

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
ARBITRATION UNDER ACT 312 PUBLIC ACTS OF 1969 AS AMENDED

In the Matter of:

CITY OF BURTON

-and-

MERC Case No. L97 B-1003

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

**FINDINGS OF FACT, OPINIONS,
ORDERS AND AWARD OF ARBITRATION PANEL**

ARBITRATION PANEL

George T. Roumell, Jr., Chairman
Dennis B. DuBay, City Delegate
James DeVries, Association Delegate

APPEARANCES:

FOR THE CITY OF BURTON:

FOR THE POLICE OFFICERS ASSOCIATION
OF MICHIGAN:

Dennis B. DuBay, Attorney

William Birdseye, Business Representative

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
GRAND OCEAN
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BACKGROUND

The Police Officers Association of Michigan represents a bargaining unit consisting of Detectives and Patrol Officers, namely, three Detectives and 28 Patrol Officers. (C.Ex. 15; Jt. Ex. 6, p. 3)¹ There are four other bargaining units and one group of non-union employees. In addition to the POAM, the City also has collective bargaining agreements with the AFSCME, covering 32 Department of Public Works (DPW) employees (C.Ex. 18); the SEIU, covering 11 supervisors and foremen in the DPW (C.Ex. 19); the COAM, covering seven command officers (C.Ex. 16); and the UAW, covering the City's 63 part-time, on-call firefighters (C.Ex. 17). (Tr-22, 30-31, 49)² The City also has 12 non-union personnel, including mayoral aides. (C.Ex. 20) (Tr-31)

The City operates under a strong mayor-council form of government. The Mayor, as well as the seven Council Members are elected for four-year terms. (C.Ex. 11, p. 2) The City is organized along typical departmental lines. (Jt. Ex. 6)

After reaching an impasse in contract negotiations with the City of Burton for a successor Collective Bargaining Agreement, the Police Officers Association of Michigan filed a petition for arbitration to the Michigan Employment Relations Commission pursuant to Act 312 of Public Acts of 1996, as amended (MCLA 423.231, *et seq.*). The petition sets forth the following disputed items:

1. Duration
2. Wages

¹ Joint Exhibits are designated by the prefix "Jt. Ex. ____"; City Exhibits are designated by the prefix "C. Ex. ____"; Union Exhibits are designated by the prefix "U. Ex. ____".

² Tr. refers to the transcript of the hearing held on January 26, 1999.

3. Detective Premium
4. Retiree Health Insurance
5. Longevity
6. Optical Reimbursement
7. Dental Insurance Benefit
8. Tuition Reimbursement

On February 2, 1998, George T. Roumell, Jr. was appointed Chairman of the Arbitration Panel, with Dennis B. DuBay as the City Delegate and James DeVries as the Association Delegate. On February 6, 1998, the Chairman wrote the parties suggesting times for a pre-trial conference. The Chairman thereafter engaged in telephone conferences with the parties. Time limits were waived. Eventually, there was a formal pre-trial conference held on April 16, 1998. As a result of this pre-trial conference, the parties continued to negotiate and have periodic telephone conferences with the Chairman. A date was set for hearing in December 1998, but adjourned by the parties pending further negotiations. Finally, a formal hearing was held on January 26, 1999.

In total, as matters developed, there were 17 issues before the Panel. The parties were able to reach agreement on 14 of these issues and the Panel entered into an Interim Award concerning same on January 18, 1999, which was concurred in by all parties. These agreements are attached hereto as Appendix A and made a part of the Award.

As Appendix A indicates, the City proposed an employee pension contribution of 5% and a defined contribution plan for employees hired after July 1, 1998 are rejected. The Union's proposal for maintenance of status quo on both proposals is adopted. The City Delegate dissents. The Union Delegate concurs. The dissent of the City's Delegate on pensions is attached hereto as Appendix B.

As set forth in Appendix A, a second issue remained open for hearing and decision and award by the Panel -- the City's proposal on residency for new hires. The City proposes the following on the residency issue:

Bargaining Unit members hired on or after July 1, 1998 shall become residents of the City of Burton within sixty (60) days after completion of the employee's probationary period. Such employees shall, as a condition of continued employment, maintain residency within the City of Burton.

The Union's position is to maintain the status quo.

THE CRITERIA FOR THE ARBITRATION PANEL'S DECISION

In pertinent part, Section 9 of Act 312 sets forth the following factors upon which the Panel's decision must rest:

"[T]he 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 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.

The importance of these factors in the statutory scheme cannot be overemphasized. The constitutionality of Act 312 was before the Michigan Supreme Court in *City of Detroit v. Detroit Police Officers Association*, 498 Mich 410, 294 NW2d 68 (1980). An examination of that ruling makes it clear that the Court's decision was based, in large measure, on the key role which the §9 factors play in determining both: (a) the evidence to be presented and relied upon at arbitration hearings, and (b) the nature and scope of judicial review of arbitration awards.

In his opinion in the *City of Detroit* case, Justice Williams quoted §9 of the Act in its entirety, stating:

[T]he panel's decisional authority has been significantly channeled by §9...that section trenchantly circumscribes the arbitral tribunal's inquiry only to those disputes including wage rates or other conditions of employment embraced by a newly proposed or amended labor agreement, and commands the panel to base its findings, opinions and order relative to these narrow disputes on the eight listed factors as applicable.... 294 NW2d at 81.

On this basis, the Court held that Act 312 satisfied the "reasonably precise standards" test

set forth in *Osius v. St. Clair Shores*, 344 Mich 693 (1956). Act 312 does not constitute an unconstitutional delegation of authority because:

...the eight factors expressly listed in §9 of the Act provide standards at least as, if not more than as, "reasonably precise as the subject matter requires or permits" in effectuating the Act's stated purpose "to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes." MCL §§423.231; MSA §17.455(31). These standards must be considered by the panel in its review of both economic and non-economic issues. In its resolution of non-economic issues, the panel "shall base its findings, opinions and order upon the following factors, as applicable, MCL §423.239; MSA §17.45(39) (Emphasis supplied). See MCL §423.238; MSA §17.455(38). The findings, opinions and order as to all other issues (i.e., non-economic issues) "shall be based upon the applicable factors prescribed in §9." (Emphasis supplied). When these eight specific §9 factors are coupled with the §8 mandate that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in §9, MCL §423.238; MSA §17.455(38) (Emphasis supplied)", the sufficiency of these standards is even more patent." (Emphasis in original, footnote omitted) 294 NW2d at 85-86.

After ruling that Act 312 is constitutional, Justice Williams then considered the second major issue in the *City of Detroit* case; that is, whether the arbitration award issued therein should be enforced. In this discussion, the critical importance of the §9 factors, as well as the interdependence of §§8, 9 and 12 of the Act was again stressed:

[A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed §9 factors, as applicable.

...Construing §§9 and 12 together then, our review must find that the arbitration panel did indeed base its findings, opinion or order upon competent, material and substantial evidence relating to the applicable §9 factors. Cf *Caso v. Coffey*, 41 NY2d 153, 158, 391 NW2d 88, 91, 359 NE2d 683, 686 (1976). In other words, the

order of the panel must reflect the applicable factors and the evidence establishing those factors must be competent, material and substantial evidence on the whole record. It is only through this judicial inquiry into a panel's adherence to the applicable §9 factors in fashioning its award that effectuation can be given to the legislative directive that such awards be substantiated by evidence of, and emanate from consideration of, the applicable §9 factors." (Emphasis in original) 294 NW2d at 96.

Justice Williams did not hold that the Arbitration Panel must give all of the §9 factors equal weight. Rather, it is for the Arbitration Panel to decide the relative importance "under the singular facts of a case although, of course, all 'applicable' factors must be considered."

[T]he Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in §§8 and 9. In effect then, the §9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in §9." 294 NW2d at 97.

In the *City of Detroit* case, the Court found that the Arbitration Panel's economic award was supported by competent, material and substantial evidence on the whole record relating to the factors set forth in §9 of the Act. On the other hand, in the Court's view, the non-economic award was defective because the Arbitration Panel "did not consider all the applicable §9 factors in making its award, as Act 312 mandates."

...pro forma deference to the requirements of §§8 and 9 of the Act will not do. These sections, by their terms, require rigid adherence ... (Footnote omitted) 294 NW2d 103.

In sum, the *City of Detroit* decision mandates that the focus of the decision-making process in an Act 312 proceeding must be the factors enumerated in Section 9 thereof, and the decision of this Arbitration Panel must be based upon competent, material and substantial evidence on the record considered as a whole.

BASIC FINDING OF FACTS

The City of Burton, located in Genesee County, is comprised of 23.5 square miles (Tr-9), and had a 1990 population of 27,617 residents. (C.Ex. 7, p. 1) While the City lost population between 1980 and 1990 (C.Ex. 7, p.2), it has experienced significant growth since 1990. Mayor Charles Smiley testified that current projections for the 2000 census place the City's population in the 31,000-32,000 range. (Tr-28) Over 1,000 new homes have been recently constructed within the City. (Tr-28)

The City's per capita income and median family income place the City in the mid-range amongst all of the proposed comparables (C.Ex. 7, p. 4) The City also falls in the mid-range with respect to its square mile area and population density. (C.Ex. 7, p. 3) The City similarly falls in the mid-range in residential SEV as a percentage of total SEV (C.Ex. 7, p. 5) and falls 6th of the 13 proposed comparables both in municipal and total tax rates. (C.Ex. 7, p. 8) While the City is currently experiencing a period of significant development, there remains a great deal of vacant land available for development. (C.Ex. 11, p. 2)

The record shows that the City of Burton is a good place in which to live and work. City Council President Ted Hammon related many aspects of the quality of life in the City which make the City of Burton "an excellent place to live." (Tr-9) Mayor Smiley also testified with respect to the good quality of life within the City. (Tr-20-21; 23-24)

The City offers many recreational and cultural opportunities. (C.Ex. 11, pp. 3-4) The City has, for example, an indoor golf dome and driving ranges, a new ice hockey rink and other skating rinks, shopping centers, movie theaters and golf courses. (Tr-9, 23-26) (C.Ex. 11, p. 3) The City has the second largest shopping mall in Genesee County. (Tr-23) The For-Mar Nature

Preserve and Arboretum has a 380-acre nature preserve with an education center, nature trails and a bird sanctuary. (C.Ex. 11-3) There also are 50 churches within the City. (Tr-24) Two Genesee County libraries are located within the City. (C.Ex. 11, p. 4) In nearby Flint, there is the Flint Institute of Arts, Flint Institute of Music, F.A. Bower Theater, Flint Youth Theater and the Robert T. Longway Planetarium. (C.Ex. 11-4)

The primary and secondary educational needs of the community are provided by seven school districts. (Tr-9, 24) (C.Ex. 11, p. 2) The seven districts, which are set forth on the School District map (C.Ex. 12), have performed very well on recent State standardized tests. (C.Ex. 13) The two highest scoring districts in Genesee County (Grand Blanc and Davison) serve Burton residents. (C.Exs. 12-13) Three others (Atherton, Bendle and Bentley) were in the top tier of districts. (C.Ex. 13) The schools range in size from class D to class AA. (Tr.-12)

Also within the City proper or within close proximity are the University of Michigan-Flint, Baker University, Spring Arbor College, Kettering University and Mott Community College. (C.Ex. 11-2 to 3)

Based upon the record, the City has a wide range and large stock of affordable, quality housing available. C.Ex. 14 sets forth the home sales in the City of Burton in 1998. (Tr-45-46) Sale prices range from \$20,000 to \$239,000 with a mean sales price of the 368 properties of \$80,512. (C.Ex. 14, p. 13) C.Ex. 14 demonstrates that there were 135 homes in the \$60,000-\$100,000 range and 219 homes in the \$50,000-\$120,000 range. This stock of housing suggests that housing can be purchased within the price range of a unit member, based upon salaries being paid police officers.

ANALYSIS

The Chairman appreciates that in *City of Detroit v Detroit Police Officers Association*, 498 Mich 410 (1980), Act 312 panels were cautioned to consider all the §9 factors in arriving at an award. This point is well taken. Yet, the fact of the matter is that, as to certain issues, certain §9 factors tend to have more of a bearing than others.

The parties stipulated that the residency issue was non-economic (Tr-61). Thus, the Panel is not required to confine itself to the last best offers on the residency issue. There is the interest and welfare of the public to be considered. Likewise, a driving force here would be the comparable communities.

Section 9 (d) of the statute requires that the Arbitration Panel base its decision upon comparisons of wages, hours, and working conditions of the City's police officers with employees performing similar services with other employers in comparable communities.

The Union submitted a list of seven proposed comparable communities: the City of Davison; Davison Township; the City of Flint; Flint Township; Genesee Township; the City of Grand Blanc; and Grand Blanc Township. (Jt. Ex. 4) The City submitted a list of nine proposed comparable communities: Bridgeport Township; Davison Township; Flint Township; Genesee Township; Grand Blanc Township; Mt. Morris Township; Mundy Township; Owosso; and Saginaw Township. (Jt. Ex. 5) The common comparables are Davison Township, Flint Township, Genesee Township, and Grand Blanc Township.

But equally important, pursuant to §9(d), are internal comparables, namely, comparisons with other bargaining units and other employees of the City of Burton. More will be said about this later in this Opinion.

Section 9(f) of the statute requires the Arbitration Panel to consider the overall compensation received by the unit employees. The relevant data in this respect are set forth in C.Exs. 9 and 10. C.Ex. 9 sets forth an analysis of the overall compensation provided by the City of Burton and the City's proposed comparables. The analysis starts with a comparison of the salaries paid in the July 1, 1996 - June 30, 1997 year (C.Ex. 9, p. 1) -- the last year under the parties' preceding contract. (Jt. Ex. 1) An analysis was then made of the payments for longevity (C.Ex. 9, pp. 2-3), shift premium (C.Ex. 9, p. 4) and the payments, if any, for weapons proficiency and physical fitness (C.Ex. 9, p. 5). All of these payments were then added together to analyze total direct case payments. (C.Ex. 9, pp. 6-7) C.Ex. 9 then sets forth the dollar value for paid time off for sick and personal business days (C.Ex. 9, p. 8) and vacation days (C.Ex. 9, pp. 9-10). C.Ex. 9 then sets forth the dollar value of the holiday pay payments. (C.Ex. 9, p. 11) All of these items were then added to the total direct cash payments to analyze total direct cash and time off value. (C.Ex. 9, p. 12) The City of Burton ranked 3rd amongst ten compared communities. The percentage and dollar value of the employer's pension contributions were then analyzed. (C.Ex. 9, p. 13) The City of Burton pays the highest pension contributions amongst the comparables. (C.Ex. 9, p. 13) C.Ex. 9 then summarizes overall compensation in each community by adding together the total direct cash payments, the value of paid time off and the employer's pension contribution. The City of Burton ranked second, \$57,768, amongst ten comparables providing overall compensation some \$9,606 above the average, \$48,162, of the comparables. (C.Ex. 9, p. 14).

When one considers the four comparable communities jointly submitted by the parties, there is a similar result (C.Ex. 9):

	Overall Compensation	Rank
Davison Township	\$50,133	4
Flint township	\$45,444	5
Genesee Township	\$50,886	3
Grand Blanc Township	\$58,552	1
Average:	\$51,254	
Burton	\$57,768	2

Thus, Burton is some \$6,514 above the average of the joint comparables.

C.Ex. 10 shows that in most of the communities proposed by either the City or the Union employees are required to make a pension contribution. Of the 11 proposed comparable communities for which there was data, eight required an employee pension contribution ranging as high as 6%. (C.Ex. 10) When one considers the four comparable communities jointly submitted by the parties, there is a similar result (C.Ex. 10):

Required Employee Pension Contribution

Davison Township	5%
Flint Township	6.1%
Genesee Township	0%
Grand Blanc Township	<u>4.9%</u>
Average:	4%
Burton	0%

There is no question that, as compared with the comparable communities, Burton's overall compensation is among the highest of the comparables.

Section 9(h) provides that the arbitration panel consider such other factors normally or traditionally taken into consideration in the negotiation of a collective bargaining agreement. Such other criteria include the bargaining history of the parties, both in the past and currently, and the strike criteria. This means that Act 312 is a substitute for a strike. Therefore, in arriving at a result, a panel could predict how a certain issue would be resolved if there was a right to

strike. This could be gained by considering strikes of private employers in the area.

Finally, there is the art of the possible. This is a buzzword for the recognition that there is a given and take in bargaining; that parties, in order to reach an agreement, make a compromise. And, again, the art of the possible is a prediction as to what that compromise may have been if the parties had reached an agreement without the aid of Act 312.

The Michigan Supreme Court upheld a municipal ordinance requiring Detroit Police Officers to reside in the city in *Detroit Police Officers Association v City of Detroit*, 385 Mich 519, 190 NW2d 97 (1971), appeal dismissed, 405 U.S. 950 (1972). The Court stated, in part:

The job of a policeman does have 'natural distinguishing characteristics' from all other city employees. There is a special relationship between the community policed and the policeman. A policeman's very presence, whether actually performing a specified duty during assigned hours, or engaged in any other activity during off-duty hours, provides a trained person immediately available for enforcement purposes....
(*Id.* at 98, J. Brennan concurring)

This holding has been affirmed on numerous occasions. See *Musto v Redford Township*, 137 Mich App 30, 357 NW2d 791 (1984); *Cross v Whedon*, 93 Mich App 13, 285 NW2d 780 (1979); *Detroit Police Officers Association v City of Detroit*, 391 Mich 44, 214 NW2d 803 (1974).

There is little question that the political leadership of the City of Burton are in agreement that new hires in police officer positions should become city residents. Mayor Smiley has been a long supporter of residency requirements. Under his leadership, residency has been negotiated in all other bargaining units into which new hires are hired, except the patrol officers. The Mayor is supported in this position by City Council President Hammon, who testified before the Panel. There was testimony from both Mayor Smiley and City Council President Hammon suggesting

that having officers as residents of the City would have a deterrent effect on crime and the police officers could serve as role models, particularly to the youngsters. (Tr-10-11) In addition to the testimony of Mayor Smiley and President Hammon, the City Advocate, in his post-hearing brief, referred to an arbitrator's decision and court decisions on the question of the effect of residency in police enforcement. At page 20-23 of his post-hearing brief, the Advocate wrote:

In 1975, the late Harry H. Platt, a distinguished arbitrator and past president of the National Academy of Arbitrators, presided over 15 days of hearing limited solely to the issue of residency for Detroit Police Officers. In concluding that the police officers should continue to be required to reside in Detroit as a condition of their employment, Arbitrator Platt stressed the importance of the police-community relationship. Arbitrator Platt stated:

There is also persuasive force to the City's contention that elimination of relaxation of the residency requirement would be likely to impair the job performance of those officers who resided outside the City, because resident police officers will have greater knowledge and awareness of the community, be more sensitive to the needs and desires of its citizens than will non-resident officers.

* * *

It is generally recognized and accepted that good police-community relations and effective cooperation between the police department and the public are essential to effective law enforcement in a large metropolitan city.

* * *

[O]n the whole record of this case, it must be concluded that the interest and welfare of the public in alleviating racial tensions and improving cooperation between citizens and police officers far outweigh the possible personal benefits which

might accrue to some police officers were they allowed to live outside the City of Detroit.

Arbitrator Platt also quoted the following passage from the Report on Police by the National Advisory Commission on Criminal Justice Standards and Goals:

Once a police officer has accepted employment...the value of his living within the community in which he works should not be overlooked or underestimated. Mutual understanding between the officer and other citizens results from the officer's assuming an active private role in addition to his professional role in the community. This rapport, in turn, helps the officer understand local problems and needs, while destroying the faults and damaging stereotyped image many people have of their police.

The importance of developing stronger police-community relations through a residency requirement was prominent through the record in the instant case. City Council President Hammon testified that as a result of a residency requirement, police officers would spend more of their time off within City boundaries. A trip to the neighborhood store or getting involved in school activities, like coaching, would increase the community presence of police officers considerably. (Tr-11) Neighborhood children would see the officer next door as a role model in a way that they cannot currently do so. (Tr-1)

Mayor Charles Smiley also testified with respect to the importance to the community that a residency requirement would represent. He recalls as a child looking to the police officers in his community as role models. (Tr-22) A residency requirement would enable police officers to spend more time interacting with Burton residents; they would talk about the community, address safety issues and get involved with sports activities in the City. (Tr-22) As noted above, the Burton City Council unanimously supports the measure. (Tr-9)

Moreover, studies have confirmed that officers who live in the City appear more committed to the City than those who do not. The President's Commission on Law Enforcement and Administration of Justice researched and studied the police-

community relationship including the impact of a residency requirement. The Commission concluded:

Wherever possible, public officers should be encouraged to live within city limits for it is important officers have a feeling and commitment to the city, above and beyond the obligation to police it. Task Force Report: The Police [U.S. Government Printing Office, (1967) 166]

9. **A Residency Requirement Leads to Better Law Enforcement.**

A police officer's off-duty involvement in the community leads to better law enforcement. As one court stated:

Two additional considerations magnify the need for direct community association by these uniformed employees. Residency places the off-duty officer physically within the municipality in which he is authorized to perform his duties. This immediate discharge of duties is not to be confused with the exercise of quick, emergency recall, for it is not the call from the station house but the chance observations of a neighbor or of the officer himself which will prompt his off-duty actions. Krzensinski v. Kugler, 338 F Supp 492, 499-500 (1972).

The more time an officer spends in the community, the more information he or she can learn about City residents. A trio of renowned commentators in the criminal justice context, once made the following observations regarding "missed opportunities in fighting crime."

First, there was little appreciation of the crucial role that better information from the community could play in strengthening police performance. It was not that the police were unaware of their dependency on citizens for information. Long before it was demonstrated that the success of rapid response to crime calls and retrospective investigation depended on the willingness of victims and witnesses to report crimes and aid in their solution, the police had

mounted campaigns mobilizing citizens to support their local police.

* * *

The theory is that the effectiveness of existing tactics can be enhanced if the police increase the quantity and quality of their contacts with citizens (both individuals and neighborhood groups), and include in their response to crime problems thoughtful analyses of the precipitating causes of the offenses. The expectation is that this will both enhance the direct effectiveness of the police department and also enable the police department to leverage the resources of citizen groups and other public agencies to control crime.

Some examples, drawn from recent experiences, suggest the ways in which these approaches can lead to enhanced crime control.

Enhanced police presence. From its inception, patrol has sought to prevent crime through the presence, or potential presence, of a conspicuous officer. Patrolling in cars is only one way to communicate police presence, however. Activities such as foot patrol, visiting citizens in their homes, and attending group meetings also increase the awareness of police to which all citizens respond -- those intent on crime as well as those not. This presence both deters potential offenders from committing crimes and affords officers the opportunities to note criminal acts in progress.

M. Moore, R. Trojanowicz, and G. Kelling, *Crime and Policing*, 13 (National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University).

10. A Residency Requirement Leads to Safer Streets.

The mere presence of an officer whether officially on duty

or not will help deter crime. As one court noted:

The added presence of off-duty police in an urban municipality to the on-duty force, even if the off-duty police are rarely called upon to act, will undoubtedly have a deterrent effect on crime.

Additionally, the chance associations and encounters which follow from residence and which may lead to invaluable sources of information will go far towards making each resident policeman a more knowledgeable, qualified officer.

Krzensinski v Kugler, 338 F Supp 492, 499-500 (1972).

City Council President Hammon testified that the increased presence brought by a police residency requirement would deter crime because more patrol cars will be parked at night in neighborhood driveways, rather than behind the stationhouse. (Tr-10) Resident officers carrying weapons also would serve as a crime deterrent. *Id.* City Council President Hammon expressed hope that an increased police presence in the City would "provide a better, safe neighborhood and environment for our constituency." *Id.*

11. A Residency Requirement for New Hirees Will Lead to Stronger Identification with the Community and the Residents That Are Served.

In the opinion of experts, police departments cannot function effectively in today's society unless their members are totally involved in the community's life, participate intimately in the community's activities and, hence, are thoroughly and completely interwoven into the community fabric. Bouza, *Police Administration and Performance XV-XVI* (Pergaman Press ed. 1978). See also, Kelling, *Police and Communities: The Quiet Revolution* (National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Police and Management, John F. Kennedy School of Government, Harvard University 1988); Task Force Report: *The Police and the Community*, Chap. 6 (U.S. Government Printing Office 1967). One court stated:

A substantial number who have studied the problem attribute much of this lawlessness to a deeply rooted

disrespect for an absentee police force which governs by day and resides afar at night. According to the proponents of this view, a policy of requiring fire department and police force residency would tend to increase the presently low degree of community cooperation uniformly observed by law enforcement officials. While this Court would not impute a conscious or deliberate neglect of duty to a policeman or fireman living apart from his municipal employer, we recognize that reasonable men could conclude that a total disengagement between work hours and personal life could detrimentally affect his attitude toward the community and the people he serves. If with each nocturnal escape he manages to leave city problems behind, it may be just a matter of time before the officer develops at least an unconscious disdain for the city and its residents. Krzewinski v Kugler, 338 F Supp 492, 499-500 (1972).

In short, the presence of police officers in the City beyond their daily shift clearly will improve the effectiveness of law enforcement.

Against this philosophical approach expressed both by City of Burton officials and other writings as quoted above, the Chairman must emphasize that the issue is the dynamics of collective bargaining, applying the criteria set forth in §9 of Act 312 as already discussed herein. And herein are the driving forces among the §9 criteria leading to a resolution of the residency issue between the parties.

The comparables suggest that there are some communities that do not require residence and others that either require same or strongly encourage same, either suggesting or requiring that the officer live within the community or in close proximity to same.

As shown by the collective bargaining agreements and record testimony concerning other cities, many municipalities, including some of the Union's proposed comparables either require

or strongly encourage as a condition of employment residency within the community itself or within close proximity.

The collective bargaining agreement between the City of Davison and the Police Officers Labor Council provides as follows:

The Employer agrees its bargaining agents unit Employees to reside beyond the Corporate City Limits, but in the following described areas: North to Francis Road, South to Maple Road. West to Belsay Road and East to Elba Road, on either side of the road. (C.Ex. 23) (Emphasis added.)

The City of Flint Police Officers' contract provides:

Employees hired after May 1, 1986, shall, as a condition of their continued employment, maintain residence within the boundaries of the City of Flint. Employees hired prior to May 1, 1986 shall live within a fifteen (15) mile radius from the City Hall complex and/or within Genesee County. (C.Ex. 24) (Emphasis added.)

The contract between the City of Grand Blanc and its police officers, states:

All employees are encouraged to live within the Grand Blanc City limits or within a ten (10) mile radius. (C.Ex. 25)

The agreement between the Police Officers Association of Michigan and Saginaw Township states:

Current employees shall not be required to reside in the Township. However, "new" employees hired by the Township after April 1, 1981 may be required by the Township to live inside the boundaries of Saginaw Township. (C.Ex. 26)

In 1987, the City of Owosso and its police officers negotiated the following residency requirement:

All Police Department Bargaining Unit Employees hired after July 1, 1987 shall be required as a condition of continued employment to reside within Shiawassee County, Michigan. All Bargaining Unit Employees hired before July 1, 1987, if residing outside of

Shiawassee County, Michigan may continue to do so. Effective, July 1, 1987, no Bargaining Unit Employee residing within Shiawassee County, Michigan, shall be allowed to continue employment with the City of Owosso if he takes up residence outside of Shiawassee County, Michigan.

These comparables do suggest that residency represents a term of employment in a number of cities and municipalities.

On the other hand, the comparisons proffered by the Association suggest that residency is not necessarily the norm in comparable communities. As noted in the Association Exhibit on point:

BURTON - RESIDENCY COMPARISON - UNION COMPARABLES

Burton
7-1-94 to 6-30-97

Article XXXIII. p. 23

33.1: All officers shall be required to maintain permanent residency within twenty-five (25) miles of the corporate boundary of the City.

33.2: Officers are required to notify the City within twenty-four (24) hours of any change in residence or phone number.

33.3: Permission to live in other areas may be granted on an individual basis by the Mayor or his designee.

Davison, City
7-1-98 to 6-30-2001

Article 2. Section 1. p. 5

The Employer agrees its bargaining unit Employees to reside beyond the Corporate City Limits, but in the following described areas: North to Francis Road, South to Maple Road. West to Belsay Road and East to Elba Road, on either side of the road.

Davison Township
7-1-93 to 6-30-97

No contractual provision

1/22/99 contacted police department via fax - no residency requirement.

Flint City

Article 68. p. 51

7-1-92 to 6-30-98

Employees hired after May 1, 1986 shall, as a condition of their continued employment, maintain residence within the boundaries of the City of Flint. Employees hired prior to May 1, shall live within a fifteen (15) mile radius from the City Hall complex and/or within Genesee County.

Flint Township
1-1-93 to 12-31-97

No contractual provision
1/22/99 interviewed dispatcher Tracy Macciomie: no residency requirement .

Genesee Township
1-1-95 to 12-31-97

Article 18. p. 44
The Township shall not impose a residency requirement for any member of the bargaining unit.

Grand Blanc
6-1-96 to 5-31-99

Article 20. Section 7. p. 27
All employees are encouraged to live within the Grand Blanc City limits or within a ten (10) mile radius.

Grand Blanc Township
1-1-96 to 12-31-99

No contractual provision
1/22/99 Interviewed Dispatcher Dixie Bowers: no residency requirement.

If the only facts before the Panel were the external comparables, the Chairman would opt to maintain the status quo, absent a trend toward residency, even though a major community in the area (the City of Flint) does have residency and there are other communities that also provide for residency. But these provisions have usually been in the contracts for some time, and not of most recent origin.

But there are two factors here in a negotiation context that become the driving force to conclude that the Panel Majority should adopt the City's position, except as to the date of the effect. The driving force is the fact that all other City of Burton employees have a residency requirement for new City employees with the only exception being the Command Police Officers, as usually members of that unit are not new City employees because, presumably, command officers are chosen from the ranks of patrol.

The AFSCME bargaining unit's current contract provides that all members hired after January 1, 1998 shall, "as a condition of employment, maintain residency in the City of Burton." (C.Ex. 21, p. 2) The 65 firefighters who are covered by the contract with UAW, Local 708 also must reside in the City. This requirement applies both to current employees and new hires (C.Ex. 22)³ In December of 1998, the City and the SEIU added a residency requirement to their contract, which provides that all new and transferred employees must be residents of the City. (C.Ex. 29; Tr-55)⁴ All 12 City employees who are not covered by a collective bargaining agreement are required to and currently reside in Burton. (C.Ex. 20) The current Mayor requires that each of his appointees reside in the City. (Tr-23) With respect to the two remaining employee units, it is undisputed that the seven member Police Command Officers unit consists of individuals promoted from lower ranks. (Tr.-11-12) There are no Police Command Officers hired off the street and there have not been, and will not be, new hires in that unit. (Tr-11-12)

The only unit into which new employees are hired which does not have a residency requirement is the Police Patrol unit involved in this proceeding. A residency requirement governs every employee unit in the City of Burton into which new employees are hired.

Does the fact that the police officers have the benefit of Act 312 isolate them from the

³ The UAW contract provides that in the event of an emergency labor shortage, and with the authorization from the Mayor, a firefighter may reside anywhere within two miles of the responding station (C.Ex. 22) The few UAW member firefighters who reside outside City limits apparently fall within the exception applicable to stationhouses where an emergency labor shortage arose. (Tr-47; 21-22; C.Ex. 17)

⁴ Although the AFSCME and SEIU lists show some mailing addresses in nearby cities, the Personnel Director and City Administrator Charles Abbey testified that the addresses are actually within City boundaries. (Tr-47-48)

negotiation pattern in the City of Burton absent a compelling reason not to have residency? As indicated above, the City's Advocate has made references to court decisions, the decision of Arbitrator Harry Platt in the *Detroit* case, and national studies suggesting benefits to residency.

As indicated, the City of Burton seems to be an attractive city, in terms of community benefits, an excellent educational system and affordable housing. This suggests there are no compelling reasons not to have residency for new hirees.

Another driving force in adopting residency is the fact that a new employee will not be required to become a resident of the City of Burton until sixty (60) days after completing his/her probationary period, with the probationary period being one year. This certainly is equitable and does not put the employee at a disadvantage of moving in and then not completing probation. Certainly, by the end of the year, an employee will know by his or her evaluations that the employee will survive probation and, therefore, should be looking for a dwelling, if not already living in Burton.

Added to the internal comparables is an observation made by the City's Advocate at page 2 of his post-hearing brief: "...the Union achieved all its goals in the Interim Award." This brings the Chairman to the strike criteria and the art of the possible incorporated within §9(h) of the Act, as discussed above. As the stipulations set forth in Appendix A suggest, and as was made clear to the Chairman, a major issue between the parties was the City's push for employees to make a 5% contribution toward pensions and to provide for a defined contribution plan for new employees. POAM resisted this, and successfully.

In the give and take of bargaining, if the parties were faced with a strike deadline, it is doubtful that after achieving the status quo on pensions, which was important to the Police

membership, that the Police would have gone out on strike because of a requirement of residency for new employees. To put it another way, the adoption of residency would have come about. This would have been the *quid pro quo*. Keep pensions as they are, which has an advantage to the police membership, and obtain the economic benefits set forth in items 1 through 14 that were stipulated to, and in return the police will agree to residency for new employees. Certainly, when faced with the internal comparables, the Police would well be aware that they would not have been able to obtain the economic benefits and the status quo on pensions without at least agreeing to the residency requirement. This particularly follows when no current member would be affected.

In the parlance of bargaining, these factors -- the comparables (particularly the internal comparables), the strike criteria and the art of the possible -- would control.

Consistent with the art of the possible and the strike criteria, it would be appropriate that the effective date for residency to apply to all new hires hired after the date of this Award.

The Chairman begins with recognizing that the City's proposal is limited to new hires, namely, individuals hired after July 1, 1998 would be required to be residents of the City of Burton. The intent was not to impact any current employees. Since this Award is being issued after July 1, 1998, and because the parties agree that this is a non-economic issue, the Chairman, reluctantly concurred in by the City Delegate, will opt for providing that the provision would apply to new hires hired after the date of this Award. The Chairman adopts this modification for employees that may have been hired prior to the date of this Award may have accepted employment not knowing that they would be bound by a residency requirement. The Association's Delegate vigorously dissents.

For logistic purposes, the Delegates have agreed that the signature of the Chairman would be sufficient to make the Award below binding on the parties with the understanding that the Association's Delegate has dissented and the City's Delegate has reluctantly concurred.

A W A R D

1. Items 1 through 14 of Appendix A have been unanimously adopted by the Panel.
2. Item 15, Pensions, has been adopted by a majority of the Panel, namely, the Chairman and the Association Delegate, with the dissent of the City's Delegate, attached hereto as Appendix B.
3. **Residency.** The contract shall provide that bargaining unit members hired on or after the date of this Award, May 26, 1999, shall become residents of the City of Burton within sixty (60) days after completion of the employee's probationary period. Such employees shall, as a condition of continued employment, maintain residency within the City of Burton.


GEORGE T. ROUMELL, JR., Chairman

May 26, 1999

Department of Consumer + Industry Services
Michigan Employment Relations Commission

City of Burton

-and-

MERC ACT 312

Case No. L97 B1003

POAM

Interim Award

The following Interim Award is entered in the above-entitled matter :

1. The parties' new contract shall be in effect for a period of three (3) years: July 1, 1997 - June 30, 2000.
2. The parties' new contract shall be the same as the parties' prior contract (in effect July 1, 1994 to June 30, 1997) as amended by the terms of this Interim Award and the Panel's Award on the one remaining open issue (City Proposal on Residency for new hires).
3. Article XLVII - Wages will be revised by the following across the board adjustments at each step:

7-1-97	Three and one-half (3.5%) percent
7-1-98	Three (3.0%) percent
7-1-99	Two and one-half (2.5%) percent

4. A retroactive payment, consisting of the difference between the pay rates set forth above and the pay rates actually paid, between July 1, 1997 and the date the contract is ratified by both principal parties will be paid to unit members within thirty (30) days after the date of ratification by both principal parties.
~~OF THE INT. UNION~~

5. Article XXIV - Hospitalization, Section 24.5 shall be revised to provide as follows:

24.5: The Employer shall provide to a bargaining unit member, who has at least twenty (20) years of service with the City and who retires under the provisions of MERS, a credit of five (\$5.00) dollars for every year of service per month towards the cost of purchasing hospitalization coverage through the Employer's carrier, (\$125 per month in the event of a duty disability retirement subject to the following conditions:

- A. The ~~retiree's~~ credit shall be available until the retiree becomes deceased.
- B. The ~~retiree's~~ credit shall not be available if the retiree has comparable insurance through another Employer or through the spouse's employer.
- C. The credit shall again be available when hospitalization is no longer available as provided in subsection B.
- D. When the retiree is eligible for Medicare, the ~~retiree's~~ credit shall cease.

E. A member must have completed at least 20 years (for age and service retirement eligibility) of service to receive this credit. There will be a cap/maximum amount of thirty (30) years.

Section 26.1

5. Article XXVI - Optical Insurance Coverage, shall be revised to provide as follows: (Effective January 1, 1999)

26.1: The Employer will pay \$200.00 per individual and \$400 per family for optical needs. This sum may be used in payment for frames, or exams, or lenses, and/or contacts, upon the presentation of billings by the employee.

Section 39.4

7. Article XXXIX - Educational Incentives, shall be revised to provide as follows:

39.4: The Employer agrees to reimburse full-time employees up to ~~one thousand~~ dollars per fiscal year for tuition, upon successful completion of any course which is reasonably related to the employee's existing job or would improve the employee to a higher position within the City of Burton. If the employee leaves the service of the City of Burton within three years of receiving this tuition reimbursement, he/she will be required to reimburse the City of Burton on a pro-rated basis. The City's pool of available reimbursement money will be limited to \$3,500 per fiscal year.

8. Article XXV - Dental Insurance Coverage Section 25.2 shall be revised to provide as follows:

25.2: The above coverage shall apply to employees and their families and shall be effective ~~at the start of the first month~~ ^{at the start of the first month} ~~following~~ ^{completion of ninety (90)} calendar days of employment. Employees who elect not to receive said coverage shall not receive any additional pay or benefits as a result of said election.

9. ~~Article XXIV~~ - Hospitalization, Section 24.1 shall be revised to provide as follows:

The employer agrees to provide hospitalization coverage Blue Cross / Blue Shield, or comparable coverage, presently Modern Benefits (NCAS Midway) with premiums being paid by the Employer.

10. ~~Article XXIII~~ - Life Insurance, Section 23.1 shall be revised to provide as follows: (Effective thirty (30) days after the contract is signed) March 17, 1999

23.1: The City agrees that subject to the terms and conditions of the carrier, it shall provide for each employee in the bargaining unit, who is a full time employee and has completed ninety (90) days of continuous service, a life insurance policy in the amount of ~~thirty~~ five thousand dollars (\$35,000.00) with a provision for double indemnity, accidental death and dismemberment.

Subject to the approval of the carrier, an employee may be allowed to purchase additional coverage at the City's group rates at the employee's cost.

11. ~~Article XXXI~~ Weapons Proficiency, Section 36.3 shall be revised to provide as follows: (Effective July 1, 1997)

36.3: The schedule of allowance which will be paid to Officers based on attendance is as follows:

SHOOTS ATTENDED

~~0-8~~
9 --
10 --

YEARLY COMPENSATION

~~None~~
400
500

- (a) The employer shall schedule shoots each month, one of which each year shall be mandatory and held while the member is on duty. ~~Make up~~ Make up shoots will be allowed with the approval of the Chief of Police.

Make up shoots must be made up in the following month.

- (b) Each member shall be allowed to qualify ~~twice~~ twice at each monthly shoot.
- (c) All members must qualify with the department issued weapons, scoring a minimum of seventy (70%) percent for uniformed officers and sixty (60%) percent for investigators.

12. ~~12~~ Article XL III, Section 43.6 shall be revised by adding the following new sub-section E:

E. The employees shall pool all patrol and command officers covered by the defined benefit pension plan together for purposes of costing. Any increase in the cost which exists on January 1, 1997 (2924%) will be paid by the employee.

13. ~~13~~ Article XXXV Detective Compensation, Section 35.5 shall be revised to provide as follows:

35.5: Those Officers assigned to a Detective position will be ^{given} ~~seventy-five~~ ^{(75) cents} per hour compensation for all time assigned as a Detective. Exception to the above described compensation shall be related to the one (1) Detective on-call for a given work week schedule, and the Detective on-call shall receive a total of four (4) hours pay at time and one-half (1-1/2) which suffices for on-call status compensation only.

14. ~~14~~ Article XL II - Longevity Compensation, Section 42.1 shall be revised by adding the following new provision:

Those employees who have obtained twenty (20) years of service, which continuous period has not been broken by any separation from the payroll, will be eligible to receive an additional longevity lump sum payment of five hundred (\$500) dollars, for a total of one thousand seven hundred (\$1,700) to be paid on or about the employee's anniversary date.

15. The parties' delegates concur in the Awards set forth in paragraphs 1-14 above.

16. The City's proposals on an employee pension contribution of five (5%) percent and a deferral contribution plan for employees hired after July 1, 1998 are rejected. The Union's proposal for maintenance of status quo on both proposals is adopted. The City Panel Delegate dissent, The Union Panel Delegate concurs.

17. One issue remains open for hearing and decision and award by the panel - the City's proposal on residency for new hires. The City proposes the following provision:

Bargaining Unit members hired on or after July 1, 1998 shall become residents of the City of Burton within sixty (60) days after completion of the employee's probationary period. Such employees shall, as a condition of continued employment, maintain residency within the City of Burton.

The Union's position is to maintain the status quo.

18. A hearing date on the one open issue set forth in paragraph 17 shall be established by the Panel.

Dated: January 13, 1999

Joseph T. Flourens
Chairperson

James J. Sullivan
Union Delegate

Dennis B. Dubay
City Delegate

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

**In the Statutory Arbitration
Between:**

CITY OF BURTON,

-and-

**MERC Act 312
Case No. L97 B-1003**

POLICE OFFICERS ASSOCIATION OF MICHIGAN

BEFORE: ARBITRATOR GEORGE T. ROUMELL, JR., ESQ.

**CITY PANEL DELEGATE'S DISSENTING OPINION
WITH RESPECT TO THE PENSION ISSUE**

The City proposed an employee pension contribution of five (5%) percent and a defined contribution plan for employees hired after July 1, 1998. The majority of the Panel adopted the Union's position of maintaining the status quo. The City Panel Delegate dissents from this Award of the Arbitration Panel. The record supports the City's proposal and the proposal should have been adopted by the Panel.

Respectfully submitted,

**KELLER, THOMA, SCHWARZE,
SCHWARZE, DuBAY & KATZ, P.C.**

By: *Dennis B. DuBay*
Dennis B. DuBay (P12976)
City Panel Delegate

Dated: March 8, 1999
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