327

STATE OF MICHIGAN

COMPULSORY ARBITRATION

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

CITY OF HARPER WOODS (Employer)

-and-

POLICE OFFICERS LABOR COUNCIL (Patrol Officer and Detective Unit) (Union)

_____/

MERC Case #D96 H-2052

FINDINGS OF FACT, OPINIONS AND ORDERS

APPEARANCES:

ARBITRATION PANEL:	Mario Chiesa Impartial Chairperson
	James Leidlein Employer Delegate
	Michael P. Somero Union Delegate
FOR THE UNION:	John A. Lyons, P.C. By: Barton J. Vincent 675 E. Big Beaver Road Suite 105 Troy, Michigan 48083
FOR THE EMPLOYER:	Johnson, Rosati, Galica, LaBarge, Aseltyne & Field By: Patrick A. Aseltyne 303 S. Waverly Road Lansing, Michigan 48917

INTRODUCTION

This proceeding is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended.

The petition was initially filed by the Union on September 29, 1997. I was notified via a correspondence dated October 17, 1997 that the parties selected me to serve as the impartial arbitrator and chairperson of the arbitration panel. The parties waived all statutory time and regulatory time limits. They did this both in writing, which was forwarded to MERC, and also memorialized in a pre-arbitration statement, and then verbally again on the record.

A pre-arbitration conference was conducted on December 8, 1997. The hearing commenced and was concluded on June 18, 1998.

The parties exchanged their last offers of settlement through my office on or about July 29 1998. The briefs were exchanged through my office on September 8, 1998. An extensive executive session was conducted on October 1, 1998. These findings of fact, opinions and orders followed as soon as possible.

STATUTORY SUMMARY

Act 312 is an extensive piece of legislation outlining both procedural and substantive aspects of interest compulsory arbitration. Without exploring 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 a 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 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 offer" 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 AND STIPULATIONS

The issues which are resolved by this proceeding are the ones which survive and were addressed by the parties' last offers of settlement. The parties have agreed that the entire award will be comprised of the stipulations contained herein, the resolutions regarding the outstanding issues, and the language of the prior Collective Bargaining Agreement which has not been deleted or altered by any of the foregoing.

One of the issues the parties did resolve was the duration of the contract. They agreed the contract would have a term of three years beginning on January 1, 1997 and, thus, running through December 31, 1999.

The parties were requested to submit last offers of settlement which contain the actual contract language to be inserted into the Collective Bargaining Agreement if the offer was adopted.

There are several outstanding issues which will be resolved by this proceeding. The following are the economic issues: wages, pension multiplier, pension-employees' contribution, part-time

officers, health insurance $10.00 co-pay, vacation accrual, holidays. The only non-economic issue is residency.

The Union has objected to the inclusion of the pension issue relating to the employees' contribution, as well as the issue regarding part-time officers. The specifics will be addressed during the analysis of each issue.

The above is just a general characterization of the issues and it is noted that the parties' final offers of settlement on each issue are attached hereto and made a part hereof.

COMPARABLES

In Act 312 compulsory arbitration parties typically, and this case is no exception, spend a considerable amount of time presenting evidence comparing the circumstances in the department involved in the litigation with the circumstances in so-called comparable communities. The use of comparable data is specifically recognized by Section 9 (d) 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 wages, hours and conditions of employment of 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. When issues arise, parties often rely on elements, such as geographic size, population, SEV, demographics, taxing schemes, etc.

In this case and much to the parties' credit, they have stipulated to a list of comparable communities and thus saved themselves the necessity of litigating the issue of which communities are comparable to Harper Woods for the purposes of this arbitration. Addressing that issue in the record is often a very tedious and expansive effort.

The parties have agreed that for the purposes of this hearing the following communities shall be considered comparable to Harper Woods: Clawson, Eastpointe, Ferndale, Hazel Park and Mt. Clemens.

The bargaining unit in Harper Woods covers all police patrol officers, detectives and dispatchers. According to the petition, there are approximately 30 members in the unit. The prior Collective Bargaining Agreement expired on December 31, 1996. As I indicated above, the Collective Bargaining Agreement resulting from these proceedings will have an effective date of 1/1/97.

WAGES

As indicated, the last offers of settlement have been attached. The analyses are typically done on the basis of the maximum patrol officer's salary, which effective 1/1/96, was $41,928.01.

As indicated in the attached last offers of settlement, the Employer's position calls for an initial lump sum payment which is not rolled into base wage, but is counted towards final average compensation in the amount of $950.00 for the dispatchers and $1,750.00 for all others. Thereafter there will be a 3% wage increase on January 1, 1998 and another 3% on January 1, 1999. My

calculations show that when the 3% is applied to the current wage rate, the figure as of January 1, 1998 would be $43,185.85. As of January 1, 1999 that figure would become $44,481.43.

The Union's last offer of settlement seeks a 3% increase effective 1/1/97, 5% effective 1/1/98, and 4% effective 1/1/99. The actual figures would be $43,185.85 for 1/1/97, $45,345.14 for 1/1/98, and $47,158.95 for 1/1/99.

According to the data supplied by the Union, the average salary in the comparable communities for a top paid patrol officer as of January 1, 1995, was $40,080.00. The rate in Harper Woods was $40,707.00 and Harper Woods ranked second behind Clawson where the rate was $42,657.00. As of January 1, 1996, the average salary in the comparable communities was $41,518.00. In Harper Woods it was $41,928.00, which, again, ranked it second behind Clawson, which was $43,937.00.

It is noted that the use of a lump sum for the first year of the contract is the same procedure used in the 312 award issued between the Employer and the command officers, as well as the 312 award issued between the Employer and the firefighters. The command officers' 312 provided for a lump sum of $2,100.00. The firefighters award provided, inter alia, $1,750.00 lump sum, and then 3% on 1/1/98 and 3% on 1/1/99.

Comparing the Union's last offer of settlement to the average salaries in the comparable communities, we find that as of 1/1/97 the average salary in the comparables is $42,980.00, while the Union's last offer of settlement is $43,186.00, which is $206.00

more than the average. On 1/1/98 the average in the comparable communities is $44,311.00, while the Union's offer is $45,345.00 for a difference of $1,034.00. As of 1/1/99, and keeping in mind that the data diminishes as we extend into the future, the average in the comparable communities is $45,144.00, with the Union's last offer being $47,159.00 which is $2,015.00 more than the average salary.

Looking at the Employer's last offer of settlement, I note that while the base rate does not change on 1/1/97, there is a $1,750.00 lump sum which actually amounts to a higher dollar figure than the percent increase sought by the Union. Nonetheless, if we compare dollars received, the Employer's offer would amount to $43,678.00 which is $698.00 higher than the average. However, it must be kept in mind that the $1,750.00 is not rolled into the base pay, so base salary would remain $41,928.00. As of 1/1/98, the base salary would increase to $43,186.00 which is $1,125.00 under the average. As of 1/1/99 the Employer's offer would provide a salary of $44,481.00, which is about $663.00 under the average.

According to the Employer's data, when base pay increases for police officers are compared to the percentage calculated from the comparable communities, it is noted that the average of the comparable communities for 1997 was 3.1%, 1998 - 2.92%, and 1999 - 2.5%, which compares to the Union's position of 3%, 5% and 4%, or the Employer's which essentially is about 4.2% in actual dollars in 1997, but without a roll-in and then 3% for 1998 and 3% for 1999.

It is clear that the reason for the lump sum in the first year of the Employer's offer without the roll-in to the base was motivated to avoid having to increase the command officers' wage rate since the command officers' wage is based on a certain percentage above the patrol base wage.

When examining the data regarding the total cash compensation received by a 15-year officer in 1996, it is noted that when the elements listed in the exhibit are considered, a Harper Woods officer received $46,769.00 of total cash compensation, compared to the average of the comparable communities of $45,190.00.

After carefully considering the entire record and applying the factors in Section 9, it is the panel's decision that the Employer's last offer of settlement should be adopted. The Employer's last offer of settlement is extremely comparable to what has transpired in both the command and the fire units. Furthermore, the Employer's last offer of settlement does not do violence to any of the comparable community relationships and, in fact, when based on January 1 analysis of the years in question, it is clearly more acceptable than the Union's last offer of settlement. Furthermore, the evidence establishes that when total cash compensation is examined, at least for 1996 which is the year in which the data was available, the Employer's last offer of settlement is much more in keeping with the comparable communities than is the Union's last offer of settlement.

The totality of the record clearly establishes that the Employer's last offer of settlement more nearly complies with the

applicable factors prescribed in Section 9 than does the Union's last offer of settlement.

ORDER

The panel orders the adoption of the Employer's last offer of settlement and orders its implementation.

1-17-99
Mario Chiesa
Neutral Chairperson

Union Delegate

Employer Delegate

PENSION

While it is clear there were two separate issues relating to pension, they are being combined for analysis and resolution. I do note that there was an objection by the Union regarding the issue related to employee contribution. The Union suggests the issue should not be considered because it was not the subject of negotiations. However, the evidence convinces me that the Union's objection cannot be sustained. There is testimony in the record clearly stating that the issue of employee contribution was on the bargaining table and was the subject of collective bargaining between the parties. Furthermore, it apparently was part of a tentative agreement the parties had reached. Thus, as I said, the Union's objection cannot be sustained. The current language in Article 37 - Pensions, appears as follows:

applicable factors prescribed in Section 9 than does the Union's last offer of settlement.

ORDER

The panel orders the adoption of the Employer's last offer of settlement and orders its implementation.

1-17-99
Mario Chiesa
Neutral Chairperson

(Dissenting)
Union Delegate

Employer Delegate

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"SECTION 2.

"The straight life pension provisions heretofore set forth in Section 2-816 (a) and (b) of the Code of Ordinances for the City of Harper Woods shall be replaced with the following provision:

a) Upon a member's retirement, his/her pension payable shall be equal to the number of years and fraction of a year of his/her credited service multiplied by 2.5% of his final average gross pay. Gross pay means all regular and overtime earnings, COLA, longevity, shift premium and accumulated vacation day payments. Gross pay does not include any allowances, bonuses, lump sum payoffs of accumulated sick days off or any other form of compensation under this contract.

Subsection (b) of Section 2-816 is deleted; and Subsection (c) of Section 2-816 shall remain the same.

****

"SECTION 6.

"Effective July 1, 1990, the employee's contribution rate to the retirement system shall be 6.35% of gross wages as defined."

Keeping in mind that both last offers of settlement are attached hereto, I note that the Union's last offer of settlement provides that the multiplier be increased from 2.5% to 2.75% and a cap on maximum benefits of 80%. The Union's offer, as far as the multiplier is concerned, does not draw any distinction between dispatchers and other members of the unit.

The Employer's last offer of settlement also increases the multiplier by 2.75% and imposes an 80% cap, but those changes only apply to members other than dispatchers. The Employer's last offer goes on to increase the multiplier for dispatchers to 2.25% with an

80% cap. The parties stipulated that previously the multiplier was 2% and were was no cap.

In relation to the issues dealing with employee contribution, I note that the current language in Section 6 provides for 6.35% employee contribution. It must be understood that such contribution rate was established prior to the time the dispatchers became part of the unit. Dispatchers' prior contribution rate was 3%.

The Union's last offer of settlement would increase an employee's contribution rate to 7.25%. The Employer's would also increase the contribution rate to 7.25%, except for dispatchers where the rate would be increased to 5%.

In actuality there is very little difference between the parties' positions. Once it was concluded that the Union's objection could not be sustained, it was apparent that the only differences revolved around the treatment of dispatchers.

It should be noted that the evidence establishes, as I have stated above, that dispatchers became part of this bargaining unit subsequent to the execution of the prior contract. The pension benefit currently received by dispatchers was stipulated by the parties to be as follows:

> **"pension:** eligibility at 60 y.o. w/ 10 yrs. srvc; 2% of FAC times the number of years of service, 'gross wages' for FAC defined to include regular and overtime earnings plus COLA and longevity but no other lump sums for accumulated sick or vacation payouts; a 3% employee contribution rate; no cap on the maximum amount of benefits; and FAC 5 of the last 10."

After carefully considering the entire record, the panel is persuaded that each of the pension issues should be resolved by adopting the Employer's last offer of settlement.

First of all, there is no dispute regarding the multiplier increase and the cap on employees other than dispatchers. If the Union's last offer of settlement were adopted, the dispatchers' multiplier would increase from 2% to 2.75%. There is no basis in the record for such a dramatic increase. The Employer's offer increases from 2% to 2.25%. This is much more acceptable.

In dealing with the employee contribution rate, it is clear that there is really no evidence which supports more than doubling the employee contribution rate currently applied to dispatchers. As I indicated, the facts show that dispatchers have a 3% employee contribution rate and adoption of the Union's last offer of settlement would raise that to 7.25%. That's not acceptable. Adoption of the Employer's last offer of settlement would raise it to 5%.

As indicated above, it is clear that the Employer's last offers of settlement should both be adopted.

ORDER

The panel orders the adoption of the Employer's last offer of settlement for each of the pension issues.

Mario Chiesa
Neutral Chairperson

/s/
Union Delegate

Employer Delegate

VACATIONS

The current vacation schedule appears as follows:

"SECTION 2.

"Effective January 1, 1985, seniority as of anniversary date.

"a. Vacation shall be prorated from date of hire to January 1 as follows:

Years of Service	Vacation Days
1 - 5 years	10 days
6 - 9 years	15 days
10 years	18 days
11 - 14 years	20 days
15 years	21 days
16 years	22 days
17 years	23 days
18 years	24 days
19 + years	25 days"

The Employer's last offer of settlement seeks to change the vacation accrual schedule for employees hired after 1/1/97. In essence, employees with one to five years of service would have 10

ORDER

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Mario Chiesa 1-17-99
Mario Chiesa
Neutral Chairperson

Michael P. Lomeo (DISSENTING)
Union Delegate

Employer Delegate

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The Employer's last offer of settlement seeks to change the vacation accrual schedule for employees hired after 1/1/97. In essence, employees with one to five years of service would have 10

days, six to fifteen - 15 days, and fifteen or more years - 20 days. The Union seeks continuation of the status quo.

The argument presented by the Employer is that the modification would only deal with new hires and while it would establish the lowest vacation accrual among the comparable communities for new hires, it believes the reduction is warranted in light of the overwhelming advantage that officers have in total cash compensation. The Union takes the position that there is no evidence to substantiate a change in the status quo.

After carefully analyzing the entire record, the panel has come to the conclusion that the Union's position is more acceptable. There is nothing in this record which convinces the panel that a two-tier vacation system should be instituted, one component of which would supply the lowest amount of vacation accrual for new hires of any of the comparable communities. There is just not enough evidence on this point to convince the panel to adopt the Employer's last offer of settlement.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo continue.

1-17-99
Mario Chiesa
Neutral Chairperson

Michael P. Sonnen
Union Delegate

Employer Delegate

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ORDER

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1-17-99

Mario Chiesa
Neutral Chairperson

Union Delegate

Employer Delegate

RESIDENCY

Currently the Collective Bargaining Agreement in Section 4 of Article 42 indicates that residency shall be as "in the City Charter." According to the record, the Charter provision requires that employees reside in the City of Harper Woods. The record establishes that command officers, firefighters and all general full-time employees must reside within the City.

The Union's offer would eliminate residency for officers with more than 15 years of seniority, while all other members of the unit must reside within the County of Wayne, Oakland, Macomb and St. Clair County, south of 696. It was stipulated that the term "officers" shall mean "members." The Employer's position would maintain the status quo.

The evidence suggests that the comparable communities do not have a residency requirement limited to within the City limits. There are some requirements that are expressed in the terms of a 20-mile radius of the city, others in terms of counties, and other provisions which lay out the boundaries of the appropriate area in which an officer may reside. There is also evidence indicating that the Employer was willing to eliminate residency for employees with over 20 years as part of a package settlement that was offered for ratification.

Residency is one of those issues which arbitration panels should be very reluctant to change and not do so unless there is compelling support. This isn't confined to only issues regarding the institution of residency or the elimination of residency, but

also applies to any modification in between. The reason is that the residency issue can have a very substantial impact on an employee's life. If there is a residency requirement which is eliminated by an arbitration panel and employees move out of the City, and then an arbitration panel decides that residency should be reinstituted, you have a situation where at best members of the unit would be treated differently. As a result, the profound impact that residency may have should be felt most appropriately as a result of negotiations.

Having stated the above, however, there are situations which would warrant a change in a residency requirement. Nonetheless, this case isn't one of them. I recognize that as part of a total package the Employer was willing to waive residency after 20 years of service. However, in its last offer of settlement the Employer has taken the position that residency should continue. This isn't enough of a reason to change a longstanding residency requirement.

As indicated above, the evidence just does not convince the panel that the residency requirement, which has existed for many years, should be altered. The parties of course are free at any time to agree to a change in the contract language, but given the record in this case, the panel will not change the status quo.

ORDER

The panel orders the adoption of the Employer's last offer of settlement and, hence, the status quo regarding residency shall continue.

1-17-99
Mario Chiesa
Neutral Chairperson

Union Delegate

Employer Delegate

HOLIDAYS

The language in the current Collective Bargaining Agreement provides the following:

ARTICLE 28 HOLIDAYS

"SECTION 1.

"Each employee is entitled to thirteen (13) days off per year in lieu of recognized holidays.

****

"SECTION 2.

"An employee who works a shift beginning on any of the following holidays:

New Year's Day	Veteran's Day
Lincoln's Birthday	Thanksgiving Day
Washington's Birthday	Day After Thanksgiving Day
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
Labor Day	New Year's Eve Day
Employee's Birthday	

shall be paid double time for all hours worked on that shift."

ORDER

The panel orders the adoption of the Employer's last offer of settlement and, hence, the status quo regarding residency shall continue.

Mario Chiesa 1-17-99
Mario Chiesa
Neutral Chairperson

Michael P. Flannes (DISSENTING)
Union Delegate

Employer Delegate

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shall be paid double time for all hours worked on that shift."

Section 3 above was modified by the most recent contract addendum to eliminate employees' birthdays as a holiday and add Martin Luther King Day as a holiday.

The Union seeks to continue the status quo. The Employer seeks to reduce the number of holidays to 12 by apparently combining Lincoln's Birthday and Washington's Birthday into one, i.e., President's Day.

The evidence establishes that comparable communities provide 10, 12, 13, 14 and 15 holidays.

The City argues that given the overall compensation level of its officers, the slight reduction in the total number of holidays is warranted.

After carefully analyzing the record the panel comes to the conclusion that the holiday language should not be changed and the status quo should continue. There is not enough evidence to establish that the benefit enjoyed by officers of 13 holidays should be reduced.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo continued.

1-17-99
Mario Chiesa
Neutral Chairperson

I/C Concur
Union Delegate

Employer Delegate

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ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo continued.

1-17-79

Mario Chiesa
Neutral Chairperson

Michael P. Somers
Union Delegate

Employer Delegate

HEALTH INSURANCE

The addendum to the 1992-1993 agreement contains the following provision regarding health insurance.

> SECTION 8. HEALTH INSURANCE.
>
> "Effective on or after January 1 1995, the prescription drug rider shall be changed to one of the following, at the City's sole discretion:
>
> A) Five dollar ($5.00) co-pay; or
>
> B) Ten dollar ($10.00) co-pay with the City reimbursing the employee $5.00 for each prescription purchased.
>
> The parties agree to meet prior to the implementation of this change as the City is currently attempting to make arrangements with local pharmacies whereby the pharmacy would bill the City directly. This would negate the need for employees to collect and submit individual slips for reimbursement. The City agrees to include language to cover emergency situations where employees are unable to obtain their prescription from a participating pharmacy should such arrangements be made."

The Employer's last offer of settlement would increase the prescription drug rider to provide for a $10.00 co-pay for each prescription purchased. The Union's position is the continuation of the status quo, i.e., a $5.00 co-pay on prescriptions. The Employer points out that the two other 312 eligible units in the City received $10.00 co-pays during the last round of 312 arbitration. Further, it maintains that given the total compensation received by officers, any additional cost to the members would be more than offset by the rate of compensation.

The Union takes the position that the evidence shows that with the exception of Ferndale, all comparable communities have a $5.00

or less prescription co-pay for each prescription purchased. It maintains that while the command officers did agree to a $10.00 co-pay for prescriptions, they were not faced with the possibility of part-time officers displacing them as the City has proposed.

After carefully analyzing the record, the panel has concluded that the status quo should continue. Presumably one of the reasons that the Employer is seeking to change the prescription co-pay from $5.00 to $10.00 is to reduce health insurance costs. How much the cost will be reduced is unknown and, thus, it is pretty difficult to conclude that reducing the benefit is warranted by the cost savings allegedly realized by the Employer. Certainly the panel recognizes that the firefighters and the command unit have a $10.00 co-pay as a result of recent 312 arbitrations. Nonetheless, it not enough evidence under these circumstances to warrant adopting the Employer's proposal.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo shall continue.

1-7-99

Mario Chiesa
Neutral Chairperson

Union Delegate

Employer Delegate
(Dissents)

or less prescription co-pay for each prescription purchased. It maintains that while the command officers did agree to a $10.00 co-pay for prescriptions, they were not faced with the possibility of part-time officers displacing them as the City has proposed.

After carefully analyzing the record, the panel has concluded that the status quo should continue. Presumably one of the reasons that the Employer is seeking to change the prescription co-pay from $5.00 to $10.00 is to reduce health insurance costs. How much the cost will be reduced is unknown and, thus, it is pretty difficult to conclude that reducing the benefit is warranted by the cost savings allegedly realized by the Employer. Certainly the panel recognizes that the firefighters and the command unit have a $10.00 co-pay as a result of recent 312 arbitrations. Nonetheless, it not enough evidence under these circumstances to warrant adopting the Employer's proposal.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo shall continue.

Mario Chiesa 1-17-96
Mario Chiesa
Neutral Chairperson

Michael P. Lomeo
Union Delegate

1st dissent
Employer Delegate

PART-TIME OFFICERS

Article 31, Section 9 - Position Security, of the prior Collective Bargaining Agreement contains the following provision:

> ARTICLE 31 MISCELLANEOUS
>
> "SECTION 9. POSITION SECURITY
>
> "a. Both parties to this agreement recognize the members of the bargaining unit are by job classification Patrol Officers. The EMPLOYER will not require any member of this UNION to perform any duty which wold tend to or in fact would degrade him as a Patrol Officer.
>
> "b. Except in an emergency, no person except a bargaining unit employee shall perform the duties of a member of this bargaining unit on a regular basis."

The Union's position is that this issue is not properly before the panel, but in addition, it seeks a continuation of the status quo.

While the last offers of settlement are made part of this document, it would be appropriate at this point to display the Employer's position.

> "ARTICLE 44 (NEW)
>
> "USE OF PART-TIME OFFICERS
>
> "SECTION 1.
>
> "Within thirty (30) days of the effective date of the 312 award, the Employer shall be allowed to hire part-time sworn police officers under a COPS UHP Grant to supplement the existing staff of full-time sworn police officers. If the Employer chooses to hire part-time officers, then the following conditions shall apply:
>
> (a) There will be no reduction in the number of sworn full-time police officers as a result of the hiring of part-time officers.

Although this is not a minimum manning clause, the Employer will continue to maintain at least four (4) full-time officers per shift.

(b) Sworn full-time police officers will continue to be called in for overtime to cover any dispatcher absences. Part-time police officers will not staff the dispatch desk, although they may be used to assist and relieve dispatch in answering telephone calls or performing other clerical duties.

(c) As a result of the hiring of part-time police officers, there will be no lay-off for full-time personnel unless all part-time personnel, except clerical, are first laid off.

(d) Although part-time officers will have full arrest authority, the duties of these officers will be structured in an effort to allow full-time officers to perform law enforcement and traffic duties. The duties assigned to the part-time officers will be designed to enhance those performed by full-time officers, not replace them. Duties may include, but are not limited to, the following: ordinance enforcement, prisoner transport, animal control, parking enforcement and traffic control. These officers will assist full-time officers in all law enforcement duties as directed by the supervisors and/or senior officers.

(e) Any request for additional police coverage that has in the past resulted in overtime call-in for full-time officers will continue to require full-time officers. Part-time officers will only be used as staffing over and above the number of full-time officers requested for the detail."

There must be a preliminary determination made regarding whether this issue is properly before the arbitration panel. In general terms it is recognized that the issue of part-time officers was not discussed during mediation or prior to the time the Act 312 petition was filed. The grant which provides the funds for hiring

the part-time officers was not issued until after the 312 petition was filed. However, at that point there was some discussion in the department, at least between the Chief and a committee which the Union had created. The record establishes that the committee did not have the same makeup as the bargaining committee, but nonetheless, there were discussions. The Union suggested that the committee didn't have the authority to make any decision and that everything would have to be taken back to the members for a vote.

As it worked out, the issue of part-time officers ended up in the TA which was taken back to the members of the bargaining unit. The entire proposal was comprised of a number of different issues and it was presented as a package to the members of the unit. The package was rejected.

While it is obvious that this issue was not discussed prior to the filing of the 312 petition, it is just as obvious that sometime after, when the grant became available, the parties interacted to the degree necessary to get the part-time issue on a TA list and presented to the members of the bargaining unit for ratification. Obviously there were discussions between the parties although, as indicated above, they may have been confined to the Chief and the committee created by the Union. So, clearly, after the 312 petition was filed, the parties dealt with this issue.

Arbitration under Act 312 is designed to be the last step in a progression of events. There are negotiations, mediation and then binding arbitration. Arguably, ignoring any aspect of the preliminary steps diminishes the value, and perhaps validity, of

the entire Act 312 scheme. So certainly a very good argument could be made that the issue of part-time officers should not be subjected to arbitration. Conversely, however, the issue was sent to members for a ratification vote, though there is some indication that the Union resisted the concept that the issue would be available to arbitrate. All of this is compounded by the fact that the issue deals with a fundamental relationship between the parties.

There is no dispute that on the face of it the Employer's position seems reasonable. There is also no dispute that potentially, and almost certainly, the adoption of the language conflicts with current contract language, i.e., Article 31, Section 9. That language specifically recognizes the parties' mutual intent that no one, except a bargaining unit employee, shall perform the duties of a member of the bargaining unit on a regular basis. There is no suggestion in the Employer's last offer that part-time officers will become members of the bargaining unit. In fact, the definition of the unit is confined to full-time officers.

Furthermore, as mentioned above, adoption of the part-time officer language has the potential, although not the certainty, of having a substantial effect on the bargaining unit. These types of fundamental changes are best implemented as a result of collective bargaining.

I note that the City has received a grant known as COPS UHP. The evidence does not establish that the only way the grant can be utilized is by hiring part-time officers. There may very well be

a way to utilize the grant funds, for it would be a shame to lose them, in some other fashion.

Nonetheless, when all of the evidence is considered and after painstakingly analyzing the parties' positions, the panel must conclude that the status quo should continue and, thus, the Union's last offer of settlement must be accepted.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo shall continue.

1-17-94
Mario Chiesa
Neutral Chairperson

Michael P. Somers
Union Delegate

Employer Delegate

a way to utilize the grant funds, for it would be a shame to lose them, in some other fashion.

Nonetheless, when all of the evidence is considered and after painstakingly analyzing the parties' positions, the panel must conclude that the status quo should continue and, thus, the Union's last offer of settlement must be accepted.

ORDER

The panel orders that the Union's last offer of settlement be adopted and, hence, the status quo shall continue.

1-17-99
Mario Chiesa
Neutral Chairperson

I agree
Union Delegate

Employer Delegate
(DISSENT)