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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

BEFORE A COMPULSORY ARBITRATION PANEL PURSUANT TO ACT 312,  
MICHIGAN PUBLIC ACTS OF 1969, AS AMENDED.

IN THE MATTER OF ARBITRATION  
BETWEEN:

CITY OF EAST DETROIT (CITY)

-and-

EAST DETROIT POLICE OFFICERS  
ASSOCIATION (UNION)

O P I N I O N

LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

PANEL MEMBERS:

CHAIRMAN:

Mario Chiesa

FOR THE CITY:

Mr. Don Kuhn

FOR THE UNION:

Mr. Ronald Zamojski

Submitted: December 27, 1977

*East Detroit, City of*

## APPEARANCES

### FOR THE EMPLOYER:

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### FOR THE UNION:

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## INTRODUCTION

Throughout this opinion, the City of East Detroit shall be referred to as the City, while the East Detroit Police Officers Association shall be referred to as the Union.

A pre-arbitration conference was held on Monday, July 11, 1977, at the East Detroit City Hall. The hearing began and was concluded on Thursday, September 22, 1977. Briefs were filed by the parties and received on or about October 12, 1977.

## ISSUES

The parties have agreed that there is only one issue in contention. That issue concerns how the language contained in Article 18, Section (c) of the collective bargaining agreement should be modified. It should be noted that all other items related to wages, hours and conditions of employment have been settled. In fact, the parties have entered into a collective bargaining agreement which will expire on June 30, 1980.

ISSUE: ARTICLE 18, SECTION (C) - MANPOWER POLICIES - ECONOMIC

### CURRENT CONTRACT LANGUAGE:

The language contained in the current collective bargaining agreement states:

"The City shall maintain 40 budgeted positions in the P.O.A. so that the membership therein shall not be reduced unless financial reasons

justify such a reduction or the elimination of any position, which would require proof. The vacancy shall be filled as soon as possible through civil service procedure."

LAST OFFERS OF SETTLEMENT:

The City has taken the position that the above mentioned language should be completely eliminated with the following language being substituted in its place:

"There shall be no minimum manpower requirement as to budgeted positions within the P.O.A. The City agrees not to lay off any present members of the P.O.A. The City retains the right to reduce positions in the P.O.A. through attrition."

The Union takes the position that the above stated language be modified to read as follows:

"The City shall maintain one budgeted position of patrolman assigned to the patrol division for each 1,400 persons in the general population of the City. General population figures shall be based on the most recent available printed annual report issued by the Southeast Council of Governments prior to July 1 of any year. Such number of positions shall not be reduced unless financial reasons justify such a reduction or the elimination of such positions, which would require proof. Vacancies shall be filled as soon as possible."

EVIDENCE:

The City introduced the testimony of Mr. Donald Kuhn, the City Assistant Manager, who is also the chief negotiator. Mr. Kuhn indicated that the current provision was placed in the collective bargaining agreement in 1972. At that time the provision provided for 37 budgeted positions. In 1975, as a result of an arbitration proceeding, the 37 budgeted positions was increased to 40 budgeted positions.

Mr. Kuhn states that the article is a flagrant abuse of managerial rights. He states that each year it becomes more and more difficult to balance the budget and that it has become necessary, this year, to reduce by attrition the personnel in the Fire Department. The reduction was by two men.

He maintains that the level of service that should be provided to the citizens must be determined by City management.

Mr. Kuhn also emphasized that if the provision were eliminated, the City would not lay off any members of the Police Officers Association, but would rely on attrition and retirement in order to reduce the number of personnel in the department if a reduction were necessary.

Mr. Kuhn emphasized that the city is suffering money problems in all of its departments.

The City has introduced City Exhibit 3, which is entitled Minimum Manpower Comparable. The exhibit lists 26 cities, in addition to East Detroit, and states whether or not the collective bargaining agreements in each of the communities has a minimum manpower requirement. An examination of the exhibit indicates that out of the 26 communities, 25 have no minimum manpower requirement contained in the collective bargaining agreement. The exhibit does show that Oak Park has a minimum manpower requirement that will be abolished during the 1978-1979 fiscal year.

The communities which are contained in City Exhibit 3 are: Allen Park, Birmingham, Centerline, Clinton Township, Detroit, Farmington Hills, Ferndale, Garden City, Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Shores, Grosse Pointe Woods, Hamtramck, Harper Woods, Highland Park, Inkster, Madison Heights, Mt. Clemens, Roseville, St. Clair Shores, Sterling Heights, Southfield, Troy, Ypsilanti, Warren and Oak Park.

In addition to documents, which will subsequently be discussed, the Union has introduced the testimony of Mr. Ronald M. Dowell. Mr. Dowell is a ten-year patrolman with the City of East Detroit and was the President of the East Detroit Police Officers Association from 1971 to 1976. He has an Associate Degree in Law Enforcement and an Associate Degree in General Studies.

He testified that there are approximately 56 or 57 sworn officers consisting of a chief, inspector, 4 lieutenants, 5 or 6 sergeants, 5 or 6 corporals and 2 detectives. The detectives are incorporated within the East Detroit Police Officers Association. There are 38 patrolmen.

Mr. Dowell's testimony indicates that on the national average, there are 2.1 police officers per thousand population. This average includes cities such as New York, Los Angeles and Detroit. His testimony further indicated that in 1975 for cities in the 10,000 to 50,000 classification, there were 1.9 police officers per thousand. Further, Mr. Dowell indicated that the range for the entire country was .1 sworn police officer per thousand all the way to 7.8 sworn police officers per thousand.

The Union further introduced documents seeking to establish a number of items. The communities the Union used were Allen Park, Birmingham, Farmington Hills, Ferndale, Garden City, Hamtramck, Highland Park, Inkster, Madison Heights, Oak Park, Southgate, Troy, Wyandotte, Ypsilanti, St. Clair Shores, Roseville, Warren, and Harper Woods. The population for the communities listed by the Union range from 173,200 for Warren to 18,600 for Harper Woods. The 1974 per capita income for the communities listed range from \$8,709 for Birmingham to \$4,179 for Oak Park. Area wise, the cities range from 35 square miles for Troy to 2.2 for Hamtramck.

The evidence shows the 1976 population for non-supervisory patrol division ratio ranges from 1:572 in Highland Park to 1:1599 for Warren. The average, excluding East Detroit, is 1:1183. Further, the documentary evidence introduced by the Union shows that the 1975 population to index crime ratios runs from 1:6 for Highland Park to 1:24 for Birmingham. The average, excluding East Detroit, is 1:15.

ARGUMENTS:

The City argues that the prior contract language should be eliminated because it feels that it is the right of management to determine the number of employees it must hire, lay off, assign or transfer. The City maintains that the question of minimum manpower is the most sensitive management's right issue.

The City points out that the issue of minimum manpower goes back to 1972. It states that the former City Manager, Charles Beaubien, originally agreed to 37 budgeted positions. Subsequently, this figure was increased to 40 pursuant to an arbitration award rendered by Dean St. Antoine.

The 40 budgeted language was continued as a result of an award issued by a panel chaired by your current chairman during the last round of negotiations. The City argues that its evidence establishes that out of 27 cities surveyed, 25 of them have no minimum manpower requirement, while only East Detroit and Oak Park have such requirements. The City goes on to argue that Oak Park will have the requirement abolished in 1978-1979.

Expressing concern for the Union's apprehension regarding layoffs, the City has stated that it will not lay off any present members of the P.O.A. The City goes on to argue that the Union's position keeps the minimum manpower requirement, but introduces a formula, which would require one budgeted position of patrolman assigned to the patrol division for each 1,400 persons in the general population. The City points out that using current population figures, this would mean that the Union would demand that 30 or 31 patrolmen should be assigned to the patrol division if its formula were to be followed. The City maintains that as a practical matter, this is no change from the current conditions.

The City goes on to argue that the evidence introduced by the Union regarding population and crime statistics has little bearing on the issue before the panel. The City argues that the Union has failed to present any evidence which supports its last offer of settlement.

The Union argues the language in question has essentially been on the collective bargaining agreement since July 1, 1972. The Union goes on to state that the individuals in charge of labor relation policies in the City of East Detroit have changed since July of 1972 and that it is now the position of the City that the language in question is an infringement on management's rights. It maintains the only support for the position taken by the City is the fact that there is no similar clause in any of the contracts between police unions and other comparable cities.

The Union points out that the City claims no injury from the existence of the minimum manpower language. It maintains that the last offer of the City in which the City agreed not to lay off any present members of the P.O.A., indicates that for a five-year period, the City has experienced no problems with the language. It maintains that the desire of the City to eliminate the language is based on principle.

The Union maintains that it rejected the City's offer regarding protection of the job status of the present P.O.A. members because the concern of the Union goes beyond that regarding job security. The City argues that the P.O.A. feels that it is currently understaffed and, thus, the minimum manpower language is a necessity. Secondly, the Union argues that it is concerned about the integrity of the bargaining unit while as a last item, the Union states that it believes that an adequate patrol division is essential for the welfare of the public.

The Union maintains that adequate manpower is essential to effective police service as well as being important to the public. It goes on to point out that adequate manpower is important to the police officers themselves because their individual safety may depend on the support of other officers.

The Union states that the East Detroit Police Department has 58 police officers, of whom 40 are patrolmen. Thirty of the patrolmen are assigned to the patrol division.

The Union argues that the testimony of Mr. Dowell establishes that the patrol division of any police department is the backbone of the police department. It maintains that all other specialized units are support units for the patrol division.

The Union maintains that its Exhibit 4 shows that the average ratio of non-supervisory patrol division to population in the comparable cities is one patrolman to each 1,183 individuals.

The Union maintains that its last offer of settlement would permit the City to lay off 10 patrolmen assigned to non-patrol functions. It would also permit the layoff of patrolmen assigned to patrol functions for economic reasons. Further, the Union maintains that its offer would allow the reduction of the patrol division if there is a declining population.

Further, the Union argues that its last offer of settlement calls for a smaller patrol division than those of comparable communities. Finally, the Union states that Section 9 of the Act directs the panel to look at two comparisons of the conditions of employment of employees involved in the arbitration proceeding and conditions of employment of other employees performing similar services. It maintains that the Act does not require that comparable working conditions be set forth in the collective bargaining agreement.



#### DISCUSSION AND FINDING OF FACT:

Generally, the panel would spend a great deal of time analyzing the communities that have been submitted as comparables by both of the parties. However, in this case, it is really not necessary. All of the communities introduced by the Union, with the exception of Wyandotte, were also introduced by the City. Thus, the parties are at least in agreement on the list of comparable communities offered by the Union. As to those which the City has introduced, but which were not contained in the Union's list, the nature of the issue in question does not make it mandatory that the panel explore the elements of comparability.

The evidence introduced by the City clearly establishes that the manpower language contained in the prior collective bargaining agreement is of such a nature that it is not contained in any of the comparable communities submitted by either party, with the exception of the Oak Park agreement. The evidence establishes that the manpower language is unique and probably was so at the time of its adoption. If this opinion were based only upon that which existed in comparable communities, there would be no question that the City's last offer of settlement should be adopted.

The City argues that the manpower provision interferes with management prerogatives and is a flagrant abuse of managerial rights. Mr. Kuhn testified:

"It is becoming more and more difficult to balance our budget each year. It has become necessary this year to reduce, by attrition, our fire department by two men. The type of fire service we provide should be determined by management, and management has to answer to the public, but the public may demand we replace these two fire fighters and suffer a loss in other services and because of it then it is the public to whom we answer.

"The same goes for the police department. The level of service we provide should be, and must be determined by management. There are many sensitive management areas, but this, in my opinion has to be the most sensitive."

The testimony as stated above seems to indicate that the City demands the removal of manpower language because it needs the flexibility that would be afforded if such language did not exist. Nevertheless, aside from the obvious impact that may be incurred because of the existence of the language, there is nothing in this record which specifically addresses the problems allegedly created by the manpower language.

Apparently, the City's position boils down to a situation where the non-existence of minimum manpower language in the comparable communities and upon the general proposition that the language interferes with management prerogatives and displaces judgments which the City maintains it should make.

The Union argues, and the evidence establishes, that the minimum manpower language was voluntarily agreed to by the City and incorporated into the collective bargaining agreement quite sometime ago. It goes on to state that the language has caused no harm or injury to the City and that in fact the City claims none. The evidence establishes that aside from the City's argument regarding displacement of management prerogatives and the difficulties that it is encountering in the area of budgeting, there actually hasn't been any harm created by the minimum manpower language. If there has, and specific monetary problems have arisen, the City certainly hasn't attempted to use the safety valve language contained in the minimum manpower language, nor has it presented proofs showing that the financial condition which exists mandates a modification of the language.

The Union argues that the City's proposal was rejected because the P.O.A. feels that the department is currently understaffed. The only evidence that is directly related to this assertion is the exhibits containing information regarding the ratio of population to non-supervisory patrol division. The evidence establishes that the average ratio which exists in the comparable communities is one patrol officer to 1,183 citizens. Currently, the manpower provision in East Detroit provides for one patrol officer for every 1,413 citizens. The widest ratio exists in Warren where there is one patrol officer for every 1,599 citizens, while the closest ratio exists in Highland Park where there is one officer to every 572 citizens. As a practical matter, the information does not establish that the department is currently understaffed. Further, if the evidence regarding population to index crime ratio is examined, it shows that the City of East Detroit has a crime ratio of 1:17 while the average in the comparable communities is 1:15. By this yardstick, the City of East Detroit has less crime per citizen than the average for all the comparable communities. Again, keeping in mind that there are probably many, many variables involved, the evidence does not establish that the East Detroit Police Department is understaffed.

The Union also states that it is concerned about the integrity of its bargaining unit. The panel is willing to assume that most bargaining units would be concerned about maintaining their integrity. The evidence establishes that the City is not seeking to destroy or injure the bargaining unit. In fact, if the City's last offer of settlement were adopted, present P.O.A. members would be immuned from layoffs and the bargaining unit could only be lessened by attrition. The record indicates that

there are pending retirements.

The Union further states that it believes that an adequate patrol division is essential for the welfare of the public. The panel cannot argue with the Union's contention. It too believes that an adequate patrol division is necessary for the public welfare. Nevertheless, the evidence introduced by the Union does not indicate that the patrol division is currently inadequate. Further, it is impossible to conclude that the adoption of the City's last offer of settlement would endanger the public welfare. It must also be kept in mind that the elected officials of the City of East Detroit have the duty to foster and preserve public welfare. They are directly accountable to the citizens of the community and if they do not live up to their duties, they should be removed from office. Thus, it would be difficult to assume that the City does not have an adequate understanding of the need for public welfare, or for that matter, the motivation necessary to provide same.

Looking to the last offers of settlement, the City proposes to eliminate all minimum manpower language in the collective bargaining agreement. However, the City is willing to agree that language be inserted in the agreement which would state that the City agrees not to lay off any present members of the P.O.A. The language would allow the City to reduce the number of positions in the P.O.A. through normal attrition. Thus, at least as far as present P.O.A. members are concerned, they would enjoy almost absolute job security. It must be kept in mind that the prior contract language allowed the P.O.A. members to be laid off if such layoffs were warranted by financial conditions. Thus, adoption of the City's last offer of settlement would eliminate the safety value language which existed previously. This leads the panel to believe that perhaps the financial difficulties

asserted by the City are not quite as critical as they appear or perhaps the attrition rate is high enough to allow a lessening of the financial tension.

The Union's last offer of settlement requires the City to maintain one budgeted position of patrolman assigned to the patrol division for each 1,400 persons in the general population of the City. The offer goes on to state that the number of positions shall not be reduced unless financial reasons justify such a reduction or the elimination of such position, which would require proof. The language also states that vacancies will be filled as soon as possible. The offer, if accepted, would require the City, using current population figures, to maintain at least 30 or 31 patrol officers in the patrol division. This is almost identical to what exists today. Further, the financial safety valve language is still contained in the provision. The Union has stated that its offer would allow the City to lay off at least 10 P.O.A. members if it so chose. However, perhaps the Union's argument is a little unrealistic in light of the testimony which shows that the other divisions support the patrol division. It would be unrealistic to assume that the City would lay off P.O.A. personnel in divisions other than the patrol division even if it were allowed to do so.

The issue, the evidence, and the arguments presented in this case place before this panel a rather unusual problem. The Union is seeking to protect the integrity of the bargaining unit. The language that it proposes would allow a decrease in the bargaining unit if the population of the City declined or if financial difficulties became acute. Yet, the offer proposed by the City provides perhaps absolute job security for present P.O.A. members, with the City having the right to reduce the size of the P.O.A. only through the normal attrition and only if it chose not

to replace those officers who retired.

The panel is mindful of the proposition that language such as that which existed in the prior collective bargaining agreement should only be modified if the moving party can show substantial and clear evidence to warrant such a modification. In this case, both parties are seeking a modification of prior language. Another item that must be considered is that generally unique language which does not exist in comparable communities comes about because of special concessions and circumstances which exist in the subject community. Such special circumstances and concessions do not appear in this record.

It should be kept in mind that both parties are seeking a change in the status quo and that the issue has been labelled economic. While in certain cases the chairman has refused to rule on an economic issue and has continued the status quo where the evidence and the positions of the parties were totally unacceptable, in this case, the evidence does indicate that a ruling must be made. If the status quo were sought to be maintained, the panel may very well have done so. However, in this case, the panel must choose one or the other last offer of settlement.

When faced with the evidence as stated above, the panel is forced to adopt the City's last offer of settlement. First, in regards to integrity of the bargaining unit, the City's last offer of settlement guarantees that the City will not lay off any present members of the P.O.A. This type of guarantee is exceedingly rare and presents the present P.O.A. members with almost absolute job security. It is true that the City will have the right not to replace officers lost through normal attrition, but this right only means that the City may choose not to replace those officers. While presenting P.O.A. members with a very

important benefit, the language also allows a limited amount of flexibility. In fact, to some degree the language allows less flexibility than that which would be forthcoming if the Union's last offer of settlement were adopted.

The panel is well aware of the safety factor involved in having an adequately manned police department. But the evidence does not allow the panel to conclude that at this point in time the department is understaffed, or to establish the level of staffing that is necessary to adequately provide for the safety of the officers on duty. The evidence shows that when staffing is expressed by a ratio of population to officers, the national range is almost meaningless. By the same token, the evidence introduced regarding the comparable communities does not clearly establish the minimum manning level which is necessary to insure an officer's safety.

It must also be understood that the Union's last offer of settlement changes the complexion of the minimum manpower language. The previous language had a minimum manpower requirement as it relates to P.O.A. members. The language stated that there must be 40 budgeted positions. The Union's last offer of settlement now states that there must be a specific ratio of citizens to police officers in the patrol division. It would be unrealistic to assume that the City would lay off personnel in support units if it were given that opportunity. Thus, the Union's last offer of settlement not only seeks to establish a minimum manpower for P.O.A. members, but it also seeks to establish the minimum number of individuals that must be employed in a specific police division. The comparable communities do not have minimum manpower language let alone language which compels the employer to employ a certain number of individuals in a

certain division.

Further, while the Union has contended that the prior collective bargaining language has not injured the City, the language proposed by the Union presents, on its face, a greater restraint. Where the comparable evidence is so overwhelming and where specific concessions or circumstances are not shown, the constraining nature of the language must be considered even if actual injury has not been shown. Unless special circumstances or concessions are shown, the City of East Detroit should not be burdened with language which demands a certain number of employees be employed in the patrol division, when that language does not burden any other comparable community.

In the final analysis, when faced with the choice of adopting one or the other modifying proposal, as opposed to remaining with the status quo, the panel is of the opinion that the evidence supports the City's last offer of settlement.

AWARD

The panel orders that the City's last offer of settlement be adopted.

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CHAIRMAN

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UNION DELEGATE

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CITY DELEGATE