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**STATE OF MICHIGAN
COMPULSORY ARBITRATION**

In the Matter of:

CITY OF WYANDOTTE

-and-

POLICE OFFICERS LABOR COUNCIL
(Police Patrol Officers)

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

Case No. D92 G1188

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ARBITRATION OPINION AND AWARD

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STATE OF MICHIGAN
DEPT. OF LABOR & INDUSTRY
EMPLOYMENT DIVISION

APPEARANCES

**For the Compulsory
Arbitration Panel:**

Mark J. Glazer, Impartial Chairperson
Steven H. Schwartz, Employer Designee
Richard Ziegler, Union Designee

For the Employer:

Steven H. Schwartz
Dykema Gossett

For the Union:

Kenneth W. Zatkoff
John A. Lyons, P.C.

DATES

Pre-hearing:

June 29, 1993

Hearings:

December 22, 1993 and January 17, 1994

Executive Session:

March 17, 1994

BACKGROUND

On April 7, 1993 the twenty-eight patrol officers of the Wyandotte Police Department filed for arbitration. The City responded on April 21, 1993. Thereafter, on May 4, 1993 I was appointed impartial chairperson.

The parties have achieved settlement on the majority of issues. To be decided in this proceeding are wages for the year beginning February 1, 1994, shift assignments and residency. The Union's Last Best Offers are attached as Appendix "A"; the City's Last Best Offers are appended as Appendix "B".

The last best offers all involve economic issues; therefore, the panel must adopt one of the last best offers without compromise. Section 9 of Act 312 requires the panel to apply the following factors in reaching its award:

[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 these 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 the 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 proceeding.
- (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 the private employment.

The panel need not afford all of the Article 9 factors the same weight. This was the holding of the Supreme Court in City of Detroit v. DPOA, 498 Mich 410; 294 NW2d 68 (1980).

COMPARABILITY

The Union and the City agree to the following Downriver communities as comparables:

Allen Park
Brownstone Township
Lincoln Park
Riverview
Romulus
Southgate
Trenton

In addition, the City requests the inclusion of the other Downriver communities found in the Downriver Mutual Aid Pact. These communities additionally include:

Ecorse
Flat Rock
Gibraltar
Grosse Isle
Melvindale
River Rouge
Rockwood
Taylor
Woodhaven

DISCUSSION ON COMPARABILITY

Chief Brown testified that in the 1986 negotiations the Command Officers, who were also represented by this Union, used the entire Mutual Aid Pact for cities in their negotiations. In 1983 these parties also used the entire Mutual Aid Pact cities except for Brownstone Township, which was then non-union. Finally, in 1991 the Labor Council and the City stipulated to the sixteen Downriver communities found in the Mutual Aid Pact as comparables.

The bargaining history, therefore, reveals that the entire group of Mutual Aid Pact cities has been utilized by the parties in their negotiations and 312 proceedings. There is nothing in the present record to suggest the deletion of any of the cities as comparables, and they consequently all will be considered.

This is consistent with following the intent of the parties as revealed in their earlier negotiations and Act 312 proceedings. Further, it is an appropriate goal to promote stability in labor relations by continuing to use the cities that the parties have used in the past in their negotiations and 312 proceedings. It is useful for the parties to know in advance what cities are appropriate as comparables.

The panel will consider the Downriver Mutual Aid Pact cities as comparables as set forth by the Employer. However, the weight afforded to each of the cities may not be the same.

ISSUE I

WAGES

The Union offers 3% effective 2-1-94; this would place officers at \$38,531. The City offers 1% effective 2-1-94; this would place officers at \$37,783.

At issue is a three year contract. The parties have settled the first year for a lump sum payment and the third year for 3%; consequently, the panel's focus is only on the 1994-1995 year.

The City maintains that any increase will place it in a deficit, and most importantly, a 3% increase will push up costs throughout the City since the Command Officers have a "me too" clause on wages, and the Fire Department is facing an Act 312 proceeding that will certainly use the Police as an internal comparable.

The Union argues that the City has seen an increase in SEV and a lower tax burden. It also notes that the City receives a fee for administering its TIFA District. The Union further believes that its offer will place its members at the average of the comparables, and that the City has concealed its ability to meet the Union demands.

DISCUSSION

The evidence indicates that a 3% increase as proposed by

the Union will increase an already projected deficit that will exist even if 1% is utilized. This is, of course, only a projection, which may or may not actually occur. However, the panel cannot engage in economic forecasting on its own and must instead rely upon the data in the record. That data suggests that the City lacks the ability to pay for the Union's offer.

The internal comparables also support the City's offer. AFSCME employees received 1% for the second year as did the non-Union employees. Consequently, the City's offer is consistent with wage offers presented to other units.

A review of the external comparables that have settled for 1994-1995 reveals that a 1% increase will keep Wyandotte roughly in place, although there is slippage in regard to one city. However, that is not enough to justify the Union's offer.

The key issue is the ability to pay. Based upon the record, the 1% increase most nearly comports with the Article 9 factors. It would not be in the best interest of this Unit or the City if layoffs were required by a 3% increase. If, however, the City's projections prove to be inaccurate, the Union will have a strong argument to catch-up in future negotiations.

SUMMARY

The City's last best offer on wages should be awarded.

ISSUE II

SHIFT ASSIGNMENTS

Currently, the twenty officers who are actually on patrol

rotate every seven days in sequence, from days to afternoons to midnights. The Union proposes a three month rotation which includes selection by seniority. In effect, the Union's proposal would result in permanent shifts for highly senior officers. The City proposes a three month rotation, without a seniority selection. This means that highly senior officers would have to rotate through the various shifts.

The Union argues that four of its comparable communities have shift selection by seniority. They are Allen Park, Lincoln Park, Romulus and Southgate. The Union maintains that a seniority selection process will not create the problems that are envisioned by the Chief, and that utilization of seniority shift selection in comparable communities is proof that the procedure works.

The City asserts that it has met most of the Union demands by moving from a seven day rotation to a three month one. It also notes that the Union, under the City's proposal, will receive more court overtime since court can no longer be scheduled when the officers are on the day shift. The City projects an additional overtime cost in its proposal of \$55,000 and the cost of hiring a new supervisor at \$66,000.

The City further asserts that the Union's concern about rapidly changing shifts is met in its proposal, and that there isn't any evidence that permanent shifts will benefit the Department; in contrast, it points to Chief Brown's concern that officers be exposed to all three shifts, and that experienced and non-experienced officers work together.

DISCUSSION

The Employer's offer represents a significant improvement for the Union, but misses the Union's biggest concern about permanent shifts for senior employees. Under the Employer's proposal, shifts are increased from seven days to three months. This should meet a major Union concern about fatigue, appetite loss and family problems due to rapidly changing shifts. The three month shift selection should also enable officers to become aware of the community present on their shift, which is another Union concern. Finally, the three month shifts as proposed by the Employer should result in increased overtime earnings for the twenty officers who are actually on patrol, and the promotion of one bargaining unit member.

The Employer's proposal, however, will not settle a Union concern about achieving stability for a second job; and most importantly, it will not allow senior employees to remain on days indefinitely.

The Chief is concerned that junior employees will be stuck on afternoons and midnights as the result of the seniority pick. He notes that most crime occurs during these periods, and that it would be helpful to mix senior and junior personnel. The Chief is also concerned that junior officers will become insensitive by working afternoons, where they will encounter the most criminals. The Chief further believes that senior employees will be essentially unsupervised on midnights, which he regards as being a negative.

The Union response is that many communities permit perma-

ment shifts by seniority without any apparent problem.

A review of the comparables reveals that Gibraltar, Grosse Isle, Riverview, Trenton and Woodhaven have seven day rotations without permanent shifts; thus, Wyandotte's offer will clearly be an improvement over the conditions in this group of comparables. Melvindale and Ecorse rotate every twenty-eight days without permanent shifts; again, Wyandotte's offer results in a more favorable situation for the Union than that found in these two cities.

The Employer's proposal leaves Wyandotte officers behind Allen Park, Flat Rock, Grosse Isle, Lincoln Park, Romulus, Southgate and Taylor on the issue of permanent shifts.

Roughly speaking then, the Employer's proposal is worse on the question of permanent shifts than seven comparables and better than six. If Grosse Isle is considered because it is on seven days even though it has permanent shifts, then the numbers are reversed. These figures fail to represent a significant reason to adopt either position.

An appropriate way to proceed that is consistent with collective bargaining is to grant the Employer's last best offer, with the realization that its arguments may be diminished after the parties have had an opportunity to work with three month shifts. In particular, there will not be an economic argument in the future since the Employer's proposal includes all the expected costs for overtime and additional supervisory personnel.

Additionally, the patrol officers presumably will be more

experienced during the next round of negotiations. This will have an impact on the Department's argument regarding the mixture of senior and junior personnel, since presumably there will be fewer junior personnel.

Finally, there will be some data regarding problems, if any, with personnel working for an extended period of time without supervision on midnights.

I would note that this was an extremely close question based upon the comparables, but that this is an issue best addressed gradually, consistent with the Employer's rather significant concession in its last best offer. Further, when the issue is addressed again in collective bargaining, the parties may be able to find a solution that meets the needs of both sides.

SUMMARY

For the foregoing reasons, the Employer's last best offer on shift selection should be adopted.

ISSUE III

RESIDENCY

The Union proposes residency within a fifteen mile radius of the City; Wyandotte proposes continuation of the current contract language, which requires residency within the city.

The Union notes that its members are required to work in other mutual aid cities, and that therefore officers should be permitted to live within these locations. The Union further points out that officers have been required to respond to calls

in their own neighborhood under the current system, which has caused serious problems. The Union also argues that Allen Park and Lincoln Park allow officers to live within twenty-five miles of the city.

The City maintains that all Wyandotte employees are required to live within the city limits and that there is affordable housing and good schooling available. It also contends that "community policing" is enhanced when officers live within the city limits. Finally, the City points to four of the Union comparables which require their officers to reside within the city.

DISCUSSION

The internal comparables support the City, since all city employees have the same residency requirement. The external comparables would not provide sufficient support for the Union either.

The record at this time fails to support the contention that neighborhood problems make residency not feasible. In contrast, there is evidence that community policing is of benefit to the City.

SUMMARY

The City's last best offer on residency should be adopted.

AWARD

ISSUE I
WAGES

The Employer's last best offer is awarded.


Mark J. Glazer, Impartial Chairperson

Dated: 9-15, 1994

Steven H. Schwartz, Employer Designee
Concur: _____ Dissent: _____

Dated: _____, 1994


Richard Ziegler, Union Designee
Concur: _____ Dissent: ✓

Dated: 4-8-, 1994

AWARD

ISSUE II
SHIFT SELECTION


The Employer's last best offer is awarded.


Mark J. Glazer, Impartial Chairperson

Dated: 9-15, 1994

Steven H. Schwartz, Employer Designee
Concur: _____ Dissent: _____

Dated: _____, 1994


Richard Ziegler, Union Designee
Concur: _____ Dissent: ✓

Dated: 4-8-, 1994

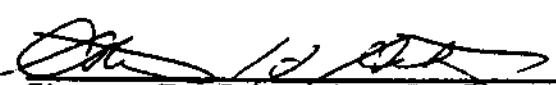
AWARD

ISSUE I
WAGES

The Employer's last best offer is awarded.


Mark J. Glazer, Impartial Chairperson

Dated: 4-15, 1994


Steven H. Schwartz, Employer Designee
Concur: Dissent:

Dated: April 11, 1994

Richard Ziegler, Union Designee
Concur: Dissent:

Dated: , 1994


AWARD

ISSUE II
SHIFT SELECTION

The Employer's last best offer is awarded.


Mark J. Glazer, Impartial Chairperson

Dated: 4-15, 1994


Steven H. Schwartz, Employer Designee
Concur: Dissent:

Dated: April 11, 1994

Richard Ziegler, Union Designee
Concur: Dissent:

Dated: , 1994

AWARD

ISSUE III
RESIDENCY

The Employer's last best offer is awarded.


Mark J. Glazer, Impartial Chairperson

Dated: 4-15, 1994

Steven H. Schwartz, Employer Designee
Concur: _____ Dissent: _____

Dated: _____, 1994

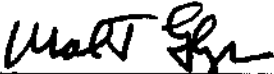

Richard Ziegler, Union Designee
Concur: _____ Dissent: ✓

Dated: 4-8, 1994

AWARD

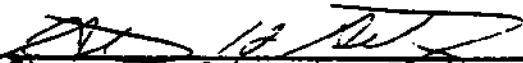
ISSUE III
RESIDENCY

The Employer's last best offer is awarded.



Mark J. Glazer, Impartial Chairperson

Dated: 4-15, 1994



Steven B. Schwartz, Employer Designee

Concur: _____ Dissent: _____

Dated: April 11, 1994

Richard Ziegler, Union Designee

Concur: _____ Dissent: _____

Dated: _____, 1994

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,
WYANDOTTE PATROL OFFICERS
ASSOCIATION,

Union,

-and-

MERC Act 312
Case No: D98 G-1188

CITY OF WYANDOTTE,

Employer.

-----/
MARK J. GLAZER, Chairperson
RICHARD ZIEGLER, Union Delegate
STEVEN H. SCHWARTZ, Employer Delegate
-----/

FINAL OFFER OF SETTLEMENT ON BEHALF OF THE UNION

Union Issues:

1. WAGES (Appendix A)

The Union is requesting the following across-the-board salary increase:

Effective 2/1/94: 3% increase.

2. HOURS OF EMPLOYMENT/ SHIFT DIFFERENTIAL (Article 10/New Section)

The Union is requesting contractual language be established to allow shift selection by seniority every three months:

New Section 4.

A. Management's Rights: Scheduling and personnel assignments for Special Operations, Traffic, D.A.R.E., Auto Theft, D.R.A.N.O., D.E.A.,

and any other non-platoon assignments, are not affected by this section and are at the discretion of the Appointing Authority.

B. Shifts: Members assigned to road patrol shall work steady shifts, which shall be 1st shift (11 p.m. - 7 a.m.); 2nd shift (7 a.m. - 3 p.m.); and 3rd shift (3 p.m. - 11 p.m.). The Appointing Authority shall assign members to work road patrol, however, the shifts shall be selected by seniority. The selections shall last for three (3) months. The selected term shall be for each calendar year quarter (Jan. - Mar.; Apr. - June; Jul. - Sept.; Oct. - Dec.).

C. Leave Days: Each member shall work an average of forty (40) hours per week over each three (3) month period. Each member shall select eight (8) leave days for each twenty-eight (28) day cycle, for a total of twenty-six (26) leave days every quarter. Members shall not accumulate leave days from one selection period to the next.

D. Selection: Members shall select their leave days by seniority. Each member shall select three (3) or four (4) consecutive leave days for the first round. For the second round, each member shall select three (3) days (if three were selected in the first round) or two (2) days (if four were taken in the first round). For the third and fourth rounds each member shall select two (2) days for each round. The second-fourth rounds can be consecutive or non-consecutive days. A maximum of two (2) members may be scheduled off on a leave day at the same time. Leave days are to be in effect for the entire term. Each member shall be guaranteed the opportunity to select one four (4) day long weekend every twenty-eight (28) day cycle. Once selected leave days are fixed and cannot be changed without mutual consent (no bumping).

E. Vacation Picks: Subject to Article XIV, Vacation Leave, once all members have selected their leave days, members may, by seniority, schedule vacation leave during the shift term.

F. Transfers to/from Platoons: Whenever possible, the Appointing Authority will make transfers to coincide with the shift selection periods in B above. In cases of exigent circumstances, such as an unforeseen separation, extended illness or leave of absence, the Appointing Authority may transfer a member from a non-road patrol assignment to the shift where the vacancy exists, for the remainder of the three (3) month period. The member will select leave days from the available remaining days, as provided in C and D above. If the transfer continues into the next three (3) month period, B, C, D and E above apply.

G. Training: The Appointing Authority may change a member's shift and/or adjust leave days for the purpose of attending training.

H. Probationary Employees: Probationary patrol officers shall be assigned to a shift by the Appointing Authority. Those probationary officers assigned to work with a field training officer may be rotated from shift to shift at any time, for purposes of training. Those probationary officers who are counted as manpower and may work alone, shall be assigned to a shift prior to the shift selections by regular officers as specified in B above.

3. RESIDENCY (New contractual provision)

Bargaining unit members shall be allowed to reside within a fifteen (15) mile radius of the city limits.

Respectfully submitted,

JOHN A. LYONS, P.C.



Kenneth W. Zatkoff (P40681)

Attorney for Union
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Dated: January 18, 1994

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March 18, 1994

Mr. Mark J. Glazer
Attorney at Law
3705 W. Maple Road
Bloomfield Hills, MI 48301-3215

RE: City of Wyandotte -and-
Wyandotte Police Patrol Officers
and POLC
MERC Act 312 Case No. D98 G-1188

Dear Mr. Glazer:

Please be advised that in preparing it's Last Best Offer, the Union inadvertently omitted a sentence from it's Last Best Offer on the issue of Hours of Employment/Shift Differential. Article X (New Section). Subsection G. Training, should read as follows:

G. Training: The appointing authority may change a member's shift and/or adjust leave days for the purpose of attending training. A member on a scheduled leave day shall not be required to attend training.

Thank you for your attention and cooperation in this regard.

Very truly yours,

JOHN A. LYONS, P.C.


KENNETH W. ZATKOFF

KWZ:cg

cc: Steven Schwartz, Esq.
Mr. Richard Ziegler

MICHIGAN DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

CITY OF WYANDOTTE,

Respondent,

-and-

POLICE OFFICERS LABOR COUNCIL,

Petitioner.

MERC Case No. D92 G1188
Arb. Mark J. Glazer

Kenneth Zatkoff
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CITY OF WYANDOTTE'S LAST BEST OFFER

Respondent City of Wyandotte, by its attorneys, Dykema
Gossett PLLC, submits its Last Best Offer.

ISSUE: RESIDENCY

City's Last Best Offer: No change.

ISSUE: WAGES (SECOND YEAR OF CONTRACT)

City's Last Best Offer: Retroactive to February 1, 1994, base wages for patrol officers shall be adjusted 1%.

ISSUE: SHIFT ASSIGNMENTS

City's Last Best Offer: (A) Effective July 24, 1994, patrol officers with seniority who are assigned by the Chief of Police or his designee to a road patrol platoon shall be assigned to either the day (first), afternoon (second) or midnight (third) shift and shall remain on that same shift for eighty-four consecutive calendar days (three twenty-eight day cycles), except as provided in this paragraph. At the end of each eighty-four day cycle, these officers shall be rotated to a different shift, in a "MAD" (midnight/afternoon/day) sequence.

Notwithstanding any other provision in this paragraph, the Chief of Police or his designee may (1) assign a probationary employee to any shift for a minimum of seven consecutive calendar days for training purposes; and (2) may change any patrol officer's shift assignment due to another patrol officer's retirement, resignation, layoff, promotion, transfer, leave of absence, sick leave, or change in the number of patrol officers deployed on shifts, or other legitimate operational reasons. Such re-assignment shall not be made arbitrarily or capriciously or solely for discipline purposes.

(B) At the discretion of the Department, training assigned to a patrol officer shall be conducted on a nine hour


work day, including an unpaid lunch hour. If the patrol officer does not work his/her regular assigned shift that day, the training time shall not be considered to be overtime. The department reserves the right to adjust the patrol officer's work schedule for training purposes.

(C) Patrol officers who are required to report to court during off-duty hours shall be credited with compensatory time at time and one half, as described in Article XI, Sections 1(C) and 5. Patrol officers may not take paid time off as vacation time in single day increments if they have at least eight hours of accrued compensatory time.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By:


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Attorney for City of Wyandotte
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(313) 568-5332

Date: January 31, 1994
SHS:3692