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In the Matter of Interest Arbitration between:

CITY OF SOUTH HAVEN,

Employer,

-and-

LABOR COUNCIL, FRATERNAL ORDER OF POLICE, LODGE NO. 119,

Union.

MERC Case No. G86 D-464

Appearances:

For the Employer: John H. Gretzinger

For the Union: John A. Lyons, Jr.

FINDINGS, OPINION AND ORDERS

OF THE ARBITRATION PANEL

Benjamin A. Kerner, Neutral Arbitrator
Scott Ratter, Employer delegate
Homer Lafrinierè, Union Delegate

This case was initiated by the Labor Council, Fraternal Order of Police and its Lodge No. 119, on December 22, 1986, by the filing of a Petition for Arbitration pursuant to 1969 Public Act 312, as amended, stating that the petitioner and the City of South Haven were at impasse in bargaining about two issues: (1) pay for patrolmen and corporals acting as shift commanders; and (2) experimental shift bid procedure. As developed at the hearing in this matter, and as evidenced in Joint Exhibit 0, the second issue involves the definition of "seniority" as used in a shift bidding procedure which otherwise has been fully agreed, and, in many particulars, has been

implemented by the City. The first issue, it was stipulated at the hearing, will be considered an economic issue; the second issue, it was stipulated at the hearing, will be considered a non-economic issue by the Arbitration Panel.

The parties continued to negotiate during the pendency of this petition; at the request of and with the consent of the parties, the Neutral Arbitrator set a hearing date almost 6 months after the date of his appointment in July 1987. On December 9, 1987, the noticed date of hearing, the parties remained at impasse on the two issues identified in the original petition, and the Panel proceeded to take evidence on the issues in dispute. Both parties were represented by counsel. Both parties were afforded full opportunity to present all relevant evidence, and to cross-examine witnesses for the other side. At the conclusion of the hearing, the parties presented their last best offers on the record, as follows:

Issue 1: Step-up Pay for patrolmen.

City's Last Best Offer:

In instances during a pay period where a police officer works for more than 24 hours as shift commander, he or she shall be paid for all hours worked as shift commander at a sergeant's rate of pay.

Union's Last Best Offer:

For any hours worked over 8 hours in one pay period in the duties of shift commander, patrol officers shall be paid at a sergeant's rate of pay.

Issue 2: Definition of "Seniority" as used in shift bidding procedure.

City's Last Best Offer:

For purposes of bidding to select a shift, an employee shall have seniority dating to the date she began to exercise any of the duties of the classification in which the employee is selecting a shift.

Union's Last Best Offer:

For purposes of bidding to select a shift, an employee shall have seniority dating to the date he or she assumed the full-time authority of the position or classification in which the employee is selecting a shift.

SUMMARY OF EVIDENCE ON ISSUE 1.

The Police Department of the City of South Haven consists of the Chief, 3 sergeants, 2 corporals, 8 or 9 patrol officers and 3 Dispatcher/ Turnkeys. The corporals enjoy a red-circled wage rate; their classification is in the process of being phased out. A normal shift consists of a sergeant (in charge of the shift), a dispatcher, and 4 patrol officers. Some shifts are covered by a sergeant, a dispatcher, and 3 patrol officers. Under current staffing patterns, approximately 2 full days (6 shifts) in 21 turns (one full week of 8-hour shifts) cannot be covered with a sergeant to command the shift. In those instances, the senior patrol officer (or corporal) on duty is designated as commander of the shift. The issue is when should patrol officers begin earning step-up pay for acting as shift commander, a role normally performed by a sergeant.

The evidence on this issue consisted of exhibits illustrating the practices of other jurisdictions on the matter of step-up pay. In addition, there was considerable testimony about the duties performed by a patrol officer, on the one hand, and by a sergeant, on the other, while in command of a shift. There is essentially no

disagreement between the parties about what these duties are. Therefore, the evidence may be summarized in abbreviated fashion, simply to give the reader some background on the significance of the condition of employment that is in dispute.

A sergeant's job is to assign the patrols (patrol 1 or patrol 2); and to give direction on the beat, as needed. All sergeants are involved in the police auxiliary program, two of them specifically in the training of crossing guards; however, this is not a function they perform while in the role of shift commander. (It is also not unique to sergeants.) Sergeants, of course, also evaluate on a regular basis the patrol officers they have supervised. Sergeants have disciplinary authority. Formerly, but not at present, they handled grievances.

In essence, patrol officers who are designated as shift commanders do everything that sergeants do, with the exception of writing up other employees for discipline. However, as Chief Allred pointed out, there may be instances when an officer in charge of shift will exercise authority in a situation which will ultimately result in the discipline of another officer: By way of hypothetical example, the Chief testified, it would be the responsibility of a patrol officer acting as shift commander to send home an employee who reported on duty while under the influence of liquor, or otherwise behaving irresponsibly. The patrol officer would take such action in the prudent exercise of his authority as shift commander, but if possible, the patrol officer would avoid giving out discipline.

The City presented an exhibit showing the populations and state equalized valuations of property in cities it considered comparable. These are Belding, Charlotte, Coldwater, Grand Ledge, Hastings,

Mason, Portland, and St. Johns. The populations of these cities range from 44 % larger (Coldwater) to 35 % smaller (Portland) than the City of South Haven (Pop. 6091). These cities have police forces ranging in size from 8 to 20.

Two of these cities, contended the Employer, have contract provisions regarding step-up pay. In Coldwater, employees must work in the higher classification for 30 days in order to receive the higher rate of pay. However, an examination of the contract provision shows that this provision is designed to apply in the event of temporary transfers [not necessarily the same as temporary assignments]. In Portland, employees must work for one full pay period in the higher classification in order to receive the higher rate of pay. The contract provision in the City of Portland is designed to apply to temporary assignments. It bears noting here that an examination of Employer Exhibit #3 would indicate that the City of Portland has only two classifications in its police department: patrolmen and dispatcher [but no sergeants].

In the same vein, the Union presented evidence of other jurisdictions which pay premium pay to officers who perform in the role of shift commander. St. Joseph pays its officers $1.00 for every hour worked in the sergeant's role. Niles, Cadillac, and Marshall likewise pay premium pay for every hour worked in the higher-paid position ($0.50 per hour). By contrast, the City of Grand Haven pays its officers step-up pay (sergeants' rate of pay) only after they have worked 8 consecutive days in a sergeant's position.

There was no evidence relating to other factors defined by Section 9 of Public Act 312. Specifically, there was no evidence relating to the lawful authority of the employer; the interest and welfare of the public and the financial ability of the jurisdiction to meet the costs; the comparative wages or practices of private-sector employers; the cost of living; the overall compensation paid to employees; changes in the foregoing circumstances; or traditional factors normally operative in collective bargaining. The Arbitration Panel is not suggesting that any further evidence was appropriate or needed. Rather, we are merely pointing out that the parties themselves deemed only one of the Section 9 factors [d(i)] to be significant, namely: What was the practice of other police departments in comparable communities, i.e. communities of similar size, police department composition, and location? [The panel takes note, as shown in Employer Exhibit #4, that the communities cited by both the Employer and the Union are confined to the southwest quadrant of the Lower Peninsula, with the exception of Cadillac, which is in the northwest quadrant of the Lower Peninsula.]

FINDINGS, OPINION, AND ORDER.

Based on the above comments, it must be clear that the decision of the Panel on this issue can be based on only one factor, the practices in public employment in comparable communities.

Our analysis of the evidence in this case establishes **and we find** that:

(1) There is a spread of approximately $0.86 per hour in the base wage of patrol officers and sergeants in the City of South Haven.

(2) Patrol officers regularly are required to perform the duties of shift commander, a responsibility which is normally performed by a sergeant. On average, 6 shifts in a 21-turn week must be covered in this fashion in the City of South Haven. There was no evidence of the frequency of occurrence of patrol officers' being assigned to act as shift commander in any other jurisdiction.

(3) At least four other jurisdictions, cities of small to moderate size on the western side of the state, have contract provisions or work practices whereby patrol officers are paid 0.50--$1.00 more per hour for every hour they work in a sergeant's role (Niles, St. Joseph, Marshall, and Cadillac).

(4) Another jurisdiction of comparable size in the southwestern corner of the state, Dowagiac, pays patrol officers a sergeant's rate of pay for every hour worked after the first 8 hours of work in a shift commander's role.

(5) Grand Haven, a city of somewhat larger size in the same vicinity, requires patrol officers to work 8 days in the higher classification before it pays them sergeant's pay.

(6) Portland, a significantly smaller community with no sergeants, so far as this record shows, has a contract provision requiring higher rates of pay for bargaining unit members who are assigned for at least one full pay period to perform the duties of a higher-paid classification. [Patrol officer and dispatcher are the only classifications shown in the City of Portland Police Department on this record.]

(7) Coldwater, a comparable community in the southern tier of the state, has a contract provision which speaks to temporary

transfers, but there was no evidence presented on how the City of Coldwater handles temporary assignments, such as are at issue in the present case. It has not been shown that temporary assignments, such as to cover one shift as shift commander, are considered by the City of Coldwater to be temporary transfers.

(8) Six other jurisdictions, comparable communities with small populations and small police departments located in the western part of the state (and which employ at least one sergeant), have no contract provisions or work rules, so far as this record shows, permitting patrolmen to receive step-up pay if they serve as shift commanders. (Belding, Charlotte, Grand Ledge, Hastings, Mason, and St. Johns).

The decision on this issue must be based on what comparable communities provide. The Panel is of the opinion that when four communities of similarly small size in the same part of the state have provided step-up pay of $0.50 to $1.00/ hour to patrolmen serving in a sergeant's role--and provide such pay for every hour of such service--it is not out of line for this community to provide step-up pay of approximately $0.86/ hour whenever an officer has already served one 8-hour shift in a pay period.

While the evidence would support a conclusion that a larger number of comparable communities do not provide any step-up pay, it is more pertinent to observe that we have no evidence about the frequency of the use of patrolmen in higher-ranking positions in any of these communities. It has been factually established, however, that in South Haven, the Police Department could not run on its present staffing pattern without utilizing patrol officers in

sergeants' roles on a regular basis. Thus, the use of patrol officers to perform shift commander duty permits the City to save on sergeants' paid time.

The duties of shift commander are recognized by all concerned to be more demanding than those of a patrol officer. More discretionary judgment is required. More responsibility is thrust on the shoulders of the shift commander. In view of the regularity of such assignments to patrol officers, it does not seem unfair to compensate patrol officers whenever the assignment is for more than one day per pay period.

We conclude that the last best offer of the Union is more nearly in accord with the practices in comparable communities, as established by the evidence in this case. Thus, we adopt the Union's proposal on this issue.

ORDER

The parties are directed to incorporate the following clause in their 1986--88 collective bargaining agreement:

> For any hours worked over 8 hours in one pay period in the duties of shift commander, patrol officers shall be paid at a sergeant's rate of pay.

Benjamin A. Kerner
Neutral Arbitrator

Homer Lafrinere
Union Delegate

Scott Ratter — DISAGREE

Scott Ratter
Employer Delegate

SUMMARY OF THE EVIDENCE ON ISSUE 2.

The parties have negotiated an experimental shift bid procedure under which the Employer agreed to implement "an experimental system to allow employees to bid and receive assignment to regular permanent shifts based upon seniority. This experimental system would allow shift assignments to be fixed as of January 1 and July 1 of each year." However, the parties were unable to agree on an appropriate definition for "seniority" as used in this section. The Union argues that "seniority" should mean "classification seniority," a term which is well defined in Section 6.1 of the contract. The Employer argues that "seniority" (as used in this experimental shift bidding procedure) should count all the time an employee performs the work of a given classification, whether or not the employee has been appointed to that classification.

The evidence on this issue consisted of the testimony of Laurie Smith Tanczos plus Employer Exhibits # 11--19 and Union Exhibit #9. From this evidence, the following facts appear to be undisputed (except where noted):

Laurie Smith Tanczos was hired in to the Department as a Parking Enforcement Officer on November 6, 1978. Her duties consisted of enforcing parking ordinances by patrolling, issuing tickets, doing paper work concerning unpaid tickets, and repairing broken parking meters. In addition, she spent some portion of her time answering phones, "sitting desk," or dispatching, as it is variously called. The parties disagree about what portion of her time was spent doing dispatching.

In mid-June, 1982, Laurie Smith Tanczos was informed that she would be laid off from the position of Parking Enforcement Officer, on account of reductions in the police department budget. She protested her layoff in a letter to the City Manager. He thereafter was persuaded that Laurie Smith Tanczos had bumping rights under the collective bargaining agreement then in effect, and that she was entitled to bump to the position of Dispatcher/Turnkey.

On July 1, 1982, Laurie Smith Tanczos was reclassified to the position of Dispatcher/Turnkey. As of July 1, 1982, there were 3 employees in the classification of Dispatcher/Turnkey: Gloria Bray, Carolyn Todd, and Laurie Smith Tanczos.

Laurie Smith Tanczos started work in the classification of Dispatcher/Turnkey on third shift [midnights] [Tr. p. 45]. In 1984, following the departure of Carolyn Todd, Laurie Smith Tanczos bid into the day shift, and has remained on that shift to the present time. [Tr. p. 46]

FINDINGS, OPINION, AND ORDER ON ISSUE 2.

This Arbitration Panel is confined by the presentation of this case as an Act 312 interest arbitration dispute to use certain factors in deciding each issue. These factors are not the same as the criteria available to a solo arbitrator working free-lance on a grievance arbitration matter. Rather, the statute directs us to look at the following factors:

(a) the lawful authority of the employer;

(b) the stipulations of the parties;

(c) the interest and welfare of the public and the financial ability of the jurisdiction to meet the costs;

(d) the comparative wages, and conditions of employment

i) in public employment in comparable communities;

ii) in private employment in comparable communities;

(e) the cost of living;

(f) the overall compensation paid to employees;

(g) changes in the foregoing circumstances; and/or,

(h) traditional factors normally operative in collective bargaining.

What are the factors on which we have evidence?

In its presentation on issue 2, the Employer, in essence, relies on Section 9(h) of the statute, traditional factors: specifically, the historical equities in favor of Ms. Tanczos' having continued seniority over a later-hired employee, Ms. Bray. The Employer's position is, "That it would have been inequitable for us to create a classification seniority system that would not recognize the historical preference given to Ms. Smith over Ms. Bray, and that appropriately it ought to be continued in that way."

The Union relies on the same factor--traditional factors used in bargaining--by its assertion that classification seniority is a traditional, well-understood concept in labor relations. The Union argues that this concept should be applied here to give meaning to the term "seniority" as used in the experimental shift bidding procedure.

There are also stipulations, or at least uncontested statements concerning the history of this dispute, as recited in full above. All the evidence on issue 2 relates to these two factor [9(b) and

9(h)]. There is no evidence relating to other factors identified in Section 9 of Act 312.

After due consideration, we are of the opinion that the historical equities cited by the Employer do not afford a good foundation for constructing a condition of employment applicable to the entire bargaining unit. Unlike a grievance arbitration, this case does not give us the liberty to judge the equities applicable to an individual potential grievant. Although evidence was adduced by the Employer going to the question of how much of the time of Laurie Smith Tanczos was spent in the duties of dispatching during the period from November 1978 until July 1982, the Panel has decided that it is not necessary to make a precise determination of the proportion of Ms. Tanczos's time spent in dispatching. We must confine ourselves to determining the condition of work applicable to the whole bargaining unit by reviewing the record evidence against statutory standards. We do not think Act 312 gives us warrant to write a general rule and then to define a "red-circle" exception for one individual in the unit.

Furthermore, the Panel is of the opinion that the "equitable" approach advocated by the Employer could wreak havoc if applied to other facts easily within the realm of possibility, even within this small department. For instance, a sergeant with low classification seniority could conceivably exercise his high overall seniority to oust another sergeant with more classification seniority from that sergeant's preferred shift. Other anomalies are possible to imagine.

But without going into the realm of imaginings, another potent reason appears to support the Union's position on this issue. Not only is classification seniority a traditional and well understood concept. But also the concept of classification seniority as used in this contract suffices to define the rights of all members of the bargaining unit unambiguously and fairly with respect to one another in the area of shift bidding. Contrariwise, to allow members of the bargaining unit to claim additional seniority, beyond that defined by the date of their hire/ transfer/ promotion/ bump into a classification would encourage untold grievances and disruptions. To allow that as the result of any arbitration proceeding, much less as the result of an interest arbitration proceeding, would be to work contrary to the traditions and expectations of all concerned, including the Employer.

It is thus with some regard for the traditional factor of regularizing the expectations of both parties (as well as the expectations of bargaining unit members), and of avoiding the need for case-by-case resolution of seniority claims in the routine matter of shift bidding, that the Panel concludes that classification seniority is the proper approach to take in resolving issue 2. The traditional factors here cited tend to support the Panel's conclusion of establishing classification seniority as the guiding light in applying the parties' shift bidding procedure.

At this point, it bears noting that the Panel must base its findings, opinion and order on this non-economic issue "upon the applicable factors prescribed in section 9" [M.C.L.A. 423.238], but need not conclude with an order which conforms to the last best offer of either party. It is the Panel's judgment that the definition of seniority which best fits the needs of the parties is that definition already adopted by them in Section 6.1 of their current contract: "Classification seniority shall be defined to mean the length of an employee's continuous service within a job classification covered by this Agreement," i.e., beginning with the date an employee was officially classified in a designated job classification.

ORDER

The parties are directed to incorporate the definition of classification seniority as used in Section 6.1 of the 1986-88 agreement in their shift bid procedure.

Benjamin A. Kerner
Neutral Arbitrator

Homer Lafrinere
Union Panel Delegate

Scott Ratter,
City Delegate

POSTSCRIPT

The members of the Arbitration Panel met to review the Findings, Opinion, and above-stated Orders on January 11, 1988. At the meeting of the Panel, it became apparent that certain issues relating to the implementation of the above-stated Orders may require further bargaining and/or hearing. Thus, the Panel agreed unanimously to continue its jurisdiction for a period of 90 days from the date of issue of this Opinion.

ORDER

The Arbitration Panel shall retain jurisdiction of this case for a period of 90 days from the date of issue. Either party may petition the Neutral Arbitrator to reconvene a hearing at any time within the next 90 days.

Benjamin A. Kerner
Neutral Arbitrator

Homer Lafrinere/BAK

Homer Lafrinere
Union Panel Delegate

Scott Ratter/BAK

Scott Ratter
City Delegate

Dated: Jan. 12, 1988.
Ann Arbor, Michigan.