

249

5/7/79
ARB

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BEFORE
A COMPULSORY ARBITRATION BOARD

THE CITY OF FRASER,

Employer,

and

FRASER DISPATCHERS, P.O.A.M.,

Employee.

William Dance

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

DECISION AND AWARD

These proceedings were commenced pursuant to the provisions of the Act entitled "COMPULSORY ARBITRATION OF LABOR DISPUTES, POLICEMEN AND FIREMEN", being Act 312 of the Public Acts of 1969, as amended, of the State of Michigan. Upon stipulation by the parties that the Dispatchers for whom this proceeding was instituted are "emergency telephone operators" within the meaning of Section 2 of said Act 312. This Decision and Award are made and entered pursuant to the provision of said Act 312, as amended.

This Decision and Award is adopted as the Decision and Award of the Arbitration Panel hearing this matter by those members who affix their signatures hereto at the end of this Decision and Award.

Dance, William H.

Fraser City of

PRELIMINARY STATEMENT

It appears from the record made in the formal hearing in these proceedings that the parties commenced a good faith bargaining early in 1977, prior to the expiration of the then existing contract between the parties, with respect to the issues presented to the Panel, and that thereafter the mutual negotiations broke down and a Petition for Arbitration was filed on or about August 14, 1978 on behalf of the Dispatchers of the Fraser Police Department. The Notice of Arbitration was received by the Chairperson on September 1, 1978. It does not appear from the formal record, but the Chairperson's records reveal that the Chairperson had several conversations with the City Manager of Fraser and William Powell of P.O.A.M. in setting dates and finally the formal hearing was agreed to be commenced on December 7, 1978 at the Hearing Room at the offices of the Michigan Employment Relations Commission at the Michigan Executive Plaza, the hearings to commence at 10:00 AM.

The formal hearing was opened at approximately 10:30 AM on December 7, 1978 at the said Hearing Room and the hearing continued throughout that day and was finally adjourned to December 8, 1978 at 2:00 PM, at which time it was continued to its closing and on the latter date the record was closed. The parties, through their respective counsel, namely Glen W. Jeakle of Gregory, Van Lopik, Korney and Moore in behalf of the Fraser Dispatchers, P.O.A.M.,

and David A. McKinnon, Esq., representing the City of Fraser, indicated at the close of the hearing, although it does not appear in the formal record, that each waived the filing of briefs in this matter. The Chairperson's recollection is to that effect, and no briefs were filed.

Aside from the exhibits of the parties, the transcription of all^{the} testimony taken at the formal hearing comprised approximately 310 typewritten pages (including index and title sheet).

The hearings were all conducted at the abovementioned Hearing Room and the Chairperson wishes to state in this Decision that both the case for the Fraser Dispatchers and the City of Fraser were both ably conducted, presented with careful, thoughtfully prepared exhibits and with explanation of positions throughout and explicit answers to questioning and cross examination of witnesses by respective counsel. The Chairperson is of the opinion that all the issues were well covered.

On the subject of Issues it should be pointed out at this time, and the record will reflect, that considerable testimony was presented by the parties relating to the following issues:

- a) RETROACTIVITY OF WAGES
- b) VACATION TIME
- c) MANNER OF SELECTING OR ALLOCATING VACATION TIME

However, during the second day of the proceedings, the parties amicably resolved the issues of RETROACTIVITY OF WAGES, VACATION TIME, and the MANNER OF SELECTING OR ALLOCATING VACATION TIME. Therefore, those issues are not considered by this Panel.

ISSUES

WAGES

1) What increase in wages is to be paid to the members of the Fraser Dispatchers of the Police Department and the Police Officers Association of Michigan (P.O.A.M.) for the contract year of July 1, 1977 through June 30, 1978?

2) What increase in wages is to be paid to the members of the Fraser Dispatchers of the Police Department and the Police Officers Association of Michigan (P.O.A.M.) for the contract year of July 1, 1978 through June 30, 1979?

CLOTHING ALLOWANCE

What increase in clothing allowance should be made to the Fraser Dispatchers of the Police Department and the Police Officers Association of Michigan (P.O.A.M.) for the contract years of July 1, 1977 through June 30, 1979?

CLEANING ALLOWANCE

What increase in cleaning allowance should be made to the Fraser Dispatchers of the Police Department and the Police Officers Association of Michigan (P.O.A.M.) for the contract years of July 1, 1977 through June 30, 1979?

LAST BEST OFFER

The Last Best Offer of the Fraser Dispatchers of the Fraser Police Department (hereinafter referred to as dispatchers), submitted during these proceedings consists of a demand for a 9.5 increase (across the board) for each of the contract years in issue, as is set forth in the Union Exhibit attached hereto, which is marked Union 40, but which the record would indicate should be Union 41. With respect to the issue of clothing allowance, the Last Best Offer of the dispatchers demands an increase of \$50.00 per year for the contract years and with respect to the issue of cleaning allowance, said Last Best Offer demands the equivalent of the clothing allowance for a cleaning allowance. This offer is unsigned, and is attached hereto, marked Exhibit A.

The Last Best Offer of the City consists of an offer of a 6% increase over the current contract wages for each of the two years covered by the contract being negotiated. In addition, the Last Best Offer of the City proposes that there be a \$25.00 increase over the life of the contract for a clothing allowance and in addition, with respect to the issue of cleaning, that there be a

\$25.00 increase for each year in the cleaning allowance. This Last Best Offer was submitted by the City and signed by its attorney, David A. McKinnon and dated December 8, 1978 and is hereto attached, marked Exhibit B, and hereby made a part hereof.

STATUTORY MANDATE

In accordance with the mandate of Section 8 of the aforementioned Act 312, Public Acts of 1969, as amended, the arbitration panel identifies the wage issue, the clothing issue, and the cleaning issue as the only economic issues in dispute, all other economic issues having been amicably resolved as is mentioned above. The parties, during the proceedings, did each submit its Last Best Offer upon said economic issues. The statute mandates that the arbitration panel shall adopt the last best offer which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9 of Act 312.

In accordance with said Section, the panel must adopt either the Last Best Offer of the dispatchers or the Last Best Offer of the City and is not permitted to engage in any mediation or negotiation.

DECISION

Both parties presented well prepared documentary evidence and produced witnesses for cross examination in support thereof on the pertinent issues before the Panel.

The dispatchers contend strongly that the job of a dispatcher carries a serious responsibility. Counsel for the Union in his opening statement says:

"We believe that in the impasse that has resulted the City has clearly not recognized the essential nature of these employees' duties; the fact that these employees are the lifeline of the Public Safety Department within the City of Fraser; nor have they recognized the eminency of their responsibility for the life and welfare of the citizens of the City of Fraser." (R. 12)

The Union then presented details with respect to those alleged responsibilities. It clearly illustrated the duties relative to dispatching police, fire and ambulance vehicles; in addition, it showed the monitoring duties a dispatcher must perform which involve radios on different frequencies, telephones (six lines) and television monitoring.

It also showed the numerous logs he must keep and the reports he must make. It indicated that the dispatcher is also responsible for the operation of a computer terminal. In addition, the working conditions were amply and well portrayed by the Union

exhibits and testimony.

As portrayed by the exhibits and testimony, the Panel could not help but be convinced that if everything evidenced as a duty happened at once, or even in close proximity in time, no human being could possibly handle the job, regardless of his motivation, effort or pay scale. The Panel must take notice that no evidence was introduced that the dispatchers found themselves in such a situation. On pages 28 and 90 of the record, Mr. Yaeck, a witness for the Union and a dispatcher, testified that it had been his experience to have all six telephone lines operating or going at the same time. But beyond that (in itself an impossibility to handle simultaneously) no comparable situation was shown.

The Panel must consider the responsibilities and the duties and the expected performance by the dispatchers as being required to be performed in a common sense manner. By this is meant that the Panel does not assume and there is no evidence that the dispatcher is handling six calls, monitoring the television, making radio calls, answering questions about a skating rink, helping with an unruly prisoner, etc., etc., all at the same time. It rather takes the position that in the daily work various duties are to be discharged, but generally speaking, these are handled in an orderly manner, not in an atmosphere of panic which would have to be present if it were concluded that the

dispatcher must be ready to handle all of these duties at once.

The City agrees on most of the duties of the dispatcher as introduced through the evidence of the Union (R. 81,82). Union Exhibit 6 was introduced with respect to the duties and the City agrees on duties 1 through 37. On the duty in Exhibit 6 of assisting in handling unruly prisoners (R. 68) the City does not stipulate the same as being a duty, but does not testify that it could not happen and the same is true as to duties 39 and 40 of Union Exhibit 6. It would appear from the testimony (R. 68,200) that the dispatchers do perform tasks covered by those duties designated 38, 39 and 40 of Union Exhibit 6 which would be outside of the duties stipulated to by the City.

Also, in considering the problems involved in discharging the responsibilities, it is fair to note that in 1976 there were approximately 5,189 incidents to be handled by the dispatchers. In 1977 there were 6,501 and in 1978, 6,027 (R. 71). If these incidents are broken down on the basis of shifts we find that the dispatcher works an eight hour shift and that if the incidents are averaged out it would indicate that in 1978 there would be a maximum of six incidents per shift to be taken care of. The prior years would be comparable. If we say, for the sake of argument, that this is artificial, even if it is doubled, within the shift, it would still seem that a dispatcher would be able to discharge the duties. There is nothing in the record pointing to a contrary result.

In addition to the evidence concerning the responsibilities and duties of the dispatchers, the parties presented documentary evidence and testimony with respect to the duties of dispatchers in cities they chose as comparables. Both parties have set forth their comparables and the thoroughness with which they indicated the manner of methodology in choosing the comparables has been most helpful to the Panel. These comparables have been carefully considered and the areas of comparability, such as population, per capita income, crime per population, the nature of the individual performing the dispatching duties, and whether the dispatchers are full time or part time, and the other matter introduced into evidence have been considered by the Panel in coming to its Decision and Award.

One area in which the dispatchers introduced considerable testimony related to the difference between the pay of a dispatcher and the pay to Fraser clerical workers who are designated as Group 3. The dispatchers contend that the disparity between those two pay levels is improper in considering the duties and responsibilities of the dispatchers when compared with those of Group 3 clerical workers. In this respect it must be pointed out that the record shows that job descriptions for the jobs in Fraser relating to supervisory, Group 3 clerical, dispatchers and Group 2 clerical were arrived at after an independent study was made for the City. It is on the basis of the job descriptions so adopted

that the dispatchers have been placed in between Group 2 clerical and Group 3 clerical as far as pay scale is concerned.

The Union expert, Labor Economic Analyst, Robert Rooney, Jr., found in his study that "the job classification for dispatchers or police dispatchers was very nebulous." (R. 109) He then described his methodology in attempting to arrive at a job classification (R. 109 - 113). Then again, in response to a question by the Chairperson re the job description used in Mr. Rooney's methodology we have the following:

"Mr. Dance: I only have one question I would like to ask. What job description did you use in creating your methodology in --

Witness: For the dispatcher?

Mr. Dance: Yes.

Witness: Well, it was a rough description considering the nebulous nature of dispatchers in general.

Mr. Dance: Did you use this Exhibit Number Six showing dispatcher duties?

Witness: Yes, I did. I used that, but I originally used the description sent by Dave and just double checked it against that." (R. 144)

The Panel agrees, Despite the concrete nature of the duties set forth in the record, which are for the most part not contested, the job description as portrayed shows a job of a "nebulous" nature. It has many routine duties calling for no

serious judgment evaluation plus some duties calling for judgment evaluation or decisions. However, the record also shows that in the very serious judgment decisions there are superiors available to make these decisions or to help the dispatcher with his decision. The responsibility does not lie at the door of the dispatcher. For example, in the event of dispatching fire equipment, the fire sergeant is advised and he comes down to decide what kind of call there is and what should be done about it. (R. 37, 38). In other situations there is a police or police safety sergeant who is a direct supervisory officer when the dispatcher is at work. (R. 85). If that sergeant is not at the desk, he must remain in contact with the dispatcher at all times. (R. 86). If the dispatcher has any questions whatsoever he would go to his boss, the road sergeant, for the decision. In fact, the Union witness, Mr. Yaeck, in response to questioning states as follows:

"If I had any questions whatsoever he (the road sergeant) would be the man I would go to." (R. 86).

In addition, the Union witness indicates on pages 91 and 92 of the record that in many situations there is no discretion on his part because the order of the department tells what procedure and what to do and that orders are promulgated which tell the dispatcher to do this and that and thereby removes discretion.

This situation is accented, in the minds of the Panel,

by the lack of formal training needed for the job. The preparation is evidenced to be really minimal. The Union testimony and evidence does not indicate anything, unless the Panel has missed it, relating to training. However, the City goes into this question and directly asks the City Manager what training is required for the job of a dispatcher in Fraser to which the City Manager responded as follows:

"A. "The training that is required for a dispatcher, according to the Director of Public Safety is that the dispatchers have to attend two schools on LEIN, basically a twenty-four hour course and a four hour advanced LEIN school.

Q. Okay. And is there any other requirement to be a dispatcher besides what you consider the normal requirements of a responsible employee?

A. You have to have normal intelligence.

Q. The normal requirements of a normal average individual employee in the City?

A. Yes." (R. 181, 182)

The Panel comments that on considering the comparables of both the City and the dispatchers it has done same with respect to all of the criteria demanded by Section 9 of Act 312, subsection D and the evidence submitted by the parties. It finds on that issue that the difference in pay between the pay being received by the Fraser dispatchers and dispatchers in other cities is not of such an overwhelming difference that it alone can

control this decision. The charts and testimony reflect that in certain instances it is more than in some of the comparable cities selected and in others it is less, however, there is no showing with any degree of thoroughness as to the overall duties performed by the dispatchers in the cities alleged to be comparables. There are general statements in the record as to the types of vehicles they dispatch and the nature of the personnel manning the dispatching post, but when we consider the evidence of the multitude of duties performed or to be performed as called for or required by the Fraser dispatchers, we cannot find in the record whether the so-called comparable dispatchers perform all of those duties, some of them, few or them or many of them, etc. Again, in the words of the Union expert, Mr. Rooney, the job classification is "nebulous". Without more preciseness with respect to the job descriptions in the comparables they do not present conclusive evidence, but do present evidence to be considered and the same has been considered.

There was evidence presented concerning the inflationary affect on the wages and the fact that it certainly did cause a loss in purchasing power. The Panel takes judicial notice of the rampant inflation which is besieging everyone in the United States today. The Panel does not consider to any degree the guidelines promulgated by President Carter in October of 1978, as same were promulgated well after the contract years in question in this

proceeding. However, inflation itself certainly must be considered in conjunction with the cost of living increases facing the dispatchers. There is evidence in the record that other unions in the City of Fraser have either settled their demands or accepted the wage increase of 6% for 1976-77 and 6% increase for the next year. However, what was accepted by one does not necessarily dictate that it must bind another group. The interests and welfare of the public and the financial ability of the unit of government to meet any increased wages, together with the cost of living increase, must also be considered and considered independently of the result of other bargaining. This is true except insofar as the overall compensation presently received by other employees must also be considered. Section 9, Act 312.

Concerning the wage issue we are dealing first with the year commencing July 1, 1977 and terminating June 30, 1978. This year presents a separate issue. There is a claim in the record, by the Union, that the contract years should not be separated as far as issues are concerned, however it was found by the Panel during the proceedings that they were separate issues and both parties dealt with them as such in their Last Best Offers.

(Exhibits A and B). The Panel feels that this manner of considering the wage issue is beneficial to both parties. As pointed out the Arbitration Panel cannot mediate or negotiate but must

accept one or the other Last Best Offers on the particular issues.

The Panel makes a finding that the City of Fraser in 1974 made a good faith job evaluation of the duties of the various employees in the City and set them up into various categories. (R. 204 - 205). The record continues on page 205 to indicate that in that study the dispatchers salary was set between Group 3 clerical personnel and Group 2 clerical personnel. The record does not disclose evidence which warrants a conclusion that the duties of the dispatchers from the time they were originally so classified and today have changed to such a degree that the original classification should not be applicable. For this reason, to be specific, because of the lack of evidence as afore-said, the Arbitration Panel feels that it is without sufficient evidence to make a finding that the former classification must, as a matter of arbitration, be changed.

However, that does not mean that increases should not be made in accordance with the mandate of the statute concerning the matters to be considered.

As stated above, there was considerable testimony relative to the duties, productivity and responsibility of the Fraser dispatchers and they do perform an impressive function. While that is impressive, the Panel cannot conclude that the wages which have been being paid under the present contract are not

comparable to the wages being paid in similar communities to persons in the same occupations. The reasons for this are given above.

Therefore, with respect to the issues of wages, it becomes clear to the Panel that based on all the evidence, including the inflationary conditions under which we are presently living and the manner in which these inflationary conditions increase, that the Fraser dispatchers are certainly entitled to an increase over their prior contract.

The Panel finds that for the contract year, July 1, 1977 to June 30, 1978, the Last Best Offer of the City consisting of a 6% increase over the 1975 - 1977 contract more nearly complies with the applicable factors described in Section 9 of Act 312 of P.A. 1969, as amended. However, with respect to wages effective July 1, 1978 to June 30, 1979, the Panel finds that the Last Best Offer of the Union with respect to that issue is more in keeping with the statutory mandate.

Finally, there is not a great deal to be said concerning the remaining issues of clothing and cleaning allowance. The Panel takes judicial notice that cleaning costs are supported by the evidence as having increased 50%. There is no question but that the City of Fraser wants its dispatchers to present a clean, good

appearance to the public. It is common knowledge that the cost of laundering has also increased.

The Panel finds that the request of the dispatchers with respect to the clothing allowance and the cleaning allowance for the uniforms which must be worn, is more nearly in keeping with the mandate of the statute governing this Arbitration Panel.

There has been no evidence introduced that the City of Fraser suffers from an inability to meet increases.

AWARD

The Panel orders as follows:

1) That the City's Last Best Offer of 6% increase over the current contract for wages from July 1, 1977 through June 30, 1978 be adopted as the Award and Order of this Panel.

2) That the Dispatcher's Last Best Offer of 9.5% increase for wages from July 1, 1978 through June 30, 1979 be adopted as the Award and Order of this Panel.

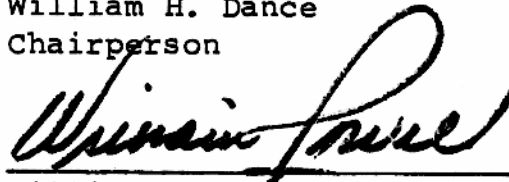
3) That the Union's Last Best Offer of an increase of \$50.00 in the clothing allowance effective July 1, 1977 be

adopted as the Award and Order of this Panel.

4) That the Union's Last Best Offer of an increase of \$50.00 in the cleaning allowance effective July 1, 1977 be adopted as the Award and Order of this Panel.



William H. Dance
Chairperson



William Powell
Panel Member



William J. Blaskis
Panel Member

Dated: May 7, 1979

All Items Retroactive as Agreed

ISSUES

- * 1. Clothing Allowance
Increase \$50.00
Eff. July 1, 1977
- * 2. Cleaning Allowance
Increase \$50.00
Eff. July 1, 1977
- * 3. Wages: Effective July 1, 1977,
through June 30, 1978

9.5% Increase across the board
- * 4. Wages: Effective July 1, 1978,
through June 30, 1979.

9.5% Increase across the board.

Last Best Offer

clothing - 75 present + 25, increase = \$100

cleaning - 75 present + 25, increase = \$100

Wages

July 1, 1977 - June 30, 1978

6% increase
over current contract

Wages

July 1, 1978 - June 30, 1979

6% increase
over previous year
(77-78)

submitted by the "City of Fraser"
represented by,

David A McKinnon
D A McK

December 8, 1978