

4/23/81 ARB

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

IN THE MATTER OF STATUTORY ARBITRATION BETWEEN
CITY OF HASTINGS
-and-
TEAMSTERS LAW ENFORCEMENT UNION, LOCAL 129

ARBITRATION PANEL AWARD

ARBITRATION PANEL:

For the City: Michael Ward
For the Union: Billy D. Mendenall
Chairperson: Daniel H. Kruger

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

APPEARANCES:

For the Union

Billy Mendenall
Albert Stanton
Roderick Tietz
Larry D. Gregory

Business Agent, Local 124
Union Steward
Union Steward
Business Agent, Local 124

For the Employer

Michael Ward
William Brandt
Ivan Snyder

Attorney
Police Chief
Mayor

Hastings, City of

INTRODUCTION

The parties requested Daniel H. Kruger to serve as Chairperson of the Arbitration Panel. On March 4, 1981, the parties signed the following Agreement to Arbitrate:

"The parties to this Agreement do hereby agree to arbitrate their contract disputes in accordance with and under the same conditions contained in Public Act 312 of 1969, as amended, and said Act is hereby incorporated herein. In addition, the parties agree that Daniel Kruger shall be the Chairman of the arbitration panel convened hereunder and that the parties shall equally divide the fees and expenses of Dr. Kruger."

The Panel originally scheduled a hearing on February 4, 1981, but due to inclement weather, one of the panel members was not able to attend. The first meeting was therefore held on March 4, 1981 at the City Hall, Hastings, Michigan. At this meeting, the parties identified the issues in impasse. The parties requested the Chairperson to act as a mediator in an effort to resolve the outstanding issues. The parties were successful in resolving several of the issues.

A second meeting of the Panel was held on March 12, 1981 at the City Hall in Hastings. At this time, all issues were resolved except one dealing with Article XXVI, Section 3, two-man patrol cars after the hours of darkness.

The parties agreed that the Chairperson would decide this one issue. The parties agreed to submit briefs on this one issue to the Chairperson and they were received on April 1, 1981.

ISSUE

Article XXVI, Section 3 in the Agreement which expired June 30, 1980 reads:

Section 3. Darkness

"Employees will be scheduled to ride patrol cars in pairs. Provided that in the event one of the employees so scheduled reports that he

is unable to work due to illness or injury, the remaining employee shall patrol alone until such time as another employee is available. The employer will replace officer as quickly as possible with another officer. Further, Employer may, if an emergency exists, temporarily remove one of said employees from the patrol car in order to meet the emergency. Command cars may be one man cars."

Joint Exhibit #1, p. 26.

The Union is seeking to retain this provision in the new agreement. The Employer desires to change the language to give the police command the discretion to assign patrol officers during the darkness hours. The command officers have the discretion to assign patrol officers during the daylight hours.

POSITION OF THE UNION

The Union noted that the language of Article XXVI, Section 3 has been in the Agreement for at least six (6) years and was negotiated in an effort to provide protection to the officers assigned during the hours of darkness. The primary thrust of the Union's argument to retain the present language is the safety factor.

In its Brief, the Union stated the following to support its position:

"In studies conducted by universities and police departments throughout the country it has been shown that the fact that officers ride in pairs has a psychological effect on both the officers involved and the public.

The officer who has an experienced, trained fellow officer as his patrol partner is more willing to be aggressive in police situations; traffic stops, building checks, bar fights, family troubles, and suspicious person checks. Knowing that he has a back-up close at hand, the patrol officer is more willing to investigate a group of persons that he might otherwise (if riding alone) pass by. He is more willing to make an arrest in a crowd if he knows that he has someone who will cover his back and assist him. He is less apprehensive about checking a dark building when he finds an open door or window if there is someone he has faith in, with him.

Studies have shown that the most common attack on police officers are made when they are working alone and make traffic stops. The second most common attacks resulting in injuries occurs when the officer is alone and answering family trouble calls.

These attacks and injuries are more likely to happen and are most prevalent during the hours of darkness.

The psychological effect of having two officers who the prospective assailant knows are trained and experienced acts as a deterrent to attack. When one officer walks into a bar fight he is viewed by the combatants as someone who can be over come, however, when two officers go into the same bar fight it causes the combatants to think twice before acting because of the presence of the other officer who could identify any attacker, summon further help and assist his partner.

This partnership concept and its psychological effect is also a confidence building tool in the community. A business man who is having trouble with a patron knows that when the two police officers walk into his place of business that the likelihood of further trouble, injury, and/or destruction of property are greatly reduced.

The average citizen is assured that any situation which might arise can be handled by the patrol car which arrives with two trained, experienced police officers."

Union Brief, pp. 1-2.

During the hearing, it was noted that the Michigan State Police have a post in Hastings and that the Barrion County Sheriff's Department is also located in Hastings. The relevance of the location of these two law enforcement agencies to the issue in question is that they can provide back up assistance to the Hastings patrol cars when needed.

The Union, in its Brief, noted that there are two-man patrol cars in the Sheriff's Department and the State Police after the hours of darkness, but noted this is the practice and not a contractual requirement. The Union further noted that there are two sheriff's patrol cars on the road on the midnight shift and their main responsibilities are to patrol the county and not remain inside the city limits of Hastings; it is not the "practice

or procedure of the Sheriff's Department to keep a car in the City just in case a City (Hastings) car might need assistance" (Union Brief, p. 2). The Union further observed that the State Police have one two-man car which patrols from 6:00 p.m. to 2:00 a.m., at which time it goes out of service. Therefore, the State Police car is not available to the Hastings patrol car after 2:00 a.m. Moreover, the State Police have patrol responsibilities outside of the city of Hastings and are not readily available (see Union Brief, p. 2).

The Union called attention to the fact that the Fenton Police Department and the Shiawasee County Sheriff's Department both provide two-man patrol cars during the hours of darkness. The Union attached to its Brief the provisions of the Agreements of these two public jurisdictions (Fenton Police Department, Article XXXII, p. 29; and Shiawasee County Sheriff's Department, Article XVII, Section 1a, p. 16).

During the hearing, the possibilities of assigning a reserve or auxiliary officer to replace a regular officer in the two-man car were discussed. Article XXIV of the expired agreement covers part-time and casual employees (see Joint Exhibit #1, p. 23). These are the auxiliary or reserve officers which the Employer has hired and these personnel are not members of the bargaining unit (see Joint Exhibit #1, p. 23).

The Union contended that the citizens have less respect for and faith in a reserve officer than they do a professional full-time police officer (see Union Brief, p. 3). The Union pointed out that the officers themselves feel more confident in a career-oriented police officer than a reserve officer whose "attitudes and goals are affected by an outside interest or job" (Union Brief, p. 3).

EMPLOYER'S POSITION

The Employer noted that there are sixteen (16) bargaining unit employees and that the City owns two patrol cars. The Employer pointed out that the population of Hastings is 6,000.

The Employer maintained that the two patrol car concepts after the hours of darkness is both inefficient and leads to a reduction of police services for the residents of the City after dark. It noted that when an officer has to return to the police station to conduct in-station activities, the patrol car must be parked and left idle because the other officer cannot patrol alone after darkness. Since the Employer has only two patrol cars, one of them has to be taken off the streets, parked and left idle when darkness sets in each evening because of the two-man patrol car requirement (see Employer Brief, p. 2).

The Employer contended that the two-man patrol car concept dictates minimum manning. The Employer noted that it has lost revenue because of reduction in State aid and will probably lose more. In its words, "If due to financial contractions the City must reduce its police force by one or two employees, it should not be faced with the unacceptable alternative of no police coverage during the hours of darkness because it cannot provide two (2) officers for its cars. It is better to have one- (1) person patrol cars than no cars at all" (Employer Brief, p. 3).

The Employer pointed out that an examination of the agreements of cities and counties reveals that no city or county in the area has mandatory two-man cars (see Employer Brief, p. 2, for its list of cities and counties which do not have mandatory two-man cars). Thus, the Employer maintained that there are virtually no comparatives in the Hastings area which support the demand of the Union for contractually required two-man patrol cars after the hours of darkness.

The Employer also pointed out that the Union's position was based solely on the safety argument. There are two (2) other police agencies in Hastings, the Michigan State Police and the Barry County Sheriff's Department, and therefore the Employer contended that police assistance or backup is very accessible. In addition, the Employer noted that Hastings is a small community geographically, and thus, response time or backup, in most instances, is available in minutes or seconds. The Employer pointed out that "the rationale for two-man patrol cars for safety reasons in Hastings breaks down when compared to larger cities and counties which have much less police availability, much greater response time and still not contractually bound to the two-man car concept" (Employer Brief, p. 3).

DISCUSSION OF ISSUE

This Arbitrator can understand the positions of the parties on this issue. The Union is concerned with the safety factor and the Employer seeks to obtain discretion in directing its small police force. The Employer, moreover, is faced with a shortfall of revenues due to the cutbacks in Federal Revenue Sharing funds and the financial plight of the State of Michigan, which is affecting State aid to municipalities. Because of the financial constraints on the Employer, the Employer is concerned about the possibilities of layoffs, which would result in police services being curtailed if the two-man patrol car is contractually required.

This Arbitrator takes note that because of the two-man patrol car requirement, the residents of the city of Hastings are denied more police protection during the hours of darkness. Under the two-man patrol car

requirement, one of the two police cars cannot be in service during the hours of darkness. With one-man patrol cars, both police cars can be in service. This is a very persuasive argument for a change in the existing language of the two-man patrol requirement.

The Employer is seeking permissive language which will give the police command discretion to determine manpower requirements during the hours of darkness. The Union rightfully is concerned about the use of that discretion by the police command. In this Arbitrator's view, there needs to be a closer working relationship between the police officers and the police command in order to minimize distrust.

From the discussion between the parties, it is the understanding that little or no training is given to the reserve or auxiliary officers. If this is the case, the position of the Union relative to the use of these auxiliary personnel is readily understandable (see Union Brief, pp. 2-3).

AWARD

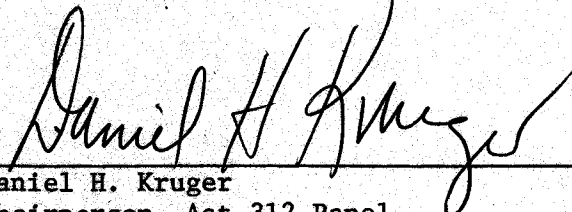
1. This Arbitrator directs the parties to negotiate appropriate language which will permit the Employer to use careful discretion in utilizing the police force during hours of darkness.
2. The Arbitrator furthermore directs the parties to negotiate appropriate language which will establish a Safety Committee which will be composed of two representatives of the bargaining unit and two command officers. The purpose of this committee is to provide frequent review of how calls for police assistance are being handled and safety matters. If the Employer is concerned about effective utilization of scarce police resources,

then the members of the bargaining unit must be more involved. It has been demonstrated that where effective teamwork is present, improvements in the utilization of personnel have been achieved. The police command has the responsibility to foster teamwork and the establishment of the Safety Committee provides a mechanism to do so. Moreover, the Safety Committee may help dissipate distrust and suspicions which may be present.

3. Since there is a possibility that the Employer may on occasion use reserve or auxiliary personnel to accompany the police officer in the patrol car during the hours of darkness, the Arbitrator further directs the Employer and the Union to establish a training program for the auxiliary personnel, utilizing resources available in the community, e.g., Barry County Sheriff's Department, Michigan State Police, City and County attorneys, Circuit Judges, etc. The training program, in this Arbitrator's view, will give the auxiliary officers needed knowledge and skill in the performance of their job duties. The Arbitrator takes note that the auxiliary officers are not members of the bargaining unit and therefore the parties may want to prepare a memorandum of understanding on the details of the training program.

This Arbitrator will retain jurisdiction of this case for forty (40) days from the date of this Award. This will provide sufficient time for the parties to implement this Award by including appropriate language in the new agreement. The parties are to notify this Arbitrator in writing that the Award has been implemented and are to supply him with a copy of the contractual language.

April 23, 1981


Daniel H. Kruger
Chairperson, Act 312 Panel