

Library  
2/4/85 Dub

STATE OF MICHIGAN

MAR 2 1 1985

Employment Relations Commission

Arbitration Under Act 312

Michigan Public Acts of 1969 as amended

In the Matter of the Arbitration Between:

City of East Jordan

-and-

Michigan Law Enforcement Union Teamster Local 129

Case No.: G 83 B-184

Arbitration Panel

Michael Ward

Larry D. Gregory

Daniel H. Kruger

Delegate, City of East Jordan

Delegate, Michigan Law Enforcement  
Union, Teamsters Local 129

Chair

Appearances

For the Union

Larry D. Gregory

Billy D. Mendenall

Secretary, treasurer  
Union Representative

For the City

Michael Ward

Attorney

Tamara A. O'Connor

Court Reporter

STATE OF MICHIGAN  
SUP. OF EMPLOYMENT RELATIONS  
OFFICE

1985 FEB 19 AM 9 58

RECEIVED

City of East Jordan

Michigan State University  
LABOR AND INDUSTRY  
RELATIONS LIBRARY

### Case History

The City of East Jordan and the Union were parties to an agreement which expired on March 31, 1983 (Union Exhibit #2). On January 27, 1983 the Union sent a notice to the City indicating its interest in commencing negotiations for a successor agreement. Prior to the commencement of negotiations the Union sent a letter to the City indicating that it desired no contract changes and no wage increase.

Negotiations however did commence and the City proposed certain changes in the agreement which it desired. The Union's position was that it would not agree to any changes in economic matters and restated its position that it only wanted a one year agreement. After two mediation sessions Mediator Robert Rombouts declared the parties at impasse. The City stated that the Union had achieved its goal by not doing anything while it was forced to continue to pay the benefits it had sought to change. On August 1, 1983 the City implemented its impasse offer as permitted by Michigan Case Law. The implemented contract has been in effect since August 1, 1983 (Union Exhibit #3). Shortly after the City implemented this agreement the union filed for Act 312 Arbitration. The Michigan Employment Relations Commission appointed Daniel H. Kruger as Chair, Act 312 Panel in this dispute on October 20, 1983.

The Chair sought to convene a pre-arbitration hearing with the parties but because of the parties' schedule and that of the Chair it was not possible to hold such a meeting until February 20, 1984. On that date the parties met in East Lansing, Michigan to discuss the history of the case. The Chair directed the parties to submit to him a list which indicated the issues which each party considered to be open and those issues which had been resolved. On February 24,

1984 Mr. Michael Ward, Attorney for the City, sent a letter to the Chair in which he indicated the issues he considered open. On April 19, 1984 the Chair received a letter dated April 10, 1984 from Mr. Billy D. Mendenall, Representative of the Union, in which he indicated the issues the Union considered to be open. Upon receipt of these two letters the Chair sought to establish a date for the formal hearing.

In August 1984 the parties suggested that the formal hearing be waived and that the parties would submit their last best offers in writing. On October 4, 1984 the Chair received written stipulations signed by the parties. Below appears the stipulations agreed to by the parties:

"STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

CITY OF EAST JORDAN,  
Employer,

and

MICHIGAN LAW ENFORCEMENT  
UNION, LOCAL #129,  
Petitioner.

Act 312 Arbitration  
Case No. G83 B-184

Stipulation

NOW COME the parties hereto by and through their respective representatives and hereby stipulate and agree to conduct the Act 312 Arbitration proceedings in the following manner:

1. On or before October 15, 1984, the parties will simultaneously forward to

the Impartial Chairman of the arbitration panel their comparable data evidence, which shall then be exchanged by the Impartial Chairman between the parties.

2. On or before October 30, 1984, the parties shall submit their Last Best Offers of Settlement together with a brief in support of their respective Last Best Offers. Upon receipt of these Last Best Offers and briefs, the Impartial Chairman shall simultaneously exchange them between the parties.,
3. Subsequent to receipt of the Last Best Offers and briefs, either party may request oral argument before the Impartial Chairman, and if either party does so, the Impartial Chairman shall schedule a mutually convenient date.
4. At the completion of the foregoing procedure, the Impartial Chairman shall render his award in this case, and the parties do hereby stipulate and agree to waive any procedure contained in Act 312 which are not in accordance with this Stipulation.

CITY OF EAST JORDAN

MICHIGAN LAW ENFORCEMENT UNION  
LOCAL #129

By MICHAEL WARD, Attorney

By BILLY D. MENDENALL

Dated: Sept. 30, 1984

Dated: Sept. 25, 1984"

The Chair sent a copy of the stipulation to Mr. Shlomo Sperka, Director, Michigan Bureau of Employment Relations on September 24, 1984 and asked for his comments. The parties had sent the Chair a copy of the stipulations prior to their signing it. On October 2, 1984 Mr. Sperka sent the Chair a letter which stated in part:

"Jim Amar has shown me the stipulation in the above-captioned matter, a copy of which you sent him. I believe you discussed this case with me beforehand.

I want to reiterate what I said to you when we talked. It appears to me that the crucial aspect of such a stipulation must be that the

stipulation creates a factual record. While the parties may agree to waive "procedures" in Act 312, it appears to me that it still would be preferable to have a stipulation at some point stating what documents, oral arguments or whatever constitute the factual record upon which the panel will act. This might be a separate stipulation of facts or it might be a stipulation to all facts contained in the briefs or all facts in the briefs not specifically contradicted within a short period of time of receipt or something along those lines.

It is quite possible that the stipulation would be sufficient to turn back a challenge if either of the parties should later attempt to appeal the award. Personally, I would rather not have to rely on the "probability" that this would be adequate. In addition, I don't know if it would be adequate in the face of a suit by a citizen."

On October 13, 1984 the Chair pursuant to the Stipulations received the contracts of the comparable cities selected by the Employer and the Union. The comparable cities were Boyne City (Joint Exhibit #2) and the City of Charlevoix (Joint Exhibit #3). In addition the parties submitted the agreement for the non police employees of the City of Jordan (Joint Exhibit #1).

On October 18, 1984 the Chair received from the Union its last best offer (Union Exhibit #1), the Employer's Implemented Offer (Union Exhibit #3), and agreement of the City of East Jordan for its garage employees (Union Exhibit #4) and the parties' 1982-83 Agreement (Union Exhibit #1).

On November 1, 1984 the Chair received the City's Brief (Employer Exhibit #5) and its last best offer (Employer Exhibit #4). The Chair exchanged the parties' last best offer on November 2, 1984.

On November 5, 1984 the Union informed the Chair that it would be necessary to hold a hearing and a formal hearing was held at 9:00 a.m. on December 5, 1984 at the Michigan Employment Relations Commission, Lansing Office. The issue in impasse were reviewed and discussed.

The following issues were identified as being before the Arbitration Panel:

1. sick leave

2. call in time - court time
3. holidays
4. vacations
5. reimbursements on deductibles
6. subcontracting
7. promotions
8. dental and optical insurance
9. longevity
10. wages and term of agreement

During the hearing the parties were able to resolve the issue on holiday pay (No. 3) and the issue dealing with Dental Care and Optical Insurances (No. 8). The number of paid holidays is still an issue.

The Chair received the transcript of the hearing on January 10, 1985.

#### Issue #1 Sick Leave

#### "ARTICLE VI (1983 Agreement)

##### Section 1.

Permanent full-time employees shall, effective January 1 of each year, be preccredited with seven (7) sick leave days per year. As of the eighth day of illness or injury an employee shall be covered by a sickness and accident insurance plan provided by the Employer.

- a.) The sickness and accident insurance plan provided by the

Employer shall pay an employee from the first (1st) day of accidents and the eighth (8th) day of sickness at the rate of seventy percent (70%) of the employee's gross biweekly regular salary.

Union Exhibit #2, page 10

Section 2.

b.) Employees may accumulate as much as 50 sick days credit (43 earned but unused sick days plus seven days precredited on January 1 of each new calendar year). Upon separation of employment, the Employer will pay at one half (1/2) the earned rate of pay for all then unused accrued sick days except if separation is discharge for cause in which case unused accrued sick day pay will be forfeited."

Union Exhibit #2, page 12

The Employer's Last Best Offer appears below:

ARTICLE VI - SICK LEAVE

Section 1.: Effective upon the ratification of this Agreement, all sick leave banks for bargaining unit employees shall be frozen and no further accumulation shall occur. The sick leave credits frozen may only be used after an employee has exhausted his/her seven (7) day annual allowance and his/her benefits pursuant to the City's sickness and accident insurance policy. Upon separation from employment, the City will pay at one-half (1/2) the rate of pay the employee was making on March 31, 1983, all frozen sick leave credits, unless separation was by discharge for cause in which case unused accrued sick leave will be forfeited.

Section 2.: On January 1st of each contract year, bargaining unit employees shall be credited with seven (7) days of paid sick leave which may be used in accordance with this Article on or before December 31st of said calendar year. However, there shall be no carry over or accumulation of unused sick leave from year to year. After the eighth (8th) consecutive day of illness or injury, the employee shall be covered by the City's sickness and accident insurance plan.

(a) The sickness and accident insurance plan provided by the City shall pay an employee from the first (1st) day of accident and eighth (8th) day of sickness at the rate of seventy percent (70%) of the employee's gross biweekly regular salary."

Employer's Last Best Offer, Employer Exhibit #4, pages 1-2

Union's Argument

The Union's argument appears below:

"The City, by unilaterally changing the sick leave provisions contained in Section 1 of Article VI, has eliminated sick leave accumulation for the East Jordan Police Officers. The Employer would freeze sick leave banks at their present level (maximum of 50 days) and not allow employees to accumulate any more sick days. The City has eliminated the ability of Officers with less than 50 days sick leave to accumulate beyond their present number of days. The City has eliminated the ability of employees to replace sick days, who because of serious illness have had to use banked sick leave.

The City further reduces the value of those "frozen" accumulated sick days to a rate of pay equivalent to that rate in effect on March, 1983. Reduced monetary value coupled with elimination of sick day accumulations diminishes the Officers ability to adequately protect their incomes from medical catastrophe as well as seriously impinging upon the previously negotiated severance pay incentive value of this benefit.

It is virtually impossible to determine realistic loss factors attributable to the minimization of sick leave as proposed by the Employer."

Union Exhibit #1

Employer's Argument

The Employer's argument appears below:

Under this previous contract, the City of East Jordan was required to maintain a sickness and accident insurance policy, which compensated employees from the first (1st day of accident and the eighth (8th) day of illness at the rate of seventy percent (70%) of the employee's biweekly salary. In addition, each employee was precredited with seven (7) sick leave days each January 1st, which could be accumulated to a maximum of fifty (50) days. In addition at separation from employment, the employee could cash in one-half (1/2) of his sick leave at his then current rate.

The City saw this system as a "best of both worlds" situation, which allowed the employee seven (7) paid days absent each year, while he still had insured protection against long term illness and



injury.

In addition, the payoff bonus was costly and turned the system into a severance pay situation, instead of a sick leave program. Thus the City proposed to freeze all existing sick leave banks and allow no further accumulation with payoff of frozen banks at the March 31, 1983 rate, if an employee separated from employment.

The existence of sick leave accumulation and thus sick leave banks and sick leave bank payoff are extremely rare in cities that have insured sickness and accident plans, such as East Jordan. Usually a city will have a sick leave program or an insured sickness and accident plan, but not both. In fact, one of the comparable cities, Charlevoix, has an insured plan very similar to that of East Jordan. The City of Charlevoix's insured plan is exactly the same as the one proposed by the City of East Jordan. Charlevoix's insured plan pre-credits fifty-six (56) hours (seven 8-hour days) each year, freezes all existing banks, allows no further accumulation and specifies that payoffs of the frozen banks will be at August 1982 rates of pay.

The City of Boyne City, the other comparable city, has its own uninsured sickness and accident plan. This plan allows accumulation of sick leave at one (1) day per month with a maximum accumulation of ninety (90) days with no payoff at separation.

The comparative data, as well as logic, support the position of the City of East Jordan. The seven (7) pre-credited days each year protect the employee during the deductible period specified in the insurance contract and thus there can be no justification for sick leave accumulation or payoff at separation and the comparable evidence shows that no comparable city has payoff or accumulation or sick leave."

Employer Brief, pages 2-3

#### Discussion and Award

The other City employees represented by Teamsters Local 214 have the following sick leave provision:

#### ARTICLE VII SICK LEAVE

##### Section 1.

Permanent full-time employees shall, effective January 1 of each

year, be credited with seven (7) sick leave days per year. As of the eighth day of illness or injury an employee shall be covered by a sickness and accident insurance plan provided for by the Employer.

a) The sickness and accident insurance plan provided by the Employer shall pay an employee from the first (1st) day of accidents and eighth (8th) day of sickness at the rate of seventy percent (70%) of the employee's biweekly-weekly regular gross salary.

## Section 2.

Employees shall be allowed to accumulate a total of fifty (50) days sick leave. If an employee is discharged, he shall not be entitled to any portion of his accumulated paid sick leave credits. If an employee retires pursuant to the City's retirement policy or dies, he or his estate shall be entitled to be paid for all accumulated unused sick leave credits at the rate of pay the employee was earning at the time he accumulated said sick leave credits.

a) For purposes of this section, sick leave credits shall be used on the basis of last credits earned are to be the first credits used.

## Union Exhibit #4, page 16

The sick leave policy of the City should be comparable for all City employees. The Union's Last Best Offer on sick leave is very similar to that contained in Teamsters Local 214 agreement noted above.

## Award

The parties are directed to include the Union's Last Best Offer on sick leave into the new agreement. The Union's Last Best Offer is the language contained in the 1981-83 agreement which expired in 1983.

## Vote:

For Kruger: Mendenall

Against: Ward

## Issue #2 Hours of Work

"Article VIII, 1982-83 Agreement

Section 2. (a) - Call in pay.

a) When an employee is called in to perform work at a time other than that for which he has previously been scheduled, he shall receive not less than three (3) hours straight time pay for the work so performed which shall count towards the overtime pay provision. The employee shall receive time and one half (1 1/2) for all call-in hours provided he works the regularly scheduled work week. The three (3) hour minimum provision shall not apply to employees who are called in for periods of less than three (3) hours prior to the start of their duty watch but who continue to work their regular duty watch thereafter.

Section 2. (c) - Court Time

c) When it is necessary for an employee to appear in a court proceeding, while off duty, such employee shall be paid a minimum of four (4) hours straight time pay or actual time, whichever is greater. The Employer agrees to reimburse said employees who drive their own vehicle the standard mileage as established by the City."

The Employer implemented the following provision dealing with call in pay and court time in August 1983.

Article VIII, Hours of Work and Overtime

Section 2. (a) Call-In

When an employee is called in to perform work at a time other than that for which he has previously been scheduled, he shall receive not less than two (2) hours of work or two (2) hours of straight time pay, which shall count toward the overtime pay provision. The two (2) hour minimum provision shall not apply to employees who are called in for periods for less than two (2) hours prior to the start of their duty watch, but who continue to work their regular duty watch thereafter.

Section 2. (c) Court Time

When it is necessary for an employee to appear in a court proceeding, while off duty, such employee shall be paid his regular straight time pay for the actual time spent in court, when said appearance is in the City of East Jordan. When the court appearance is outside the

City, the employee shall be paid a minimum of four (4) hours of straight time pay or actual time, whichever is greater. The Employer agrees to reimburse said employees who drive their own vehicle the standard mileage as established by the City.

Union Exhibit #3, pages 11-12

Union Position

The position of the Union is that the provisions dealing with call in and Court time which are contained in the 1982-83 agreement be retained in the new agreement.

Employer's Position

The Employer wants the Panel to accept the provisions which it implemented in August 1983, i.e. the reduction in call in time from three (3) hours to two (2) hours and the elimination of the four (4) hour straight time pay for all court appearances within the City of East Jordan.

Union Argument

The Union's argument is presented below:

"The City by its unilateral change in call-in and court time has reduced the members income for the year 1983 and thus far in 1984. The East Jordan Police Officer, because of the size of the department, is often subject to being called in to perform various job related duties. Prior to the implementation of the City's position, if the task took only 30 minutes the officer would receive 3 hours straight time pay. The City's change not only reduced the number of hours from three (3) hours to two (2) hours but would not require officers who were called in to perform a task, to remain for the entire two hours to receive his pay. This is in fact destroying the principle of call-in time. As the panel is well aware call-in time was established for Police Officers, in order to make up for inconveniences caused because work schedules and requirements of the job which otherwise cannot be handled while they are working.

The panel is also aware that court time has been established also to compensate Police Officers for the inconvenience and mandatory nature of commitments. East Jordan Officers are required to spend time in court and this is usually because of either misdemeanor offenses, traffic violations or district court violations or district court appearances. the City would now again take away from Officers the additional pay which has been negotiated and historically paid for inconveniences caused in the officers life."

## Union Brief

### Employer's Argument

The Employer maintained that the reasons for the condition in minimum call in pay from three (3) hours straight time to two (2) hours in that small tasks such as signing warrants take far less time than three (3) hours and thus compensation should reflect time spent. Secondly, once an employee has reported for work under the minimum call in, the Employer should have the right to use his services to perform work for the full maximum time. The Employer further noted that the comparable cities of Charlevoix and Boyne City have a minimum call in of two (2) hours.

The expired contract provided for a minimum of four (4) hours of pay for all court appearances during off hours. The implemented contract provides actual time for court appearances at the City of East Jordan and four (4) hours minimum for appearances in the Circuit Court at Charlevoix. The Employer maintained that this distinction is logical since an employee can appear in East Jordan with far less inconvenience than driving to Charlevoix a number of miles away. The Employer further noted that the comparable cities of Charlevoix and Boyne City have only two (2) hours minimum court time.

Employer Brief, page 4

### Discussion and Award

The Union's only argument is that the provisions in the expired contract should be reinstated. It offered no other persuasive arguments. The Employer on the other hand called attention to the provisions of the comparable cities - Charlevoix and Boyne City relative to minimum call in pay and minimum time for

court appearances.

The Chair must be guided by the provisions of Act 312, Section 10. The decision of the panel must be supported by competent, material, and substantial evidence on the whole record. The weight of the evidence in the view of the Chair on this issue supports the last best offer of the Employer.

#### Award

The parties are directed to include the provisions relative to minimum call in pay and minimum court appearances contained in the Employer's Last Best Offer in the new agreement (Employer Exhibit #4, page 3).

#### Vote

For Kruger: Ward

Against: Mendenall

#### Issue #3 Holidays

Article IX Holidays. 1982-83 p. 15

In this agreement, the following days were paid holidays:

New Years Day  
Independence  
Thanksgiving  
Good Friday  
New Year's Eve

Memorial Day  
Labor Day  
Christmas Day  
Washington's Birthday  
Christmas Eve

Thus there were a total of ten paid holidays. In the implemented agreement in August 1983 the Employer eliminated Washington's Birthday as a paid holiday.

### Union Position and Argument

It is the position of the Union that Washington's Birthday should be included as a paid holiday in the new agreement since this was a paid holiday in the 1982-83 agreement.

### Employer Position and Argument

The Employer pointed out that the comparable cities of Boyne City had nine and one half paid holidays and Charlevoix had only nine (9) holidays; neither of these cities recognize Washington's Birthday as a holiday. Thus the Employer in an effort to reduce labor costs, is proposing nine (9) paid holidays, i.e. eliminating Washington's Birthday as a paid holiday.

### Discussion and Award

The Panel takes note that the comparable cities of Charlevoix and Boyne City do not recognize Washington's Birthday as a holiday. Furthermore, the Employer and Teamsters Local 214 do not recognize Washington's Birthday as a holiday (see Union Exhibit #4, page 23).

The Panel directs the parties to include the nine holidays in the new agreement. Washington's Birthday will not be recognized as a paid holiday in the new agreement.

Vote:  
For Kruger: Ward  
Against: Mendenall

Issue #4 Vacations

In the expired agreement (1983) Article X Vacations p. 15 read as follows:

"Section 1. Regular full-time employees who have completed one (1) full year of employment with the Employer since their last hiring date shall be entitled to a paid vacation as hereinafter set forth.

a) When an employee completes twelve (12) consecutive months of service with the Employer since his last hiring date he shall thereafter be entitled to one (1) week vacation (forty (40) hours of pay).

b) Employees who, as of the anniversary of their last hiring date, have completed two (2) but less than five (5) years of continuous employment with the Employer shall be entitled to two (2) weeks of paid vacation (eighty (80) hours of pay).

c) Employees who, as of the anniversary of their last hiring date, have completed five (5) but less than ten (10) years of continuous employment with the Employer shall be entitled to three (3) weeks of paid vacation (one hundred twenty (120) hours of pay).

d) Employees who, as of the anniversary of their last hiring date, have completed ten (10) or more years of continuous employment with the Employer shall be entitled to four (4) weeks of paid vacation (one hundred sixty (160) hours of pay).

e) Employees shall receive one (1) additional vacation day for each year of service completed after their tenth (10th) year of service."

Union Exhibit #2, page 15

The Employer in its implemented contract of August 1983 included the following provision on vacations:

"Article X Vacation

Section 1.

Regular full-time employees who have completed one (1) full year of employment with the Employer since their last hiring date shall be entitled to paid vacation as hereinafter set forth:

a) when an employee completes twelve (12) consecutive months of service with the Employer since his last hiring date he shall thereafter be entitled to one (1) week of paid vacation (forty (40) hours of pay).

b) Employees, as of the anniversary of their last hiring date



have completed two (2) but less than ten (10) years of continuous employment with the Employer shall be entitled to two (2) weeks of paid vacation (eighty (80) hours of pay).

c) Employees who, as of the anniversary of their last hiring date have completed ten (10) but less than fifteen (15) years of continuous employment with the Employer shall be entitled to three (3) weeks of paid vacation (one hundred twenty (120) hours of pay).

d) Employees who, as of the anniversary of their last hiring date, have completed fifteen (15) or more years of continuous employment with the Employer shall be entitled to four (4) weeks of paid vacation (one hundred sixty (160) hours of pay).

e) "Eliminated entirely".

Union Exhibit #3, pages 13-14

#### Position of the Union

The Union seeks to include in the new agreement the provision on vacations which appeared in the 1983 expired agreement

#### Position of the Employer

The Employer wants to retain the provision on vacation which was included in its implemented agreement and in its last best offer (Union Exhibit #3).

#### Union Argument

The Union's argument appears below:

"The 1983 agreement contained vacation provisions which provided for employees with 2 years through 5 years of service to receive ten (10) days vacation.

The City has implemented a schedule that allows employees with 2 through 10 years to receive ten (10) days of vacation. The time it would take to advance up the vacation scale was increased by the city by 5 years. The prior contract allowed for employees with 5 through 10 years to receive fifteen (15) days of vacation. The City now requires that employees with 10 through 15 years receive 15 days of vacation.

Again, the City's schedule requires an additional 5 years to receive the same number of vacation days as given under the last

agreement. The past agreement allowed employees with 10 or more years of service to receive twenty (20) days of vacation. The City now forces employees to work for 15 years before achieving 20 vacation days.

Again, the time to achieve vacation days allowed under the 1983 agreement has been increased by 5 years. The past agreement allowed for (1) additional day to be the vacation for each year after 10 years of service.

The City's implemented plan has deleted this section. This makes the maximum amount of vacation 20 days after 15 years.

The City's unilateral change in vacation has cost one of the current officers with 12 years seniority, seven (7) days of vacation. The reduction would continue to escalate and will affect each officer. The 12 year officer will loose eight (8) days in 1984, nine (9) days in 1985, etc., etc. This is a further loss of time off, (money), to the officers, this 12 year officer has in 1983 lost 7 days pay and will loose 8 days pay in 1984, with the loss continuing to escalate if the Employer is allowed to continue with this unilateral change of conditions of employment."

#### Union Exhibit #1

#### Employer Argument

The Employer maintained that the vacation schedule in the implemented agreement is fair and equitable. When compared to Boyne City and Charlevoix, the comparable cities, and with the other City employees of East Jordan.

Boyne City has the following vacation schedule:

1 year = 1 week  
2 years but less than 10 years = 2 weeks  
10 years but less than 15 years = 3 weeks  
15 years or more years = 4 weeks

Article XI, pp. 15-16, Employer Exhibit #2

The City of Charlevoix has the following vacation schedule:

1 year = 1 week  
2 years = 2 weeks  
thereafter, one (1) day for each completed year with  
a maximum vacation allowance of 25 days after 17 years of  
service

Article XV, pp. 13-14, Employer Exhibit #3

The Employer called attention to the vacation schedule of other employees of the City of East Jordan.

Article XII Vacations  
Section 1.

1 year = 1 week  
2 years but less than 8 years = 2 weeks  
8 years but less than 17 years = 3 weeks  
17 or more years = 4 weeks

Teamsters Local 214 agreement, p. 25

Employer Exhibit #1

The Employer further noted that the Chief of Police has the same vacation schedule as do the other City employees.

The Employer contended that the police officers of East Jordan should not continue to have a vacation schedule which is totally out of line with surrounding comparable communities.

Discussion and Award

The Union's only argument is that the vacation schedules contained in the 1983 expired agreement should be included in the new agreement. The Union had the opportunity to continue to negotiate prior to impasse. Once an impasse was reached the Union did not file for Act 312. It filed for its Petition for Arbitration under Act 312 only after the Employer implemented its impasse offer as allowed by Michigan Law. The petition indicates that wages is the only unresolved issue.

The Panel must be guided by Section 10 of Act 312, i.e. competent material and substantial evidence on the whole record.

Below is a comparison of the vacation schedules in the expired agreement, the Employer's Last Best Offer, other City employees (Teamsters Local 214).

#### Comparison of Vacation Schedules

Union's Last Best Offer  
1983 Expired Agreement

1 year = 1 week  
after 2 years = 2 weeks  
after 5 years = 3 weeks  
after 10 years = 4 weeks  
1 additional day for each year  
of service after 10 years

Teamsters Local 214  
(Other City Employees)

1 year = 1 week  
2 but less than 8 years = 2 weeks  
8 but less than 17 years = 3 weeks  
17 years or more = 4 weeks

Boyne City

1 year = 1 week  
2 years but less than 10 years = 2 weeks  
10 years but less than 15 years = 3 weeks  
15 or more years = 4 weeks

Employer's Last Best Offer

1 year = 1 week  
2 years but less than 10  
years = 2 weeks  
10 years but less than 15  
years = 3 weeks  
15 or more years = 4 weeks

Charlevoix

1 year = 1 week  
2 years = 2 weeks  
thereafter one (1) day for  
each completed year with a  
maximum vacation allowance  
of 25 days after 17 years  
of service

None of the comparables provide for four (4) weeks vacation after ten (10) years as does the 1983 expired agreement. The Panel strongly believes that vacation schedules should be comparable for all City employees.

#### Award

The parties are directed to include the Employer's Last Best Offer on Vacations in the new agreement.

Vote:  
For Kruger : Ward  
Against: Mendenall

Issue # 5

"ARTICLE XV MISCELLANEOUS - 1982-83 Agreement Page 19

Section 6: - Reimbursement of deductible

It is understood and agreed that an employee may be required to reimburse all or part of damage to repair cost, up to one hundred (\$100) dollars either by monetary payment or by deducting accrued vacation time. Any reimbursement shall be conditional on the proven negligence of the employee involved, as determined by the City Police Committee, for the following offenses:

- a) Accidents involving city-owned vehicles;
- b) Careless operation of City vehicles;
- c) Careless use or damage to City equipment, materials or property which may necessitate the repairing thereof; and
- d) Property damage, either public or private."

Position of the Union

The Union seeks to maintain the one hundred (\$100.00) dollar deductible in the 1982-83 agreement.

Position of the Employer

The Employer seeks to raise the amount of the deductible to two hundred and fifty dollars (\$250.00)

Union Argument

The Employer has sought to implement this change in the condition of employment without negotiations. The deductible has been raised by 150 percent and this will increase the cost to an officer who is found to be negligent from \$100.00 to 250.00.

### Employer Argument

The Employer increased the deductible on its insurance coverage from \$100.00 to \$250.00 and this explains the rationale for the increase. When this provision was originally negotiated the purpose was to require the employee to pay the deductible amount under the City's insurance coverage which at that time was \$100.00 when damage to City property was the result of the employee's negligence. Since the deductible was increased to \$250.00, the Employer maintained that the contract should remain at the increased level, since this reflects the intent of the parties.

Employer Brief, page 7

### Discussion and Award

The Panel awards the deductible of \$250.00 because the original intent of this provision was to require the officer to pay the deductible under the City's insurance policy when damage to City property was the result of the employee's negligence. Since the deductible has been raised under the insurance coverage, the language of the agreement should reflect this change.

Vote:

For Kruger : Ward

Against: Mendenall

Issue #6 - Subcontracting

"ARTICLE XV MISCELLANEOUS - 1982 Agreement

Section 9. - Subcontracting

The Employer shall have the right to subcontract work normally performed by bargaining unit employees if and when, in its judgment, it does not have the available or sufficient manpower, proper equipment, capacity and ability to perform such work within the required amount of time, during emergencies or when such work cannot be performed by bargaining unit employees on an efficient and economical basis. The Employer agrees not to subcontract any work which would result in the direct layoff of current employees employed at the time of subcontracting.

Union Exhibit #2, page 20

#### Union's Position

The Union wants to retain the language of Article XV Section 9 Subcontracting which was in the 1982-83 agreement in the new agreement.

#### Employer's Position

When the Employer implemented the agreement in August 1983 it deleted the last sentence in Section 9 which read: "The Employer agrees not to subcontract any work which would result in the direct layoff of current employees employed at the time of subcontracting."

#### Union Argument

The Union maintained that the Employer by eliminating the last sentence would destroy the intent of Article XV Section 9. It would take away the job security that was inherent in the past agreement. The Union contended that this was another attempt by the Employer to discriminate against the Police officers.

The Union called attention to thg provision on subcontracting in the agreement of the City's garage employees, Article XIV, Section 5. This provision reads:

#### Section 5.

The Employer shall have the right to subcontract work normally performed by bargaining unit employees if and when, in its judgment, it does not have the available or sufficient manpower, proper equipment, capacity and ability to perform such work within the required amount of time, during emergencies or when such work cannot

be performed by bargaining unit employees on an efficient and economical basis, and no bargaining unit employee will be laid off or displaced."

Union Exhibit #4, page 29

#### Employer's Argument

The Employer maintained that the Union's proposals would completely destroy the City's right to subcontract its police coverage to the Sheriff's Department or another police agency. It was pointed out at the hearing that the City of Merrill has subcontracted its police functions to the Saginaw County Sheriff's Department and that the City of Fenton has subcontracted its police functions to the Genesee County Sheriff's Department. The Employer noted that the City of Charlevoix and Boyne City do not have any restrictions on their subcontracting rights of the nature requested by the Union.

#### Discussion and Award

The Panel takes note that the City had agreed to place restrictions on its right to subcontract out in its agreement with Teamsters Local 214 (see page 23 of this Award for this provision<sup>6</sup>). The Union seeks the same protection from the Employer as did Teamsters Local 214, i.e. comparability.

The Panel is directed to base its findings on the factors enumerated in Section 9 one of which is 9(d), comparability with other employees generally. This Panel takes this to mean other employees of the City.

The Panel, therefore, directs the parties to include the language of Article XV Section 9 found in the 1982-83 agreement into the new agreement.

#### Vote:

For Kruger: Mendenall

Against: Ward



Issue #7 - Promotion

"ARTICLE XV - MISCELLANEOUS 1982-83 Agreement, page 20

ARTICLE XV - Miscellaneous,

Section 11. - Promotional Procedure

Promotions to higher paying jobs within the bargaining unit shall be on the basis of the score obtained in the Michigan Municipal League Test for said positions and the oral interview rating with the senior person receiving the highest composite score being promoted."

Position of the Union

It is the position of the Union to retain this provision in the new agreement.

Position of the Employer

The Employer has eliminated this provision from the implemented agreement.

Union Argument

The position of the Union is expressed below:

When a Police Officer joins a Police Department whether large or small he does so with the vision that at some time in his career, that he will raise through the ranks and someday become chief. The city has taken this vision and dream away from officers of the East Jordan Police Department by unilaterally taking away this negotiated provision for fair treatment."

Union Brief

Employer Argument

The Employer stated that the implemented agreement eliminated the

promotional language because there is only one rank in the bargaining unit and thus there is no need for promotional language. It was noted that by city charter the City Council has the right to appoint the chief.

#### Discussion and Award

Because there is only one rank in the bargaining unit the Panel concluded that the promotional language is not necessary. Should the Employer and the Police Department in the future establish a command officer classification other than the Chief of Police, the parties can then review the need for a provision dealing with promotions.

Vote:

For Kruger : Ward

Against : Mendenall

#### Issue #8 - Longevity

#### Present Language

Article XV Miscellaneous 1982-83 agreement, p. 21

#### Section 15, Longevity

Effective April 1, 1982 employees will be paid a longevity allowance in accordance with the following schedule:

Upon Completion of Five (5) years - 2%

Upon completion of ten (10) years 4%

Position of the Union

It is the position of the Union that this longevity pay be maintained in the new agreement.

Position of the Employer

It is the position of the Employer that the longevity pay be eliminated effective August 1, 1983 in the implemented agreement.

Union Argument

On August 1, 1983, the Employer eliminated longevity payments. On March 31, 1984 the Employer and Teamsters Local 214 negotiated the same longevity provisions which were in the 1982-83 Police Officers' Agreement. The Union contended that the Police Officers were being treated differently than other employees.

It was noted that the longevity payment was added to wages and paid on each hour worked. The Union further pointed out that other City employees received an 8 percent increase in 1984. The Police Offices Union had agreed to a wage freeze for 1983-84.

Employer Argument

The Employer contended that longevity is unwarranted and unsupported by comparable data. It maintained that the comparable cities of Boyne City and Charlevoix do not have longevity bonuses.

Discussion and Award

The Panel awards longevity payments as follows:

Upon completion of five (5) years - 2%

Upon completion of ten (10) years - 4%

The Panel makes this Award based on the fact that the other union with whom the Employer negotiates received a similar longevity payment in the negotiations for a new agreement in March 31, 1984. This Panel could not find any language in the 1982-83 agreement to indicate that it was the intent of the parties to fold in the longevity payment into the wage rate. The Panel, therefore, states that the longevity payment is not to be rolled in or folded into the base wage rate during the life of this agreement.

The Panel directs the Employer to pay the longevity pay for 1983-84, for 1984-85 and for 1985-86. The longevity payments will be made on April 1, 1983, April 1, 1984 and April 1, 1985.

Vote:

For. Kruger : Mendenall

Against: Ward

#### Issue #10 - Wages and Term of the Agreement

Initially the Union had proposed a one year agreement from July 1, 1983 thorough June 30, 1984. At the hearing on December 5, 1985 the Union agreed to a two year agreement (see Transcript, page 43). The Employer in its last best offer proposed a three year agreement {see Employer Brief, page 10- and Employer Exhibit 34 (Last Best Offer)}.

On January 14, 1985 the Chair wrote to the parties to ask them to get together to discuss wages for the third year of the agreement. Mr. Ward had earlier pointed out that by the time the Award in the instant case will be issued the second year of the agreement would almost be over and the parties would be back at bargaining. The Union attempted to contact Mr. Ward to discuss this

matter but because of the busy schedules of the parties they were unable to do so. Mr. Mendenall sent a letter to the Chair dated January 23, 1985 in which with reservation he agreed to a three year contract (see letter dated January 23, 1985 from Mr. Mendenall to the Chair).

The parties are in agreement that there would be a wage freeze for the 1983-84 contract year. The parties are also in agreement that for the second year of the agreement 1984-85 the wage increase will be three (3) percent.

The Employer has proposed a three (3) percent increase for the third year of the agreement (1985-86). The Union has proposed a five (5) percent increase for the third year.

#### Union's Argument

The Union is attempting to seek a wage increase in the third year which it considered fair in light of the circumstances surrounding the case i.e. the implementation of the Employer's last offer in August 1983.

#### Employer's Argument

The wage increase offer for the third year is equitable, since it represents roughly the rate of inflation during this time period and is within the financial capability of the City. The Employer maintained that the total compensation package for the police officers is very competitive and that the proposed wage increase keeps these officers in a competitive position with other area officers.

Employer Brief, page 10

#### Discussion and Award

The parties are in agreement that the new agreement will be a three year agreement to run from April 1, 1983 to March 31, 1986.

The parties are in agreement that there will not be a wage increase in the first year of the new agreement, April 1, 1983-March 31, 1984.

The parties are in agreement that there will be a three (3) percent wage increase in the second year of the agreement, April 1, 1984-March 31, 1985. The Employer is directed to pay this three percent increase within two weeks of the date of this Award.

With respect to the third year of the agreement, April 1, 1985-March 31, 1986, the Panel accepts the last best offer of the Union i.e. a pay increase of five (5) percent effective April 1, 1985. The Panel takes note that the other City employees received an eight (8) percent increase in March 1983. The five percent increase granted by this Panel will provide a total wage increase of eight (8) percent which in the view of the Panel is fair and equitable in light of the wage increase received by other City employees in 1983.

Vote:

For Kruger : Mendenall

Against: Ward

#### Summary

The Panel urges the parties to consummate the new three year agreement as quickly as possible which would incorporate both the items which the parties have previously agreed upon and the Awards of this Panel.

Daniel H. Kruger

Daniel H. Kruger

Chair, Act 312 Panel

Billy D. Mendenall

Billy D. Mendenall

Delegate for the Union

Michael Ward

Michael Ward

Delegate for the Employer

February 4, 1985

**\*\*The signatures of the Delegates only indicates  
that this is the Award of the Panel. The vote on each issue is  
indicated under that issue.**