

CITY OF CLAWSON

-and the-

POLICE OFFICERS LABOR COUNCIL

Act 312 Compulsory Arbitration Panel

MERC Case No. D01 A-0165

ACT 312 AWARD

John Viviano, POLC Delegate

Mark Douma, POLC Advocate

Brad A. Rayle, Employer Advocate and Delegate

Donald R. Burkholder,

312 Chair and Arbitrator

January 13, 2003

The Michigan Employment Relations Commission appointed this Arbitrator by letter of February 21, 2002. The Petition for Arbitration, dated December 3, 2001, listed the following issues in dispute:

Union:

- Article 29, Disciplinary Procedure and Members Rights
- Article 30, Salary Schedule
- Article 31, Pension Contributions
- Retroactivity of Benefits

Employer:

- Article 6, Hospitalization, Dental and Optical Benefits
- Article 10, Holidays
- Article 14, Court Time, Call Back Time and Standby Time
- Article 16, Probationary Employee
- Article 20, Funeral Leave and Sick Leave
- Article 24, Residency
- Article 30, Salary Schedule
- Article 33, Term of Agreement and Modification
- Article 35, Promotion to Sergeant
- Letter of Understanding Regarding Overtime
- The creation of gender neutral language, and replacing the word member or "officer" with the word "employee" where applicable.

The appointment was preceded by two-eight-hour mediation sessions, on August 20 and September 20, 2002. Negotiations took place prior to and during the initial 312 Arbitration hearing date, November 5, 2002 and continuing through the date of the second hearing, November 14, 2002. Both parties were represented by counsel, the Union represented by Mark Douma and the Employer by Brad A. Rayle. Counsel for the parties agreed to submit the matter to the Panel, based on exhibits prepared by the

parties. With the introduction of exhibits as evidence, the parties stipulated that a] all issues in this arbitration are economic; b] each year of wages will be considered a separate issue, c] the parties agree as to the authenticity of the exhibits and their relevancy, and d] all issues other than the following were withdrawn:

1. Hospitalization medical insurance coverage, Article 6. City Issue.
2. Sick Leave, Article 20. City Issue.
3. Record of Disciplinary Action, Article 29. Union issue.
4. Pension Contribution, Article 31. Union Issue.
5. Term of Agreement, Article 33. Joint Issue.
6. Promotion to Sergeant, Article 35. City Issue
7. Wages – Joint Issue

As to each of the issues, all of the factors in Section 9 of Act 312, noted below, were taken into account. Further, the parties agreed at the November 14th hearing, that the comparables for this 312 only would be as follows:

Harper Woods
Hazel Park
Melvindale
Mt. Clemens
Northville
Rochester
Walled Lake

MICHIGAN EMPLOYMENT RELATIONS COMMISSION [MERC]

Act 312, 1969, Section 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:

- (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 price index for goods and services, commonly known as 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 hearing.
- (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.

The Employer and Union delegates requested that they be permitted to accept or reject the Awards hereinafter set forth on an individual issue-by-issue basis. The Arbitration Panel determined that the members may do so by affixing their signature after the Award in each issue, and indicating the acceptance or rejection of each issue.

Issue 1 Article 6 – Hospitalization, Dental and Optical Benefits

Employer's Last, Best Offer (proposed language in boldface)

Effective January 1, 2003 or as soon thereafter as administratively possible, the hospitalization medical insurance coverage shall change to become Blue Cross Blue Shield Community Blue Option 1 with a \$15.00 drug card for generic prescriptions and a \$30.00 drug card for non-generic prescriptions. Upon presentation of proper documentation showing such payment, the City shall reimburse an employee \$5.00 for each prescription paid for by the employee. Such payment shall be on a monthly basis.

Effective February 1, 2003 or as soon thereafter as administratively possible, employees who are covered by other hospitalization insurance, and who opt not to be covered by the City's hospitalization plan shall receive a stipend as follows:

2 person coverage	\$450.00 per month
Family coverage	\$450.00 per month

In order to opt out of coverage under the City's hospitalization plan, an employee must do so in writing on a form provided by the City, and must provide the City Manager with acceptable proof that the employee and eligible dependents, if any, are covered by other insurance. By way of example, and not limitation, if an employee would normally be covered by the City's 2 person insurance, the employee must show proof that the employee and spouse are covered by other 2 person insurance. Similarly, an employee who normally would

be covered under the City's family insurance must show that the employee and all family members are covered by another family insurance plan.

Stipend to be received by employees who opt out of the City's hospitalization plan will be paid on December 1 and June 1 for the preceding months. Employees who lose their other coverage may be added back to the City's hospitalization plan coverage, subject to all Blue Cross/Blue Shield rules, the next month.

Employees who decide to drop their other coverage and re-enter the City's plan must wait until the next Blue Cross/Blue Shield enrollment date.

Section 2. Upon retirement, Blue Cross/Blue Shield benefits then in effect shall be paid by the City for the retiree and spouse.

Employees retiring after January 1, 2003 and their spouses and any children under the age of nineteen (19) years of age at the time of retirement shall receive Blue Cross Blue Shield Community Blue Option 1 with a \$15.00 drug card for generic prescriptions and a \$30.00 drug card for non-generic prescriptions. Upon presentation of proper documentation showing such payment, the City shall reimburse an employee \$5.00 for each prescription paid for by the employee. Such payment shall be on a monthly basis.

Should hospitalization and medical care benefits provided to current employees as defined in this Article change in future contracts, then hospitalization and medical care benefits provided for retirees retiring on or after January 1, 2003 shall also be changed to the same hospitalization and medical care benefits coverage provided to current employees. Should hospitalization and medical care benefits coverage provided to current employees cease for any reason, such

retirees shall continue to receive the hospitalization and medical care benefits coverage last provided to them at the time the hospitalization and medical care benefits coverage provided to current employees ceased. In the event current employees may be required to share in the premium cost of hospitalization insurance, retirees would not be required to participate in any form of premium cost sharing.

All retirees and / or their spouses must make application and enroll for Medicare parts A & B coverage when eligible. If eligible for Medicare parts A & B the retiree and spouse shall receive City paid for supplemental insurance by the same insurance provider as current employees. Such supplemental coverage, in combination with Medicare, shall provide, to the extent possible, the same benefits as those benefits being received by non-medicare eligible retirees.

Section 3. Employees, spouses and their families shall be covered by the City Dental Program, 80% / 20% co-pay up to a limit of \$900 per contract year. xxx

Union's Last, Best Offer – Status Quo.

The panel is persuaded that the Employer's proposals are supported by the competent, material, and substantial evidence on the whole record, particularly the double-digit increases in premiums. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Employer proposals on Hospitalization, Dental and Optical Benefits.

Accept:



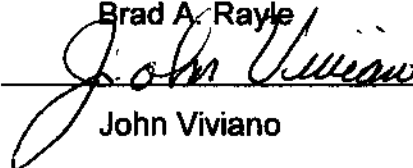
Donald R. Burkholder

Accept:



Brad A. Rayle

Reject:



John Viviano

Issue 2. Article 20 – Funeral and Sick Leave

Employer's Last, Best Offer (proposed language in boldface)

Section 3. The City may require any employee who is on sick leave for three (3) or more consecutive days to be examined by a City physician, at the City's expense, to determine if the employee is able to return to work. The City may require a member who is absent for 3 or more consecutive days to present a doctor's slip excusing the absence before the member is permitted to return to work. After a member has used 48 hours of sick leave in a contract year which has not been excused by a doctor's slip, the member shall be counseled by the City regarding such absenteeism. After receiving such counseling, an employee may not be paid for any further absences not excused by a doctor's slip where the absence is contiguous (i.e., occurs the day before or the day after) with another day off taken by the employee or paid time off taken by the employee, or where the absence occurs after the employee has incurred 72 hours of absences not excused by a doctor's slip.

Section 4. Employees may be permitted upon retirement to take fifty percent (50%) of accrued sick leave x x x

Union's Last, Best Offer - Status quo.

The panel is persuaded that the Employer's proposal is supported by competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Employer's proposal on sick leave.

Accept: Donald R. Burkholder

Accept: Donald R. Burkholder

Reject: Brad A. Rayle

John Viviano
John Viviano

Issue 3. Record of Disciplinary Action

Article 29 – Disciplinary Procedure and Members Rights

Union's Last, Best Offer (Union language in boldface)

Section 4. When **thirty six** months of satisfactory service have been completed from the last disciplinary action taken by the City, all disciplinary matters appearing in the records shall, at the request of the employee, be removed.

Employer's Last, Best Offer – Status quo.

The Panel is persuaded that the Union's proposal is supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to Section 9 factors, the Panel awards the Union's proposal on disciplinary procedure.

Accept: Donald R. Burkholder
Donald R. Burkholder
Accept: John Viviano
John Viviano
Reject: Brad A. Rayle
Brad A. Rayle

Issue 4 a and b Pension Contributions

ARTICLE 31 - PENSION CONTRIBUTIONS

Effective June 30, 2001 the MERS Benefit program B-4 (2.5% of members final average compensation multiplied by years and months of credited service). Final Average Compensation Plan FAC-3 (Final Average Compensation is computed on the highest 36 consecutive months of earnings, divided by 3).

4 a

Union's Last, Best Offer (in boldface)

Effective January 1, 2003 or as soon as administratively possible, the MERS E-2 (2.5% cost of living for all future retirees) benefit shall be added to the employees' pension benefits for employees retiring on or after January 1, 2003. As a result of this benefit members have agreed to increase their contribution from 1.5% currently, to 3.5% effective January 1, 2003.

An employee who has 25 years of service with the City, and who has reached the age of 50, may, at his or her option, retire with full pension (F50/25).

All employees shall contribute 1.5% of all compensation towards pension benefits. Compensation reportable to MERS towards pension benefits.

The Panel is persuaded that the Union's proposal is supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Union proposal regarding benefits for future retirees and subsequent member contribution level.

Employer's Last, Best Offer: Status quo.

Accept: Donald R. Burkholder
Donald R. Burkholder
Accept: John Viviano
John Viviano
Reject: Brad A. Rayle
Brad A. Rayle

4b Employer's Last, Best Offer (in boldface)

The City and the Union further agree that, effective January 1, 2003 and continuing through June 30, 2010, the parties shall not make any negotiations or bargaining demand or request seeking to increase or decrease the benefits received by employees or retirees under this Article. The parties hereby waive their right to make such demands or requests. The City and the Union agree and acknowledge that it is the intent of this section of this Article to place a moratorium on pension benefits during this period from January 1, 2003 through June 30, 2010. The agreement and waivers set forth in this section of this article shall not apply to a demand or request by the Union for an increase in the defined benefit program multiplier from 2.5 % to 2.75%, provided, however, that such request or demand shall (1) only be made during negotiations for a new collective

bargaining agreement and (2) provide that the costs to the City of such increased multiplier benefit shall be fully borne by employees in the bargaining unit in the form of increased employee contributions.

Union's Last, Best Offer – Status quo.

The Panel is persuaded that the Employer's proposal is supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Employer proposal regarding benefits for future retirees and subsequent member contribution level.

Accept: Donald R. Burkholder

Donald R. Burkholder

Accept: Brad A. Rayle

Brad A. Rayle

Reject: John Viviano

John Viviano

Issue 5 **ARTICLE 33 - TERM OF AGREEMENT AND MODIFICATION**

Employer's Last, Best Offer (in boldface)

Section 1. This Agreement shall be in effect from the first day of July 2001 **and** shall remain in full force and effect up to, and including, the 30th day of June 2003.

Union's Last, Best Offer (in regular boldface)

Section 1. This Agreement shall be in effect from the first day of July 2001 **and** shall remain in full force and effect up to, and including, the 30th day of June 2004.

The Panel is persuaded that the Employer's proposal is supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Employer's proposal on term of agreement.

Accept: Donald R. Burkholder

Donald R. Burkholder

Accept: Brad A. Rayle

Brad A. Rayle

Reject: John Viviano

John Viviano

Issue 6. Promotion to Sergeant

ARTICLE 35 – PROMOTION TO SERGEANT

Employer's Last, Best Offer (in boldface)

Section 1: To be eligible for promotion to Sergeant an officer must have:

- A. **Three** years of service with the Clawson Police Department as a sworn officer.
- B. Total Score shall determine position on list.
- C. List shall be good for two (2) years.
- D. Total Score shall be made up of the following components, both of which must be passed.

Written test: 25%

Applicant must pass the written test with a score of seventy percent (70%) or more to be eligible to move on in the process to the Assessment Center.

Assessment Center: 65%

It is the City's intent that EMPCO would be used by the city. If the City is unable to use EMPCO as an assessment center, it will consult with the Union before choosing another Assessment Center. The Assessment Center panel shall be made up of only Sergeants and Lieutenants. All applicants must achieve a minimum score of 70% to pass the Assessment Center.

Seniority: 10%

A. Seniority shall be based on departmental seniority. Each candidate's total months of seniority will be calculated based on seniority as of the written test exam date. For any partial month of seniority, the candidate shall be credited with a full month of seniority. The seniority of the most senior candidate shall be divided into 10 to obtain a factor for calculating the score. Each of the other candidates' months of seniority shall then be multiplied by this factor to obtain their seniority. All numbers will then be rounded off to four decimal places by rounding any third decimal place of five or higher up and any decimal place of four or lower down. The most senior candidates' seniority score shall be 10. Example:

- **The senior member taking the test has 13 years of seniority (13 yos x 12 months = 156 months).**
- **10 points divided by 156 months = .0641025 credit for each month of service, rounded to .0641.**

- ***The other candidates, months of service are then multiplied by .0641.***

B. *An officer who receives a final suspension (i.e., after the employee has failed to grieve the suspension or exhausted his right to grieve and the suspension has been upheld) within 2 years of the date of the written test shall have 3 points deducted from his/her seniority score.*

Section 2: The number of applicants for promotion must exceed the number of positions available for promotion. If the number of applicants does not exceed the available positions, or if no officer tests for the promotion, or no officer is certified after the written test and Assessment Center for the promotional list, the City has the right to appoint any officer in the unit to the position on a temporary basis. Temporary appointment will last until another officer is certified, or 180 days, which ever comes first. This period may be extended by mutual agreement of the parties. If the number of applicants fails to exceed available positions the second time, or no officer is certified after the second opportunity to test, or the second test and Assessment Center for the promotion is conducted, the City Manager would have the discretion to permanently appoint any officer to the position.

Section 3: The City is not required to promote, however if it does it must promote the top candidate from the list.

Section 4: A promoted officer shall serve a one-year probationary period. The probationary period does not include any leave time or other leaves of absence greater than 1 day in duration. During this time period he or she would be subject to being removed from the position by the city Manager, whose decision would not be arbitrary or capricious. If the promoted employee decides to return to the unit within one year, he or she would retain all seniority, including time spent in the Sergeant position.

Union's Last, Best Offer – Status quo.

The Panel is persuaded that the Employer's proposal is supported by competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Employer's proposal on promotion to Sergeant.

Accept: Donald R. Burkholder

Accept: Donald R. Burkholder

Reject: Brad A. Rayle

John Viviano
John Viviano

Issue 7 – Wages (Retroactivity)

Union's Last, Best Offer

Wages shall be retroactive.

Employer's Last, Best Offer

No retroactivity.

The Panel is persuaded that the Union's proposals are supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the applicable Section 9 factors, the Panel awards the Union proposal on retroactivity.

Accept: Donald R. Burkholder

Donald R. Burkholder

Accept: John Viviano

John Viviano

Reject: Brad A. Rayle

Brad A. Rayle

Issue 8 – Wages

Union's Last, Best Offer

2001/02	3% wage increase across the board
2002/03	3% wage increase across the board
2003/04	3% wage increase across the board

Employer's Last, Best Offer:

2001/02	2% increase across the board
2002/03	3% increase across the board
2003/04	2% increase across the board

The Panel is persuaded that the Union's respective proposals of 3% for the 2001/02 contract year and 3% for the 2002/03 contract years are supported by the competent, material, and substantial evidence on the whole record. Accordingly, having given due consideration to the Section 9 factors, the Panel awards the Union's proposal of 3% for the 2001/2002 contract year, and the proposals of both parties of 3% for the 2002/2003 contract year. The Panel notes that the Term of the Agreement, as noted in Issue 5, does not include 2003/2004.

The wages for 2001 and 2002 shall therefore be retroactive to July 1, 2001, and shall be as listed in Appendix A

The City shall have the right, at its discretion, to grant a new hire, an additional increase in salary equaling two six months' steps on the above scale as credit for two or more years of full time experience by that new hire with another certified law enforcement agency prior to being hired by the City. Such a credit shall be capped at two six month Steps, regardless of the amount of past experience.

First Year Wage Increase of 3%:

Accept: Donald R. Burkholder
Donald R. Burkholder
Accept: John Viviano
John Viviano
Reject: Brad A. Rayle
Brad A. Rayle

Second Year Increase of 3%;

Accept: Donald R. Burkholder
Donald R. Burkholder
Accept: John Viviano
John A. Viviano
Accept: Brad A. Rayle
Brad A. Rayle

All other provisions and "Letters of Understanding" of the July 1, 1998 through June 30, 2001 Agreement not contained herein are to remain in full force and effect in the successor Agreement without change.

This award is issued on January 17, 2003, 2003.

Donald R. Burkholder
Donald R. Burkholder, Chairman