

In the Matter of)
)
City of Muskegon)
) Act 312 Case No. G991 K-0704
and)
)
Muskegon Command Officers,) Opinion and Award of
Labor Council,) Arbitration Panel -
Michigan Fraternal Order)
of Police) Economic Issues

ARBITRATION PANEL

Nathan Lipson, Chairman
Byron Mazade, Employer Designee
Fred LaMaire, Labor Organization Designee

APPEARANCES

City

John C. Schrier, Attorney
Timothy Paul, Finance Director

Union

Kenneth W. Zatkoff, Attorney
Nancy Ciccone, Research Analyst
Daniel A. Stout, President - Muskegon Command Union
Donald H. DeBoef, Secretary/Treasurer - Muskegon Command Union
Joseph V. Steinhauer, Vice-President - Muskegon Command Union

INTRODUCTION

On July 13, 1992, the Arbitration Panel had a pre-hearing conference in which numerous issues that had arisen in the parties' bargaining were identified; some issues had been resolved prior to the meeting and others were still outstanding. Procedures for the handling of the case were established and it was agreed that formal hearings would be scheduled December 1, through 4, 1992.

However, shortly before hearings were to begin the Panel was advised that all issues but two had been settled by the parties. Accordingly, it was determined that a hearing on December 3, would suffice. The hearing took place and the case was closed with post-hearing briefs.

The parties pointed out that there are eight factors in the governing statute upon which the Arbitration Panel must base its opinion and orders. These are:

- (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 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 of 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 and 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.

The parties provided evidence and argument covering some, but not all, of the above factors. It was stipulated that the following communities were comparable to the City of Muskegon: City of Grand Haven, City of Holland, City of Muskegon Heights, City of Norton Shores, County of Muskegon. In addition, it was agreed that agreements between the City of Muskegon and other labor organizations could be used as comparables. The opinions and orders of the Arbitration Panel were also based on those matters of which judicial notice could be taken. The Panel considered the following:

I. Acting Assignment Pay or Working out of Classification

The Union's last best offer was that Section 27 of the collective bargaining agreement be modified to read as follows:

"Effective January 1, 1992 any employee who works in a higher classification than his/her own shall be

paid the rate of the higher classification for all hours worked, provided the employee has first accumulated forty (40) hours work in a higher classification during that year. The first forty (40) hours accumulated in a higher classification shall be paid at the employees regular rate of pay."

The City's response was:

"ACTING ASSIGNMENT PAY --- City proposes no change in the present language."

The 1989-1991 collective bargaining agreement included

Section 27 - Working Out of Classification as follows:

"Any employee who, upon request, works in excess of forty (40) consecutive hours in a higher classification than his own classification, shall be paid at the rate of the higher classification for all hours worked in said higher classification in excess of forty (40). The first forty (40) consecutive hours of work in said higher classification shall be paid at the employee's regular rate of pay."

A review of the collective bargaining agreements, coupled with calls to cities, indicated the following with regard to acting assignment pay in communities that the parties stipulated as comparable to Muskegon:

<u>Community</u>	<u>Conditions and Restrictions</u>
Grand Haven	Step-up pay after 8 consecutive days. <u>1/</u>
Holland	Step-up pay after 1 work day. <u>2/</u>
Muskegon Co.	Step-up pay after 60 days.
Muskegon Heights	Step-up pay after 30 days.
Norton Shores	No contractual language.

1/ The City is not allowed to remove an employee from a temporary assignment and then return the employee to the same assignment for the purpose of avoiding an obligation to pay the higher rate after 8 consecutive days.

2/ None if for vacation, personal leave, etc., but after one day if there is a vacancy.

The un rebutted testimony of Union witnesses indicated that some employees work as much as 32 consecutive hours per week in higher classifications without receiving higher pay. Sgt. Steinhauer explained that while in the past employees were assigned to higher classifications as a result of temporary situations such as vacations and sick time, currently command officers are assigned out of classification on a continuous basis as a result of the shortage of higher classification employees.

He gave the example of frequent assignments of a night shift sergeant who works eight consecutive hours or one shift in his regular job, and is then assigned as a lieutenant (a higher classification) for eight hours. Thereafter, he is sent back to his regular position. Since he has not worked for forty hours in the higher-rated job, he is not entitled to additional pay. The testimony was that these are not isolated occurrences involving only one member of the bargaining unit.

It was pointed out that in 1989 there were thirteen employees in the command officers bargaining unit, but at the date of the hearing there were only nine so employed. Moreover, although the City budgeted for eleven to twelve officers for 1992 and 1993, no additional positions have been filled. This, the Union believes is reason for the frequency of out-of-classification assignments.

The Union has argued that the City has used Section 27 of the contract to avoid bargaining unit hiring, and

particularly the hiring of higher classification employees. But the Panel does not ascribe evil motivation to the described temporary assignments. The probable explanation is that these assignments were made as a result of the need to fill vacancies with the available work force.

But whatever the explanation, employees affected by such assignments are not being compensated for the work done. It is observed that in at least two of the comparable bargaining units, in some circumstances, higher compensation for out-of-classification assignments is provided, than does the City of Muskegon. It is also the observation of the Panel Chairman, on the basis of many years of collective bargaining experience, that immediate higher pay for assignments to higher classifications is the norm in the private sector.

The modification proposed by the Union does not require pro-rata higher pay for every assignment. Instead, management would be allowed to assign an employee to higher classification work without additional pay for as much as 40 hours during a year --- only thereafter would additional pay be required.

The Panel does not view this proposal as being limited by the Employer's ability to pay. Instead, if manning is handled reasonably --- i.e., by filling required vacancies --- out-of-classification assignments should be minimal. Thus, this is an equity issue which can be granted for the employees without violating any of the requirements of the Act.

II. Wages

The parties have agreed that the collective bargaining agreement will have a three-year term and will be effective January 1, 1992. The proposed salary increases for all bargaining unit classifications are as follows:

<u>Effective Date</u>	<u>Union Proposal</u>	<u>City Proposal</u>
01/01/92	5%	3.5%
01/01/93	5%	3.25%
01/01/94	5%	3.25%

The Union argues for higher wage increases than offered by the City on the basis that Muskegon command officers' salaries are lower than those in the stipulated comparables. Thus, Muskegon sergeants' and lieutenants' salaries ranked last among five comparables in 1991 and 1992. Three of the comparable communities had captain positions, and Muskegon was third in this comparison in 1991 and 1992. If average salaries for sergeants, lieutenants, and captains are compared for 1991 and 1992, Muskegon is consistently below the averages for the comparable communities.

The Union also argues that the working conditions of the employees in this bargaining unit justify higher increases than offered by the City. As was earlier pointed out, the number of command officers has declined in recent years, and it can be concluded that the burden on the remaining employees has risen.

The increase in workload and stress of command officers is substantiated by the fact that the number of sworn

officers supervised by these employees has declined from 102 in 1972 to approximately 62 in 1991. However, when 1972 is compared to 1991, it is seen that the number of felonies and misdemeanors have increased by 83%.

The average percentage wage increases in the comparable communities for sergeants and lieutenants in 1992 was 6.2% and 5.8%, respectively. For all of these reasons the Union believes that its pay proposal is more justified than the City's. The Union concludes that, "The command officers are overworked, undermanned, and underpaid."

While the City contends that an analysis of pay increases among the comparables supports its position better than the Union's, the Employer's major argument is based on its financial condition. Thus, the state's equalized valuation of property for the City of Muskegon, as stated on a per capita basis was \$10,730. This was well below the average of the \$14,380 for the comparable cities and next to the lowest among the comparables. SEV per capita is deemed a valid measure of a government's ability to generate tax dollars.

Another measure of a community's tax burden is "relative tax effort," which is based on taxes raised versus SEV and compared to other communities in the state. The City of Muskegon has a relative tax effort of 1.09752. Since a relative tax effort of 1 would be the average in the state, Muskegon taxes itself above the Michigan average.

Moreover, Muskegon's relative tax effort is above the

average of the four cities in the comparables, when Muskegon itself is included in the average. Only one of the cities, Muskegon Heights, has a higher relative tax effort than Muskegon.

The fact that the City's fund balance has been declining since 1990, and that the decline is projected to continue has great significance. Thus, at the end of 1990, the fund balance was \$1,718,839, and the budgeted fund balance for the end of 1992 was \$1,163,603. Declines are projected for the next three years. When projected general fund revenues for 1995 of \$11,645,126, are compared with projected general fund expenditures for that year of \$12,312,866, a negative fund balance of \$94,356 is anticipated.

The Arbitration Panel takes judicial notice of the fact that the Consumer Price Index has been rising at about the rate of 3% during 1992, and that inflation is not predicted to be a substantial problem during the less than two years that this contract has to run. Thus, the salaries of the bargaining unit members when viewed in real terms would likely be preserved by the City's proposal.

When these considerations are coupled with the City's financial condition, it becomes apparent that the City's wage proposal is the more appropriate of the two. The City's difficulties must be deemed to outweigh the equitable arguments advanced by the Union.

AWARD

I. Acting Assignment Pay or Working Out of Classification

On the basis of findings of fact from the record as a whole, and in consideration of each of the relevant factors of Section 423.239 of the Act, and particularly on the basis of Paragraphs (b) and (h), the Union's last best offer is accepted and that of the City is rejected. Section 27 of the collective bargaining agreement shall be modified as requested by the Union.



Nathan Lipson, Chairman

Panel Member(s) Dissenting

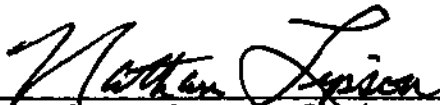


Panel Member(s) Concurring



II. Wages

On the basis of findings of fact from the record as a whole, and in consideration of each of the relevant factors of Section 423.239 of the Act, and particularly on the basis of Paragraphs (b), (c), and (e), the City's last best offer is accepted and that of the Union is rejected. Wage increases shall be 3.5%, 3.25%, and 3.25%, in 1992, 1993, and 1994, respectively as set forth in the City position above.



Nathan Lipson, Chairman

Panel Member(s) Dissenting



Panel Member(s) Concurring



Dated this 8TH day of MARCH, 1993
Ann Arbor, Michigan