

285

10/18/90
msu
p.p.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

COMPULSORY ARBITRATION PURSUANT
TO PUBLIC ACT 312, 1969 AS AMENDED

IN THE MATTER OF THE ARBITRATION
ARISING PURSUANT TO ACT 312,
PUBLIC ACTS OF 1969 AS AMENDED
BETWEEN:

GREEN OAK TOWNSHIP (Employer)

MERC CASE #L88 H-677

-and-

POLICE OFFICERS ASSOCIATION OF
MICHIGAN (Union)

FINDINGS OF FACT, OPINION AND ORDER

APPEARANCES:

ARBITRATION PANEL:

Mario Chiesa, Impartial Chairman
Bonnie G. Toskey, Employer Delegate
Richard Ringer, Union Delegate

FOR THE UNION:

William Birdseye
Police Officers Assn. of Michigan
Suite 103
28815 West Eight Mile Road
Livonia, Michigan 48152

FOR THE EMPLOYER:

Cohl, Salstrom, Stoker &
Aseltyne, P.C.
By: Bonnie G. Toskey
515 North Capitol Avenue
Lansing, Michigan 48933

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

INTRODUCTION

As indicated above, this proceeding is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. The petition was filed by the Employer and is dated January 23, 1989. I was appointed chairman, via a correspondence from MERC dated January 31, 1989. A pre-arbitration conference was conducted on April 20, 1989. The hearing commenced on October 26, 1989 and continued on October 27, March 2, 1990 and concluded on May 21, 1990.

The last offers of settlement were submitted to the panel and subsequently exchanged between the parties on June 11, 1990. Briefs were forwarded to the chairman and shortly thereafter on July 17, 1990 they were exchanged between the parties.

The panel conducted an extensive executive session on July 31, 1990. These findings of fact, opinion and order follow as soon thereafter as possible.

It should be noted that the parties waived all regulatory and statutory time limits. Nevertheless, this matter proceeded to hearing and was concluded as soon as possible under the prevailing circumstances.

STATUTORY SUMMARY

Act 312 is an extensive piece of legislation outlining both procedural and substantive aspects of interest compulsory arbitration. Without getting into every provision, but certainly ignoring none, there are aspects of the statute which should be highlighted.

For instance, Section 9 outlines a set of factors which the panel shall base its findings, opinions and orders upon. Those factors read as follows:

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet those 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 proceedings.

"(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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

This statute also provides that a majority decision of the panel, if supported by competent, material and substantial evidence on the whole record, will be final and binding. Furthermore, Section 8 provides that the economic issues be identified. Parties are required to submit a "last offer of settlement" which typically is referred to as "last best offers" on each economic issue. As to the economic issues the arbitration panel must adopt the last offer of settlement which, in its opinion, more nearly complies with the applicable factors prescribed in Section 9.

Section 10 of the statute establishes, inter alia, that increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period or periods in dispute.

ISSUES

Even though at the beginning of the hearing the parties intended to litigate several issues, after discussions and further efforts, agreements were reached on all of the issues except one. Thus, the only issue presented for resolution is the economic issue of wages.

It should be noted that the duration of the Collective Bargaining Agreement was established by an understanding of the parties which is memorialized by an agreement appearing on page 5 of Volume I of the transcript. That agreement reflects that the Collective Bargaining Agreement will be in effect from 7/1/88 to 6/30/90. It is a two-year agreement. There was also a subcontracting issue which the parties settled and that understanding begins on page 6 of Volume I of the transcript.

Additionally, there was a pension issue which, in essence, was settled at the hearing, the specifics of the settlement beginning on page 168 of Volume IV of the transcript. I note from the procedure that the parties were going to agree to language settling the issue and if that could not have been done, both would have filed last offers of settlement. Neither party filed a last offer of settlement on the pension issue. I note in the Union's last offer of settlement that it requests that jurisdiction be retained until the proposed language was received and approved by the Union. The last offer of settlement is dated June 8, 1990. I also have a letter directed to Mr. Birdseye and Mr. Ringer from Ms. Toskey dated June 9, 1990 transmitting the proposed language of the pension issue. Since I have heard nothing since that date, I assume the issue was settled.

All prior TAs, settlements of the parties or language in the prior contract which has not been deleted or altered by any agreements, are part of this award.

As a result of the above, the only issue remaining was the wage issue, with both parties agreeing that there was not a separate issue for each contract year. The practical implication was that either the Employer's last offer of settlement would be accepted for both years, or the Union's last offer of settlement would be accepted for both years.

THE RECORD

There was an extensive hearing with each party afforded every opportunity to present all the evidence they thought was necessary. As

a result, testimony was taken from several witnesses with the final transcript exceeding 670 pages. There were almost 50 marked exhibits, but when considering the compilation of data in each exhibit, there were literally hundreds of pages of data and information to be reviewed. Both parties filed written last offers of settlement and both filed post-hearing briefs. The parties' respective last offers of settlement are attached hereto. The Union's is identified as Exhibit A, while the Employer's is identified as Exhibit B.

All of the factors contained in Section 9 of the Act, along with all of the evidence related to each, was carefully considered and applied. Of course, every factor and each bit of evidence has not been mentioned in the analysis of the issue. However, that doesn't mean anything was ignored. That's not the case at all, and all the evidence and factors were evaluated and the order is based strictly thereon.

COMPARABLES

In Act 312 compulsory arbitrations parties typically, and this case was no exception, spend a substantial amount of time presenting evidence and making arguments regarding paragraph (d) of Section 9 of the statute. That portion of the statute involves comparison of the wages, hours and conditions of employment of employees involved in the arbitration with the same factors of other employees performing similar services and with employees generally in both public employment in comparable communities, and in private employment in comparable communities.

The statute doesn't specifically outline how such comparable communities shall be determined. While parties historically argue about the comparability of communities, they usually agree on a few of them. In this case the only community which hasn't been the subject of argument is Hamburg Township. In addition, the Employer has offered Clay Township, Bridgeport Township and Davison Township. The Union has offered Brighton, Howell, Huron-Clinton-Metropolitan Authority, Livingston County Deputies, and Michigan State Police, classification Trooper II. The parties have used different means to arrive at their suggested comparables.

Historically some parties have utilized data related to geographical locations, size, population, SEV, per capita income, department size, and many other varied factors. In general this is the analysis utilized by the Employer.

A detailed analysis of the Employer's methodology is outlined in Employer 16 and while I will not relate every facet contained in the approximate 50-page exhibit, the major criteria should be examined. The Employer started with population and selected every township in Michigan which were within 35 percent of the population of Green Oak. This produced a list of 69 townships. At that point the Employer shortened the list to include only those townships with both police departments and populations within 35 percent of Green Oak. That left 28 townships. At that point only those townships with a state equalized valuation of plus or minus 35 percent survived and the list was pared down to 13.

At that point the 13 townships were subjected to what the Employer characterized as a "secondary profile" of four additional criteria. Those criteria were per capita income, geographical area, police department size, and geographical proximity. The standard for per capita income, land area and department size was plus or minus 15 percent of Green Oak. Geographic proximity was determined by presence within the southwest quadrant of the lower peninsula. While not all of the Employer's comparables met the last four standards, all of them met proximity per capita income. Davison failed in land area and Bridgeport and Clay failed in department size. Yet, the Employer's overall consideration, including other realizations, left it with the four mentioned comparables, i.e., Bridgeport, Charter, Clay, Davison and Hamburg.

The Union's approach was somewhat different in that it relied upon the concept of local labor market to define the communities which should be considered comparable to Green Oak for the purpose of this hearing. It relies heavily upon the definitions and concepts contained in portions of the book entitled, "Where the Jobs Are," by William L. McKee and Richard C. Froeschele, published by the W. E. Upjohn Institute for Employment Research in 1985. In general terms the local labor market is a geographical area in which individuals sell their labor in return for money. In this dispute the Union is suggesting that all of the communities or jurisdictions within Livingston County which provide 24 hour law enforcement services are considered the local labor market.

After applying its standards the Union suggests that Brighton, Hamburg Township, Howell, Huron-Clinton-Metropolitan Authority, Livingston County Deputies and Michigan State Police Troopers II should be considered comparable for the purposes of this hearing.

Before any further analysis it would be appropriate to recognize at least some of the characteristics of Green Oak Township. First, the taxing power of Green Oak is potentially much different than dissimilar political subdivisions. For instance, home rule cities, villages and charter townships have much broader discretion on local property tax levies. Per the Employer's data, the 1986 population of Green Oak was 11,080. Its 1989 total SEV was \$182,503,721. Its 1985 per capita income was \$11,174 and its land area was 36 square miles. As of the date of the data there were nine full-time officers. However, as far as I can tell from the documents, prior to the end of 1989 there were seven members in the bargaining unit with the latest information indicating that only five remain.

The relationship of the communities offered by the Employer to Green Oak have previously been discussed and the elements of comparability and the parameters for comparison have been analyzed. The statute does not establish the standards which should be utilized in determining whether a community is comparable to the one involved in the arbitration. The historical factors considered in establishing comparability do not by their nature allow a surgically precise comparison or analysis. One community may be comparable to the community involved in a litigation in certain aspects, and yet in others may not be comparable or perhaps not as comparable. Usually there is a substantial amount of balancing involved in determining which community

should be considered comparable. Nevertheless, after carefully considering the record, it is found that for the purposes of this arbitration the communities offered by the Employer will be considered comparable to Green Oak.

In essence, the Union's position suggests that any entity within Livingston which provides 24 hour police service should be considered comparable to Green Oak because in addition all of them would be in the local labor market. Surely we should recognize that the Union's approach deviates somewhat from the historical elements utilized to establish comparability. It also leaves out a number of considerations, such as the very limited taxing ability of Green Oak Township. I recognize the Union's assertion that in more and more arbitrations the concept of local labor market is being accepted and, frankly, there are certain appealing aspects of the analysis. However, given the obvious differences and the striking dissimilarity of other factors, including the ability to acquire revenue, it is difficult for me to conclude that Brighton, Howell, Huron-Clinton-Metropolitan Authority, Livingston County Deputies, and the Michigan State Police, should be considered strictly comparable with Green Oak Township for the purposes of this arbitration.

For instance, examining a portion of the information supplied by the Employer regarding the Michigan State Police, I note that there is almost 2,300 full-time law enforcement employees. That's a far cry from the less than 10 employed in Green Oak Township. In 1987 the law enforcement budget for the Michigan State Police was \$192,000,000 as opposed to the \$343,488 in Green Oak Township. In 1988 the

Michigan State Police had a budget of \$195,000,000 as opposed to Green Oak's budget of \$349,926. Also, it is obvious that the Michigan State Police are a state-wide law enforcement organization funded by appropriations from the Michigan legislature.

Examining the information regarding the City of Howell, I note that its population is about 4,000 less than Green Oak Township, which of course is a big deviation. Its total SEV in 1989 was substantially less than Green Oak Township. Per capita income was essentially the same as Green Oak Township. However, there are some real differences between the two communities. Howell has 14 full-time law enforcement officers, has a very high population density compared to Green Oak Township, and had a 1987 law enforcement budget which was approximately twice the size of Green Oak Township's. This is out of a total budget which was approximately six times larger than Green Oak's. There isn't a great change in the data for 1988. Furthermore, the tax rate in Howell is \$17.82 per thousand of total SEV, as opposed to Green Oak's \$1.73 per thousand. The total taxes levied in Green Oak was just a little more than \$273,000, while in Howell the figure was a little better than \$1,700,000. These are 1988 figures.

If we look at the data regarding Brighton, we find much the same situation. While Brighton's population is slightly less than half of the population in Green Oak Township, its department is approximately the same. However, population density is about five times that of Green Oak Township. In 1987 its law enforcement budget was about double of Green Oak Township and its total expenditures were about two and a half times the expenditures in Green Oak Township. The

data is essentially the same for 1988. Brighton's tax rate per thousand dollars of total SEV is \$16.75, as opposed to Green Oak's \$1.73 and the total levy is a little more than \$1,500,000, as opposed to Green Oak's a little more than \$270,000. Again, these are 1988 figures.

Livingston County has 71 deputies, a law enforcement budget in 1987 which approaches \$2,900,000 out of a budget of just little more than \$13,100,000 and levies a total amount of tax of almost \$9,000,000 in 1988.

Similar differences exist, even though perhaps in other areas, between Huron-Clinton-Metropolitan Authority and Green Oak Township.

Given this data it is impossible for me to conclude that the communities offered by the Union, with the exception of Hamburg Township, are comparable to Green Oak Township for the purposes of this arbitration.

However, that doesn't mean that the Union's data will or can be ignored. The data it supplies outlines the wage rates for similar, although perhaps not identical services, offered by employers within Livingston County who provide 24-hour police service. Now of course that data is helpful and even though there may be striking differences between the entities, such as the ability to tax, etc., the similarity of the services makes it impossible to ignore the Union's evidence. It must be and has been considered.

WAGES

As previously stated this issue is economic and the parties' last offers of settlement have been attached as Exhibits A and B. In essence, the issue deals with the language and figures at Article IV, paragraph 4.1. The provision and the wage rate as appearing in the prior contract display the following:

ARTICLE IV - REMUNERATION

"4.1: Annual base rates of pay applicable to members of the bargaining unit who are employed as of May 21, 1986, shall be as follows:

"Sergeant Salary. The sergeant position shall be paid at \$1,000.00 per year above the top patrol pay.

<u>7/1/85</u>	<u>7/1/86</u>	<u>7/1/87</u>
23,405	24,189	24,769

<u>"Patrolperson</u>	<u>7/1/85</u>	<u>7/1/86</u>	<u>7/1/87</u>
Start	15,152	15,607	15,919
After 1 year	18,030	18,571	18,942
After 2 years	19,759	20,352	20,759
After 3 years	22,405	23,189	23,769

"The Chief of Police may start a newly hired police officer with two (2) or more years police experience at a salary level up to the first year rate.

<u>"Dispatchers</u>	<u>7/1/85</u>	<u>7/1/86</u>	<u>7/1/87</u>
Start	8,291	9,866	10,850
After 1 year	9,866	10,850	11,500
After 2 years	10,853	11,500	12,500
After 3 years	12,877	13,328	14,000"

In examining the Union's last offer of settlement it is apparent that not only is the Union seeking a wage increase of 15 percent

in the first year and 5 percent in the second, but there has also been other changes. For instance, the prior contract characterized sergeants' salaries as being \$1,000 per year above the top patrol pay. The Union's offer does not follow that pattern, but instead applies the percentage increases, i.e., 15 percent and 5 percent, to the prior sergeants' rate. This of course has the effect of eliminating the \$1,000 per year differential. Also, it is clear from the offer that the wage rates are to be retroactive to July 1, 1988 for all employees on the payroll as of the date of award.

The Employer's last offer of settlement provides for a 5 percent increase in each of the two years of the Collective Bargaining Agreement. It maintains the \$1,000 per year differential between sergeant and the top paid patrol officer. It is fully retroactive and the increases are applicable to members of the unit who are employed as of May 21, 1990.

In the discussions I will almost always utilize the salary for top paid patrol officer. It makes the comparisons and analyses a little easier to follow and while perhaps not universal, is certainly a customary way of dealing with the figures.

If we look at the data regarding the comparable communities offered by the Employer, it becomes apparent that when judged only by this standard, the Employer's last offer of settlement is much more acceptable. For instance, if we begin on 7/1/87, it is noted that the average salary of the Employer's comparables was \$24,497.00. At that time Green Oak was paying \$23,769.00, which of course was the rate for the last year of the prior contract. That rate is approximately \$800.00 less than the average. The Employer's last offer of settlement for the

period beginning 7/1/88 is \$24,957.00. The average salary for the group is about \$25,732.00. However, the Union's last offer of settlement would provide a rate at 7/1/88 of \$27,334.00. The difference is obvious. The Union's rate is much higher than the average for the group. Even though the rank may not change (both the Union's and the Employer's offer will rank Green Oak third in the first year of the contract), the dollar difference is substantial. Moving on to the second year of the contract, beginning 7/1/89, the Employer's last offer of settlement is \$26,205.00, compared to the average of about \$26,692.00 for its comparable communities. The Union's rate is \$28,701.00 which not only increases Green Oak's rank in the comparable communities by one step, but is \$2,000.00 above the average.

If we compare the last offers of settlement to the date offered by the Union, specifically that contained in Union Exhibit 5, it is noted, as I would expect, that the communities offered by the Union, with the exception of Hamburg, pay rates which are substantially more than Green Oak Township. So while the Union's last offer of settlement is much more in keeping with the averages existing for the various years, the group utilized by the Union, because of various factors, had much higher salaries to begin with.

Another aspect which can't be ignored is the total percentage increase of salary for the contract period in question. Of course it must be recognized that contract years may not be the same for all communities. This must be kept in mind in all these analyses. Nevertheless, the Union's last offer of settlement provides for a 20.7 percent

increase in salary over the two years in question. The Employer provides for a 10.2 percent increase in salary. Examining the information on Employer Exhibit 23, it is apparent that during the same period of time Bridgeport officers receive 7.1 percent; Clay 9.5 percent; Davison 9.2 percent; and Hamburg 10.2 percent. If we take a look at the Union's data, i.e., Union Exhibit 5, Brighton officers receive only 4.5 percent increase, although they did receive a signing bonus; Howell 10.2 percent; Huron-Clinton-Metropolitan Authority 6.1 percent; Livingston County Deputies 10.2 percent.

It is obvious that when compared on this basis the Employer's last offer of settlement is more acceptable.

Looking at the interest and welfare of the public and the financial ability of the unit of government to meet the costs, the data convinces me that during the period in question the Employer's last offer of settlement is more acceptable. There was a prior millage request of $1\frac{1}{2}$ mills for police capital, equipment and improvement, etc., for a five-year period from 1990 through 1994, which was defeated by the voters. Why it was defeated is unknown, although there was some speculation that since the terminology of the referendum could have been interpreted to allow subcontracting of police services, the voters turned it down.

However, I do note that a recent vote did indeed provide for an increase in millage for police services, but only for contract years subsequent to the term of this contract. The vote obviously establishes that citizens are willing to be taxed and, hence, the township may spend more for police services and I would expect this to be reflected in the next Collective Bargaining Agreement. However, I am not

convinced it would be appropriate to at this time grant the more than 20 percent increase sought by the Union partially on the basis that a recent vote of the citizens would provide additional funds in subsequent years.

There was a tremendous amount of financial data in the record including budgets, budget letters, etc., and all of that information has been carefully analyzed and as I said at the outset of analyzing this factor, I find that the Employer's last offer of settlement is more acceptable when judged by this standard.

If we look at the average consumer prices and specifically the data in Employer Exhibit 20, it establishes that there was a 24.2 percent increase for the period 1983 through 1989 utilizing the U.S. all cities CPI for urban consumers. If the Detroit CPI is used for that period, the percentage increase is 21.6 percent. If the Employer's last offer of settlement were accepted, the wage increases over that period of time will be 29.6 percent. This is very favorable with the CPI as determined by either index. Of course adoption of the Union's last offer of settlement would greatly increase the 29.6 percent figure. As a result, it is apparent that both last offers of settlement exceed the growth in CPI over the period in question with the Union's doing so by a more substantial margin.

The foregoing is just a display of a portion of the evidence as it relates to only a few factors outlined in Section 9 of the Act. There is much more evidence in this record which has been carefully analyzed, and all of the applicable factors as outlined in Section 9 have been applied and carefully considered. After so doing it is clear

that the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9. This decision is clearly supported by competent material and substantial evidence on the whole record.

ORDER

The Employer's last offer of settlement is adopted.

Mario Chiesa 10-24-90
MARIO CHIESA
Chairman

Oct 23, 1990 Bonnie G. Toskey
BONNIE G. TOSKEY
Employer Delegate

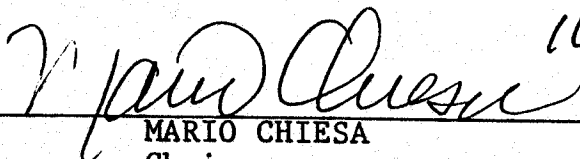
RICHARD RINGER
Union Delegate

Dated: 10-24-90

that the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9. This decision is clearly supported by competent material and substantial evidence on the whole record.

ORDER

The Employer's last offer of settlement is adopted.

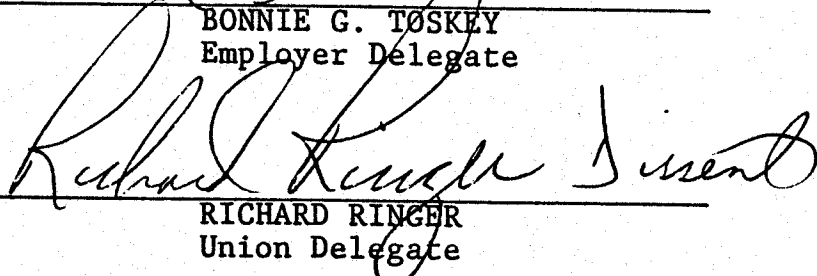


MARIO CHIESA
Chairman

10-24-90

(S)

BONNIE G. TOSKEY
Employer Delegate



RICHARD RINGER
Union Delegate

Dated: 10-18-90

A

PROPOSED:

ARTICLE IV
RENUMERATION

4.1: Annual base rates of pay applicable to members of the bargaining unit shall be as follows:

<u>Sergeant</u>	<u>7/1/88</u>	<u>7/1/89</u>
	28,484	29,909

<u>Patrolperson</u>	<u>7/1/88</u>	<u>7/1/89</u>
Start 18,307	19,222	
After 1 Year	21,783	22,872
After 2 Years	23,873	25,066
After 3 Years	27,334	28,701

The Chief of Police may start a newly hired police officer with two (2) or more years police experience at a salary level up to the first year rate.

<u>Dispatchers</u>	<u>7/1/88</u>	<u>7/1/89</u>
Start	12,478	13,101
After 1 Year	13,225	13,886
After 2 Years	14,375	15,094
After 3 Years	16,100	16,905

[Wages at 7/1/88 reflect an increase of 15.0% across-the-board]

[Wages at 7/1/89 reflect an increase of .% across-the-board]

Wages to be retroactive to July 1, 1988 for all employees on the payroll as of the date of award.

B

COHL, SALSTROM, STOKER & ASELTINE, P.C.

ATTORNEYS AND COUNSELORS

601 NORTH CAPITOL

LANSING, MICHIGAN 48933

PETER A. COHL

LARRY A. SALSTROM

DAVID G. STOKER

PATRICK A. ASELTINE

ROBERT D. TOWNSEND

BONNIE G. TOSKEY

DAVID M. FOY

(517) 372-9000
FAX (517) 372-1026

June 8, 1990

Mario Chiesa, Esq.
428 North Gulley Road
Dearborn, Michigan 48128

RE: Green Oak Township Police Department and POAM Act 312
Case No. L88 H-667: EMPLOYER'S LAST, BEST OFFER

Dear Mr. Chiesa:

The Employer's last, best offer on the one remaining economic issue before the panel, which is wages, is a five percent (5%) increase on the base wage for each year of the contract. The effect of this proposal on the contract language is set forth as follows:

ARTICLE IV
REMUNERATION

4.1: Annual base rates of pay applicable to members of the bargaining unit who are employed as of May 21, 1990, shall be as follows:

Sergeant Salary. The sergeant position shall be paid at \$1,000.00 per year above the top patrol pay.

	\$	<u>7-1-88</u> 25,957	\$	<u>7-1-89</u> 27,205
<u>Patrolperson</u>				
Start	\$	<u>7-1-88</u> 16,715	\$	<u>7-1-89</u> 17,551
After 1 year		19,889		20,884
After 2 years		21,797		22,887
After 3 years		24,957		26,205

The Chief of Police may start a newly hired police officer with two (2) or more years police experience at a salary level up to the first year rate.

<u>Dispatchers</u>				
Start	\$	<u>7-1-88</u> 11,393	\$	<u>7-1-89</u> 11,963
After 1 year		12,075		12,679
After 2 years		13,125		13,782
After 3 years		14,700		15,435

Very truly yours,

COHL, SALSTROM, STOKER & ASELTINE, P.C.

Bonnie G. Toskey
Bonnie G. Toskey