

8/27/90

246

IN THE MATTER OF ARBITRATION BETWEEN

CITY OF FLINT TOWNSHIP,

Employer,

-and-

MERC ACT 312 Case No.: L87 K765

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,

Union.

_____ /

STATE OF MICHIGAN
BUR. OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Flint Township

OPINION AND AWARD

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

August 27, 1990

Richard L. Kanner, Chairman
Alan Luce, City Panel Member
Nancy Ciccone, Union Panel Member

BACKGROUND

This arbitration proceeding is pursuant to petition filed by the union under P.A. 312 of 1969 which provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Section 8 of Act 312 states in relation to economic disputes that:

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. The findings, opinions, and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9. (emphasis added)

Section 9 of Act 312 contains eight factors on which the arbitration panel shall base its opinions and orders as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) A 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 within other communities generally:
 - (i) In public employment comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices of 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 presented during the pendency of arbitration proceedings.

(H) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by competent, material and substantial evidence on the whole record. This is supported by the Michigan Supreme Court's decision in City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980).

In that case the court commented on the importance of the various factors as follows:

The legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the legislature has made their treatment, where applicable, mandatory in the panel through the use of the word "shall" in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to insure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a

contested issue under the singular facts of the case.

Although, of course, all "applicable" factors must be considered. Id., p. 484.

COMPARABLE CITIES

The parties have stipulated and agreed to the following cities as comparable per s/s 9 (d) above:

Genesee Township

Grand Blanc Township

Mt. Morris Township

WAGES

CITY'S LAST BEST OFFER

DELETE ALL STEP PROGRESSION LANGUAGE FROM THE AGREEMENT AS OF 12-31-90.

INCLUDE THE NEW WAGE AND STEP PROGRESSION SCHEDULES AS OUTLINED BELOW EFFECTIVE 1-1-91.

	<u>EFFECTIVE 1-1-91</u>	<u>EFFECTIVE 1-1-92</u>
BASE SALARY(HIRING)	\$26,023 (3)	\$27,324
STEP ONE	26,936	28,522
STEP TWO	27,849	29,720 (3)
STEP THREE	28,762 (7)	30,919
STEP FOUR	29,675 (8)	32,117 (19)*
STEP FIVE	30,588 (4)*	

* ANY POLICE OFFICER WHO RECEIVED A BASE SALARY IN EXCESS OF THIS (*) FIGURE IN CALENDAR YEAR 1990 SHALL NOT HAVE HIS/HER SALARY REDUCED AS A RESULT OF THIS NEW SALARY SCHEDULE, NOR SHALL SAID OFFICER HAVE HIS/HER SALARY INCREASED UNTIL SAID SALARY EQUALS OR EXCEEDS HIS/HER SALARY, AT WHICH TIME SAID OFFICER SHALL BE PAID AT THE TOP STEP OF THE NEW SALARY SCHEDULE.

<u>OFFICER NAME</u>	<u>1990 SALARY</u>	<u>1991 SALARY</u>	<u>\$INC</u>	<u>%</u>	<u>1992 SALARY</u>	<u>\$INC</u>	<u>%</u>
LORANGER	\$19,471	\$26,023	\$6,552	33.65	\$29,720	\$3,697	14.21
KIMES	19,690	26,023	6,333	32.16	29,720	3,697	14.21
ASBRIDGE	19,690	26,023	6,333	32.16	29,720	3,697	14.21
SANTA	24,400	28,762	4,362	17.88	32,117	3,355	11.66
SCHMITZER	24,400	28,762	4,362	17.88	32,117	3,355	11.66
SEIBEL	24,400	28,762	4,362	17.88	32,117	3,355	11.66
WINGATE	24,400	28,762	4,362	17.88	32,117	3,355	11.66
GREEN	24,400	28,762	4,362	17.88	32,117	3,355	11.66
SIPPERT	24,400	28,762	4,362	17.88	32,117	3,355	11.66
HOVEY	24,400	28,762	4,362	17.88	32,117	3,355	11.66
STONE	26,150	29,675	3,525	13.48	32,117	2,442	8.23 - median
BATTINKOFF	26,150	29,675	3,525	13.48	32,117	2,442	8.23
CLARK	26,423	29,675	3,525	12.31	32,117	2,442	8.23
IACOVACCI	26,423	29,675	3,525	12.31	32,117	2,442	8.23
JONES	26,423	29,675	3,525	12.31	32,117	2,442	8.23
EDWARDS	26,423	29,675	3,525	12.31	32,117	2,442	8.23
OESTMAN	26,717	29,675	2,958	11.07	32,117	2,442	8.23
DEAL	26,717	29,675	2,958	11.07	32,117	2,442	8.23
DUBUC	33,465	33,465	0	0	33,465	0	0
CROCKER	33,465	33,465	0	0	33,465	0	0
ROLAND	33,465	33,465	0	0	33,465	0	0
ROBINSON	33,465	33,465	0	0	33,465	0	0

UNION LAST BEST OFFER

The union is requesting a collective bargaining agreement effective 1/1/87 to 12/31/92: with the following wage increases:

Effective 1/1/90: 0% base wage increase
Effective 1/1/91: 2% base wage increase
Effective 1/1/92: 2% base wage increase

The Union is requesting a reduction in steps to maximum pay from the current eight (8) steps to five (f) steps beginning 1/1/90.

The union's offer results in the following schedule.

<u>%</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
LEVEL "A" 100%	TOP PAY Officers Hired before 1985 \$34,881 4 officers	TOP PAY Officers Hired before 1986 \$35,579 12 officers	TOP PAY Officers Hired before 1987 \$36,290 19 officers
LEVEL "B" 95%	Officers hired in 1985 \$33,136 8 officers	Officers hired in 1986 \$33,800 7 officers	Officers hired in 1987 \$34,375 0 officers
LEVEL "C" 90%	Officers hired in 1986 \$31,393 7 officers	Officers hired in 1987 \$32,021 0 officers	Officers hired in 1988 \$32,661 3 officers
LEVEL "D" 85%	Officers hired in 1987 0 officers	Officers hired in 1988 \$30,242 3 officers	Officers hired in 1989 \$30,846 0 officers
LEVEL "E" 80%	Officers hired in 1988 \$27,905 3 officers	Officers hired in 1989 \$28,463 0 officers	*STARTING WAGE* Officers hired in 1990, 1991, and 1992 - \$29,032 0 officers
LEVEL "F" 75%	Officers hired in 1989 \$26,161 0 officers	*STARTING WAGE* Officers hired in 1990 & 1991 \$26,684 0 officers	
LEVEL "G" 70%	*STARTING WAGE* Officers hired in 1990 \$24,417 0 officers		

DISCUSSION AND OPINION

The rationale underlying the above s/s 9 is equal pay for equal work. That is to say that the parties' last best offer which most closely relates to the median wage of comparable cities should be accepted by the panel. Hence, over time, the wages of all police officers performing similar work in similar communities would ultimately cluster around a median wage figure. Where, of course, the character of the city, work load, danger, etc. varies, such factors could affect the award of wages. But absent any evidence of such factors in this case, it is the median of the three agreed upon comparable cities that is to be the standard to which the panel must measure each parties' last best offer.¹

Preliminarily, in connection with addressing the wage issue, it is necessary to discuss the parties' last best offer as to reduction in salary steps to achieve maximum pay. This is for the reason that, in the panel's view, a wage increment is inextricably tied to reduction of steps. That is to say that when steps are reduced, an increase of wages obviously follows year by year. It is noted that both parties seek to reduce the steps from eight to five with the city starting January 1, 1991 and the union starting January 1, 1990. But it is obvious that, per the above salary schedules submitted by both parties, there is a large discrepancy between them as to what amounts will be paid officers by

1. No evidence was presented relative to s/s 9 (c), (d) (ii) (e) (f) and (g).

the target year 1992. The union's offer not only reduces the steps, but requests, in addition, no pay raise in 1990 and 2% in 1991 and 2% in 1992. For example, per the union offer, 19 out of 22 officers will be at a top rate of \$36,290.00 in 1992; 15 out of 22 officers will be at the top rate of \$32,117.00 in 1992; and 4 officers will remain at their former top rate of \$33,465.00 for 1990, 1991, and 1992.

It is noted that the median wage paid to the top officers in comparable cities, as interpolated through 1992 by adding a hypothetical 5% wage rate, is as follows:

<u>COMPARISON OF TOP SALARIES</u>				
TOWNSHIP	1989	1990	1991	1992
Genesee Township	\$25,834	29,009	30,588	32,117
Grand Blanc Twp.	32,362	33,980	35,679	37,463
Mt. Morris Twp.	26,717	28,053	29,456	30,929
<u>MEDIAN SALARY</u>	<u>26,717</u>	<u>29,009</u>	<u>30,588</u>	<u>32,117</u>
(Union 21)				

It also appears that, in the three comparable cities, all officers were at the top rate by 1990. (Union 21) By 1992 the median of the top rate is \$32,117. Accordingly, the goal mandated by the above s/s 9 (d) is to put Flint Township officers in the same position as the median of the comparables, i.e., all at the top rate of \$32,117 by 1992.

Such goal is, in the panel's view, more nearly achieved by the city's last best offer. As stated, 15 out of 22 officers will

progress to \$32,117 by 1992. Three other officers will have substantially closed the gap at \$29,720.

It is also noted that four officers, now at the top rate of \$33,465 in Flint Township, will remain at that rate for three years. But it is significant that they are receiving \$1,348 per year above the median of \$32,117.

The union's last best offer places 19 officers at \$36,290 in 1992 or \$4,173 above the median of the comparables. This result makes its last best offer considerably less favorable when compared to the median of the comparables, per s/s 9 (d) above.

As stated, the reduction in steps requested by both parties results in a wage increase readily apparent in the city's last best offer. The 19 officers receiving \$32,117 in 1992 will have achieved a substantial increase. For example, Officer Wingate will increase from \$23,342 in 1989 (City 19) to \$24,400 in 1990 over a 4.5% increase with successive increases of 17.88% in 1991 and 11.66% in 1992. Officer Battinkoff will increase from \$23,500 in 1989 to \$26,150 in 1990 or a 11.3% increase with successive increases of 13.48% in 1991 and 8.23% in 1992.

It is duly noted by the panel that the increase from 1989 to 1990, which includes COLA, longevity and step increment has already been achieved in past bargaining. Such benefits have been carried forward during the pendency of the subject PA 312 proceeding in accordance with that act. Hence, per the city offer, it is only the raise in wages due to the reduction of number of steps starting

January 1, 1991 that represents new money to the bargaining unit.

There is no exhibit in evidence denoting what percentage increase these officers would have received under the old eight step system in 1991 and 1992. But it is obvious that reducing steps to three would substantially improve their earnings. Accordingly, reducing the steps from eight to three results, practically, in a pay raise. The actual pay raise is the difference between what each officer would have received under the old eight step system, and what they will receive under the new three step system.

In summary, the city's offer places 86.3% of the bargaining unit at the \$32,117 median level of the comparables in three years which persuades the panel that the city's last best offer more closely conforms to the parties' comparables.

Finally, the union asserts that the firefighters' starting wages in Flint Township as of January 1, 1989 are \$8,024 more than patrol officers. (Union 23) Therefore, in conformance with the mandate in s/s 9 (h) above to take into account "other factors" the panel should adopt the union's last best offer. But it is also noted that the top wage of firefighters is the same as that of patrol officers. (Union 23) Accordingly, since most of the bargaining unit will be at the top wage in 1992, the panel is not persuaded to the union's argument.

I. AWARD

The panel awards the city's last best offer relative to step reduction and wages.

COST OF LIVING ALLOWANCE

CITY LAST BEST OFFER

Delete all COLA provisions from the agreement as of December 31, 1990.

UNION LAST BEST OFFER

The union is requesting the current cost of living schedule be eliminated effective July 1, 1990.

OPINION

Since the cost of living allowance has been paid as of July 1, 1990, the parties stipulate and agree that their last best offer intend the same result.

II. AWARD

The panel awards the union's and city's last best offer.

VACATIONS

CITY LAST BEST OFFER

The employer is asking that the vacation schedule be the same as the vacation schedule included in the Flint Township Police Supervisory unit.

UNION LAST BEST OFFER

The union is requesting status quo on this issue.

OPINION

The three comparables denote vacations as follows:

	<u>GENESEE TOWNSHIP</u>	<u>GRAND BLANC TOWNSHIP</u>	<u>MT. MORRIS TOWNSHIP</u>	<u>FLINT TWP. PROPOSAL</u>
After 1 yr.	10 days	5 days	5 days(median)	10 days
After 5 years	15 days	15 days	15 days(median)	15 days
After 10 years (Union 25)	20 days	20 days	20 days(median)	20 days

The union admits that the present vacation entitlement exceeds the median of the comparables. But it contends that the command officers adopted its vacation schedule in 1981. That bargaining unit is presently in a PA 312 proceeding, and one of its demands is to increase vacations to equal that of the patrol officers.

In all the comparables, as in Flint Township, vacations may not be accumulated during tenure of the employee. However, Grand Blanc and Mt. Morris do permit a carry-over to the next contract year, but Flint Township does not.

The union asserts that one command officer, Lieutenant Vane King, has a vacation schedule comparable to the bargaining unit. But he has a special individual contract. Therefore, such fact does not militate in favor of the union's position.

The panel is again disposed to follow the comparables for the reasons outlined above which favor the City offer. Such evidence is, in the panel's opinion, substantial and should be controlling.

The union's position would lead the panel into conjecture as to what command officers might achieve in their PA 312 proceeding. While such assertion by the union may be characterized as one of "such other factors" to be considered under s/s 9 (h) above, the panel is persuaded that such "conjectural factor" is not substantive evidence. Therefore, such factor should not take priority over the comparables.

III. AWARD

The panel awards the city's last best offer.

DISCIPLINE/DISCHARGE

CITY LAST BEST OFFER

The city is asking that the following language be included in the agreement:

"Article 4, Section D. - Any unresolved complaint as to the reasonableness of any new or changed rule or regulation shall be resolved through the grievance procedure. Unless otherwise agreed in writing, any rule, regulation, policy or procedure in dispute shall be adhered to by members of the union until a contrary resolution is reached.

UNION LAST BEST OFFER

The union is requesting status quo on this issue.

OPINION

There are no comparables supporting the city position. It is the panel's view that non-economic contract language changes have to be supported by comparables.

IV. AWARD

The panel awards the union's last best offer.

GRIEVANCE PROCEDURE

CITY LAST BEST OFFER

The employer is asking that the following language be included in the agreement:

"Article 3, Section D. - An employee may elect either the grievance and arbitration forum as set forth in this Agreement or the appropriate forum set forth under any law, but not both."

UNION LAST BEST OFFER

The union is requesting status quo on this issue. (Article 3, Step 3, Section 2 of the present contract)

OPINION

There being no comparables supporting the city position, the panel is persuaded to the union last best offer.

V. AWARD

The panel awards the union last best offer.

LONGEVITY

CITY LAST BEST OFFER

The employer is proposing no change in the amount of longevity, but that it be paid in a lump sum to all employees and that the amount paid be properly identified.

Current Longevity Schedule

A. Beginning with the 6th year of employment:	\$150.00
B. Beginning with the 11th year of employment, an additional:	\$200.00
C. Beginning with the 16th year of employment, an additional:	\$250.00
D. Beginning with the 21st year of employment, an additional:	\$300.00

New Longevity Schedule

A. Beginning with the 6th year of employment:	\$150.00
B. Beginning with the 11th year of employment, an additional:	\$350.00
C. Beginning with the 16th year of employment, an additional:	\$600.00
D. Beginning with the 21st year of employment, an additional:	\$900.00

UNION LAST BEST OFFER

The union is requesting status quo on this issue (present Article 16, s/s 3).

OPINION

There being no comparables supporting the city position, the panel is persuaded to the union position.

VI. AWARD

The panel awards the union last best offer.

DURATION OF THE CONTRACT

CITY LAST BEST OFFER

The employer is asking that the following language be included in the agreement:

"A. This agreement shall be effective as of January 1, 1987 and unless otherwise provided herein, shall continue in full force and effect until December 31, 1993.

B. In the event that a new agreement is not reached prior to the expiration date of this agreement, this agreement shall be continued without change, unless otherwise provided, until such time that a new agreement is ratified and signed by the parties."

UNION LAST BEST OFFER

The union is requesting a collective bargaining agreement effective January 1, 1987 to December 31, 1992.

OPINION

Since the extension of the contract to December, 1992 was not previously negotiated and demanded by the city, but was first proposed by the city subsequent to the closing of the hearings, the panel has no authority to address its last best offer.

VII. AWARD

The panel awards the union last best offer.

RETROACTIVITY

CITY LAST BEST OFFER

The city request that there be no retroactivity payment.

UNION LAST BEST OFFER

The union is requesting retroactive pay for the three-year period, January 1, 1987 thru December 31, 1989 of \$1000.00 per patrolman per year not to be added to the base wage rate.

The city contends that the requested retroactive payment should be rejected by the panel for the reason that top officers in the bargaining unit were paid in excess of the median of the comparables from 1987 thru 1989. (Union 22) To add a retroactive \$1000.00 bonus would add approximately an additional 5% per officer.

But, as asserted by the union, such discrepancy between the median of the comparables and the earnings of the top officers was achieved in prior bargaining. As above concluded, most of the bargaining unit will be at the top wage scale by 1992 which amount will be exactly at the median of the comparables. Accordingly, by 1992 top officers in the bargaining unit will not be receiving more than the median of comparables as they did in 1987 thru 1989.

Further, it appears that the median of the comparables received 5%, 4% and 7.6% increases from 1987 thru 1989. Therefore, the 5% increase represented by the \$1000.00 retroactive payment will approximate such raises, but will not, as with the comparables, be made a part of the base wage rate.

VIII. AWARD

The panel awards the union last best offer.

Finally, the panel adopts and hereby awards the parties' present agreement as to other contract provisions not presented in the P.A.312 proceeding.

August 27, 1990



Richard L. Kanner, Chairman

ALAN LUCE, City Panel Member

Alan Luce I, II, III, & VII
Concurring

Alan Luce IV, V, VI, & VIII
Dissenting

NANCY CICCONE, Union Panel Member

Concurring

Dissenting

VIII. AWARD

The panel awards the union last best offer.

Finally, the panel adopts and hereby awards the parties' present agreement as to other contract provisions not presented in the P.A312 proceeding.

August 27, 1990

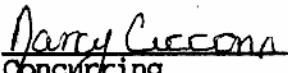

Richard L. Kanner, Chairman

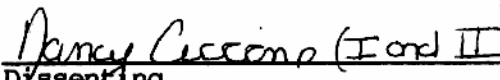
ALAN LUCE, City Panel Member

Concurring

Dissenting

NANCY CICCONE, Union Panel Member

 (III, IV, V, VI, VII)
Concurring

 (I and II)
Dissenting

STATE OF MICHIGAN
COMPULSORY ARBITRATION

In the Matter of:

CITY OF FLINT TOWNSHIP,

Employer,

-and-

MERC Act 312
Case No: L87 K-765

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,

Union.

ARTICLE 13, SECTION 1, VACATIONS

DISSENT

The Union hereby expressly dissents to the Panel's Award on the vacation issue in the above matter. It is with great surprise and dissatisfaction that the Panel "took away" a benefit long enjoyed by the bargaining unit. As this was an economic issue and ability to pay was not before the Panel, the award on vacations was especially troublesome. The Union believes the Employer presented little, if any, justification for reducing the number of vacation days. Yet, despite the lack of evidence presented, the Panel confined its analysis to external comparables and yielded to the Township's demand. To be merely "consistent", is no justification to reduce a long-standing benefit. In short, the Panel's award on this issue was not supported by competent, material and substantial evidence.

Nancy A. Ciccone
Nancy Ciccone
Union Delegate

Dated: September 10, 1990