

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

CITY OF GROSSE POINTE WOODS

and

GROSSE POINTE WOODS POLICE  
OFFICERS ASSOCIATION

2/18/74

Before a Tripartite Panel:

Richard I. Bloch, Esq., Chairman  
Leonard R. Page, Esq., Association Panel Member  
Frederick G. Hornfisher, City Panel Member

Appearances:

For the Association

Michael C. Kovalski, Esq.

For the City

Chester E. Petersen, City Administrator  
George C. Catlin, Esq.

Hearings Held: December 21, 1973,  
January 14, 16, 1974

OPINION

Facts

The Grosse Pointe Woods Police Officers Association represents approximately 35 employees in the Public Safety Department. The Public Safety Department, established in 1944, performs functions of both police and firefighters. Grosse Pointe Woods is a basically residential community of about 22,000.

LABOR AND INDUSTRIAL  
RELATIONS LIBRARY  
Michigan State University

AUG 3 1976

2/18/74  
ARB

Grosse Pointe Woods, City of

Efforts to resolve a continuing dispute concerning the new contract to be effective July 1, 1973, having been unavailing, the matter was submitted to mediation and thereafter to arbitration. The Panel finds that the statutory prerequisites to arbitration have been met, and the hearings having been held, this opinion is issued.

According to the requisites of Public Act 312 (M.S.A. 17.455) the economic positions of the parties are submitted as an "either-or" proposition.<sup>1</sup> In this case, the Association has submitted its entire economic proposal in package form. That is, the Panel is requested to consider each economic proposal as contingent upon all others and therefore to accept all or none.

#### Position of the Association

The Association proposes a two-year contract. The base salary as of July 1, 1973 to continue through December 31, 1973, would be \$13,500. Additionally, the Association proposes a public safety premium of 8%. With the exception of a uniform cleaning allowance of \$100.00 and a \$2.00 deductible prescription rider in addition to existing health benefits, all other economic

---

1

Section 8 states that:

At or before the conclusion of the hearing. . . ., the arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue . . . .As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9.

fringe benefits would remain the same. Accordingly, there would be no change in the methods of computing shift differential, cost of living bonus, holiday pay, pension contribution, uniform allowance, health care insurance and life insurance.<sup>2</sup> Moreover, holidays would remain the same, as would vacation and sick days.

As of January 1, 1974, the Association proposes a base salary of \$14,000, with the 8% public safety premium in addition to this.

As of July 1, 1974 and continuing until June 30, 1975, the base salary, according to the Association's proposal, would go to \$14,500 with the public safety premium of 8%. The Association proposes implementation of a dental plan at that time, as well.

The Association also suggests a change in the technical longevity provisions of the contract. Presently, the agreement provides that, at five years of service, a patrolman receives \$100.00 "technical longevity" which is paid as part of his base salary. Additionally, in December of that year he receives an additional \$100.00. At ten years, the officer receives \$500.00, \$250.00 of which is in the base pay and \$250.00 to be paid in December. Similarly, the employee receives \$700.00 at fifteen years and \$800.00 at twenty years. The Association proposes that

---

2

Some dollar figures, such as for cost of living bonus, pension contribution, and various insurances might change, of course, due to a built-in change in the base.

the full payment be made in a lump sum at Christmas rather than dividing payments between base salary and the bonus.

Position of the City

The City proposes simply that the total payment of any new economic cost -- salary and fringe benefit cost -- for the fiscal year 1973-74 shall not exceed 7% in "new monies." For the fiscal year 1974-75, the new monies shall not exceed 6.5%. Included in the City's offer is its stated willingness to implement the dental plan during the second year, raising the shift differential to \$200.00, the holiday pay to \$709.00, the uniform allowance to \$225.00, as well as assuming increased costs in the various insurances. This, according to City Exhibit 7, results in a base of \$14,272 (exclusive of cost of living bonus) for the first year of the agreement and \$15,015 during the second year.

Inclusion of Corporals in the Bargaining Unit

An initial question exists concerning whether Corporals should be included in the scope of this award. The Association maintains the Corporals are part of their bargaining unit and that the award is, therefore, applicable. The City, for its part, recognizes the Association as representing the Corporals, but has not bargained with them over their contract demands. The City has indicated its willingness to negotiate at the conclusion of these hearings, however.

The most recent agreement between Association and City recognized the Association as the "sole and exclusive collective

bargaining agency for all Public Safety Officers . . . below the rank of Corporal of the Public Safety Department and excluding all civilian personnel in the matter of wages, hours of work, and other conditions of employment." The parties entered contract negotiations on the new agreement on January 31, 1973. The then-existing contract was to expire June 30, 1973. Following inability to resolve their differences over new contract terms, meetings were held with a State Labor Mediator on June 3 and June 12, 1973. It is undisputed that no negotiation was had at these times concerning Corporals. Mediation failed to produce a settlement and further bargaining sessions commenced as of July 10, 1973. Here, too, the demands of the Corporals were not made subjects of bargaining. A letter of July 5, 1973 by the Association's representative, Mr. Kovaleski, requested binding arbitration. The Panel Chairman was appointed on October 5, 1973.

On November 26, 1973, the Association indicated, in a letter to the City, that it was representing the rank of Corporal in the Grosse Pointe Woods Department of Public Safety. A letter received the same day from Corporals Kensora, Kerving and Setchell appointed the Association as their collective bargaining agent. However, no demands were negotiated. Arbitration was commenced December 21, 1973. At no time prior to commencement of the hearings, then, were the demands of the Corporals subjected to the collective bargaining procedures, either through negotiation or mediation. The Corporals' demands were presented during the arbitration hearings and the Panel indicated at that time it would accept them into

evidence but reserve judgment on the propriety of rendering an award relevant to that group.

When public sector disputes arise, they may be submitted, failing resolution by negotiation, to mediation.<sup>3</sup> Further, Public Act 312 (M.S.A. 17.455(33)) provides:

Whenever in the court of mediation of a public police or fire department employees' dispute, the dispute has not been resolved to the agreement of both parties within thirty days of the submission of the dispute to mediation and fact-finding, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the Labor Mediation Board.

The legal requirements of channelling the various disputed issues through negotiation and mediation reflect the reasonable goal of attempting to settle these disputes early. To allow initial presentation of demands at the arbitration hearing would defeat these purposes. Accordingly, the Panel finds that the offer presented on behalf of the Corporals is not properly before the Panel. This award, then, shall be applicable only to the Public Safety Officers below the rank of Corporal and excluding all civilian personnel.

#### Non-Economic Issues

Certain matters concerning non-economic issues raised by

---

3

Public Act 1947, no. 336, as amended by Public Act 1965, no. 379 (M.S.A. 17.455(7)).

the Association are agreed to by the City and, as such, are incorporated as part of this award.

1. Section 1(6), Definitions, shall be changed to read as follows:

Section 1(6). "Management" shall mean the Director of the Public Safety Department, Captains, Lieutenants, Sergeants, and the City Administrator, or his designated representative.

2. Section 2(a), Bargaining Unit, shall be changed to read as follows:

Section 2(a). The City hereby recognizes the Association as the sole and exclusive bargaining agent for all Public Safety Officers (described as "employees" in Section 1(f) of this Agreement) below the rank of Sergeant of the Public Safety Department and excluding all civilian personnel in the matter of wages, hours of work, and other conditions of employment.

3. Section 29, Special Assignments, shall be changed to read as follows:

Section 29. Assignment of employees covered by this Agreement shall be based upon merit, qualifications, education, ability and seniority.

4. Section 81(B), Duration, shall be changed to read as follows:

Section 81(B). Future negotiations -- Members of this bargaining unit shall submit any new salary, fringe benefit and/or agreement amendment proposals to the employer on or before the February 1 preceding the termination date of the current agreement and the employer shall respond to same within thirty (30) days after receipt of any such proposals.

5. (To be incorporated in the appropriate section of the collective bargaining agreement).

It is agreed that an employee's personnel record shall be reviewed after sixty (60) months of satisfactory service and all disciplinary matters appearing therein shall be destroyed; nor shall any prior disciplinary action of more than sixty (60) months duration be adversely used in any subsequent disciplinary action.

6. (To be incorporated in the appropriate section of the collective bargaining agreement).

It is agreed that the employer shall furnish one (1) master and indexed copy of the new agreement containing all amendments thereto for the purpose of the Association utilizing the employer's equipment and material to duplicate sufficient copies of the aforesaid agreement for distribution to its members.

7. (To be incorporated in the appropriate section of the collective bargaining agreement).

It is hereby agreed that members of the Association shall be permitted to donate one or more earned vacation days to another member of the Association of the same rank, who is on medical leave due to extended injury or illness provided, however, that the following situation exists:

A. The member of the Association who is on medical leave has utilized all of his sick leave and personal leave reserve, as well as any earned vacation time.

B. The member of the Association who proposes to donate one or more of his earned vacation days shall sign a release form, as may be mutually agreed upon by both parties, which will guarantee the release of the employer from any obligation to such employee for payment to the individual member so donating any day or days for the benefit of another Association member.

8. Grooming Code

The Association requests deletion of all existing grooming code provisions. The City, for its part, while recognizing the necessity of updating the code, requests certain provisions they deem essential. The Panel has carefully considered the parties' requests and awards as follows: effective immediately, the parties shall establish a revised grooming code which shall incorporate specific standards such as hair and mustache length and sideburn width, for example. The code shall



incorporate the overall concept of good grooming, which shall be interpreted to mean, among other things, neatly trimmed hair, tapered at the rear. Mustaches shall be trimmed so as to effect an overall neat appearance.

The City indicates it finds beards or goatees inappropriate among members of its public safety staff, with the exception of such as are necessitated by special assignments. From a personal standpoint, and but for the Union's acquiescence in this regard, the arbitrator might be tempted to remind the City of the occasional hirsute splendor of such carefully trimmed facial accoutrements. However, as indicated above, the Association has acceded to the City's request in this regard. Doubly rebuffed, the arbitrator adds his assent.

#### 9. Probationary Period

Presently, the probationary period for a new Public Safety Officer is 24 months. This is at least a full year longer than surrounding communities, including those with public safety departments. As such, the Panel grants the Association's request for reduction of the probationary period. However, feeling that six months (as recommended by the Association) is insufficient time to evaluate an individual expected to perform the multiplicity of duties expected of the Public Safety Officer, the probationary period shall be twelve months. This clause shall be effective immediately as to Public Safety Officers hired after the date of this award. As to existing probationary officers, probationary periods shall expire no later than six months from the date of this award.

#### Economic Proposals

In this case, both parties have submitted final offers

which are, in retrospect, reasonable, and which reflect a sincere effort to accommodate respective interests. The City's offer, as set forth in its Exhibit 7, results in an approximate basic wage increase of 4.7% in the first year of the two-year contract and 5.2% in the second year, not including fringes. Additionally, the contract would provide a cost of living adjustment to be computed on an annual basis and paid in January of 1975 and 1976, respectively.<sup>4</sup>

The Association's offer amounts to an average of approximately 8.9% increase in the first year and 5.5% in the second year. As indicated above, these demands may not be seen as unreasonable. However, on the basis of consideration of those factors prescribed by Section 9 of Public Act 312 (M.S.A. 17.455(39)) the majority of the Panel finds the City's offer the more satisfactory. In arriving at its conclusion, the Panel notes specifically the fact that Grosse Pointe Woods presently stands first among surrounding and comparable communities in salaries and fringe benefits paid its Public Safety Officers. These officers receive

4

Some question was raised at the hearing as to the impact of the \$396.00 cost of living adjustment actually paid in January of 1974. The City suggests this is, in fact, "new monies", and should be considered as such in awarding any increases. However, the Panel finds that such payment, although made in 1974, was obligated by virtue of the 1972-73 contract. It is a cost of living adjustment for increases in the Consumer Price Index of a prior period and, for obvious reasons, could not be made during that period. However, as indicated, the January, 1974 payment is simply a satisfaction of that pre-existing obligation and may not be computed as partial satisfaction of the 1973-75 contractual obligations.

generally higher wages than surrounding police departments and deservedly so, for their dual functions as both police and fire-fighters entitle them to compensation reflecting these additional skills. However, even in comparison with comparable communities having public safety departments, such as Fraser and Grosse Pointe Shores, Grosse Pointe Woods ranks first. The package suggested by the City maintains that standing. Considered in its totality, it is a fair offer, with the basic wage and fringe benefits satisfactorily compensating these employees for their dual functions and the cost of living provisions reasonably accommodating the realities of an inflationary economy.<sup>5</sup>

Thus, effective July 1, 1973, the previous distinctions as to public safety premiums and <sup>FIRE</sup> ~~first~~ training bonuses shall be eliminated and a base wage of \$14,272 shall be established. Cost of living adjustments shall be made in accordance with the plan adopted in the 1972-73 agreement. A shift differential of \$200.00 shall be implemented, and, in general, adjustments shall be made to the fringes as proposed by the employer in its Exhibit 7. During the second year of the agreement, the base wage shall be \$15,015 and adjustments shall be made accordingly, again with


5

The Bureau of Labor Statistics reports that the Consumer Price Index rose by a seasonally adjusted .5% in December alone last year, with over one-third of the advance attributable to the energy shortage. Compared with a year earlier, the all-items CPI was up 8.8% in December -- the fastest year-to-year gain in 27 years.

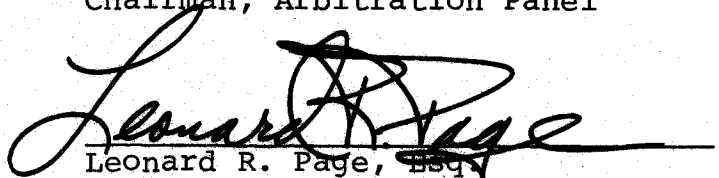
reference to City Exhibit 7. Included during the second year of the agreement shall be the dental plan. It is also stipulated that the adjustment in longevity pay as requested by the Association shall be granted.

AWARD

The award shall be consistent with the findings contained herein.



Richard I. Bloch, Esq.  
Chairman, Arbitration Panel



Leonard R. Page, Esq.  
Association Panel Member  
DISSENTING - SEE ATTACHED OPINION



Frederick G. Hornfisher  
City Panel Member

Date: February 18, 1974

DISSENTING STATEMENT  
BY ASSOCIATION PANEL MEMBER  
LEONARD R. PAGE

I respectfully dissent on the corporal issue and the economic package calculations.

On the corporals, it is important to note that the Association attempted to discuss or negotiate their demands prior to this proceeding. The City, however, took the position that it would not discuss the corporal demands until all other matters had been resolved. Thus it was the City's posture which precluded actual negotiations on the corporal issue. It seems inequitable that the City can preclude an issue from being arbitrated based on its own wrongful refusal to bargain. As was stated in *Dearborn Fire Fighters v. Dearborn*, 42 Mich. App. 51, 54 (1972): "Neither the city nor the union, were the situation reversed, can vitiate the arbitration procedure simply by inaction."

I would therefore grant the Association's demands for the corporals.

On the economic package, my dissent rests solely with the majority's calculations as to just what constitutes the City's last best offer. Both sides stipulated that the panel's only choice was between either's total economic package. The City's last best offer as stated in the hearing was a two-year contract containing an increase in the first year of 7% above total current salary and fringe benefit costs and a 6.5 increase over total salary and fringe benefit costs in the second year.

The question then becomes what is a 7% increase over existing salary and fringe benefit costs. The City's Exhibit No. 7 provides but a starting point. It is woefully inaccurate on this calculation.

To begin with, it omits a cost-of-living benefit of \$396 from the 1972-1973 base. The cost-of-living benefit was earned during this period and thus must be viewed as part of the existing benefit structure which both sides agreed to continue. It cannot possibly be considered "new money" or as part of the 7% increase in evaluating the first and second year increases.

Next, workmen's compensation should not be viewed as a fringe benefit for evaluating the labor package. Workmen's Compensation is a statutory insurance requirement (like Social Security) and thus cannot be a subject for collective bargaining.

Finally, the exhibit fails to account for the fringe benefit dollar costs of a number of major items: tuition refund, personal leaves, funeral leaves, sick leaves, technological and longevity pay and vacations. The total fringe costs are therefore grossly understated. It is obvious that an increase of 7% of the total existing salary and fringe benefit costs would yield figures well above those being awarded herein.

Indeed, I am constrained to point out that the figures being advanced herein admittedly represent an approximate wage increase of only 4.7% and 5.2% respectively. Given the stipulation

of the parties and the constraints of the statute,<sup>1/</sup> I do not believe the panel has the power to so construe or reduce the City's offer. I simply fail to understand how the award of wage increases of only 4.7% and 5.2% in each year can be reconciled with the City's last best offer of 7% and 6.5% respectively.

1/ Section 423,238 of the Act provides in relevant part:

...the arbitration panel shall adopt the last best offer of settlement which in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9.