

1/18/85 arb

FEB 20 1985

DECISION AND AWARD  
ACT 312 PROCEEDING

CITY OF FLAT ROCK

January 18, 1985

and

Case No. D 83 F 1674

POLICE OFFICERS ASSOCIATION OF MICHIGAN

Subject: Contract Provisions, July 1, 1983 - June 30, 1985  
Agreement

- I. Economic Issues
  - Wages
  - Pension Improvements
- II. Non-economic Issues
  - Bargaining Unit Work
  - Dispatch-Jailer Job Classification
  - Management Rights
  - Waiver Clause
  - Maintenance of Conditions

STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
DETROIT OFFICE

1985 FEB 14 PM 3:15

RECEIVED

Flat Rock, City of

Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

Hearing Data:

Date

Petition Filed:	October 31, 1983
Appointment of Chairman:	December 22, 1983
Pre-Hearing Conference:	January 27, 1984
Hearings Held:	February 23, 1984
	March 9, 1984
	April 12, 1984
	June 18, 1984
	August 1, 1984
	August 14, 1984
Final Offers Submitted:	
Employer's Revised Final Offer Submitted:	October 16, 1984
Post Hearing Briefs:	
Employer:	October 18, 1984
Union:	November 27, 1984

## REPORT OF DECISION

This arbitration proceeding has been conducted pursuant to Act No. 312, Michigan Public Act of 1969, as Amended. It was initiated by petition of the Police Officers Association of Michigan on behalf of the police officers of the City of Flat Rock, in October 1983. The Michigan Employment Relations Commission appointed the undersigned Chairman by letter of December 22, 1983.

Flat Rock is located in southern Wayne County, part of a string of cities and towns most commonly referred to as the "downriver" communities. For a number of years, the single sizable industry in Flat Rock was the Michigan Castings Company, owned and operated by the Ford Motor Company, and employing approximately 5,700 people. Ford shut down its operations at Michigan Castings in late 1981. The only remaining manufacturing employers are of far less significance: Flat Rock Metals, with 50 employees, and Colto, employing two or three persons. The commercial area of the community has a small retail shopping center and a "main street" with food services and other kinds of retail and services facilities.

Flat Rock occupies seven square miles. Its population was measured at 6,800 in the 1980 census. According to Mayor T. Anders, only about two square miles of Flat Rock is developed. The State of Michigan Department of Natural Resources has disapproved any extensive real estate development plan which would extend or require installation of a multiple tap, asserting that present sewage treatment facilities are overloaded. Anders testified that most of Flat Rock is residential, and most of the people work outside of the community.

With the shut down of Michigan Castings, negotiations led to an agreement concerning the appropriate basis for assessing the properties -- both realty and personalty. The impact on the City's SEV can be seen in the following figures, taken from Employer's Exhibit No. 26:

<u>Date</u>	<u>SEV*</u>
1981	\$144.1 Million
1982	\$152.4 Million
1983	\$132.7 Million
1984	\$100.0 Million
1985	\$ 89.3 Million

---

\*Based upon the preceding year-end valuation.

1983 figures are the first to reflect the agreed-upon tax-basis reduction.

The City laid off six employees from the Police Department in 1981-1982. The Union further agreed to freeze wages when the then current collective bargaining Agreement expired in June 1982, arriving at a contract extension for one year, until July 1983. It is against this background that negotiations for the 1983-1985 Agreement began.

The parties were unable to reach a settlement of all issues through their own collective bargaining efforts. Accordingly, the Union sought arbitration under Act 312. Section 8 of the Act directs that the economic issues in dispute be identified and that the parties submit a "Last Offer of Settlement" on each economic issue. The economic issues in this case concern wages and certain pension improvements. The non-economic issues in dispute concern performance of bargaining unit work by non-bargaining unit members, the establishment of a new, civilian position within the bargaining unit, changes in the provision regarding Management Rights (Section 7.1 in the prior Agreement), introduction of a Waiver Clause, and elimination of the Maintenance of Conditions provision (Section 23.1 in the prior Agreement).

Section 9 of the Act establishes the standards to be considered by the Panel in arriving at findings, opinions and its orders. The factors most pertinent in the instant matter and upon which the parties have relied in their presentations are these:

\* \* \* \*

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

"(d) Comparison of the wages...and conditions of employment of the employees involved in the arbitration proceeding with the wages...and conditions of employment of other employees performing similar services and with other employees generally:

"(i) In public employment in comparable communities.

\* \* \* \*

"(e) ...the cost of living.

"(f) The overall compensation presently received...

"(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

"(h) Such other factors...normally... taken into consideration in the determination of wages...and conditions of employment..."

Some discussion of the Section 9 criteria as they relate to the parties' positions in this case will be helpful, before proceeding to examination of the Union and the Employer's respective arguments in relation to the various disputed contractual provisions.

The Union emphasizes several points to support its economic demands: the layoffs which occurred subsequent to the Ford closing, with an asserted increase in work load for the remaining police officers (h); an allegation that if the Employer's position regarding a wage increase is awarded, the employees would be going without an increase for three years (h); the impact of the cost of living (e); and the status of this bargaining unit relative to the "comparables", the cities in the downriver area which it believes are appropriate to consider (d)(i).

The Employer, for its part, mainly asserts an inability to pay (c). It emphasizes the adverse impact on its tax base due to the closing of the Ford-owned facility, its very careful budgeting and its greater tax effort which have enabled the City to stay in the black despite the drop in the state equalized valuation. The Employer insists that any award beyond what it has offered would jeopardize the City's financial health.

Examining the Union's claims first, the record states that there had been 22 members in the bargaining unit, and there are now 16. That is a reduction of twenty-seven percent, not forty-one percent as the Union brief alleges. Whether the

work load has increased by forty-one percent is quite another matter. That fact is certainly not developed on the record. Some activities may have been eliminated. In other cases, there may be an increase in the amount of overtime, which is not precisely the same as an increased work burden brought on by fewer personnel. In any event, police work, unlike, say, a manufacturing operation, cannot be reduced to measurable units. Given the lack of a developed record on this point, this particular argument cannot be given much weight.

As to the allegation that the employees will have had no wage increase for three years if the Employer's offer of a wage increase only in the second year of the Contract is awarded, that is simply not so. The last increase was given in 1981. No increase was given in 1982, and under the Employer's offer none would issue in 1983. The time period runs from July 1982, not 1981.

As to the cost of living, the Union asserts that the theory of the COLA concept is to preserve the employees' agreed-upon wage bargain from erosion by inflation. In this case the parties are divided as to the starting point for measuring the impact of inflation. The Union believes the starting point is 1981, the time of the last increase. The Employer insists the appropriate starting point is 1982, which marked the extension of the "old" Agreement. Accepting the Employer's contention, it appears that under either party's proposal, the employees will not be made whole for the loss of purchasing power which they have suffered.

Using Employer's Exhibit No. 25, \$23,971, top patrolman wages -- said to be the most common classification -- for 1982 have not kept up with the consumers price index since March of 1983. In July 1983, that wage would have had to be a little more than \$25,000 to account for a higher cost of living. In July 1984, that figure rose to just under \$28,000. It is true that the consumer price index as drawn on the Employer's exhibit started to decline after January 1984. Nonetheless, that fact does not detract from the circumstance that the wages of the bargaining unit members were adversely affected by the CPI movements from July 1983 and thereafter. If the only criterion was protection against inflation, clearly the Union's demands would meet that test. However, of course, contrary to the Union's assertion that the statute "mandates" adoption of its demands under this criterion, Act 312 simply enumerates many factors and this is but one. It certainly will be given weight.



Next, the matter of comparables. The Union selected fourteen neighboring communities, the so-called "downriver" group. It asserts that these cities share commerce, some have a mutual aid pact in which the police force may help out in another area. The Employer selected Melvindale, which is also among the Union comparables, and Monroe, which is not. It urges that there is a bond of commerce between Flat Rock and Monroe, that the Monroe newspaper covers Flat Rock matters, and that generally there is a social intermingling between the two communities.

The Employer selected only two communities for its comparables: Melvindale, also selected by the Union, and Monroe. Monroe is substantially larger than Flat Rock. Its population is approximately four times greater; its police force is three times the size of Flat Rock, and its area is fifty percent greater. It is somewhat difficult to evaluate their wage structure in relation to Flat Rock because it has far more service steps. I conclude that there is insufficient basis to look only at Melvindale and Monroe as the appropriate comparable cities. Rather, Monroe will be considered as one additional community, along with the Union's selections.

My own conclusion regarding the usefulness of these comparables is that they serve the valuable purpose of providing a general, overall picture of public safety officers' wage rates in the geographical area, which is a valid consideration. However, the record does not contain sufficient information to permit determination of whether some are more relevant than others. For example, there is no information about tax rates, density of population, whether there has been an historical reliance on these particular communities in collective bargaining, whether these communities have suffered a similar reduction in SEV to that which has occurred in Flat Rock due to its loss of Michigan Castings.

The most that can be said is that Flat Rock in 1981 was very close to the average (a simple average) wages paid in these communities. Flat Rock's top patrolman was paid \$23,971. The Union provided comparable wage information for ten communities. The average, not including Flat Rock, was \$23,803. Six communities paid more than Flat Rock; four paid less. In 1982, Flat Rock remained at \$23,971; the average for thirteen communities was \$24,510. In 1983, the average (for twelve communities) rose to \$25,329.

Finally, the matter of the Employer's ability to pay which, in Section 9 (c) is linked to "[t]he interests and welfare of the public". It goes without saying that the welfare

and the interests of the public are directly related to a viable police force, one with good morale. As was stated by the City in the hearings, the community must understand and expect to pay for the high quality of public safety services which it perceives to be necessary to its welfare and interest.

It appears from the data presented that when the Ford Plant was operating, Flat Rock met its employees' wage demands, and at the same time built up a sufficient surplus to help it later withstand revenue losses due to Ford's closing. Subsequent to the closing, the City has raised its millage rates 14 to 16, and again to 16.75, the latter rate to take effect in 1985. Under the governing laws of the City, it may levy as much as 20 mils without resorting to a referendum. In addition to this greater tax effort through increased millage, residential property has been reassessed and has yielded greater revenues.

The evidence establishes that the City is tightly budgeted, that it has scaled its expenditures to fit within its budgeted revenues, and that because of past years when there was surplus or savings possible, it is not in a deficit position.

Much testimony -- as should be apparent from the foregoing -- relating to the ability to pay argument was tied to the Plant shutdown. Also, the Employer's post-hearing brief in support of its final offer alludes frequently to the "bleak prospects" for Flat Rock. Subsequent to the time during which final offers and post-hearing briefs were due, there was a public announcement that Mazda had agreed to build a facility on the land formerly occupied by Michigan Castings. The precise economic impact of this decision is, of course, not known, but it is safe to conclude that this is a most positive event and therefore, I believe it is proper to discount the Employer's concern about the community's "bleak prospects". At the same time there is no evidence on the record to support a finding that the Mazda plant will have any fiscal impact for the years with which this proceeding is concerned, July 1983 through June 1985. It was stated by the Employer's auditor that 1985 tax bills are based upon an evaluation on the records as of December 31, 1984. It would seem therefore that the earliest time at which the Mazda announcement would translate into improved revenues would be 1986.

The conclusion from the foregoing is that Flat Rock has the present ability to provide for some improvements in the bargaining unit's compensation and that its prospects for later years are much brighter.

I.

ECONOMIC ISSUES

1. Wages. The Union's final offer with respect to wages is for the year commencing July 1, 1983, that there be a three percent increase. For the year commencing July 1, 1984, the Union's final offer is a six percent increase.

For the first year of the Contract, the Employer offers no increase. For the second, it offers a three percent increase.

Given all of the considerations which have been discussed earlier, namely, the erosion in the wages which the bargaining unit has suffered in the past two years, that there has been no wage increase for two years, that the community has the financial ability to afford some increase, equitable considerations persuade me to adopt the Union's offer for a three percent increase effective July 1, 1983, and the Employer's offer of a three percent increase for the second year of the Agreement, that is, to be effective July 1, 1984.

Using the Employer's figures, the wage bill for the bargaining unit is currently approximately \$449,000. A three percent improvement in the first year will raise the bill to \$462,490, the increment being \$13,470. In the second year of the Contract, the three percent increase will add \$13,875 to wages, thus raising the overall wage bill for the bargaining unit to \$476,365. Stated differently, this award yields over the two-year term of the Agreement an increase in wage payments which amounts to \$40,835.

As the Union points out in its post-hearing brief, this amount of increase leaves the bargaining unit a little more than \$600 below the average of the twelve communities shown as Union "comparables", for 1983. In the second year, with another three percent added, Flat Rock's wages are approximately \$1200 below the 1984 average of the Union's comparables.

2. Pension Improvements. The Union seeks several improvements in the pension benefits. The improvements which it seeks to be effective June 30, 1985 are the following:



1) it seeks a higher multiplier, that is, an increase in the percentage of compensation to be used in calculating the employee's pension; 2) it asks that an employee be allowed to retire at age 55 after fifteen years' service with no actuarial reduction in the pension; 3) it seeks an E-2 escalator, which links the pension benefit to the consumer price index with a cap of 2.5 percent per year.

The remaining pension-related demand concerns the shifting of a portion of the employee's pension contribution to the Employer; it would carry an earlier effective date. Whereas employees now contribute three percent of the first \$4,200 of compensation and five percent of the remaining, under the Union's proposal they would pay in one percent of the first \$4,200 and three percent of the remaining. The Union seeks this change either in the first year or, as an alternative, to begin in the second year.

The Employer would make only one change in the pension benefit structure: with respect to early retirement, it would permit retirement at age 55, after twenty-five years' service, with no actuarial reduction in the benefit.

The estimated cost of these various changes were given as follows:

Multiplier factor -- .98 percent of payroll  
Age 55 after fifteen years -- 1.69 percent of payroll  
Age 55 after twenty-five years -- 1.3 percent  
E-2 escalator -- 2.32 percent  
Shift of employee contributions -- 2.15 percent

The Union emphasizes that the Employer's costs with respect to pensions have diminished in recent years. It relies on these figures from the Plan actuary, which show the trend of the Employer's contribution:

1981 -- 8.78 percent of payroll  
1982 -- 6.78 percent of payroll  
1983 -- 6.37 percent of payroll  
1984 -- 6.10 percent of payroll

The Union further notes that among the Union's comparable communities, seven employers contribute a range of approximately twenty-three percent of payroll to thirty-four percent; the remaining contribute between nine and sixteen percent. It

urges that both of these circumstances -- the diminishing cost to the Employer of the existing program and the relatively low burden compared to the downriver communities -- call for an award of the Union's demands. Further, the Union contends that benefit improvements made in 1985 will not require Employer funding until 1986.

The Employer argues against the changes, apart from the early retirement which it offered. It urges that many of the improvements, particularly those which do not become effective until June 30, 1985, will have little or no impact on this bargaining unit for some time forward. It believes the Union is seeking to attain in this contract what it should be postponing until negotiations for the next contract. There is some merit to the Employer's argument. However, when pensions are the subject of collective bargaining, these matters often are prospective, for benefits are funded over a substantial period of time. Immediate impact is not the test.

Improvement of the pension plan means an increase in cost to the Employer. This cannot be measured only in light of the recent decline in the Employer's pension costs, but this Award must also consider the cost of the wage award and the various factors which affect each party's position.

After consideration of the merits of the various proposed pension improvements, the cost factors involved, the overall pattern of pension provisions evidenced in the tables regarding the comparable communities, the following award will be made.

The multiplier factor proposed by the Union will be granted. Of the thirteen comparable communities selected by the Union, all had a more generous formula than Flat Rock. The new formula, at the C-2 level under the Michigan Municipal Employees Retirement System uses two percent of final average compensation times years of service with a B-1 base, i.e., when social security begins for a retiree, the MERS pension shall not be offset by social security below a value of 1.7 percent of final average compensation times the years of service. The cost of the benefit has been estimated at .98 percent of payroll. It becomes effective on June 30, 1985.

The early retirement provision offered by the Employer, permitting an unreduced pension at age 55 after twenty-five years, is awarded. It is effective immediately.

The E-2 escalator is denied. It was estimated to cost 2.32 percent of payroll. The benefit is clearly one of value

to retirees, for it protects their income from erosion by inflation. Nonetheless, given the realistic limits which must be set on the increased financial burden to the Employer, I believe it not appropriate to grant this demand.

The shift of a portion of the pension contributions from the employees to the Employer is denied.

## II.

### NON-ECONOMIC ISSUES

1. Bargaining Unit Work. This issue concerns the use of non-bargaining unit employees to perform bargaining unit work, namely work at the police desk. The Employer proposed this language:

"Management may fill in the police desk position up to a maximum of six (6) hours in the event of an unscheduled absence or emergency."

The Union proposes this wording:

"Bargaining unit work shall be performed only by bargaining unit members with the sole exception that Management personnel may fill in the police desk position for a period less than four (4) hours cumulative in any one day in the event of unscheduled absence."

The Employer's proposal permits the use of non-bargaining unit people when there is an unscheduled absence or an emergency, whereas the Union would permit the assignment only for an unscheduled absence. I concur with the Employer's position that either circumstance justifies the assignment.

As to the length of time, the Union's allowance of four hours seems more reasonable, but should be permitted in any one shift. Accordingly, the following language will be ordered:

"Bargaining unit work shall be performed only by bargaining unit members. However, Management

personnel may fill in the police desk position for a period up to four (4) hours in any one shift in the event of an unscheduled absence or an emergency."

2. Dispatch-Jailer Job Classification. This job classification does not now exist. Its validity is not disputed. There is some disagreement about the language. The Employer proposes:

"During the term of this Agreement, the City may establish the civilian job classification of Dispatcher/Jailer, and as such shall perform certain functions relating to dispatching and as a jailer presently performed by officers within the bargaining unit. Prior to the establishment of this classification, the City shall meet and discuss with the Union the wage scale for this classification."

The Union's proposal is this:

"During the term of this Agreement, the City may establish the civilian job classification of Dispatcher/Jailer, and as such, shall perform certain functions relating to dispatching and as a jailer, presently performed by officers within the bargaining unit. Prior to the establishment of this classification, the City shall negotiate with the Union the wage scale for this classification. There shall be a minimum of three (3) members of the bargaining unit who shall be sworn officers on duty at all times one of whom shall be a Sergeant or Lieutenant who shall be assigned to the desk."

The Employer's language which promises to meet and discuss the wage for this new classification is not well based and will be rejected. On the other hand, it is inappropriate for the Union to seek to establish manning requirements in this context. According, this language shall be ordered:

"During the term of the Agreement, the City may establish the civilian job classification of Dispatcher/Jailer, and as such, shall perform certain functions relating to dispatching and as a jailer, presently performed by officers within the bargaining unit. Prior to the establishment of this classification, the City shall negotiate with the Union the wage scale for this classification."

3. Management Rights. There is a Management Rights provision in the Agreement which the Employer seeks to expand at considerable length and detail. The Union believes the present language is sufficient and opposes any change.

The Employer asserts that it seeks to avoid the situation which has arisen in the past where an individual employee challenges a Management decision. That reason simply is not sufficient to justify the kind of lengthy provision sought by the Employer. The Employer noted that these inquiries come not from the Union but from an individual who "questions" Management. It would seem that the existing language is sufficient to respond to such an individual inquiry. I am not persuaded that an individual who wishes to question a particular decision will be silenced by four or five paragraphs which do not dramatically add substance to what the existing Article 7 now states.

After careful examination of the existing and proposed language, and the absence of substantial justification, particularly that it is not demonstrated that the Union abuses this provision to challenge City actions, I find the modifications do not serve any demonstrated purpose not met by current language. The Employer's proposal will be denied.

4. The Waiver Clause. The Employer seeks the inclusion, for the first time, language which, in summary, represents the acknowledgement that the Contract represents the parties' full agreement.

The Union opposes such language.

The Employer presented no testimony or argument as to the introduction of a waiver clause. Accordingly, I can find



no basis for its approval. Accordingly, the demand for a waiver clause will be denied.

5. Elimination of a Maintenance of Conditions Clause.  
The Employer regards this provision as a "'super' past-practice clause". It believes that the Maintenance of Condition Clause (Article 23) is in conflict with inherent management rights.

The Employer's assertion of conflict is unsupported by any testimony on the record. Without some persuasive basis to strike the provision, it would seem highly improper to adopt the Employer's demand. Accordingly, the Employer's final offer with respect to deletion of the Maintenance of Conditions article from the Agreement will be denied.

#### AWARD

##### I. Economic Issues.

1. Wages. The Union's final offer of settlement for the first year of the Agreement, effective July 1, 1983, is ordered. The Employer's final offer of settlement for the second year of the Contract, effective July 1, 1984, is ordered. Accordingly, Appendix A, with respect to wages, shall read as follows:

"Effective July 1, 1983

"RANK	STARTING	2 YEARS
"Lieutenant/Det. Lieutenant	11% over top Patrolman	
Sergeant/Det. Sergeant	8% over top Patrolman	
Patrolman	\$19,890	\$24,690
Police Clerk	16.5% below Patrolman	
Ordinance Officer	30.5% below Patrolman"	

"Effective July 1, 1984

"RANK	STARTING	2 YEARS
"Lieutenant/Det. Lieutenant	11% over top Patrolman	
Sergeant/Det. Sergeant	8% over top Patrolman	
Patrolman	\$20,487	\$25,431
Police Clerk	16.5% below Patrolman	
Ordinance Officer	30.5% below Patrolman"	

2. Pensions.

- a). Multiplier Factor. The Union's demand is ordered. Accordingly, all employees in the bargaining unit shall be covered by the Michigan Municipal Employees Retirement System (MMERS), plan C-2, with a B-1 base. This multiplier factor is to be effective June 30, 1985.
- b). The 47f Waiver, Early Retirement. The Union's demand is denied. The Employer's offer is awarded. Accordingly, the following language is adopted:

"The City shall elect to waive  
Section 47f of the Plan, but only  
for employees who have twenty-five  
(25) or more years of credited  
service."

This provision is effective immediately.

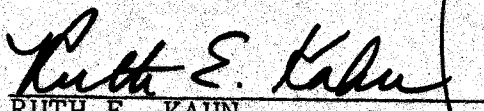
3. The Union's demand for the E-2 escalator is denied.
4. Employee contributions will remain unchanged from the previous Agreement.


II. Non-Economic Issues.

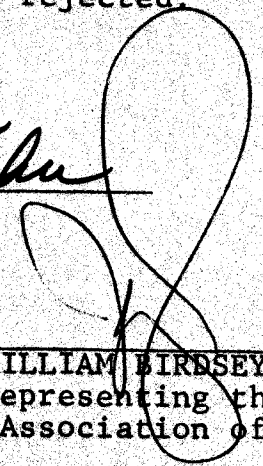
1. Bargaining Unit Work. The following language is ordered:

"Bargaining unit work shall be performed only by bargaining unit members. However, Management personnel may fill in the police desk position for a period up to four (4) hours in any one shift in the event of an unscheduled absence or an emergency."

2. Dispatch/Jailer Job Classification. The following language is ordered:  
"During the term of the Agreement, the City may establish the civilian job classification of Dispatcher/Jailer, and as such, shall perform certain functions relating to dispatching and as a jailer, presently performed by officers within the bargaining unit. Prior to the establishment of this classification, the City shall negotiate with the Union the wage scale for this classification."
3. Management Rights. The language contained in the previous Agreement shall be retained. The Employer's final offer is rejected.
4. The Waiver Clause. The Employer's offer is rejected.
5. The Maintenance of Conditions Clause. The existing language shall be retained. The Employer's offer is rejected.

  
RUTH E. KAHN  
Chairman

  
DAVID P. GRUNOW  
Representing the City of  
Flat Rock

  
WILLIAM BIRDSEYE  
Representing the Police Officers  
Association of Michigan