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STATE OF MICHIGAN
STATUTORY LABOR ARBITRATION PANEL
(Pursuant to Act 312, P.A. 1969, as amended)

In the Matter of Arbitration Between:

THE CITY OF FENTON

-and-

No. D81 C-407

MICHIGAN LAW ENFORCEMENT UNION #129

OPINION AND AWARD

Chairman of Arbitration Panel: Kenneth P. Frankland

City's Delegate: Merle Grover

Association's Delegate: James W. Allen

Representing the City: Merle Grover

Representing the Association: James W. Allen

Hearing Held: February 17, 1982 at the City Hall, Fenton
Michigan

Opinion and Award: March 1, 1982

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Fenton, City of

I. STATEMENT OF THE CASE:

This matter came on for hearing before a panel of arbitrators appointed pursuant to the terms of Act 312 of Public Acts of 1969 (as amended) for the purpose of the hearing and deciding the unresolved issue of wages in the second year of a proposed new contract. This is the sole remaining issue in dispute between the City of Fenton (hereinafter called the City) and the Michigan Law Enforcement Union #129, consisting of the patrolmen unit (hereinafter called the Association). It should also be noted that the parties have stipulated and agreed that the award herein would also be applicable to the sergeant's unit of the Association.

Pursuant to the governing statute, Kenneth P. Frankland was appointed by the Acting Director of Employment Relations Commission to serve as chairman of the arbitration panel. The City designated Merle W. Grover as its delegate and the Association designated James W. Allen as its delegate. So constituted, the panel conducted a hearing on February 17, 1982 in the offices of the City Hall, Fenton, Michigan. During the hearing, the delegates also acted as advocates for the respective sides, testimony was taken from one additional witness and the parties presented numerous exhibits in addition to stipulations to make a complete record.

At the hearing on February 17, both parties expressly waived the time limits set forth in the statute. They also mutually stipulated that the panel was properly appointed and functioning in accordance with the statute. Finally, they agreed there was but

one issue remaining in dispute namely appropriate wage for the second year of a two year contract. The parties agreed that this was an economic issue. They acknowledged that therefore the statute required that the panel's award be limited to the last best offer of either the City or of the Association.

II. THE BACKGROUND:

The City and the Association were signatory to a Collective Bargaining Agreement for both the patrolmen and the sergeant's units which expired on June 30, 1981. The parties held numerous bargaining sessions throughout 1981. A meeting was held under the auspices of the State Mediator, Mr. Terepin, on July 24, 1981. Subsequent thereto on July 29, 1981, the Association requested that a panel of arbitrators be appointed under the Police-Fire Fighters Arbitration Act. On October 28, 1981, the Michigan Employment Relations Commission implemented the provisions of that Act.

The parties continued to meet in efforts to reach a contract settlement. A pre-hearing conference was held on November 30, 1981 by the panel. The mediator's proposal appeared to be the basis for a settlement upon most of the items in dispute. In fact, the stipulations that are ultimately entered and are made apart of this award arise as a result of the mediator's recommendations. At the pre-hearing conference stage, it was also ascertained that the salary for the first year of the proposed two year contract would be stipulated as 7%. The parties were discussing an additional 7% increase effective for the second year of the contract. A subsequent pre-hearing conference by telephone indicated that the parties were not able to agree upon the wages for the second year of the contract. A second pre-hearing conference was held on January 21,

1982 at which time the parties, in fact, agreed that there was but one issue, namely the appropriate wage for the second year of the contract. This was predicated upon a January 11, 1982 letter from the City to the Association (Union exhibit #10) that the City was unable to agree to the second year. They stipulated to a two year agreement and also agreed to stipulations on all other disputed issues based upon the recommendations of the mediator.

As to stipulations, the parties agreed that the two Collective Bargaining Agreements, one for patrolmen and the other for sergeants, shall be modified according to specific items enumerated in a three page document appended hereto. Additionally, there is a stipulation as to Article VII, seniority, which is appended hereto. It should be noted that the provision in Article XVII on holidays, Section 2, that appears in the three page document is not the language stipulated to and a specific stipulation on separate page was revised, agreed to and stipulated by the parties at the hearing to be the agreement. A copy thereof is also attached hereto.

Relative to the wages in the second year, the City, as a result of changing economic circumstances, suggested that it was unable to agree to a 7% increase as had been part of the initial discussions. (See Union exhibit #10.) The Association contended that an increase at that or a higher level was financially possible by the City. It is in this context and with this background that the parties made their last best offers.

III. THE LAST BEST OFFERS:

The City would offer for settlement purposes as last best offer that the patrolmen and sergeants contracts for 1982-83 fiscal year include no increase from the prior year's pay. That would

mean that the officers would be paid their base salary on the existing contract plus a 7% increase for the first year of the new contract, but no increase above that level for the second year of the contract. The Association presented its last best offer that the patrolmen and sergeants would accept a 7% across the board pay increase for the second year of the contract effective July 1, 1982. Each of the above last best offers were delivered to the chairman of the panel in writing at the conclusion of the hearing on February 17, 1982.

IV. FINDINGS AND CONCLUSIONS:

The following opinion and award takes into consideration each of the factors enumerated in Section 9 of Act 312. The lawful authority of the Employer is not a significant factor in this case. The Panel has carefully considered the stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet costs, and comparisons offered by both parties which have provided a basis to review the appropriateness of the economic requests of the Association. The wages for employees in this unit were compared to those of employees performing similar services in comparable communities. Also, the panel has taken into account the exhibits with respect to consumer price indexing, the over-all city budget, the situation of the City and other factors normally considered in determining provisions for collective bargaining contracts.

COMPARABLES:

The Association suggests that comparable communities would include Grand Blanc, Grand Blanc Township, and Flushing. Population wise, Grand Blanc has 6,635 persons; Flushing, 8,620; and Fenton, 8,300. Grand Blanc has 11 patrolmen; Flushing has five patrolmen; and Fenton has seven patrolmen. For 1981, third year wages for the patrolmen in the City of Grand Blanc were \$20,715.80; Flushing, \$21,015.00 plus COLA; and Fenton, including the first year increase, \$21,125.00.

The City has suggested that the state equalized valuation of communities is a better indicator of a basis for revenue potential and therefore ability to pay. City exhibit #7, 1981 certified tax rates in Genesee County per \$1,000 state equalized valuation, indicates the City of Fenton has a SEV of \$80,245,373. Cities of comparable population would be the City of Flushing with a state equalized valuation of \$81,381,755; the City of Grand Blanc with a state equalized valuation of \$80,344,693, and the City of Swartz Creek, which has a state equalized valuation of \$63,184,026.

The employer further suggests that the local effort as to millage is restricted in the City of Fenton because of a charter cap of 13 mills. This record does not disclose what the limit is for other cities in Genesee County, but the voted millage in the City of Flushing is 6.88 mills; City of Grand Blanc, 9.51 mills; the City of Swartz Creek, 5 mills. By way of comparison, the total millage, including local schools, intermediate schools, colleges and local government for Fenton ranges from a high of 65.3 mills to a low of 59.72. In the City of Flushing the total millage is 50.75;

the City of Grand Blanc, 53.95; and the City of Swartz Creek, 54.98.

It is the panels recommendation that the comparable communities, for purpose of this award, would be located within Genesee County and the most comparable communities using either the City's approach or the Association's approach would be the surroundings communities of Flushing, Grand Blanc, and Swartz Creek. Each is in the same general population range, located in Genesee County within reasonable distance of Flint, a major industrial, manufacturing, and commercial area along the I-75 corridor. Although the City of Flint has a significant percentage of minorities, the City of Fenton and comparable communities above described do not have significant percentage of minorities nor do the cities being used for comparison have an inordinate crime rate then one would expect for cities of like size. Thus, either using the Association's list of comparables, or using those suggested by the employer, the communities of Grand Blanc, Flushing, and Swartz Creek would be a sound basis for the panels deliberations. By comparison, the base salary after three years, for 1981-82, would be \$21,015 in Flushing, \$20,715 in Grand Blanc and \$21,125 in Fenton. The City also suggested in exhibit #4 that the cities of St. John and Sturgis should be used for comparing base salaries. Although they may be in the same population size, 7,000 to 9,500 persons, they are not geographically situated near Fenton, no information was provided regarding state equalized valuation which the City suggests as a standard, and the communities within the greater Flint area are a more appropriate basis for comparison of base salaries.

ABILITY TO PAY:

The panel is also charged with considering the City's ability to pay before it makes its final award. The City, on January 11, 1982, indicated that it must of necessity reduce the offer to a one year settlement for the fiscal year beginning July 1, 1981 to and including June 30, 1982. (See Union exhibit 10.) At the hearing, the City specifically raised the issue of inability to pay and offered exhibits with respect to full time positions eliminated since July of 1978 (#1), total employee costs for police officers as of January 1, 1982 (#2), cost comparisons of a 7% increase versus a zero percent increase (#3), comparable cities with respect to police officers salaries (#4), additional costs for 7% wage increase (#5) and the general fund revenue and expenditure comparisons 1977-1981 (#6). City exhibit #6 had a budget estimate for 1981-82, a six month adjustment and an estimated 1982-83 budget. The City Manager testified regarding the above exhibits. It would be fair to summarize his testimony that notwithstanding efforts to reduce expenditures, he projected a budget deficit for '82-'83 of approximately \$100,000. For 1981-82 there is an anticipated surplus of \$116,000. Of that figure, approximately \$84,000 is available for budget balancing, the difference being reserved for unknown expenditures and accounts payable. Of the \$84,000 available for deficits, the City Manager indicated that the pay increases that have been agreed to for two other bargaining units and the 7% increase for the first year for this bargaining unit would need to be paid. Any balance thereafter would be carried forward to fiscal year 1982-83. He thought that sum would be less than \$20,000.

For 1982-83 the City suggests that there will be a 3% reduction in anticipated revenue from local funds. They also project a revenue sharing short fall of approximately \$32,000. They also suggest that as a result of recent legislation that if the City does not assess at 50% of true cash value and reduce their assessment factor to 1.00, they will lose additional money.

The City also indicates that of the bargaining units within the city, they have not settled with two AFSCME units for 1981-82, but they assume that they would settle for the 7% figure for other bargaining units. The City suggest that if the 7% figure is negotiated for the police officers for the second year of the contract, that that pay increase would be the barometer used for other bargaining units for settlement purposes. Under the City's last best offer, they are arguing that they cannot afford any increase. Conversely, the Association suggests that there is an ability to pay and their last best offer is 7%.

City exhibit #3 indicates that the additional cost for 1982-83 as an increase in base salary for patrolmen would be \$10,750 and for sergeants \$4,916. That represents \$1,536 base salary increase per patrolman and \$1,638 base salary increase per sergeant.

It seems clear that the City could financially afford the 7% increase for 1981-82 within the anticipated surplus of \$116,000. Even given the testimony regarding use of those funds, it is clear that some surplus will result. Further, the increase, if granted at 7% for 1982-83, as to base salary would only aggregate \$15,666. Admittedly, that is the base upon which other costs are figured, but the base salary is the item which is in dispute in this particular hearing not the total cost including fringes.

Even though there may be less funds available in 1981-82 to carry forward and there may be less funds available to the City in 1982-83, the projected deficits, if any, for '82-'83 are just that, projections. There are options and discretions in the hands of the City's leaders whereby they could absorb the new liability for patrolmen and sergeants without plunging the City into fiscal bankruptcy. Certainly in any budgetary process, the decision makers have to set priorities and satisfy the needs and desires of their citizens. Arbitrators have said the public employees are not expected to subsidize the community by being required to accept substandard compensation (see decision of Richard Block, Oscoda Board of Education, 55 LA 568, 1970). However, the salary demands of all public employees must be viewed in light of the total demand of the community for public funds.

The panel here should not ignore that the ability to pay issue goes beyond the increase liability for the seven patrolmen and three sergeants. Admittedly, the City hopes to hold the line with respect to all of its employees under Collective Bargaining Agreements. However, the City clearly has the ability to pay what is sought in this narrow arbitration issue. The City may well seek additional administrative options and should the City perceive it necessary, lay-offs of personnel in other areas of city government or even from these units could well be options available to the City.

PUBLIC INTEREST AND WELFARE:

The interest and welfare of the citizens of Fenton have also been considered by the panel. The public needs well motivated,

highly skilled and fairly compensated police officers so that these employees will perform their duties well. On the other hand, the City's citizens should not be forced to give up other vital or desired city services nor to tax themselves disproportionately in order that their city police officers may receive additional compensation. Therefore, the equities of the public employees petition for greater benefits will always be balanced with the cost impact on the municipality to determine if the public's interest is well served.

V. DISCUSSION:

Based upon the comparable cities submitted by the Association and given the comparable cities with respect to SEV as suggested by the City, the salary for the second year of the contract including a 7% increase would not be out of line with that which is being made available in comparable communities. The fact that this particular award might be a precedent for other bargaining units within the City ought not to dissuade the panel from its award.

The City will have to deal with its other bargaining units on the issue of wages each in due course. For example, the City indicated it has not yet bargained on wages with two of the units for 1981-82. The City has also indicated that it has not entered into any agreement with any of its five units with respect to 1982-83. However, to the extent that this award might set a precedent, it is beyond the bounds of the panel to take that factor into consideration. The practical effects that this award might have can be mitigated by alternatives that the city administration may wish to take. Further, the anticipated reduction in revenues may or may not materialize and assuming that the City were to assess at

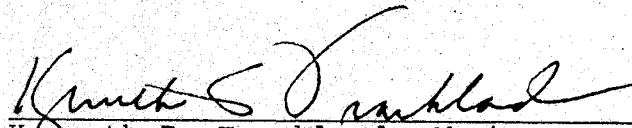
50% of true cash value, then in fact revenues might allow for a properly balanced budget.

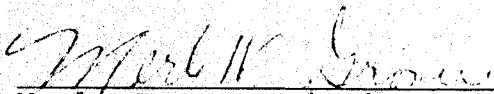
The panel believes that the City has not demonstrated that the last best offer of no increase is equitable under all of the circumstances. The facts as presented by testimony and exhibits do not sustain the suggestion that the second year increase is fiscally unsupportable. It is concluded that the Association's last best offer outweighs the City's arguments and its claims that such an offer is not financially feasible for the City. It is determined that the City can meet this demand of the Association without being put in an unreasonable position and that the public's interest is not impaired by such an award.

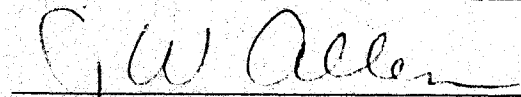
AWARD

The contract between the parties for the period July 1, 1981 through June 30, 1983, shall contain the Association's last best offer on base pay for the second year of the two year contract. Otherwise, the contract shall be a continuation of the prior agreement with a new salary schedule as awarded herein and including stipulations of the parties as to amendments to the contract as has been mutually agreed upon by the parties.

Dated: March 1, 1982


Kenneth P. Frankland, Chairman


Merle Grover, City's Delegate
concurs _____ dissents X


James W. Allen, Association's Delegate
concurs X dissents _____

STIPULATIONS CITY OF FENTON AND
MICHIGAN LAW ENFORCEMENT
UNION LOCAL 129
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

The parties agree that the two Collective Bargaining Agreements, Patrolmen and Sergeants, shall be modified as follows:

1. Grievance and Arbitration Procedures

Step 3. If the grievance is not settled in Steps 1 and 2, the Union may within five (5) working days after the supervisor's answer, request a meeting between Union representatives and the Chief and/or his representative to review the matter. Such meetings will be held within ten (10) working days after the date of written request and the Chief and/or his representative will render his decision within ten (10) working days thereafter.

Step 4. If the grievance is not settled in Step 3, the Union may, within five (5) working days of the Chief's answer, request a meeting with the City Manager and/or his representative to review the matter. Such meeting will be held within ten (10) working days after the request and the City Manager will render his decision in writing within ten (10) working days thereafter.

2. In the Patrolmen Contract Article VI, Section 2, Section B 1, "Patrolmen shall not be allowed to remain on any shift for more than three (3) consecutive periods," shall be deleted.
3. Article XV, Section 5, Damage Personal Property, shall be amended as follows:

Patrolmen who have any of the following personal property lost or damaged (as a result of action taken) in the line of duty shall be reimbursed up to the amount of actual damage not to exceed:

- 1) \$25.00 for a wrist watch, ring, etc.
- 2) \$150.00 for personal glasses, contacts, or hearing aids, replacement to be of a like kind to those damaged.

4. Article XXII, Section 2, Life Insurance.

The Employer shall maintain the present life insurance to its employees in the sum of \$15,000 with AD&D (The \$3,000 increase from the present \$12,000 amount shall be implemented as soon as reasonable after the ratification of this Agreement by both parties.).

5. Article XXII, Section 4, Teamsters Dental & Optical Plan.

The Employer agrees to pay into the Michigan Conference of Teamsters Welfare Fund, for each employee covered by this Agreement who is on the regular seniority list, unless otherwise specified in Appendix "A" attached, a maximum contribution of:

\$5.00 per week	-	Effective as of January 1, 1981
\$5.76 per week	-	Effective upon ratification of this Agreement

6. Article XXX, Transportation.

Where an employee is directed by Employer to use his own transportation, he shall be reimbursed the sum of twenty (20) cents per mile.

7. Article XXXII. Staffing.

At least one patrol car is to be manned by two certified patrolmen between 4:00 p.m. and 6:00 a.m., except by mutual agreement of the officers individually. (To be deleted.)

8. General wage increase 7% increase over the amounts shown in the present Collective Bargaining Agreement.

Effective July, 1982, the following changes in the Agreements shall take effect:

9. Article XVII, Holidays, Section 2.

All employees shall receive eight (8) hours pay for each of the above listed holidays.

All employees who work a holiday shall receive time and one-half (1 1/2) for actual hours worked.

Employees whose starting time falls during the holiday period shall be paid premium rate for the entire shift that is worked.

(It is understood that the present practice of paying in accordance with the Arbitrator's decision the equivalent of three and one half (3 1/2) times the regular rate of pay shall be discontinued and one (1) day's pay for each holiday shall be computed and added to the pay schedule commencing July 1, 1982, so that the pay schedule for the patrolmen and officers shall be increased the equivalent of ten (10) holidays for the 1982-83 Fiscal Year.)

10. Article XVIII, Vacations, Section 1.

Twenty (20) years of service - Twenty (20) days. To be deleted and in its place the following language: Fifteen (15) years of service - Twenty (20) days.

The above changes are agreed to and stipulated by the parties as part and parcel of the Arbitration Award to be rendered in the instant case.

The parties further stipulate that the Arbitrator will issue a decision in accordance with the above stipulation and such decision shall be limited to the second year salary increase (1982-83).

ARTICLE VII - SENIORITY

Section 1.

Seniority shall mean the status attained by continuous employment with the Fenton Police Department in a particular classification beginning with the first day of scheduled work.

Employees entering a specific classification in the Fenton Police Department from other City divisions or classifications, shall use their total City seniority for retirement only.

STIPULATION

Article XVII- Holidays - Section 2

An employee who is not scheduled to work on a holiday shall receive eight hours pay at his regular rate of pay in addition to his normal pay.

All employees who work a holiday shall receive time and one-half ($1\frac{1}{2}$) for actual hours worked in addition to their normal pay.

Employees whose starting time falls during the holiday period shall be paid premium rate for the entire shift that is worked.