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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: D96-F-0889

ACT 312 AWARD

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman
Vicki Blitz, Employer Delegate
William F. Birdseye, Union Delegate

FOR THE EMPLOYER

Brian S. Ahearn

FOR THE UNION

William F. Birdseye

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
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Garden City, City of

BACKGROUND

There are 12 persons in the Garden City Police Command Unit, including the deputy chief and lieutenants and sergeants. An Act 312 petition was filed on January 16, 1997. At issue is wages for the three year 1996-1999 contract.

Hearings were held on November 6, 1997 and November 17, 1997. Last best offers were submitted on December 12, 1997. Briefs were provided on February 2, 1998.

The panel is to apply the provision of Section 9 of Act 312. Pursuant to City of Detroit v. DPOA, 408 Mich 410, 482, the panel need not afford equal rate to all factors. The Section 9 criteria 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,

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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.

This proceeding follows an earlier Act 312 involving these parties, which I chaired. An award was issued on May 25, 1995 that awarded, in part, the Union's last best offer on wages (3%, 0%, 3%) and the Union's last best offer on pensions. The pension award brought the command officers up to a level enjoyed by most other units within the City, and includes social security.

COMPARABILITY

The prior award included the following as comparables: Allen Park; East Pointe; Ferndale; Inkster; Oak Park; Southgate; Lincoln Park; Trenton; Wayne; Wyandotte and Ypsilanti. The parties stipulated to these comparables.

Now, the Employer seeks to drop Oak Park, insofar as it is a Public Safety Department. The Union seeks to drop Inkster, insofar as many of its officers have been terminated.

In order to provide stability in labor relations and to provide for certainty during collective bargaining, it is appropriate to continue comparables absent changed circumstances. Oak Park has been used by the parties as a comparable, notwithstanding its Public Safety status. Therefore, it should continue as a comparable. Inkster's contract with its command officers still exists for

comparability purposes, even though certain officers may have been terminated. As a result, the comparables from the prior Act 312 proceeding should be continued in this Act 312 matter.

THE UNION'S WAGE OFFER

The attached last best offer of the Union is designed to reflect the average of comparables approach used for members of the Garden City Supervisors and Professionals Association. The Union asserts that under its proposal the deputy chief will receive a 6% increase on October 1, 1996; the lieutenants will receive a 7.87% increase and the sergeants will receive a 7.70% increase. For the second and third years the Union maintains that it is seeking approximately 2.5% each year.

It is the Union's belief that its first year equity offer is consistent with the approach taken for other City supervisors. The Union further maintains that the equity approach will bring the unit up to the average among the comparables.

The Union also argues that there has been a purchasing power loss from the prior contract, and that its offer is required by the cost of living. It is further noted that notwithstanding the pension improvements under the last contract, the City has not been required to make any actual additional payments for pensions since 1991. Even when the City's Social Security payments are considered, it is argues that the City doesn't pay more than the other comparables.

The Union also maintains that the City will not be required to make pension payments for 9 1/2 years, whereas its bargaining unit continues to be required to make a 5% annual contribution.

The Union asserts that the gap has widened with the comparables since the last award, and that now is the appropriate time to make an equity adjustment. The Union believes that the City has the financial ability to meet its last best offer.

POSITION OF THE CITY ON WAGES

Garden City offers 3%, 4% and 4% for sergeants, 8.09%, 4% and 4% for lieutenants, which includes in the first year an increase of 5.09% to the captain's level, and 3%, 9.56% and 4% for the deputy chief.

The City argues that units within Garden City historically move together on wages, with the exception of the department heads and supervisors. It is asserted that in the fourth year of the prior contract (the first year for the police command unit) the patrol officers, the firefighters, the dispatchers and the AFSCME unit all received 3%, after accepting 0% in the first year for a pension improvement (the dispatchers are an exception - they accepted 4% in lieu of a pension improvement).

The City maintains that the cost of living has been less than 3%. The City also argues that the Union has unfairly increased its last best offer from a 3% figure for three years during negotiations to the present level. The City sees the Union's first year offer as approaching 9.9% and between 3.3% and 5% for the remaining two years.

The City contends that the Union's approach will set the tone for other contracts in Garden City, and will cause the City to fall below a minimum 5% fund balance. The Union's offer is also seen as being an unfair surprise that prejudices the City in presenting its defense.

The Union's offer is said to ignore that the Union was granted its salary offer and its pension offer in the prior proceeding, and that the Union received 6% increases rather than the 3% that it asserts. It is emphasized that had the Union accepted the Employer's offer in the prior matter, it would have received an additional 4.5% of salary increase instead of a pension benefit.

The Union argues that the Union is in a favored position in terms of overall compensation

as a result of the pension improvement in the last contract.

DISCUSSION

The necessary place to begin my analysis is with the prior award, which set the wage levels leading to the present last best offers of the parties. At that time I noted that the Union felt that an equity adjustment was necessary, and that the command officers were lagging behind the comparables on wages. I said at p.6:

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.

I rejected the Union's wage demands in the fourth year because of the pension gains awarded to the command officers. I said at p.6:

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 improvements, 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%.

The Union also requested, in the prior Act 312 proceeding, an equity adjustment as it has here. However, I rejected an equity adjustment in the fourth year, adopting instead a "wait and see attitude" regarding the job responsibilities for sergeants. I emphasized that an equity adjustment in the fourth year might be required only for selected cases. I said at pp.6-8:

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.

In the prior award, I rejected the large wage increases in the fourth year, that the Union now seeks in the first year (the fourth year of the prior contract). In the absence of proof of the need for equity adjustments in the selected areas I noted in my prior award, it would be inappropriate, based upon my prior award, to grant the large increases that the Union now seeks in the first year.

If I were to ignore the holding of my prior award, and grant the Union's demand in this proceeding, it would mean that the parties couldn't rely upon the credibility of an arbitrator's decision in subsequent negotiations for Act 312 proceedings. If I had indicated in my prior award that the Union should receive a large increase in the first year of a new contract, and I didn't award that increase, the Union would be rightfully upset that I had reversed myself. Similarly, it would undermine collective bargaining and the Act 312 process if I were to reverse myself in this Act 312 proceeding.

Obviously, if a prior Act 312 award is clearly in error or there are substantially changed circumstances, the rationale underlying an award can be changed. Further, an Act 312 proceeding is dependent upon statutory factors, as opposed to general arbitral principles, which is the case in grievance arbitration.

Nevertheless, in this case, where I decided the prior arbitration, Section H of the Act requires that I follow my earlier award to maintain credibility with the parties and to provide stability and meaning to their negotiations. Therefore, the equity adjustment sought by the Union in the first year runs contrary to the holding of my prior decision, and should not be accepted in this arbitration.

Moreover, the 3% offered by the City in the first year of the contract is consistent with my prior award and internal comparability under the Act, since those units that accepted the pension improvements offered by the City also took 3% in the fourth year (the first year of the present command contract).

The first year offer by the Employer is also consistent with Section F of the Act, the overall compensation received by the Unit. I had indicated in my prior award that the command unit in Garden City has an advantaged position over the comparables in the area of pensions. Consequently, the overall compensation received by the unit would justify the Employer's 3% offer in the first year.

It should be noted that the Union offered a 0% wage increase in the prior proceeding in order to achieve a pension gain. It would not be expected under Section H of the Act, that the Union would immediately recoup in the first year of a new contract, the 0% that it offered in the prior proceeding.

The Union also references a cost of living loss, but that, in part, is the result of its own request for a 0% increase in the prior proceeding in order to achieve a pension gain.

In its first year proposal, the City provides a 3% increase for lieutenants in addition to an increase to captain's wages. This represents an improvement for lieutenants, insofar as previously they only received step-up wages when they acted as a captain. Now, they will receive captain's wages for such things as holidays and vacation pay.

In the Employer's second year offer for the deputy chief, there is an equity adjustment that approximates the Union's last best offer. Further, there is a 4% wage increase offer that is actually superior to the Union's offer of 2 1/2% in years 2 and 3.

Therefore, the City's offer is appropriate in the second and third years as well as, as previously indicated, in the first year. Consequently, the City's last best offer should be awarded in this proceeding.

The concept of raising the wages of the command officers to the average of the comparables is not rejected for the future. However, based upon my prior award and the fact that the Union traded wages for pension improvements in the prior contract, the wage increases sought by the Union in the first year were premature. Further, wage demands must be consistent with the overall compensation of the command unit, including pensions.

AWARD

The last best offer of the City on wages is awarded.

Date: 3/8/98



Mark J. Glazer
Chairman

Date: _____

Concur: _____ Dissent: _____

Vicki Blitz
Employer Delegate

Date: _____

Concur: _____ Dissent: _____

William F. Birdseye
Employer Delegate

AWARD

The last best offer of the City on wages is awarded.

Date: _____

Mark J. Glazer
Chairman

Date: 2/24/98

Concur: X Dissent: _____

Vicki L. Blitz
Vicki Blitz
Employer Delegate

Date: _____

Concur: _____ Dissent: _____

William F. Birdseye
Employer Delegate

AWARD

The last best offer of the City on wages is awarded.

Date: _____

Mark J. Glazer
Chairman

Date: _____

Concur: _____ Dissent: _____

Vicki Blitz
Employer Delegate

Date: 3-5-91

Concur: _____ Dissent: X

William F. Birdseye
Employer Delegate

IN THE MATTER OF
ARBITRATION UNDER ACT 312
PUBLIC ACTS OF 1969
AS AMENDED

BEFORE: MARK J. GLAZER, IMPARTIAL CHAIRMAN

CITY OF GARDEN CITY

- and -

MERC Case No.: D96 F-0889

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN

UNION'S FINAL OFFER
OF SETTLEMENT

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN
28815 West Eight Mile Road
Suite 103
Livonia, Michigan 48152
(248) 476-3355

DURATION

The parties stipulated to a contract term October 1, 1996 through September 30, 1999.

WAGES

The parties stipulated to an inseparable final offer covering all three contract years for all three classifications: deputy chief, lieutenant and sergeant.

UNION'S FINAL OFFER OF SETTLEMENT:

I. Effective October 1, 1996 base salaries for bargaining unit members shall be adjusted to equal the percentage change in base salaries for the average of comparable positions over the period October 1, 1993 to October 1, 1996.

II. In addition to the above, a comparability adjustment shall be determined as the difference between the dollar amount of base salaries for bargaining unit members (after October 1, 1996 increase) and the average dollar amount of base salaries for comparable positions at October 1, 1996 (for all settled contracts). The total amount shall be distributed over the life of the contract. On the first day of each year of the three year contract, October 1, 1996 through September 30, 1999, one-third of such dollar amount shall be added to and become part of base salary for bargaining unit members.

The comparables utilized will be comparable positions in the following eleven communities:

- | | |
|-----------------|---------------|
| 1. Allen Park | 7. Southgate |
| 2. Eastpointe | 8. Trenton |
| 3. Ferndale | 9. Wayne |
| 4. Inkster | 10. Wyandotte |
| 5. Lincoln Park | 11. Ypsilanti |
| 6. Oak Park | |

III. Effective October 1, 1997 base salaries shall be increased by 2.5% across-the-board.

IV. Effective October 1, 1998 base salaries shall be increased by 2.5% across-the-board.

Wages to be retroactive to October 1, 1996 for all hours

compensated.

EXAMPLES:

Calculation of first-year percentage increases

Deputy Chief

Average increase comparables

Oct. 1, 1993 to Oct. 1, 1996 9.66%

Minus Garden City increase

- 3.00%

Oct. 1, 1993 to Oct. 1, 1996

Increase October 1, 1996

6.66%

Lieutenant (at former Captain pay)

Average increase comparables

Oct. 1, 1993 to Oct. 1, 1996 10.87%

Minus Garden City increase

- 3.00%

Oct. 1, 1993 to Oct. 1, 1996

Increase October 1, 1996

7.87%

Sergeant

Average increase comparables

Oct. 1, 1993 to Oct. 1, 1996 10.70%

Minus Garden City increase

- 3.00%

Oct. 1, 1993 to Oct. 1, 1996

Increase October 1, 1996

7.70%

Calculation of dollar differences at October 1, 1996

Deputy Chief

Average base salary settled comparables

Oct. 1, 1996 \$ 58,992

Minus Garden City with +6.66%

- 54,567

Total dollar difference

\$ 4,425

One-third

\$ 1,475 [Annual add-on]

Lieutenant (at former Captain pay)
Average base salary settled comparables
Oct. 1, 1996 \$ 54,028
Minus Garden City with +7.87% - 52,708

Total dollar difference \$ 1,320
One-third \$ 440 [Annual add-on]

Sergeant
Average base salary settled comparables
Oct. 1, 1996 \$ 50,243
Minus Garden City with +7.70% - 47,300

Total dollar difference \$ 2,943
One-third \$ 981 [Annual add-on]

RESULTING WAGE SCHEDULE

	<u>Present</u>	10-1-96 <u>First Year</u> +6.66%+\$1,475	10-1-97 <u>Second Year</u> +2.5%+\$1,475	10-1-98 <u>Third Year</u> +2.5%+\$1,475
Deputy Chief	\$51,160	\$56,042	\$58,918	\$61,865
		+7.87%+\$440	+2.5%+\$440	+2.5%+\$440
Lieutenant	\$48,863	\$53,148	\$54,917	\$56,730
		+7.70%+\$981	+2.5%+\$981	+2.5%+\$981
Sergeant	\$43,918	\$48,281	\$50,469	\$52,712

UNION'S FINAL OFFER OF SETTLEMENT IN RESPONSE TO EMPLOYER POSITIONS:

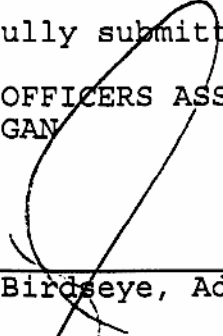
The Union agrees to assign Captain's wages to all Lieutenants and delete references to Captains in the collective bargaining agreement.


For other Employer issues (if any), the Union desires to maintain the status quo.

Wherefore, the Final Offer of Settlement of the Union is
tendered in good faith and upon careful consideration.

Respectfully submitted,

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN



William Birdseye, Advocate

Ann Maurer, Labor Economist

DATE: December 12, 1997

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION

In the Matter of:

CITY OF GARDEN CITY

Employer

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

- and -

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN,

Case No. D96 F-0889

Union

**LAST OFFER OF SETTLEMENT
(LAST BEST OFFER) OF CITY OF GARDEN CITY**

Pursuant to Section 8 of Act 312, Public Acts of 1969, as amended (MCL 423.238), the City of Garden City submits the following last offer of settlement (last best offer) in the above-entitled matter:

Amend APPENDIX A, WAGES, attached to and by reference made a part of the Agreement between the parties, to read the same as APPENDIX A attached hereto.

Respectfully submitted,

CITY OF GARDEN CITY

BY:



BRIAN S. AHEARN (P10071)
510 First National Bldg.
Detroit, MI 48226
(313) 961-6474

Dated: December 12, 1997

cbsa\gcity.ofr

STRINGARI, FRITZ, KREGER, AHEARN & CRANDALL, P.C. (313) 961-6474

APPENDIX A

WAGES

	<u>October 1, 1996</u>	<u>October 1, 1997</u>	<u>October 1, 1998</u>
Sergeant	\$45,236 (3.0%)	\$47,045 (4.0%)	\$48,927 (4.0%)
Lieutenant	\$50,329 (8.09%)	\$52,342 (4.0%)	\$54,436 (4.0%)
Deputy Chief	\$52,695 (3.0%)	\$57,735 (9.56%)	\$60,044 (4.0%)

*Captain position has been eliminated per Letter of Understanding (originally dated 11-8-88) and attached to parties' 1993-1996 Agreement as Exhibit "A".