

8/12/91

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
ACT 312 INTEREST
ARBITRATION BETWEEN

CITY OF FLINT

MERC CASE No. L89 C-0223

AND

August 12, 1991

LABOR COUNCIL MICHIGAN FRATERNAL
ORDER OF POLICE

ARBITRATION OPINION, FINDING, AND ORDER

ARBITRATION PANEL

NORMAN BERKOWITZ, CHAIRMAN
~~FRED SCHWARZE, CITY DELEGATE~~
RICHARD ZIEGLER, FOP DELEGATE

STATE OF MICHIGAN
BUR. OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Flint, City of

APPEARANCES

City Representation: Dennis DuBay
FOP Representation: Kenneth Zatkoff

WITNESSES

Employer: Anthony Skowronski
Lucien Henry

FOP: Thomas Needham
John Steele

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

INTRODUCTION

Negotiations to replace a contract expiring June 30, 1989, between the City of Flint (City) and Labor Council Michigan Fraternal Order of Police (FOP) representing Police Sergeants not having produced a new agreement the Michigan Employment Relations Commission (MERC) assigned Mediator Ed Conner to assist the parties. A three-hour mediation session held on June 15, 1989, failed to produce an agreement between the parties.

On June 28, 1989, the FOP petitioned MERC under Act 312, Public Acts of 1969, as amended, to resolve the contractual dispute listing 34 issues of disagreement. The City in its reply to the petition listed 32 additional issues.

On November 30, 1989, MERC Commissioner Thomas Roumell notified the parties that Norman Berkowitz had been appointed impartial arbitrator and chairperson of an arbitration panel to settle the matter. Fred Schwarze was selected by the City and Richard Ziegler was designated by the FOP as their representatives on the arbitration panel.

A pre-arbitration conference was held on March 5, 1990, in the State Office Building in Flint. At that time, both parties stipulated the only remaining issue still to be resolved was residency. The parties also waived all statutory time limitations required by the Act.

Hearings were scheduled for June 12 and 19, 1990, and subsequently adjourned at the request of the parties. Hearings were again scheduled for October 12 and 29, 1990. These were also subsequently adjourned at the request of the parties.

New hearing dates were assigned to December 11 and 19, 1990. A hearing was held on December 11 in the Flint City Hall but the December 19 date was adjourned at the request of the parties.

A continuation of the December 11, 1990, hearing was scheduled for March 21, 1991, and, if necessary, on the 22nd. The hearing was held and completed on March 21, 1991. Last best offers were received by the Chairperson and exchanged by him among the parties.

The Panel held executive sessions on June 25 and July 10, 1991. An additional session scheduled for August 13 was cancelled.

LEGAL BASIS

Section 8 of Act 312 of the Public Acts of 1969, provides in part:

At or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9.

Section 9 of the Act provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

CITY OF FLINT GENERAL DATA

The City of Flint with a population of about 150,000 people and approximately 1500 employees is the fourth largest in the State. It is located about 70 miles north-east of Detroit in what may be categorized as the State's main industrial corridor. Its economic well-being essentially reflects the economic health of the automobile industry although it does possess other strengths.

STIPULATIONS

During the hearing the parties agreed to a series of positions. They stipulated:

1. The parties had resolved all issues except residency by signing and placing into effect a new contractual agreement for the period July 1, 1989 through June 30, 1992. The residency Article of the new contract (Joint Exhibit 9) provides that the wording of the residency provision is to be determined by this 312 panel and is quoted below.

All Flint Police Department members hired after July 1, 1973, shall, as a condition of their employment, maintain residence within the boundaries of the City of Flint. All Flint Police Department members hired prior to July 1, 1973, shall abide by residence restrictions imposed by departmental policy prior to July 1, 1973, i.e., fifteen (15) mile radius from City Hall complex and/or within Genesee County. Note: The parties' October 10, 1989 Settlement Agreement, Paragraph #6 states: "The issue of residency shall be submitted to an Act 312 Arbitrator." Said Act 312 proceedings, Case No. L89 C-0223, were not concluded at the time the parties signed this collective bargaining agreement.

2. Residency is an economic issue.
3. Transcript Volumes IV (hearing date March 28, 1990), Transcript Volume X (hearing date April 24, 1990) and

Transcript Volume XI (hearing date April 26, 1990) from the most recent 312 case involving the City of Flint and Flint Police Officers Association (Patrol Officers) and chaired by Mario Chiesa are to be made a part of the record of the current proceeding.

4. Cities to be used as comparables for this proceeding are to be:

Ann Arbor

Battle Creek

Grand Rapids

Jackson

Kalamazoo

Lansing

Muskegon

Saginaw

SOLE ISSUE REQUIRING DECISION

Through exhibits and testimony an extensive amount of material, including three days of verbatim testimony from a previous 312 panel chaired by Mario Chiesa, was placed into the record by both parties to support specific arguments for and against compelling residence within the City. Some of the main points made involved crime, drugs, community involvement, public support for residency, safety of living in the City, availability and price of housing and the quality of the educational system of the City. While such testimony and exhibits were presented to influence the panel, in fact it did not prove to have much value since neither side's final offer for settlement proposed to do away with City residency as a requirement for employment as a Sergeant.

The issue to be decided is not whether Sergeants should be residents of the City. The one and only issue is the effective date on which such City residency shall be required.

LAST BEST OFFERS

The last best offer of the City of Flint reads as follows:

All Flint Police Department members hired after July 1, 1973, shall, as a condition of their employment, maintain residence within the boundaries of the City of Flint. All Flint Police Department members hired prior to July 1, 1973, shall abide by residence restrictions imposed by departmental policy prior to July 1, 1973, i.e., fifteen (15) mile radius from City Hall complex and/or within Genesee County.

The last best offer of the FOP reads as follows:

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

The last best offer of the City proposes to retain the status quo.

The last best offer of the FOP proposes to change the residency requirement to read the same as that found in the current contract for Flint Patrol Officers.

INTERNAL COMPARABLES

There are six union bargaining units and three groups of employees not represented by a union. They are listed below together with the current residence requirements and union representation for each.

MAYORAL APPOINTEES - UNREPRESENTED Approximately 41 employees. Section 1-50 of the City Charter requires all Mayoral appointees to be residents.

POLICE PATROL OFFICERS - FPOA Approximately 210 employees. "Employees hired after May 1, 1986 shall, as a condition of their continued employment, maintain residence within the boundaries of the City of Flint. Employees hired prior to May 1, 1986 shall live within a fifteen (15) mile radius from the City Hall complex and/or within Genesee County."

POLICE SERGEANTS - FOP Approximately 85 employees. "All Flint Police Department members hired after July 1, 1973, shall, as a condition of their employment, maintain residence within the boundaries of the City of Flint. All Flint Police Department members hired prior to July 1, 1973, shall abide by residence restrictions imposed by departmental policy prior to July 1, 1973, i.e., fifteen (15) mile radius from City Hall complex and/or within Genesee County. (Subject to this 312 case - L89 C-0223)"

POLICE LIEUTENANTS AND CAPTAINS - FPLCA Approximately 16 employees. "All Flint Police Department members hired after July 1, 1973, shall, as a condition of their employment, maintain residence within the boundaries of the City of Flint. All Flint Police Department members hired prior to July 1, 1973, shall abide by residence restrictions imposed by departmental policy prior to July 1, 1973, i.e., fifteen (15) mile radius from City Hall complex and/or within Genesee County."

GENERAL CITY EMPLOYEES - AFSCME LOCAL 1600 Approximately 775 employees. "All Employees hired on or after June 30, 1992, shall as a condition of their continued employment establish and/or maintain residency within the corporate boundaries of the City of Flint.

"In consideration of the foregoing change in current residency requirements, the parties to this agreement agree that neither shall alter, attempt to alter, add to or attempt to add, through negotiations, interest arbitration or court or administrative action, any provision or practice related to residency requirements for a period of twenty (20) years following the ratification date of this agreement.

"The provisions of the first paragraph, above, shall not be effective unless residency requirements have been mandated by ordinance requiring residency as a condition of continued employment for newly hired 'low level exempt' employees hired on or after July 1, 1992."

SUPERVISORY CITY EMPLOYEES - AFSCME 1799 Approximately 135 employees. "All employees hired on or after January 1, 1988, shall as a condition of their continued employment establish and/or maintain residency within the corporate boundaries of the City of Flint.

"This residency requirement does not apply to employees hired prior to January 1, 1988, nor to employees who promote or transfer into Local 1799 from another bargaining unit, provided the employee was hired prior to January 1, 1988.

"In consideration of the foregoing change in current residency requirements, the parties to this agreement agree that neither shall alter, attempt to alter, add to or attempt to add to, through negotiation, interest arbitration, or court or administrative action, any provision or practice related to residency requirements for a period of ten (10) years following the ratification date of this agreement."

FIRE DEPARTMENT PERSONNEL - IAF Local 352 Approximately 220 employees. "The Department's Rules and Regulations shall continue to apply to all employees hired before the ratification date of this agreement.

"Employees hired after the ratification date of this agreement shall, as a condition of their continued employment, maintain residence within the boundaries of the City of Flint. In consideration for the foregoing change in current residency

requirements, the parties to this agreement agree that neither shall alter, attempt to alter, add to or attempt to add to, through negotiation, arbitration or court or administrative action, any provision or practice related to residency requirements for a period of ten (10) years following the ratification date of this agreement."

LOW LEVEL EXEMPT PERSONNEL - Unrepresented Approximately 173 employees. "All persons hired by the City of Flint in the classified service to positions assigned to levels 22E and below, on or after July 1, 1990, shall, as a condition of continued employment with the City of Flint reside within the corporate limits of the City of Flint. This condition shall continue throughout his/her term of employment. Failure to establish and maintain residency within the corporate limits of the City of Flint, including any relocation of residency outside of the City of Flint after obtaining employment, shall result in action to vacate the employee from his or her position and the termination of the employment relationship. The City Council may waive this residency requirement for employment in the classified service for good cause shown. Nothing contained within this paragraph shall apply to positions covered by a collective bargaining agreement between the City of Flint and a recognized exclusive collective bargaining agent."

HIGH LEVEL EXEMPT PERSONNEL - Unrepresented Approximately 65 employees. "All persons hereafter employed by the City of Flint in the classified service to positions assigned to Levels 23 and above, and not represented by a recognized bargaining unit, shall as a condition of employment with the City of Flint, reside within the corporate limits of the City of Flint. This condition shall continue throughout the term of employment. Relocation of residence outside of the City of Flint shall, after obtaining employment, be a basis to terminate the employment relationship. The City Council may waive this residency requirement for employment in the classified service for good cause shown.

"Employees who are not residents and are not represented by a recognized bargaining unit, may not be transferred or promoted to other positions in the classified services, Levels 23 and above, except where said employee is otherwise agreeable to relocate his/her residence within the City of Flint, said relocation to occur within six (6) months from the date of promotion or transfer. The City Council may waive this residency requirement for employment in the classified service for good cause shown.

"Failure to establish residency in the City of Flint within six (6) months will constitute noncompliance with the residence requirement and shall result in action to vacate the employee's position. Any request for extension of the six (6) month period due to extenuating circumstances must be approved by the City Council."

A summary of City employee residence requirements shows the following:

<u>GROUP</u>	<u>RESIDENCY REQUIREMENT</u>
Mayoral Appointments	Must be City residents
Police Sergeants	If hired before 7/1/73, must live within a 15 mile radius of City Hall or within Genesee County. If hired after 7/1/73, must maintain residence within corporate limits of the City.
Police Lieutenants and Captains	If hired before 7/1/73, must live within a 15 mile radius of City Hall or within Genesee County. If hired after 7/1/73, must maintain residence within corporate limits of the City.
High Level Exempt	No residence requirement if hired before 10/28/84. Must become City resident for transfer or promotion within this category. If hired after 10/28/84, must maintain residence within corporate limits of the City.
Patrol Officers	If hired before 5/1/86, must live within a 15 mile radius of City Hall or within Genesee County. If hired after 5/1/86, must maintain residence within corporate limits of the City.
IAFF - Local 352	No residence requirement if hired before 6/8/87. If hired after 6/8/87, must maintain residence within corporate limits of the City.

AFSCME - Local 1799	No residence requirement if hired into this bargaining unit before 1/1/88 or transferred into this unit from another bargaining unit with an initial employment date prior to 1/1/88.
	If hired into the unit after 1/1/88 or transferred from another bargaining unit with an initial employment date after 1/1/88, must maintain residence within corporate limits of City of Flint.
Low Level Exempt	No residence requirement if hired before 7/1/90.
	If hired after 7/1/90, must maintain residence within corporate limits of the City.
AFSCME - Local 1600	No residence requirement if hired before 6/30/92.
	If hired after 6/30/92, must maintain residence within corporate limits of the City.

COMPARABLE CITIES

A summary of residence requirements for the comparable cities for Police Sergeants are shown below:

<u>CITY</u>	<u>RESIDENCY REQUIREMENT</u>
Grand Rapids	No residence requirement.
Lansing	No residence requirement.
Kalamazoo	Must reside so as to be able to arrive at assigned station within 45 minutes of notification to report unless grandfathered by the 1982-1984 agreement.
Jackson	Must be residents of Jackson County. No information on effective date.

Flint	<p>If hired before 7/1/73 must live within 15 miles of City Hall or anywhere in Genesee County.</p> <p>If hired after 7/1/73 must be City residents.</p>
Battle Creek	<p>No residence requirement if employed before 7/1/83.</p> <p>If hired after 7/1/83 and is resident of metropolitan area (City of Battle Creek, City of Springfield and Townships of Bedford, Emmett and Pennfield), not required to become resident of City unless changes place of residence.</p> <p>If hired after 7/1/83 and lives outside of the metropolitan area, must become resident of City.</p>
Muskegon	<p>No residence requirement if employed in the Command Officers bargaining unit before 8/1/86.</p> <p>The Union acknowledges the City's commitment to the concept of residency.</p> <p>All employees who enter the bargaining unit after 8/1/86 or who attempt to receive promotions after 8/1/86, if not exempted in previous paragraph, must be residents of the City.</p>
Ann Arbor	<p>No residence requirement if hired before 11/16/87.</p> <p>In 1987 bargaining agreement stated intention to establish residence requirements by a process of attrition.</p> <p>All Department employees hired after 11/1/87 must live within the City limits.</p>
Saginaw	<p>Must be City residents. No information on effective date.</p>

DISCUSSION OPINION AND FINDING

The City has methodically worked toward requiring City residency for all its employees. Through negotiated union contracts and by establishing appropriate policies and regulations it will ultimately attain this result. When this completely occurs depends on specific contract language for various bargaining units and city regulations for the non-union employees.

It appears to the Panel that in order to achieve the City's main objective of City residence for all City employees it has negotiated varying effective dates among the different employee groups. What the present proceeding illustrates, however, is that in its desire to negotiate residence agreements among the various groups, the City has produced a tangle of differing conditions among its employee groups. The most extreme example appears to be the case of Police Sergeants and Lieutenants and Captains, on the one hand, who must be City residents if employed after 7/1/73 while employees represented by AFSCME Local 1600, on the other hand, must be City residents if employed after 6/30/92.

Promotions or transfer of an employee from one group to another changes the residency condition to which an employee must adhere. This is so even though the employee continues

to work for the same employer. At least one of the comparable cities, Muskegon, provides that once a person is grandfathered in (no residence requirement if employed before 8/1/86 in the bargaining unit) he or she may be promoted while retaining the grandfather privilege.

This is also true in Flint where the contract for Local 1799 provides that if a City of Flint employee is transferred into or promoted into the 1799 bargaining unit the employee need not be a resident of the City if initially employed prior to 1/1/88.

At least one city, Battle Creek, permits its employees to reside outside its defined metropolitan area if employed prior to 7/1/83 but if they move their residence, it must be into the City.

Another comparable city, Ann Arbor, states in its contract its intention to achieve city residency requirements for its employees by a process of attrition. The City of Flint has, in effect, established such an attrition policy but has produced inconsistent rates of attrition among its various groups.

The City, in supporting its arguments during the hearings, discussed its two most recent 312 cases involving Patrol Officers. The 312 panels were chaired by Hiram Grossman in 1989 and Mario Chiesa in 1990.

In both cases, the panels supported the City's position and continued to require City residence for Patrol Officers hired after May 1, 1986. If City residence was the issue the conclusion of this Panel could have and probably would have been different. The City does have a legal right to enforce a residence requirement. It has followed a steady and consistent policy of bringing, group by group, all employees under a City residence requirement. Given this history the presumption would probably have to be in favor of the City's attempts to enforce residence requirements on its employees. However, the two previous 312 cases were fundamentally different from this one because the Union (FPOA) was asking for total elimination of any City residence requirement while in this case the FOP is only requesting the effective date for residency be moved from 7/1/73 to 5/1/86 to match the requirement for Patrol Officers, the only group from which employees are promoted to the Sergeant class.

The City argued that a change in the effective date for residency for Sergeants could create problems by inspiring other groups, such as the Lieutenants and Captains, to request similar changes. That may be. If so, the City may have to work toward a policy of greater consistency among its employees to solve such a problem.

Taking into consideration the record as a whole and all factors in Section 9 of Act 312, the Panel finds substantial competent and material evidence showing that fairness, equity, and a labor relations policy that would serve the best interest of the City and all its employees calls for a greater degree of consistency of residence requirements among its employees. This goal can be partially achieved by equalizing the requirement among Patrol Officers and Sergeants as requested by the FOP in this proceeding. The achievement of parity between Patrol Officers and Sergeants will not alter in any way the success of the City in having established a policy through negotiation and council enactment that will, after a period of time, through attrition, produce City residency for all its employees.

It bothers the Panel that a decision in favor of the FOP would enable some present residents to move out of the City. However, the parties have deemed residency in this case to be an economic issue. This means the Panel cannot write an order that would ease this problem by preventing such move-outs. The Panel must adopt the last best offer of one party or the other exactly as those offers were presented to it.

The City's proposal would continue to require employees who became Sergeants after July 1, 1973, to be residents of the City. The FOP proposal would change the effective date for City residence from July 1, 1973, to May 1, 1986.

ORDER


The Panel orders that the following language replace that now found in Article 30 of the Collective Bargaining Agreement between the City of Flint and Labor Council Michigan Fraternal Order of Police - Police Sergeants covering the period July 1, 1989 - June 30, 1992:

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

Dated: 8/12/91


NORMAN BERKOWITZ
NEUTRAL CHAIRMAN

Dated:


FREDERICK SCHWARZE
CITY DELEGATE

Dated: 11/5/91


RICHARD ZIEGLER
FOP DELEGATE