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Arb. 5/25/95

STATE OF MICHIGAN  
COMPULSORY ARBITRATION

IN THE MATTER OF

CITY OF GARDEN CITY

Employer

-and-

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN

Union

Arising pursuant to  
Act 312, Public Acts  
of 1969, as amended

Case No. D93 G-0957

\* \* \* \* \*

ACT 312 AWARD

\* \* \* \* \*

Garden City

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman  
Richard J. Fritz, Employer Delegate  
William F. Birdseye, Union Delegate

FOR THE EMPLOYER

Ronald E. Mack

FOR THE UNION

William F. Birdseye

### ACT 312 AWARD

The Act 312 petition for this twelve person command unit was filed on March 10, 1994. The panel chairman was appointed on June 30, 1994. A pre-hearing conference was held on August 10, 1994 followed by hearing dates on January 6 and January 20, 1995. The parties then submitted last best offers and post-hearing briefs. An executive session was held on April 6, 1995.

Last best offers were submitted for either a three year or a four year contract, with duration to be selected by the panel. On wages for three years, the Union offers 3%, 0% and 3%. The City offers 4.5%, 3% and 3%.

On a four year contract, the Union offers 3%, 0%, 3% and "equity adjustments" amounting to a 9.2% increase for sergeants, and 11.23% increase for lieutenants, a 6% increase for captains and a 7% increase for the deputy chief. The City offers on wages for a four year contract, 0%, 3%, 3% and 3%.

The next issue concerns pensions. The City offers no pension improvements for a three year contract. For a four year contract, the City would use three years rather than the previous four years in computing final average compensation, it would raise the multiplier from 2.0 to 2.5, and would compound the 2% annual pension adjustment: currently the 2% adjustment isn't compounded. The Union offers this retirement plan for both three and four year contracts.

Additionally, the City seeks language in Article V, Section

5.6 on proration of administrative leave time to conform leave for outgoing officers with leave for incoming officers, which was established in a grievance arbitration decision. The Union would include contract language which would grant full leave time without proration, regardless of when an officer entered or left the unit.

Finally, the City seeks an increase in the prescription drug co-pay from \$3.00 to \$5.00 for generics and \$15.00 for name brand drugs. Also, a \$5.00 per month share of premium costs is sought. The Union opposes any change in the current contract language.

A three year contract would cover 10/1/93 until 9/30/96; a four year agreement would cover from 10/1/93 until 9/30/97. The stipulated external comparables are: Allen Park; East Pointe; Ferndale; Inkster; Oak Park; Southgate; Lincoln Park; Trenton; Wayne; Wyndotte and Ypsilanti.

The contractual standard in this proceeding is Section 9 of Act 312. Pursuant to case law, the panel need not afford equal weight to each of the Section 9 factors. These factors are:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these 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 proceeding.
- (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 factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The current contract provides that the captain position would be eliminated after the incumbents leave. There is only one captain on days, who is planning to retire.

The day shift on patrol consists of a captain, a lieutenant and a sergeant. Afternoons are covered by a lieutenant and a sergeant; the same is true of midnights. There is one lieutenant in the detective bureau. There is also a sergeant in support services.

In the absence of the captain, the lieutenant on days receives step-up pay to captain. The lieutenants on afternoons and midnights receive captain step-up pay except for such things

as vacations, court time and training. Sergeants on afternoons and midnights receive lieutenant step-up pay when the lieutenant is not present.

#### DURATION, WAGES AND PENSIONS

The Union in its brief requests a four year contract; at the executive session, however, it was willing to accept a three year contract. The Employer is willing to offer a four year contract and pension improvements only if its four year wage proposal is utilized.

Garden City argues that only two of the eleven comparable communities offer social security with their pension, which the command officers receive. Therefore, it believes that the Union would not be entitled to an improvement in its pension benefit except for the City's desire to create parity with the other bargaining units.

It is emphasized by the City that the Union's request in a three year contract with the pension increases will exceed 6% per year. The four year last best offer sought by the Union is seen as being out of line considering the extreme increases sought in the various classifications. In contrast, the internal comparables are said to support the City's pension and wage offer over four years. As an alternative, the City's three year wage offer without a pension improvement is said to be reasonable.

The Union suggests that equity adjustments are appropriate for command officers, who are now required to take a higher responsibility with the attrition of the captains. It is also

noted that Garden City lieutenants are 13.88% below the average comparables, and sergeants are 11.79% below the average.

The Union feels that its four year offer compensates command officers for their increased responsibility. It is also argued that the increase is necessary to decrease the inequity with the comparable communities to only 5.4%.

### DISCUSSION

The command officers should receive the pension improvement offered to most other bargaining units within the City; internal comparability requires this result. Moreover, it would not be in the best interest of the public for command officers to receive lower pension benefits than their subordinates in the patrol unit.

It is true that external comparability wouldn't support the increased pension benefit: Garden City Command Officers currently enjoy a superior benefit over the majority of comparable command officers insofar as they receive social security in addition to their pension. However, internal comparability, the best interest of the public, and the expected outcome of collective bargaining outweigh external comparability on this issue.

The wages for the first three years, coupled with the pension improvement, are not in dispute. There is one year of 0% increase, with two years of 3% increases in both offers. This leaves both offers at the same place on wages for the fourth year.

At this point, the City offers 3% consistent with its set-

tlement with other bargaining units. It strongly argues that the only way it could offer the pension improvement was with a 3% increase that is applicable to all units.

The Union, in contrast, feels that there must be an "equity adjustment" in the fourth year to close the gap with the comparables, and to reflect the increased work load caused by the loss of the captains.

A review of the evidence reveals that Garden City Command Officers, with a new pension plan, would be a leader among the comparable communities. The Union's request in the fourth year for a 9.2% increase for sergeants, 11.23% increase for lieutenants, a 6% increase for captains and a 7% increase for the deputy chief, when added to the pension improvement, creates an excessive gain which isn't justified by either the cost of living or the comparables. Moreover, while Garden City Command Officers lag in wages in regard to the comparables, they enjoy a significant pension benefit over most of the comparables. Under these circumstances, the Union's fourth year wage offer would be unreasonable pursuant to the Section 9 factors. It must be emphasized that basically, with the exception of one group within a unit, all units within the City received 0, 3%, 3% and 3%.

Remaining is the question of an "equity adjustment" as sought by the Union in the fourth year for increased duties caused by the attrition of the captains. I disagree that the evidence at this time supports an equity adjustment for the patrol shift lieutenants: with the retirement of the remaining captain, these lieutenants will be stepped-up to captain pay most of the

time. Further, the contract contemplates the elimination of captains. The payment of a premium to lieutenants over and above the payment of captains pay would render the elimination of captains in the contract meaningless.

Also, the evidence at this time fails to reveal that an equity adjustment is required for the sergeant in support services, whose position is of a continuing nature since the last contract. There also doesn't appear to be a need for an equity adjustment for the detective lieutenant, who isn't replacing a captain.

Also, while it appears that the deputy chief has taken on the duties of the police analyst, there is no indication that this represents the duties of a higher classification requiring an increase in pay.

Finally, there isn't a problem when the sergeant on the various patrol shifts replaces the lieutenant and thereby receives step-up pay to lieutenant.

Based upon the record, the one potential place for an equity adjustment is the situation where a sergeant works under a lieutenant on a patrol shift: the sergeant wouldn't be receiving step-up pay although the lieutenant would receive step-up pay to captain. Lieutenant Carr implied in his testimony that patrol shift sergeants may be doing some shift commander work while the lieutenant is present.

In 1993 the detective sergeants in the patrol unit received an increased retirement benefit worth .31%, while other patrol officers and the rest of the units received a wage freeze except



for the fire marshal. Therefore, there is an internal precedent for providing a small increase to sergeants in excess of wages paid to other employees within the City.

The large wage increase sought by the Union in the fourth year is not supported by the evidence. Essentially, the substantial pension improvement and the 3% paid to all other City employees would support the City's offer of 3% in the fourth year.

However, when the remaining captain retires, there may be a situation where patrol sergeants are working at a higher level while a lieutenant is on the shift, thereby requiring an adjustment in pay of that type that was granted to the detective sergeants.

The proper approach is to award a three year contract and to wait and see what happens with the fourth year concerning job responsibilities for the sergeants. I would emphasize that the Employer, in any future negotiation or a 312 proceeding, should be given credit for providing a pension improvement that essentially justifies a 3% increase for the command unit. However, an equity adjustment in selected cases in line with the one granted detective sergeants may be appropriate in the fourth year, if indeed sergeants are required at times to perform shift commander work while still at sergeant pay.

The pension proposal should be awarded along with the Union's three year wage proposal.

#### PRORATION OF ADMINISTRATIVE LEAVE TIME

In the Newcomb award, AAA Case No. 54-39-0907-93, the Griev-

ant entered the command unit during the year and received prorata leave days, rather than the ten mentioned in the contract. Arbitrator Roumell in denying the grievance, stated in part:

To repeat, there was no necessity to refer to a proration, as in the case of vacations and clothing allowance, for example, because the situation here was different. Ten administrative days were provided "in return". When a command officer cannot fulfill the "in return" because of the timing of his or her promotion to the command unit, then, to reflect the parties' agreement, proration, as suggested by the City and applied by the City, is appropriate.

The "in return" that Arbitrator Roumell refers to is reporting to work one-half hour before the scheduled work shift. It was the arbitrator's interpretation of the contract that proration of the leave days was appropriate because the leave days were paid in return for working a half hour early.

In-house arbitration awards are authoritative, and are generally considered binding on another grievance arbitrator, absent a clear error. If the case of an officer leaving the unit were presented to an arbitrator, it is likely that the leave days would be prorated as they were in the Roumell award.

Consequently, the authoritative interpretation of the contract represented by the Roumell award requires the proration of leave days for both incoming and outgoing officers. The Employer's last best offer should therefore be awarded, because it most closely represents the meaning of the contract language as interpreted by Arbitrator Roumell.

#### **HEALTH CARE CO-PAYS**

The City argues that increases in the drug co-pay and pre-

mium participation are necessary to meet increased health care costs. The Union denies that proof of increased costs were established; further, it notes that the other City bargaining units are not required to participate as the command officers are being asked to.

A demonstrated need for increased participation by the command officers hasn't been established. This is a small unit, yet other City employees haven't been asked to make health care concessions. Consequently, payment by the command officers would have little impact on the City.

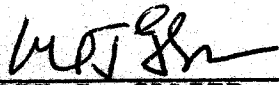
This is a situation where internal comparability with other City units strongly favors the Union. Therefore, the Union's last best offer on health care should be awarded.

AWARD

I

The Employer's three year language on duration is awarded.

DATED: May 25, 1995

  
MARK J. GLAZER,  
Chairman

CONCUR: \_\_\_\_\_ DISSENT: X

  
RICHARD J. FRITZ,  
Employer Delegate

CONCUR: ✓ DISSENT: \_\_\_\_\_

  
WILLIAM F. BIRDSEYE,  
Union Delegate

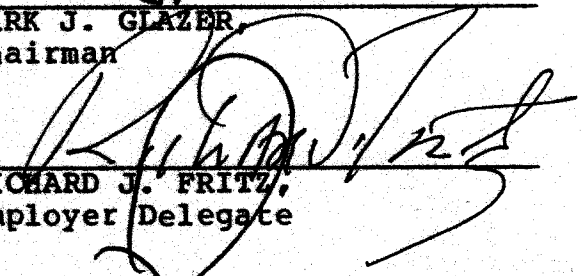
II

The Union's three year language on wages (3%, 0%, 3%) is awarded.

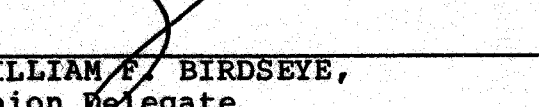
DATED: May 25, 1995

  
MARK J. GLAZER,  
Chairman

CONCUR: \_\_\_\_\_ DISSENT: X

  
RICHARD J. FRITZ,  
Employer Delegate

CONCUR: ✓ DISSENT: \_\_\_\_\_

  
WILLIAM F. BIRDSEYE,  
Union Delegate


III

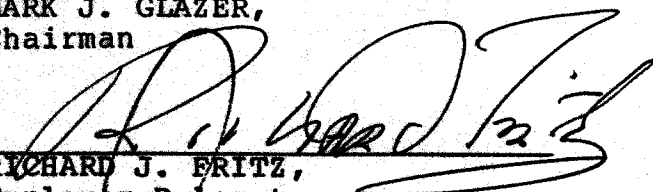
The Union's last best offer on pensions is awarded.

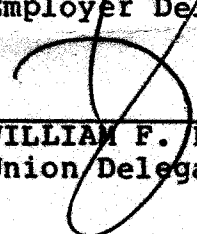
DATED: May 25, 1995

CONCUR: \_\_\_\_\_ DISSENT: X

CONCUR: ✓ DISSENT: \_\_\_\_\_

  
MARK J. GLAZER,  
Chairman

  
RICHARD J. FRITZ,  
Employer Delegate

  
WILLIAM F. BIRDSEYE,  
Union Delegate

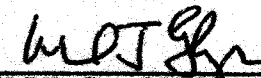
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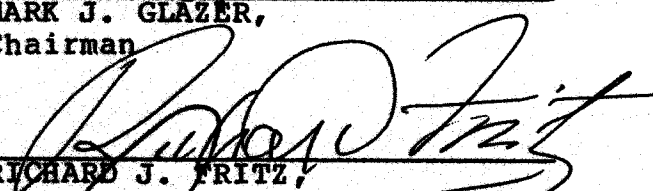
The Employer's last best offer on administrative leave time is awarded.

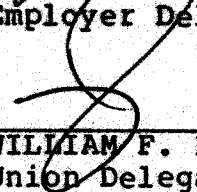
DATED: May 25, 1995

CONCUR: X DISSENT: \_\_\_\_\_

CONCUR: \_\_\_\_\_ DISSENT: ✓

  
MARK J. GLAZER,  
Chairman

  
RICHARD J. FRITZ,  
Employer Delegate

  
WILLIAM F. BIRDSEYE,  
Union Delegate

V

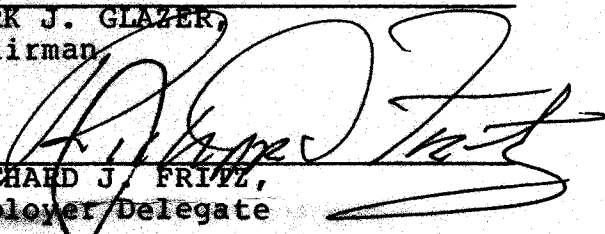
The Union's last best offer on health insurance is awarded.

DATED: May 25, 1995

CONCUR: \_\_\_\_\_ DISSENT: 4

CONCUR: ✓ DISSENT: \_\_\_\_\_

  
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MARK J. GLAZER,  
Chairman

  
\_\_\_\_\_  
RICHARD J. FRITZ,  
Employer Delegate

  
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WILLIAM F. BIRDSEYE,  
Union Delegate