

STATE OF MICHIGAN

Compulsory Arbitration Between:

CITY OF INKSTER)

-and-)

INKSTER POLICE)
OFFICERS' ASSOCIATION)

Arbitration Arising Under
Act No. 312, Public Acts
of 1969, as amended.

7/24/75

INTRODUCTION

This arbitration proceeding has been conducted pursuant to Act No. 312, Michigan Public Acts of 1969, and upon the initiation of the parties.

On August 20, 1974, Robert G. Howlett, Chairman of the Michigan Employment Relations Commission, designated Harry T. Edwards to serve as the Impartial Chairman in this matter.

The three members of the Arbitration Panel were: Mark Reizen, Esq. (Association Delegate), John Reseigh, Esq. (City Delegate) and Harry T. Edwards (Impartial Chairman).

Three hearings were held in the instant arbitration matter, on September 25, 1974, December 11, 1974 and March 4, 1975. The parties also met on October 1, 1974, during which time the Impartial Chairman was given a guided tour of the City of Inkster.

In addition to the testimony and documents received during the aforementioned hearings, the parties submitted the depositions of David A. Killins III and Edward F. Juarez (taken on November 19, 1974), Dennis Robert Anderson and Martin John Yurchak (taken on February 17, 1975), and Ben A. Denny (taken on March 11, 1975). Post-hearing briefs were submitted by both parties.

The dispute in this matter arose during the summer of 1974, when the parties reached an impasse in their collective bargaining negotiations for a new two-year contract covering the period from July 1, 1974 through June 30, 1976. Prior to the commencement of this arbitration proceeding, the parties were able to resolve all but two issues, salaries and presidency.

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Inkster, City of

As a consequence, these two matters were the only substantive issues submitted to this Arbitration Panel for final and binding resolution.

An Expedited Award was issued on June 4, 1975 without any statement of facts or supporting rationale. The parties waived receipt of such statement in consideration of their need for an award in this matter, but with the further stipulation that within sixty (60) days of the Expedited Award, or as soon thereafter as feasible, the Arbitration Panel would issue a formal opinion, including a statement of facts and rationale to support the award there given.

It should be noted that, before reaching a judgment in this matter, the Chairman carefully weighed all of the evidence in the record, including the transcripts of testimony, depositions, briefs, contracts and other exhibits in the evidence. In considering the evidence, the Panel paid heed to and was strictly guided by the explicit mandates of Sections 8 and 9 of Act No. 312, Public Acts of 1969, as amended; M.S.A. 17.455 (38) and (39).

This Opinion has been written by the Chairman of the Panel. Concurrence by either member of the Panel in the Award does not necessarily indicate agreement with everything stated in this Opinion.

DISCUSSION

I. RESIDENCY ISSUE

During the course of the hearings in this matter, and in their post-hearing briefs, the parties advanced numerous arguments in support of their respective positions on the issue of "residency." A summary of these various arguments is set forth hereinbelow:

Association Arguments

1. The elimination of the residency requirement costs the city nothing.
2. Children of police officers living in Inkster are required to attend school outside the city limits of Inkster.
3. There is a scarcity of suitable housing in Inkster where an officer and his family can be safe from crime, particularly

breaking and entering. There is evidence that policemen are concerned for the safety of their families while on duty, that homes of several officers have been vandalized, that full theft insurance coverage is difficult to obtain, and that off-duty officers and their families have been harassed by residents with whom the officers have dealt in the course of their employment.

4. The residency rule exacerbates marital tensions, since the spouses of police officers sometimes wish to live outside of Inkster.

5. Other communities nearby Inkster offer a variety of housing and life styles not found in Inkster.

6. Maintenance of the residency rule has caused a number of officers to leave the force.

7. Abolition of the rule will increase the availability of qualified police recruits.

8. Elimination of the rule will not create manpower shortages, since no officers have been called-in to respond to work emergencies during the past several years. Moreover, officers are likely to be more readily available for emergency calls when they are allowed to choose their place of residence.

9. Police officers who live in Inkster do not acquire a working knowledge of the residents of the community and their habits while off duty. Indeed, association with the residents of the community in which a policeman works invites unequal enforcement of the laws and favoritism towards those persons who are known personally by police officers.

10. Permitting police officers to live where they please has significant motivational advantages and upgrades morale.

11. The relaxation of residency regulations would enable some officers to live in adjacent cities and travel to their stations faster than they can travel from their present homes within the City of Inkster. In general, improved transportation systems have lessened the travel times from outlying areas to the City.

12. There is a scarcity of suitably priced homes for police officers in Inkster.

13. The investment value and marketability of a home in

Inkster are far less than in surrounding areas.

14. Between March, 1967, and November, 1970, Inkster Civil Service regulations allowed all policemen to reside in neighboring communities.

15. At least three police officers presently live outside Inkster with the knowledge of the City.

16. Forty-three patrol officers signed a petition requesting the abolition of the residency rule.

17. The residency requirement is discriminatory and unconstitutional in that it applies only to police officers, fire-fighters and Department of Public Service employees.

18. A significant number of the police departments in Michigan have abolished or relaxed residency rules.

19. A police officer cannot engage in unrestricted political activity if he must live where he works.

20. The work-jurisdiction of the Inkster Police Department extends beyond the city limits for certain designated purposes, such as the Saturation Patrol.

21. The residency rule creates an unwarranted, arbitrary barrier to employment of minority groups in violation of Title VII of the Civil Rights Act of 1964.

22. The residency rule denies the fundamental liberty of a person to live where he or she chooses.

City Arguments

1. Residency is a long-standing rule which has been enforced during all history of Inkster with the exception of a necessary brief hiatus in 1967-68.

2. The rule has been uniformly enforced against the class of city police and firefighter employees.

3. Special circumstances prevent the City from enforcing the residency requirement against the three officers currently residing outside the City.

4. The I.P.O.A. has the burden of showing changed circumstances necessitating a re-evaluation of the residency rule.

5. Residency rules are not constitutionally impermissible if they are uniformly enforced and reasonably job-related.

6. As a "para-military" force, police officers require greater regulation than do other city employees.

7. Relaxation of the residency standard would create a mass exodus of police officers, particularly White officers, from the City.

8. The current view, shared by many Inkster citizens, of the police department as an "occupation force" would be strengthened if police officers no longer resided in Inkster.

9. A vast majority of citizens attending hearings on the issue of police residency favored the rule.

10. Upon their hiring, all officers knew of the residency requirement, which condition of continued employment they voluntarily accepted.

11. The residency rule improves job performance by enabling policemen to receive a greater amount of confidential information and thereby more readily learn the identity and characteristics of the criminal element in the City.

12. Vigorous enforcement of residency regulations since 1970 has resulted in a significant decrease in the number of charges of police brutality.

13. Residents of a community feel more secure when police officers live in the community.

14. Officers' stated motives for living elsewhere are spurious, since crime knows no economic or political boundaries and marital discord is inherently greater among police officers than among many other professionals.

15. After the most recent examinations, the City hired five Police Department employees, leaving an eligible list of in excess of thirty qualified candidates.

16. Adequate housing of a type and nature suitable for police officers exists within the City.

17. The residency rule does not impede equal opportunity in the City of Inkster.

Burden of Proof

Section 9 of Act No. 312, Public Acts of 1969, M.S.A. 17.455 (39) authorizes this Arbitration Panel to:

"...base its findings, opinions and order upon the following factors...

- (a) The lawful authority of the employer...
- (c) The interests and welfare of the police...
- (d) Comparison of ... conditions of employment of the employees involved in the arbitration proceeding with ... conditions of employment of other employees ... in public employment in comparable communities...
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of ... conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public sector or in private employment."

The City contends that the Association as the party moving to change a long-standing condition of employment, has the burden of showing such changed circumstances as would justify an alteration of the residency rule. While this is not entirely true, since "interest arbitration" is a substitute for collective bargaining, rather than a full-fledged judicial proceeding, and "technical rules of evidence shall not apply," M.S.A. 17.455 (36), the Panel nevertheless must render an order supported by "competent, material and substantial evidence on the whole record." M.S.A. 17.455 (42). To the extent that such evidence is required, it seems only just that it should be forthcoming in no small measure from the moving party on any given issue.

After having carefully reviewed all of the pertinent evidence in this record, the Panel concludes that the Association request for a relaxation of the current residency rule is plainly justified by competent, material and substantial evidence on the whole record. The primary considerations militating in favor of this result are discussed below.

A. The Existing Residency Rule

The present Personnel Rules and Regulations of the City of Inkster provide, in part, as follows:

"The residency for City Employment shall be as follows:

1. Entry level laboring and trade positions... persons entering the City service in these positions must reside in the City of Inkster at the time of appointment and must remain residents of the City of Inkster during the duration of their employment with the City through any promotional positions.
2. Policemen and Firemen... Shall be required to live within the City of Inkster within three (3) months after completion of their probationary period. It is the intent of this requirement to have policemen and firemen residents of the City and their residency within the City be a part of their continuing condition of their employment.
3. All other employment shall have no residency requirement except as may be specified by subsequent action of the Commission and City Council.
4. In all cases in all departments, the City of Inkster residents will be given preference in being considered for employment."

Under these rules, the City has required all police officers to live within the boundaries of the City of Inkster, within three months after completion of their probationary periods, as a condition of continued employment.

B. Legal Questions

In support of its request for a relaxation of the residency rule, the Association has raised several legal issues for consideration by the Panel.

The first of these issues relates to the Association claim that the existing residency rule is unlawfully discriminatory because it impedes equal access to job opportunities in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. secs. 2000e et seq. In light of the conclusions and Award herein rendered on the residency issue, the Panel deems it unnecessary to consider or resolve the Title VII questions raised by the Association. If the Association persists in the belief that a residency rule is somehow unlawfully discriminatory, then the matter can be appropriately heard and resolved by the Equal Employment Opportunity Commission and the courts pursuant to Title VII.

The second legal question concerns the claim by the Association that the existing residency rule violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that its application among City employees is limited to police, firefighters, and laboring and trade positions. Relying on Williams v. Detroit Civil Service Commission, 383 Mich. 507 (1970), the City responds that a requirement that employees live within the limits of a city is not such an infringement of constitutional rights as to render it impermissible. It is plainly unnecessary for this Panel to reach the ultimate issue of the constitutionality of the regulation. The Michigan Supreme Court only last year ruled that residency is a mandatory subject of collective bargaining under the Public Employment Relations Act, M.S.A. 17.455 (15). Detroit Police Officers Association v. City of Pontiac, 391 Mich. 814, 87 L.R.R.M. 2540 (1974). Furthermore, nothing in the Williams decision suggests that residency must always be a necessary condition of employment for municipal employees.

Since the Williams decision merely holds that a residency rule is not constitutionally impermissible and since the DPOA decision plainly allows public employees in Michigan to bargain about the subject of residency, the Panel will be guided solely by the applicable sections of Act No. 312, Public Acts of 1969, as amended, in its consideration of the residency issue. Any constitutional issues remaining unresolved after the issuance of this decision must of necessity be resolved by the courts, not this Panel.

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It should also be noted that since the City is legally required to negotiate about the subject of residency it cannot effectively contend that the police officers are estopped from seeking a modification of the residency rule because of their knowing and voluntary consent at the time of hiring to residency as a condition of continued employment. The duty to bargain over residency is a continuing duty. Any agreement on this subject endures only until the particular contract term expires, at which time either party may reopen the issue as of right. To affirm the City's contention would be tantamount to permitting it to breach its statutory duty with impunity and would deny these public employees their right to bargain collectively over the conditions of their employment.

C. Discussion of Residency Issue

The Panel finds that the position of the Association on the residency issue is supported by substantial evidence on the whole record. In reaching this conclusion, the Panel has been greatly influenced by the following factors:

1. It is well established on the whole record, including a guided tour of the City of Inkster given the Chairman on October 1, 1974, that a dearth of desirable homes in the price range generally sought by employees earning approximately \$15,000 per year currently exists within Inkster. Mr. Ben Denny, a Westland realtor, testified that people in the \$15,000 annual income range generally seek housing which costs between \$27,000 and \$34,000, and that very little of that housing is available in Inkster (March 11, 1975 Deposition at Tr. 7, 14, 18, 19, and 20). The scarcity of housing is further accentuated by studies compiled for the 1970 United States Census, which indicated only 234 owner-occupied houses in Inkster within the owner-estimated value range of \$25,000 to \$34,999; this is equivalent to a mere 3.87% of the total number of owner-occupied houses in the City (Ex. M-1). Moreover, it should be observed that a city-limit residency rule in Inkster confines a police officer's search for desirable and affordable housing to an area of only 6.25 square miles (City Ex. M-2); this is a much smaller area than that delimited by the residency rule which withstood constitutional challenge in Williams v. Detroit Civil Service Commission, *supra*. At least one officer on the present police force has tried without success to find a suitable house within the small area of the City of Inkster (February 17, 1975 Deposition of Dennis Anderson at Tr. 25-26).

Given these facts, the Panel finds that the scarcity of available and suitable homes for police officers has been amply demonstrated.

Although a house in Inkster may be purchased more cheaply than a similar house in nearby communities, the real value of such an investment in Inkster is apparently lower. Once put up for sale, Inkster houses generally remain on the market longer than houses in surrounding communities (March 11, 1975 Deposition at Tr. 10-11). Testimony from both sides also shows home values in Inkster since 1970 have increased at approximately a rate of about 4 percent per year (March 11, 1975 Deposition at Tr. 9-10 and 32; March 4, 1975 Hearing at Tr. 19); whereas the home values in nearby Westland and Livonia have been increasing at roughly double that rate (March 11, 1975 Deposition at Tr. 10, 12-13, and 32-33).

In addition to the other criteria mentioned in this opinion, the Panel also believes that the City should be able to point to an ample variety of available and adequate housing, in suitable surroundings, consistent with the incomes of the affected employees, in order to justify a city-limit residency rule. Cf. State, County & Municipal Employees Local 339 v. City of Highland Park, 363 Mich. 79 (1961). The evidence here plainly fails to satisfy these additional criteria.

Furthermore, the evidence indicates that there is no rural housing in Inkster (September 25, 1974 Hearing at Tr. 25). Yet "you can go ten minutes away in the City of Romulus and have a five-acre farm and horses" (February 17, 1975 Deposition of Dennis Anderson at Tr. 32). Larger lots in Inkster, located in a portion of the southeast section of the City, cost between \$55,000 and \$100,000 (March 11, 1975 Deposition at Tr. 5). The remaining housing is fairly homogeneous, consisting of low income two- and four-family wooden duplex-type houses and city housing projects in the south and southwestern sections (September 25, 1974 Hearing at Tr. 24), and three bedroom ranches and one and one-half story bungalows in the northern half of the city in the \$19,000-\$24,000 range (March 11, 1975 Deposition at Tr. 5, 6). Except for a few colonials near the Westland border (March 11, 1975 Deposition at Tr. 6), one cannot easily purchase bi-level and tri-level housing in Inkster.

Nor can the rate of crime in Inkster be overlooked in examining the availability of suitable housing there. The relatively high crime rate is illustrated by statistics from the Uniform Crime Enforcement Act (Ass'n Exhibits 4 and 5). More to the point is the evidence that several officers have had their homes broken into and entered, have been victimized

by theft, have received threats from residents of the community while engaged in various off-duty activities, and sometimes fear for the safety of their families (September 24, 1974 Hearing at Tr. 36, 37, and 52; February 17, 1975 Deposition of Martin Yurchak at Tr. 25-26, 27 and 32.

2. The evidence here also shows that off-duty Inkster police officers are rarely required to return to work to respond to emergency situations (September 25, 1974 Hearing at Tr. 53). This fact is not insignificant because the need for the "immediate mobilization" of police officers is frequently advanced as a primary justification in support of a residency rule. See, Detroit Police Officers Association v. City of Detroit, 385 Mich. 519, 78 L.R.R.M. 2267 (1971). No such justification has been shown in this case.

There is no reason suggested by the record of evidence here to explain why Inkster police officers are rarely called back in to work. The Panel assumes, however, that even in the absence of such evidence it may become necessary for the City to mobilize the off-duty police force on occasions in the future to respond to emergency situations. As a consequence, the Panel has decided to limit the Award here to something less than the unlimited residency rule sought by the Association. Under the new rule, as prescribed by the Panel Award, off-duty police officers who are at home when summoned will still be able to respond to emergency calls within a reasonable period of time.

3. A substantial number of Michigan municipalities have either abolished or relaxed residency rules. On this point, Association Exhibit No. 7 indicates that only 86 out of 244 police departments surveyed had city-limit residency rules.

4. Relaxation of the Southfield, Michigan residency rules, to allow police officers to live within one hour's traveling time of police headquarters, has not resulted in manpower problems there in emergency situations according to Captain Edward Ritenour, Executive Officer of the Southfield Police Department (December 11, 1974 Hearing at Tr. 53-55).

5. Furthermore, Inkster itself has had limited experience with a relaxed residency rule with no apparent ill effects. Under a rule adopted March 6, 1967, allowing police officers to reside in three adjacent municipalities (Jt. M-Ex. 2), certain officers were hired who lived beyond the City limits (March 4, 1975 Hearing at Tr. 42). The City concedes, in addition, that three officers currently reside outside Inkster (City's Summary and Closing Arguments at 1). No evidence has been produced,

however, which shows unsatisfactory job performance on the part of any of these officers.

6. The current residency rule in force in Inkster is discriminatory in its application. While police, fire-fighter, and laboring and trade employees must be residents of the City, no other City employees are subject to residency limitations. It should be noted that the rule which withstood constitutional challenge in Williams, supra, applied uniformly to all employees in the classified service of the City of Detroit.

Moreover, the Panel is hard-pressed to find any legitimate reasons underlying the distinctions drawn by the current residency rule in Inkster. In an effort to point to such reasons, the City suggested at least four justifications in support of its position.

First, the City asserts that police officers are subject to greater regulation than employees in other City departments by virtue of the "para-military" nature of the department in which "roll calls and formations are required prior to each shift change" (City's Summary and Closing Arguments at 3). However, this "para-military" categorization overlooks the fact that, insofar as the residency rule is concerned, it is only the possibility of emergency call-ins, not roll calls and formations, that distinguishes police officers from other city employees. Indeed, The Michigan Supreme Court has stated that "[t]he police force is a semi-military organization subject at all times to immediate mobilization, which distinguishes this type of employment from every other in the classified service." D.P.O.A. v. City of Detroit, 385 Mich. 519, at 523. However, as noted above, there have been no emergency call-ins of Inkster police officers during the past two years. More importantly, however, is the fact that the modified residency rule prescribed by the Award here will still allow for police officers to return to work within a reasonable period of time.

If the City of Inkster constituted a relatively large geographic area, with a good variety of available and suitable housing, then the City's "para-military" arguments might carry more force. But Inkster is confined to a relatively small area and, therefore, police officers can live outside of the City limits and still be reasonably available for emergency call-ins.

Second, the City contends that resident police officers are likely to learn the identity of persons engaged in criminal activity within the community during their off-duty hours. The Panel is unable to find any material or substantial evidence to support this contention. Indeed, several police officers refuted this claim when asked to draw from their own experiences (November 19, 1974 Deposition of David A. Killens at Tr. 18-19; November 19, 1974 Deposition of Edward F. Juarez at Tr. 18-19; December 11, 1974 at Tr. 49-50).

Third, the City argues that the number of charges of police brutality has subsided since it began vigorous enforcement of its residency requirement. This contention is a classic example of the error of believing that because an event occurs after an act it occurs because of that act. It is just as likely, if not more so, that the decrease in such charges is due to better training of police officers or to a somewhat calmer atmosphere in the community than that which prevailed about the time of the Detroit riots of 1968. Furthermore, the City concedes that residency was also strictly enforced before 1970, when brutality charges were allegedly substantially greater than they are now. The City's assertions, in any case, are nowhere substantiated by reliable data. The argument thus fails as lacking in both logic and proof.

Finally, the City contends that the widely-shared view in the community of the police department as an "occupation force" will harden if policemen are permitted to live outside the city they police. This argument, if true, is troublesome, in that any added resentment and bitterness toward the police would very likely impede the performance of a non-resident police force to such an extent as would justify city-limit residency. But again, the City's conclusion is illogical and unfounded. The City asserts that the "occupation force" view would harden if police officers were not required to reside in Inkster at the same time that it acknowledges that the perception developed during a period of mandatory police residency. Obviously then, factors other than police non-residency must underlie the "occupation force" perception. If such causative factors include the fact of White policemen patrolling predominantly Black neighborhoods, one solution to the problem might be to assign patrols in such a manner that their racial composition conforms more closely to that of the neighborhoods to which they are assigned patrol duty, and not to require the entire force to live within the city limits. In any event, the Panel is without competent and substantial evidence concerning the conditions that generated the "occupation force" perception, and we accordingly decline the invitation to specu-

late as to the effect of non-residency on the continued growth of this view.

6. With improved transportation facilities, a police officer can live virtually anywhere in Wayne County and be reasonably near to Inkster City Hall in terms of traveling time. Traveling time, for example, from Gibraltar, Michigan at the southeasternmost reach of the county to City Hall is only about 33 minutes (Assoc. Ex. 11). Traveling time from near the western border of Wayne County is roughly comparable (Northville) or even substantially less (Canton or Belleville) (Assoc. Ex. 11). The Panel can foresee no impairment of future emergency mobilizations by permitting officers to live in these locations.

II. SALARY

Pursuant to M.S.A. 17.455 (38), each party submitted to the Arbitration Panel its last offer of settlement on the issue of salaries for the patrol officers at Step 4, as follows (March 4, 1975 Hearing at Tr. 88):

	<u>1974-75</u>	<u>1975-76</u>
The City	\$14,800	\$15,980
The Association	15,100	16,300

It is easily seen that these offers are extremely close. M.S.A. 17.455 (38) states that "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," including the amount of compensation paid other City employees, budgetary constraints of the City, the interests and welfare of the public, and the rate of inflation. In complying with this statutory mandate, the Panel has unanimously agreed to adopt the last offer of the City.

AWARD

(1) SALARY

It is hereby found that the salary for Patrolmen and Patrolwomen at Step 4 (2 years) shall be \$14,800 for the 1974-75 fiscal year and \$15,980 for the 1975-76 fiscal year.

(2) RESIDENCY

The Personnel Rules and Regulations for the City of Inkster presently provide that "all policemen and firemen hired by the City shall be required to live within the City limits of Inkster" (Jt. Ex. 5). Effective immediately, said residency rule shall be null and void insofar as it affects personnel represented by The Inkster Police Officers' Association.

In substitution for the existing residency rule, the following rule shall be adopted and incorporated as part of the 1974-76 collective bargaining agreement between the City of Inkster and The Inkster Police Officers' Association:

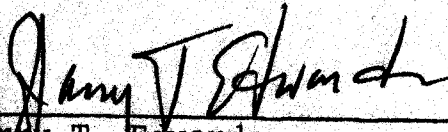
"All persons covered by the terms of this agreement must, as a condition of continued employment, live and maintain residency within Wayne County, Michigan; except that to the east of the City of Inkster, north of where I-75 intersects Fort Street in Detroit, I-75 shall be the east boundary for purposes of the residency requirement."

This new residency rule shall take effect immediately upon issuance of this Award.

The opinion of the Arbitration Panel is unanimous with respect to the Award on the second issue (salaries); as to the Award on the first issue (residency), Mr. Reizen concurs and Mr. Reseigh dissents.

This Opinion is hereby executed and delivered on this 24th day of July, 1975 by the Chairman, for himself and for (and with the authorization of) the Association Delegate and the City Delegate.

For the Panel:



Harry T. Edwards
Impartial Chairman

Mark Reizen /s/ _____
Association Delegate

John Reseigh /s/ _____
City Delegate