budget for 1990-1991 was \$2,157,258.00. The police budget for 1991 was \$818,875.

It appears that the largest land owner in Gibraltar is McLouth Steel Corporation. In fact, according to Employer Exhibit 3, McLouth owns a majority of the land area. Of course there is a substantial residential community and given the city's location on the shore of Detroit River, there are several boating-related facilities.

The police department is full-time, working three shifts on a 24-hour basis. The department offers basic public safety and in addition to the customary police services, many of the officers are trained in and provide EMT services. Advance training for EMT with defibrillator is in the works.

At the time of the arbitration there were six patrol officers, four sergeants, one lieutenant, one deputy chief and the chief of the department, John Connolly. Chief Connolly has additional duties and is the City administrator.

While the department does not have a separate detective or traffic bureau, for the most part it provides the general array of services available in most city police departments. It is noted that the fire department is volunteer, so apparently many of the services which would generally be provided by a full-time fire department, such as EMT services, are provided by members of this bargaining unit.

The Union has suggested that the communities which should be considered comparable to Gibraltar for the purposes of this hearing

are those which have generally been considered the downriver communities. These communities make up the general southeast area of Wayne County. They include Allen Park, Brownstown Township, Ecorse, Flat Rock, Grosse Ile Township, Lincoln Park, Melvindale, River Rouge, Riverview, Rockwood, Southgate, Taylor, Trenton, Woodhaven and Wyandotte. Gibraltar is bordered by Trenton on the north, Brownstown on the south and west and Rockwood on the southwest.

The Union has several reasons for suggesting that the communities it has offered are comparable to Gibraltar. It references mutual aid agreements, police frequencies, membership in the Downriver Community Conference, reliance by other arbitrators and the perceptions of the officers involved.

Contrary to the Union's approach, the Employer relies upon several statistical factors to determine comparability, including general geographic location, population, area, per capita income, total SEV, total general fund budget, total police budget, etc. Applying its formula the Employer offers as comparable communities: Belleville, Brighton, Flat Rock, Milan, New Baltimore and Rockwood. It also points out that many of the cities offered by the Union, such as Taylor, Southgate, Lincoln Park, etc., have multiples of the population of Gibraltar. They are exceedingly different than Gibraltar in terms of the criteria utilized by the Employer, with many of them having more than seven times Gibraltar's SEV.

In examining the evidence and after carefully considering the arguments, it would be appropriate to consider the relevant data

offered regarding each of the communities referenced by the parties. Obviously the evidence establishes that communities, such as Taylor, are much larger and wealthier than Gibraltar. Perhaps information regarding communities of that size will be given a lesser weight, but the fact of the matter is that the Employer's approach cannot be ignored even though there are certain questions, such as remote geographical locations, etc., and certainly the Union's approach in focusing on the downriver communities, also have some viable factors even though there are many objective differences between the individual communities. So for the purpose of this arbitration, and this arbitration alone, all the information offered will be considered. Of course it will be weighed and its probative value carefully scrutinized, but nothing has been totally rejected.

One of the several factors outlined in Section 9 relates to the financial ability of the unit of government to meet the costs involved. This of course refers to (c) of the section. There has been a substantial amount of evidence introduced regarding this factor and it would be appropriate to highlight it at this point.

The City of Gibraltar had a 1990-1991 total general fund budget of just over two million dollars. The record established that the unreserved, unappropriated fund balance was \$47,000. There was some suggestion in the testimony that this figure should be higher. When judged in terms of its ability to sell bonds, either on voted or unvoted millage, the record tends to establish that the city would have a very difficult time doing so and at best

for voted millage any bond sale would barely break into the investment quality level. This testimony was offered to give an insight to the general financial condition of the city because obviously, and as indicated by the record, police operations are a budget item under the general fund budget.

The largest commercial resident in the City of Gibraltar is McLouth Steel. Of course that means that McLouth pays taxes and utilizes services and one of the indications of the services is the history dating back to May of 1990 of the water revenues received by the city from McLouth's use. In May of 1990 McLouth purchased 5,900,000 gallons and paid about \$29,250. This use dwindled to a 1,265,000 gallons in May of 1990, with a corresponding decrease in revenue. The amount paid by McLouth in May of 1991 was \$6,347.

An employer's ability to pay -- the term which is generally used to describe the factor under Section 9 (c) -- must of course be carefully considered and in fact has been carefully considered. It is clear that the City could be in better financial shape.

Notwithstanding the limited in-depth above display, it must be understood that the panel carefully considered all of the factors in Section 9 as applicable.

DISCUSSION AND RESOLUTION OF ISSUES

WAGES

As can be seen from the prior delineation of the issues, the wages to be paid by the City over the term of this Collective Bargaining Agreement is an item in dispute. Arguably each year of the Collective Bargaining Agreement could present a different issue

and as a result, there could be three separate wage issues. However, while that may be a viable consideration in other cases, in this dispute it is purely academic because as a discussion of the evidence will establish, it is more appropriate when applying Section 9 standards to adopt the Union's wage offer in total for each year of the contract. This will become apparent not only in a discussion of this issue, but when an analysis is presented regarding the other two issues.

As to be expected, the record contains a substantial amount of information regarding many of the comparable communities spanning a period from July 1, 1987 through July 1, 1992. Also, to be expected, the number of contracts expiring in the later years of the data increases, so that in 7/1/91 there is data available from only a very few of the comparables, whereas, in the early years there were more than five times the data. However, this is one of the realities when dealing with this information.

The record shows that for the period 7/1/87 through 9/1/90 comparable communities received a total percentage increase of about 12.2%. The increase for the officers in Gibraltar for the period 7/1/87 to 6/30/90 was about 8.1%. So certainly percentage-wise, the employees involved in this dispute were a little behind during that time period.

In analyzing data of this type it must also be understood that not everyone is going to be paid the same and not everyone is going to be at the top rate. The point is that there should be some significance given to the historical rankings that may exist

amongst the communities. Of course, this isn't a hard and fast rule, but it does allow one to gain a perspective of history and perhaps some insight into what the future may be. If we look at the data regarding 7/1/90, it shows that the average wage rate for patrol officers, and it must be understood that this entire analysis is based on a top paid patrol officer, was approximately \$32,847. The Union's offer is about \$800 lower than that average, while the Employer's is about \$1,100 lower than that average. A historical view shows that the Gibraltar officers were never top paid and in fact for many years were in varying degrees under the average.

The figures for July 1, 1991 show that the average salary is \$34,526. Of course this is based on much less data, but nevertheless, the Union's last offer of settlement for that year is \$1,194 under the average, while the Employer's is over \$1,800 under the average. It is also significant to note that the percentage increase of average salary between 7/1/90 and 7/1/91 is about 5.1%.

There is little data for 7/1/92, but what there is available shows that the average salary would be approximately \$35,324. The Union's offer at \$34,665 is approximately \$650 under the average, while the Employer's at \$33,674 is about \$1,650 under.

A careful analysis of the data available establishes that the Union's last offer of settlement is more in keeping with the data regarding the comparable communities. This is especially true in light of the fact that Gibraltar officers have not received even an

average percentage increase for the three-year period ending on 6/30/90.

It must be understood that there are certainly others factors which have been considered and the average salaries in the comparable communities isn't the end of the analysis, although it is very important. The officers in Gibraltar pull several different duties and as the record establishes, many are trained as EMTs.

Of course there has been a careful consideration of the City's ability to pay as previously outlined. All in all, a careful analysis of the record and an application of the applicable factors in Section 9, established that the Union's last offer of settlement should be adopted for each of the three years in question.

PENSION

The parties' last offers of settlement have previously been displayed and are not going to be reiterated at this point. It is noted, however, that both provide for an increase in the multiplier, although the application is for varying periods. There are some other changes which are apparent from the parties' positions.

A comparison of the pension plans existing in Gibraltar shows that the TPOAM unit provides a 2.25% multiplier for the first 25 years and then 1% for 26 to 30 years. There are also differences between the Gibraltar police officers' pension plan. It is also noted that the TPOAM unit has social security as does the Teamsters

214 bargaining unit. There is no indication that the employees in this unit are under the social security program.

An examination of the evidence regarding the pension plans in comparable communities displays, as is to be expected, a vast array of different formulas. There are differences in multipliers, but there are also differences in many other aspects of the plan and, in fact, there is really no consistent uniformity with the type of plan. There are Act 345 plans, ordinance plans, MERS, charters, etc. Several of the comparable communities provide social security coverage which of course in the long run can enhance an employee's retirement coverage. The data shows that at this time modest changes of the provisions in question would not be inappropriate.

One of the aspects not to be overlooked in this type of analysis is the long-term cost of the last offers of settlement. In this regard there is data comparing the cost of the current benefit formula to three different alternatives. The first alternative is 2% of final average compensation multiplied by total credited service. The third is 2.25% of final average compensation multiplied by total credited service and the last is 2.25% of final three year compensation multiplied by total credited service. Of course it is noted that those alternatives are not the precise formulas offered by each of the parties, but they do give at least some insight to the costs involved. It is quite clear that the Union's last offer of settlement would be more costly than the Employer's.

After a careful analysis of all the available evidence and the applicable factors in Section 9, it is apparent that at this point in time and under the circumstances of this case, the Employer's last offer of settlement is more acceptable. As a result, the panel will order that the Employer's last offer of settlement be adopted.

VACATION

As indicated above, there are two separate vacation schedules in the Collective Bargaining Agreement. One is for employees hired after July 1, 1987, while the other is for employees hired before that date. Employees hired after July 1, 1987 receive 10 days vacation after one year, 14 days after five years, and 21 days after ten years. In general terms, employees hired before that date receive 10 vacation days with 12 months of continuous service, 14 vacation days with 24 months of continuous service, and 20 vacation days after 60 months of continuous service. They also receive one additional vacation day for each additional year of service to a maximum of 28 vacation days.

In analyzing this portion of the dispute, it must be kept in mind that this division was developed by the parties and imposed either by collective bargaining or arbitration. In analyzing it, the evidence does not convince the panel that the distinction should be eliminated. While there are substantial differences between vacations received by so-called new employees, vis a vis the comparable communities, and in fact employees hired before July

1, 1987, the evidence doesn't suggest that the reason for developing two different schedules has been eliminated.

To state it more simply, the evidence in this record establishes that the status quo should continue.

ORDER

1. WAGE ISSUE

The panel orders that the Union's last offer of settlement be adopted in total.

Mario Chiesa 3-12-92
MARIO CHIESA
Chairperson
ES
Employee Delegate
Agree _____ Dissent ✓
[Signature]
Union Delegate
Agree ✓ Dissent _____

1, 1987, the evidence doesn't suggest that the reason for developing two different schedules has been eliminated.

To state it more simply, the evidence in this record establishes that the status quo should continue.

ORDER

1. WAGE ISSUE

The panel orders that the Union's last offer of settlement be adopted in total.

Mario Chiesa 3-12-92
MARIO CHIESA
Chairperson

3/11/92

Joseph W. Fremont
Employer Delegate

Agree _____ Dissent ✓

151 m.c.
Union Delegate

Agree X Dissent _____

2. PENSION ISSUE

The panel orders that the Employer's last offer of settlement be adopted.

Mario Chiesa 3-12-92

MARIO CHIESA
Chairperson

151
Employer Delegate

Agree ✓ Dissent

Union Delegate

Agree Dissent ✓

3. VACATION ISSUE

The panel orders that the Employer's last offer of settlement be adopted.

Mario Chiesa 3-12-92

MARIO CHIESA
Chairperson

19 m.e.
Employer Delegate

Agree ✓ Dissent

Union Delegate

Agree Dissent ✓

2. PENSION ISSUE

The panel orders that the Employer's last offer of settlement be adopted.

Mario Chiesa 3-12-92
MARIO CHIESA
Chairperson
3/11/92 Joseph W. Fremont
Employer Delegate
Agree ✓ Dissent _____
/s/ m.c.
Union Delegate
Agree _____ Dissent ✓

3. VACATION ISSUE

The panel orders that the Employer's last offer of settlement be adopted.

Mario Chiesa 3-12-92
MARIO CHIESA
Chairperson
3/11/92 Joseph W. Fremont
Employer Delegate
Agree ✓ Dissent _____
/s/ m.c.
Union Delegate
Agree _____ Dissent ✓