

Sub. 2/92

IN THE MATTER OF STATUTORY ARBITRATION BETWEEN:

CITY OF INKSTER

AND

UAW LOCAL 985: INKSTER POLICE

MERC ACT 312: CASE NO. D89-L-2750

HERBERT S. KEIDAN, IMPARTIAL ARBITRATOR

*Inkster City*

OPINION AND AWARD

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE  
1992 FEB 28 PM 3:00

RECEIVED

~~Herbert S. Keidan~~  
Arbitrator  
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LABOR AND INDUSTRIAL  
RELATIONS COLLECTION  
Michigan State University

### BACK GROUND

The parties to this dispute have attempted to resolve their differences since December 19, 1989. A mediation meeting was conducted on the aforesaid date and further mediation hearings were conducted on January 10, 1990, January 19, 1990, January 26, 1990 and February 14, 1990. As a result of the aforesaid, petition hearings were conducted pursuant to Act 312 on the following dates: January 22, 1991, February 13, 1991, March 11, 1991, March 25, 1991, June 10, 1991, July 12, 1991, July 17, 1991, and July 18, 1991. Prior to the filing of this petition, an effort was made one more time to compromise this controversy. The City and the Union Officers submitted the proposed settlement terms to their respective parties. It is my understanding that the general vote of the union membership refused the proposed settlement. As a result, the union has filed the petition for arbitration. Throughout these hearings the following people were present.

The Union:

Laura Campbell, Legal Department UAW

John Shea, Detective

Kenneth James Koeppen, UAW International

James Horne, Police Officer

Any Ginsberg, Local Intern

James McBride, International Rep of UAW

James Bergeron

The following City members were present:

Thomas White, City Manager

Dennis Dubay, City Attorney

Linda Foster, City Attorney

Terry Colwell, Police Chief

L. Martin, Personnel Director

Jim Knobuchar, City Treasurer

Margie Rose, Director of Administrative Services

The history of the conflict between this union and the city of Inkster goes back a number of years. The parties prior to this arbitration hearing had five or more mediation hearings. The last hearing prior to this current arbitration resulted in a proposed settlement being offered to the union by the city, which if accepted by the union, would have been accepted by the city. It is no military secret that the only item the union would not accept was the one regarding residency. Obviously, no matter which way this chairman rules, someone is going to be extremely disappointed and provoked and someone is going to be very happy. However, this matter has to be brought to a head, has to be explored, and the requirement has to be realistic and reflect to the realities of our time.

Section 423.231 of the act specifically states: ". . . . The provisions of this act, providing for a compulsory arbitration, shall be liberally construed."

Section 423.236: "Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be

received in evidence. The proceeding shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired."

Section 9 of the act provides the basis for considering the residency rule and also provides the fact that this rule is a proper subject for good faith bargaining.

The city of Inkster consists of about 5.9 square miles and has a population of about 35,000. In the early 40's, Inkster had the choice of becoming the host to some light industry and some heavy industry. The Common Council decided that it would structure Inkster in such a way as it would become a "bedroom community" and therefore precluded industry from moving into Inkster. As a result, the taxes levied upon real estate and buildings are such that they are inadequate to finance all of the improvements that this distressed area requires.

The city of Inkster is suffering from a depressed economic climate which is common throughout the state and beyond. The city has been economically distressed prior to the current recession and/or depression for many reasons. The opportunity for employment in that area is less than it was when Ford Motor Company had 120,000 employees at the Rouge plant alone and today has about 15,000. The city, as other cities, has a severe drug problem and crime problem. Certain areas in the city are in such economic and social distress that the area is not suitable or even safe for a young couple to raise their family.

There are many reasons and theories advanced by the employer

as to why it is desirable to have the police officer reside in the place of his employment. The first argument put forth historically by the administration would be that a police officer who lives in the city gets to know the city, meets people in the city, adds to the tax income for the city, engages in activity other than police work; such as coaching a baseball little league, basketball, or any other social or recreational activity. Testimony showed that maybe two or three officers of the entire police department participated in such activities.

The burden of the aforesaid extra curricular activities is an attempt by the city employer to maintain control and authority over the police officer. The fact that the police officer does not involve himself with the city basketball or some athletic activity by no means indicates that such lack of interest in those activities diminishes his ability to be a good and competent police officer. If the city wants adults to supervise and control little league baseball, then the Department of Recreation or some similar organization should be given the authority and the responsibility to carry out such a program.

There is no question that the city has the power and authority to establish a residency requirement. The issue is whether or not the city has abused that power. The primary purpose of the residency requirement is to have all patrol officers available for immediate call. Judge John Shepard in the case of Musto v Redford Township, 137 Mich. App. p. 39-84 states: "In these days of high mobility and rapid communications, the

arguments of the defendants are not able to pass a test of rationality".

The time has come for the courts to take a fresh look at this residency problem. Over and over again the city counsel puts great importance on the availability of the officer after his duty hours to be a participant in community life. That is not why a police officer was hired but is a windfall for the city. The average officer has a family of his own. If he spends the amount of time in community affairs as the city of Inkster would like him to, he would soon be a defendant in a divorce suit in the Circuit Court for the County of Wayne. Obviously, there wouldn't be sufficient time for him to be attending to his family needs and requirements. These extraordinary services the city demands the police to perform are really in the area of a sociological department, court psychiatrist or other similar professional worker well trained to deal with the anti-social conditions that exist in the cities. The city did not provide adequate evidence to back up its claims of the broad public support "showed by the residency rule". The argument that the residency provision would make a substantial contribution to the city's economy has not been demonstrated. There was no evidence indicating the availability of jobs in the nearby area or in Inkster itself, or an adequacy of available shopping areas or the availability of decent housing. The witnesses contradict each other in indicating the average value of a house and the amount of mortgage money available. On repeated occasions the city

argues that the law enforcement people should be physically within the city limits to perform their duties. Duties inferred by that statement are regarding 24 hour duty. The contract of the police officer is 8 hours a day, one shift a week and not a commitment to engage in extra activities for the benefit of the city.

The Michigan Senate and House are presently debating the change in the residency law indicating that this basic problem is not resolved by restricting places of residency. The question of residency for police officers is an old and abused subject. Many years ago, before there was an availability of adequate expressways and other forms of communication by phone, radio, and so on, it was essential that in order to have the police officers available, the administration of individual cities required that they become a resident in the area in which they served. At that time, the reasoning was valid and accurate. However, since the early 50's, expressways have been developed in the state of Michigan and in this area, which permits people to have ready access to their place of employment. Therefore, the validity of the demand on the police officer to live in the area in which he is to serve does not accurately reflect the conditions under which they currently live. One reason offered by the employer, (the police department) is that the department was compared to a "para-military" organization. Such an organization consists of soldiers who are trained under certain circumstances to kill their fellow human beings (the enemy). Police officers differ

completely inasmuch as their function is to maintain the peace. The very last resort for a police officer is to use his weapon to kill a human being. The above comparison is without a factual basis and should be ignored.

Three of the four school districts available to Inkster residents are below the state average at all grade levels, and according to the testimony given by a union witness, Wayne-Westland is the best of the four. The other three school districts within the present boundaries of the residency requirement performed poorly on the standardized test scores. These school districts included Allen Park, Dearborn, Dearborn Heights, Garden City, Grosse Ile City, Livonia, Riverview, Southgate, and Trenton. Poor performance by school districts serving Inkster, with the exception of Wayne - Westland, discouraged new residents from moving to the city of Inkster. People interested in buying a home are concerned with many factors, one of which is whether or not there are good schools in the districts. The selling price of a home reflects proximity and quality of the local school facility.

The union produced several witnesses to testify to the fact that mortgages are difficult to obtain in Inkster for a home costing more than \$40,000-\$50,000. The lower rate of sale of houses in Inkster is also a factor for substantiating that allegation. Apparently, there is only one bank within Inkster which is available for the negotiation of mortgage money. Two other factors which discourage new residents within the city are



a drug problem and a high crime rate. These two problems obviously are aggravated by the lack of availability of adequate housing and of good schools.

Testimony alleged that a police officer's "level of commitment to a job" can be measured by his willingness to reside within the city limits. This theory was proved to be inaccurate by evidence indicating that two or maybe three officers out of the 40 officers in the department involved themselves with extra curricular activities.

The availability of complex expressways and modern communication equipment eliminate the theories of distance being a problem for the immediate availability of a call for a police officer.

It is interesting to note that one of the union witnesses advised that in 20 years of service to the department, he has never been called out for an emergency service.

When a police officer is hired, the contract indicates that the police officer is available for duty 24 hours a day. His job consists of obeying orders from his superiors and fulfilling the functions of his particular assignment. Although the police officer agrees to be available for emergency calls any day or night, it doesn't require the police officer to show his good faith by coaching a little league team, swimming team, roller skating contest, or other athletic activity for children. The employment agreement does not impose upon the police officer a duty to perform extra curricular activities as set forth above.

The following list of comparables was submitted by the union: Highland Park, Dearborn, Dearborn Heights, Garden City, Lincoln Park, Livonia, Plymouth, Romulus, Southgate, Taylor, Trenton, Wayne - Westland and Wyandotte. The following comparables were listed by the city: East Detroit, Ecorse, Ferndale, Garden City, Hamtramck, Hazel Park, Highland Park, Lincoln Park, Melvindale, Mt. Clemens, River Rouge, Riverview, Romulus, Southgate, Wayne - Wyandotte. From this list of 30 alleged comparables, the following comparables were listed by both employer and employee: Garden City, Lincoln Park, Romulus, Southgate, Wayne and Wyandotte. Eight of the city's comparables, Hamtramck, Melvindale, Mt. Clemens, River Rouge, Riverview, Romulus, Southgate and Wyandotte had no residency requirements. In fact, it is common knowledge that there is presently pending in the Michigan legislature a bill which prohibits restriction of residency for police officers. The bill has passed the Senate several months ago and is tied up in the committee in the House of Representatives. It is also common knowledge that the reason this bill is tied up in the house is that the administration of one of our large cities in Michigan has blocked this legislation because the administration does not want to give up its control in any fashion possible of the police officers. It is further a matter of common knowledge that the day has come when this rule of residency no longer fulfills the intent at the time of its origin. As I said before, the availability today of modern, efficient, reliable communication devices which permit a

dispatcher to reach all of the city's police officers practically immediately, and the availability of expressways and other main avenues enable police officers to respond in a matter of minutes. Twenty years ago or more the dispatcher had limited communication and unreliable equipment.

#### GEOGRAPHIC LOCATION TO INKSTER AND DISTANCE

East Detroit	Northwest	20 1/2	miles
Ecorse	East Southeast	7 1/2	miles
Ferndale	Northeast	12	miles
Garden City	North	1 1/2	miles
Hamtramck	Northeast	13 1/2	miles
Hazel Park	Northeast	12 1/2	miles
Highland Park	Northeast	11	miles
Lincoln Park	Southeast	6	miles
Melvindale	East Southeast	6	miles
Mt. Clemens	Northeast	30	miles
River Rouge	East	8 1/2	miles
Riverview	Southeast	9	miles
Romulus	Southwest	4	miles
Southgate	Southeast	8	miles
Wyandotte	Southeast	8	miles

#### COMPARABLES

I have found a variety of opinions by competent arbitrators as to what constitutes a "comparable". If you would examine the opinion of 12 competent arbitrators, that at best one or two

would agree with each other as to a complete test of a comparable. This is not to say that the other opinions as to what constitutes a comparable are not valid or reasonable. There are many factors that can be used to determine comparability. The personal philosophy of the arbitrator actually controls the required elements preferred by that particular arbitrator. The elements of the "comparable" most frequently "include the comparison of wages, compensation, conditions of the labor market in general, conditions of employment, private employment, and other civic employees generally. Comparable communities are adjudged by whether or not they are predominately an industrial community, moderate retail stores, a bedroom community, whether it consists of private homes only or predominately small or large rented homes, multiple apartment houses and so on. The elements of SEV (State Equalized Value) can vary to the point that they are unrealistic.

COMPARABLES APPROVED BY BOTH EMPLOYER AND EMPLOYEE

1. Garden City, Lincoln Park, Romulus, Southgate, Wayne and Wyandotte.

LIST OF COMPARABLES SUBMITTED BY THE UNION

1. Highland Park, Dearborn, Dearborn Heights, Garden City, Lincoln Park, Livonia, Plymouth, Romulus, Southgate, Taylor, Trenton, Wayne, Westland and Wyandotte.

LIST SUBMITTED SOLELY BY THE CITY

1. East Detroit, Ecorse, Ferndale, Garden City, Hamtramck, Hazel Park, Highland Park, Lincoln Park, Melvindale, Mt. Clemens, River Rouge, Riverview, Romulus, Southgate, Wayne and Wyandotte.

COMPARABILITY. This subject has challenged arbitrators since the enactment of Act 312. I examined opinions of record in the Commission's Office and after reading a dozen or two I came across the decision written by one Stanley T. Dobry. I am going to quote some of his material as I think his definition and comments hit the nail on the head. He refers to a Livingston County Case No. 87H-2068 in which he states "one statutory factor that must be considered relates to the comparison of wages, hours and conditions of employment for both employees performing 'similar services' and 'other employees generally', in both public and private employment in comparable communities." (Section 9(d)). "The word comparable is defined in the dictionary as "something that is capable of being compared, having sufficient features in common with something else to afford comparison." One of the basic definitions used by arbitrators after Act 312 was in effect was the discussion of two elements making up the basis for comparability. The basic definition of a comparable was founded on S.E.V. (State Equalized Value and Population). The arbitrator then states "based upon location within a common labor market, geographic, homogeneity,

shared law enforcement duties, and consistent comparison by bargaining unit members for a period of nearly 15 years, the definition grows larger and the elements become more numerous. "It may very well be that the comparables suggested by both parties meet the bare threshold of comparable communities" or "similar or identical localities" within the meaning of the statute but the fact that they could be validly compared does not establish the weight to be given to any comparison. The traditional approach, using state equalized value (S.E.V.), crime rates, population levels, general taxes and revenues, governments, the number of motor vehicles, to establish comparability is a very small window upon the world. Unquestionably, those are factors which can properly be considered but they are not necessarily the best method to arrive at a result. The arbitrator then quotes economist Ann Maurer "local labor market may be defined as a geographic area in which a concentration of workers can live, work and change jobs without changing residences." Taking all of these comments cited by the arbitrator Mr. Dobry, you arrive at a point where this situation is really unique and all these elements may take a prominent role in your decision. I have attached hereto and made a part hereof, a list of comparables approved by both the employer and the employee which are six in number; a list of comparables submitted by the union alone (14) and a list submitted by the city (16). I believe these comparables are sufficient to satisfy the requirements of Section 9 of the Act.

The day has long gone where the officer knew the people and activities on his beat, and where the citizens respected the police officer, and had a friendly attitude toward that officer. Unfortunately, in today's world, the police officer is not safe wherever he goes. Young people have no respect for the police, only fear, and in some groups not even that. Adults do not respect the police. The lack of respect for the police department is one factor which results in the police officer not having any incentive of involving himself recreational activities.

It is the finding of this chairperson that it is an unreasonable burden on the police officer to force that officer to live within the restricted boundaries in the city of Inkster.

"Section 45 of the current Contract, Residency, all persons pursuant to 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."

It is therefore directed that the restriction of residence as presently stated is adopted with no changes whatsoever.

RESPECTFULLY SUBMITTED

HERBERT S. KEIDAN, ARBITRATOR

DATED: February 27, 1992



## ISSUES

### UNION

ARTICLE XIV - Holiday Provision  
ARTICLE XXXI - Sick Leave  
ARTICLE XXII - Vacation Leave  
ARTICLE XXIII - Hospitalization Insurance  
ARTICLE XIV - Life Insurance  
ARTICLE XXVII - Job Classification and Pay Plan  
ARTICLE XXVIX - Performance Allowance  
ARTICLE XXXI - Court Time  
ARTICLE XXXIX - Shift Allowance  
ARTICLE XXXXV - Residency  
ARTICLE XXXXVIII - Pension Charges

### CITY

ARTICLE XV - Duty Disability Leave  
ARTICLE XXI - Sick Leave  
ARTICLE XXIII - Hospitalization Insurance  
ARTICLE XXVII - Pay Plan  
ARTICLE XXXIII - Education Leave

2/17/92

- Item 1: Article XXVII - Job Classification and Pay Plan, Section (a) Wage Schedules for Police Officers and Detectives - Union

The panel stipulates according to the attached schedule of pay rates as signed by both the City and Union representatives on 1/30/92.

- Item 2: Article XXVII - Job Classification and Pay Plan Section (a) - Years to Top Step - Union

The panel finds for the union's last best offer per the schedule as attached. Four years from end of probation to top of scale.

- Item 3: Article XXVII - Job Classification and Pay Plan Section (a) - Wage Schedule for Detectives - Union

The Panel finds for the union's last best offer language as follows: Detectives shall receive eight (8%) percent wage differential over police officers.

- Item 4: Article XXXIX - Shift Allowance - Union - Economic

Panel accepts the Union's last best offer.

A shift differential of 15 (.15) cents per hour shall be included for each employee while employed on a second or afternoon shift; and a shift differential of twenty (.20) cents per hour shall be paid to each employee who shall be employed upon a third or midnight shift.

Effective Date: 1/1/92.

- Item 5: Article XXXI - Court Time - Union - Economic

Panel accepts the Union's last best offer.

(a) Officers appearing in District Court during their off duty hours shall receive extra pay at the rate of time and one half (1 1/2) for a minimum of 2 hours or for the actual time spent which ever is greater.

(b) Officers appearing in Circuit Court and other Courts and administrative

hearings during their off duty hours shall receive extra pay at the rate of time and one half (1 1/2) for a minimum of 4 hours or for actual time spent, which ever is greater.

Effective date 1/1/92.

Item 6: Article XIV - Holiday Provisions - Union - Economic

Panel accepts the City's last best offer.

- (a) Each employee shall receive compensation for thirteen (13) holidays at their normal rate of pay in lieu of holiday time off.
- (b) The thirteen (13) holidays shall be designated as follows: New Years Day, Dr. Martin Luther King's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve Day, Christmas Day, New Year's Eve Day and the Employee's Birthday.
- (c) Holiday pay for employees to be paid in accordance with paragraphs (a) and (b) above shall be paid to each employee upon the first regular payday following December 1st of each year, or as accrued time upon separation.

Effective date: 7/1/89

Item 7: Article XXII - Vacation Leave - Union - Economic

Panel accepts the city's last best offer.

- (a) During the first five (5) years of employment, all seniority and probationary employees shall receive vacation time at the rate of thirteen (13) regular scheduled work days. New probationary employees, however, may not be permitted vacation leave until they have completed six (6) months of their probationary period. After five (5) years of seniority, employees shall receive seventeen (17) work days vacation. After 10 years of seniority, employees shall receive twenty one (21) work days of vacation. After twenty (20) years of seniority, employees shall receive twenty-four (24) work days of vacation.

Effective Date: 7/1/91

Item 8: Article XXIII - Hospitalization Insurance - Union-Economic

No change in existing language of (a), (b), (c) and (e).

- (d) The CITY will pay fifty (50%) percent of the premiums for the cost of the hospitalization program equal to that provided to regular employees to all those employees who retire subsequent to July 1, 1976, until Medicare, or a national health system in effect covers the retiree. Employees who retire after July 1, 1989 shall be granted a freeze on the dollar amount of his/her portion of health insurance premiums as of the date of retirement, and any increase in said premium which may be imposed after retirement shall be borne by the City.

Effective date: 7/1/89

Item 9: Article XXXXVIII - Pension Changes - Union - Economic

1. Pension Multiplier. Effective July 1, 1986, the City of Inkster Policemen and Firemen Retirement System (hereinafter the Retirement System) shall be amended to provide that any UNION member eligible for retirement under Section 18.3 of the Retirement System shall, upon his own application, be retired and shall receive a pension equal to his final average compensation multiplied by two percent (.02), multiplied by his number of years and fraction of a year of service, by quarters, to age 55, plus his final average compensation multiplied by one percent (.01), multiplied by his number of years and fraction of a year of service, by quarters, after age 55 to his date of retirement. This improvement shall cover all current employees and all future retirees. Provided, however, that, should a current employee elect to retire prior to July 1, 1986, his pension shall be calculated under the current Retirement System, but shall be recalculated on July 1, 1986, and he shall receive the improved pension effective July 1, 1986.
2. Spouse-Dependent Coverage. Effective July 1, 1986, the Retirement System shall be amended to provide that, upon a retiree's death, his/her designated spouse or child or children under the age of eighteen (18) as contingent pensioner shall receive a total of sixty (60%) of the pension the retiree was receiving at the time of his death. For any individual who becomes eligible for contingent pension benefits under the Retirement System between the date of this Agreement and July 1, 1986, the current retirement provisions

shall apply, and the pension shall be recalculated on July 1, 1986 pursuant to Paragraph 1 above, and the contingent pensioner shall receive the improved pension benefit effective July 1, 1986. This improvement shall apply to all current employees and all future retirees.

3. Employee Pension Contribution. Effective July 1, 1986, all UNION members shall be granted a one percent (1%) reduction in their Retirement System contributions, from seven percent (7%) to six percent (6%).
4. Agreed to stipulation entered by the City and the Union on 1/30/92 attached hereto and made part hereof.

Effective Date: 7/1/89

Item 1 - Article XV - Duty Disability Leave - City

The panel finds for the City's last best offer with the following stipulation:

Article XV paragraph

- (d)1 Management shall, for a period not to exceed 52 weeks, supplement without charge to sick leave or vacation leave, the employee's workers compensation equal to the normal weekly earnings excluding overtime and premium pay.
- (d)2 After 52 weeks of duty disability leave, if employee has sufficient accrued sick leave, he will receive a payroll check for the difference between the workmen's compensation check and his normal bi-weekly payroll check, exclusive of his differential and other work premium, to the extent of his accrued sick leave only.
- (e) Any seasonal, temporary or part-time employee who sustains an illness or injury arising out of, and in the course of his employment shall receive only such benefits as he may be entitled to under the provisions of the workmen's Compensation Act. Benefits provided for in this section apply only to seniority and probationary employees. (Employees on duty disability cease to accrue benefits after fifty-two (52) weeks of disability. Hospitalization will continue.)

Effective date: 7/1/91

Item 2 Article XXI - Sick Leave - City

The panel finds for the Union's last best offer. No change in existing language.

Sick leave shall not be considered a privilege which an employee may use at his discretion, but shall be allowed only in case of necessity and actual sickness or disability of an employee:

- (a) The amount of sick leave credit shall not exceed one (1) day per month nor twelve (12) days per year. The accumulation of sick leave credit shall not exceed two hundred (200) days for any employee. Vacation leave and paid holidays shall be considered as days worked for accumulation of sick leave benefits. Sick leave shall be computed from the first full working day of the employee. However, no employee shall be entitled to sick leave credit until he shall have completed his probationary period at which time he shall be credited with the number of hours he will have earned during his probationary period of service. Except for job-incurred disabilities, an employee who has not served his probationary period of service shall not be paid for his absence due to illness. As a matter of mutual convenience, probationary employees shall be entitled to sick leave pay after the completion of the fourth month of their probationary period, based upon the credit earned in the beginning of the fourth month--and shall be entitled to sick leave credit for the first ninety (90) days of this probationary period upon the successful completion of their one (1) year probationary period.
- (b) The amount of sick leave used by an employee shall be equal to the number of regularly scheduled hours he would otherwise have worked during his absence on such leave. Should a change in the work week occur, accumulated sick leave shall be credited on the basis of the new work week schedule. Accumulated sick leave credits shall be converted to hours that would have been earned on the new work week schedule.
- (c) A certificate of illness or injury from a physician, if available, may be required by the Chief as evidence of illness or disability before compensation for the period of illness or disability is allowed, and shall be mandatory if the illness or disability exceeds four (4) consecutive working days. Abuse of the sick leave privilege or falsification of illness or disability will result in disciplinary action up to and including discharge.
- (d) Sick leave credits will not be allowed if it is established that the absence is due to illegal use of narcotics or intoxicants, willful misconduct or any illness or injury while self-employed or employed by other than the CITY.

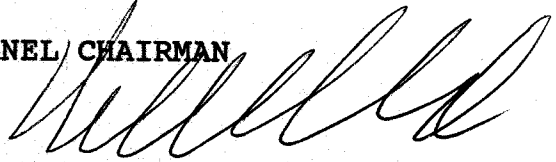
- (e) Any employee who becomes ill and unable to report for work must, unless circumstances beyond the control of the employee prevents such reporting, notify the supervisor on duty at least one (1) hour before the starting time of his particular shift on the first day of his absence, and thereafter, if not hospitalized, or sick leave pay will not be allowed and the employee shall be considered absent without leave.
- (f) If the employee so elects, after all accrued sick leave is used, vacation leave may be used and payment made therefor to the extent of vacation leave accrued to which employee is entitled as of such date.
- (g) When an employee receives his last check for sickness or disability, he will be placed on leave without pay for a period not to exceed one (1) year. If, at the end of that time, employee is still unable to return to work, his employment shall be terminated. Employee shall be eligible for re-employment, provided he has completely recovered, and has a doctor's statement to that effect subject to the CITY's physical examination and approval and provided further, that a position is available in accordance with his seniority.
- (h) Upon ordinary retirement of an employee, or upon death, the employee's estate, shall receive cash payment at his current daily rate of pay, excluding premium rates for fifty (50%) percent of his accumulated sick time, but not to exceed one hundred (100) days of payment. Upon retirement termed disability under the CITY OF INKSTER pension plan, an employee shall receive cash payment at his current daily rate of pay, excluding premium rates, for seventy-five (75%) percent of his accumulated sick time but not to exceed one hundred fifty (150) days of payment. No payment is to be made for unused sick leave upon separation from CITY employment except upon retirement, either ordinary or disability, as defined in the employee's retirement plan, or upon death.
- (i) Employees who use not more than five (5) days sick leave and/or leave without pay per fiscal year shall be given three (3) days additional leave with pay. Such "bonus" days may be used to extend vacations or as personal leave days. When used for personal leave, the Employer shall receive at least 24 hours notice.

Item 4 Article XXXIII - Educational Leave - City


The panel finds for the Union's last best offer. No change in existing language.

- (a) The Chief may authorize educational leave with or without pay for regular employees when determined to be in the best interests of the CITY. In such cases where educational leave is granted with pay, the employee shall be required, upon mutual agreement, to return to the CITY employment for a specified period of time after completion of educational leave.
- (b) Subject to the provisions of Article XII, Promotions, abilities acquired as a result of education leave which may qualify the employee for a higher classification will be considered for such higher classification as soon as such high classification becomes available. The employee so qualified must request a change in classification as soon as possible after the higher classification becomes opened.
- (c) Each officer, upon satisfactory completion of two (2) years of undergraduate study toward a four (4) year degree, or upon the achievement of an Associate Degree shall receive an annual educational salary increment of \$200. In addition, upon completion of thirty (30) semester hours or subsequent year or undergraduate study, the officer shall receive an additional increment of \$100. Increments will be given during the fiscal year following the presentation of satisfactory evidence or transcripts to the Department and authorization by the City Manager.

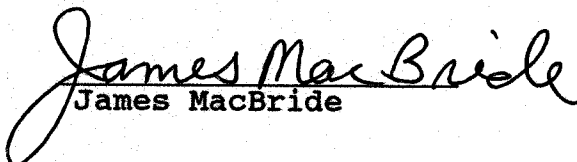
PANEL CHAIRMAN

  
Herbert S. Keidan

CITY OF INKSTER

  
S. Thomas White

UNION

  
James MacBride

February 17, 1992

ink7.mtg



STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

CITY OF INKSTER,

-and-

MERC Act 312

Case No. D89-L2750

INTERNATIONAL UNION  
UAW, LOCAL 985

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AGREEMENT AND STIPULATION

It is hereby agreed and stipulated between the City of Inkster (hereinafter referred to as the "City") and the United Automobile Workers (hereinafter referred to as the "Union") that, in complete and final settlement of the wage adjustment issue, the City and Union hereby agree that:

1. The rates of pay set forth in Article XXVII - Job Classification and Pay Plan, Section (a) for Police Officer and Detective shall be revised as follows:

July 1, 1989 - June 30, 1990: Increase the wage scheduled by four (4%) percent across the board.

July 1, 1990 - June 30, 1991: Increase the wage scheduled by four (4%) percent across the board.

July 1, 1991 - June 30, 1992: Increase the wage scheduled by three (3%) percent across the board.

2. Revise the 3rd and 4th sentences following the salary schedule in Article XXVII - Job Classification and Pay Plan, Section (a) to provide as follows:

Effective January 1, 1992, new employees who are not MLEOTC (Michigan Law Enforcement

Officers Training Council) certified shall have a starting pay rate of \$20,000.

Effective January 1, 1992, new employees who are MLEOTC (Michigan Law Enforcement Officers Training Council) certified shall have a starting pay rate of \$22,000.

2. The wage adjustment issue resolved by the above agreement and stipulation shall be withdrawn from Act 312 Arbitration by the parties.

3. The Act 312 Arbitration Panel will incorporate this Agreement and Stipulation into its Award.

This Agreement and Stipulation is entered into by the City's and Union's authorized representatives.

James McBride 1/30/92  
James McBride on behalf of  
the International Union,  
UAW Local 985

S. Thomas White 1/30/92  
S. Thomas White, on behalf of  
the City of Inkster

<u>PATROL</u>		<u>End of Probation</u>	<u>6 months after Probation</u>	<u>1 yr. after Probation</u>	<u>2 yrs. after Probation</u>	<u>4 yrs. after Probation</u>
	7/1/88 (Present)	\$22,000 10.54	\$23,000 11.02	\$25,000 11.97	\$28,500 13.65	\$30,300 14.51
	7/1/89 - 4%	\$22,880 10.96	\$23,920 11.46	\$26,000 12.45	\$29,640 14.20	\$31,512 15.09
	7/1/90 - 4%	\$23,795 11.40	\$24,877 11.91	\$27,040 12.95	\$30,826 14.76	\$32,772 15.70
	7/1/91 - 3%	\$24,509 11.74	\$25,623 12.27	\$27,851 13.34	\$31,751 15.21	\$33,755 16.17
<u>DEFECTIVE - 8% over Patrol</u>						
	7/1/88 (Present)	\$23,320 11.17	\$24,380 11.68	\$26,500 12.69	\$30,210 14.47	\$32,118 15.38
	7/1/89	\$24,710 11.83	\$25,834 12.37	\$28,080 13.45	\$32,011 15.33	\$34,033 16.30
	7/1/90	\$25,699 12.31	\$26,867 12.87	\$29,203 13.99	\$33,292 15.94	\$35,394 16.95
	7/1/91	\$26,470 12.68	\$27,673 13.25	\$30,079 14.41	\$34,291 16.42	\$36,455 17.46

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

CITY OF INKSTER,

-and-

MERC Act 312

Case No. D89-L2750

INTERNATIONAL UNION  
UAW, LOCAL 985

AGREEMENT AND STIPULATION

It is hereby agreed and stipulated between the City of Inkster (hereinafter referred to as the "City") and the United Automobile Workers (hereinafter referred to as the "Union") that, in complete and final settlement of the pension vesting issue, the City and Union hereby agree that:

1. The language set forth in Article XXXXVIII, Paragraph 4 - Vesting, shall be revised to read:

Union members shall be one hundred (100%) percent vested in the pension plan after ten (10) years of service effective as of 7/1/89.

2. The pension vesting issue resolved by the above Agreement and Stipulation shall be withdrawn from Act 312 Arbitration by the parties.

3. The Act 312 Arbitration Panel will incorporate this Agreement and Stipulation into its Award.

This Agreement and Stipulation is entered into by the City's and Union's authorized representatives.

James McBride 11/30/92  
James McBride on behalf of  
the International Union,  
UAW Local 985

S. Thomas White  
S. Thomas White, on behalf of  
the City of Inkster.

This case involved a rule by the Township that an applicant who wanted to become a police officer had to be a resident of the Township for one year before he could file an application. The appellate court agreed with the trial court in saying that such a classification and requirement is unconstitutional. They applied what is called a strict scrutiny test which requires the state show a compelling interest to justify the classification. They further found obviously that the compelling interest in this case was not adequate. In the opinion written by Judge Shepard he indicates "If the interest is fundamental or the classification suspect, the court applies a strict scrutiny test requiring the state to show a compelling interest which justifies the classification. Rarely have courts sustained legislation subject to this standard of review. P. 33. Further, other legislation principally social and economic, is subjected to review under the traditional equal protection test. The burden is on the person challenging the classification to show that it is without reasonable justification. The court discusses the right to travel as fundamental.

P. 36--Defendants argue that the rational bases for the statute are: local residents will be more familiar with the community and its geography; there will be increased trust by local residents in officers who come from the community; there will be increased community; the township has an interest in giving jobs to its own residents; and it will be easier for township officials to do a background investigation on an applicant who lives in the community.

The courts further state on p. 36

In our opinion all of these arguments fall when we recognize that, in full compliance with the statute in question, one can move into a community for the mere purpose of establishing a residence while continuing one's employment and social activities elsewhere. In the one-year period such an individual would acquire almost no familiarity with the community and establish no roots or commitment to the community which would justify a claim that the applicant has established links to the community that would either enable the officials to adequately investigate his background or which would be an adequate prediction of loyalty and dedication to the interests of the community. In these days of high mobility and rapid communications, the arguments of defendants are not able to pass a test of rationality.

The formula used to determine the distance from the city that an officer may reside is the "officer must be able to report for duty within one hour of telephone contact under normal weather conditions."

D.P.O.A. v. City of Detroit, 385 Mich 519 (1971)

Basically this case stands for the proposition that in every step of government there is an ongoing power struggle between office holders, politicians and so on. This case involved a power struggle between the commissioners office which is really the mayor, and common council. To the outward appearance--you have a struggle for power between the commissioners office (the police) and the common council. In reality it is a struggle between the mayor's office and the common council inasmuch as the mayor appoints the commissioner and controls him.

"An ordinance requiring police officers and most other employees of the city to reside therein but permitting waiver of this requirement for employees in the classified service is valid in its totality because a policeman's job has "natural distinguishing characteristics" from all other city employees as the 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." [Headnote 3]

"The legislative power of the City of Detroit is vested exclusively in the common council by the city charter under which, subject to equal protection limitations, the council's determination that an ordinance enacted by it to require most of the employees of the city to reside therein would promote the general health, safety, welfare and good government of the city was a policy decision within the bounds of legislative discretion." [Headnote 6]

"A classification is an ordinance allowing a waiver of residence in the city to employees in the classified service when it 'would serve the best interest of the city' but denying it categorically to police officers, in order to be upheld under the equal protection clause of the United States and Michigan Constitutions, must be based upon a real and substantial difference having reasonable relation to the object of the legislation". [Headnote 7]

"A classification in an ordinance allowing a waiver of residence in the city to employees in the classified service when it 'would serve the best interest of the city' but denying it categorically to police officers is devoid of rationality by denying that which is in the best interest of the city to police officers, the classification forgoes any claim it might have to a reasonable relation to a legitimate governmental purpose and denies to police officers the equal protection of the law". [Headnote 8]

There are several opinions contained in this matter, all of them are basically the same idea. The old worn out theory that the police officer is a semi-military person subject at all times to immediate mobilization distinguishes this type of employment from every other type of service. Judge Brennan made concurring opinions based that he cannot agree totally with Justice Williams.

"He would hold that the residency ordinance invidiously discriminates against police officers, because no waiver is permitted for them".

The case further discusses that other city employees under certain circumstances can have the residence requirement waived when the police department cannot under any circumstances.

"That classification amounts to nothing more than a legislative determination that the nature of a police officer's work is such that he ought to be a resident of the city".

"The residency requirement is not designed solely to assure that the officer has a greater stake in the city. It is also intended to bring about a more cooperative attitude among the citizenry with whom the police are in daily contact".

"The common council wants--desperately needs--to promote a feeling of trust, confidence and fraternity between the people of Detroit and their police departments".

"The trial court also held that the ordinance discriminates arbitrarily against police officers as contrasted with all other city employees by denying them the same conditional waiver of residency and in so doing denies them the full protection of the laws. From the decision of the trial court, leave to appeal directly was granted by this court".

"The common council is vested by the charter with the legislative power of the city. Its legislative powers and duties include the following among others:

1. "To enact ordinances to carry into effect the powers conferred and the duties imposed upon the city by the constitution and the laws of the state, to make operative the provisions of this charter, and to promote the general peace, health, safety, welfare and good government of the city".
2. "To execute all legislative powers of the city including the power to adopt, continue, amend and repeal city ordinances".
3. "To 'enact such ordinances as may be necessary to carry out the provisions' of specified chapters dealing with the powers and duties of various executive offices and departments, one of which is the chapter dealing with the office of Commissioner of Police".

"The Commissioner of Police, on the other hand, is an officer of the executive branch, 'who shall be appointed by the mayor and who shall have charge of the police department.' The charter provides that:

"The powers and duties of the commissioner which shall be exercised and performed as herein provided and in accordance with the laws of the state and the ordinances of the city, shall be as follows:

- (a) He shall assume and exercise supervision over the police department and make all proper rules for the government and discipline thereof;

\* \* \*

- (d) May change the titles of police officers and employees under him, except deputies, designating such titles as he may see fit, creating whatever officers and positions he



may deem necessary for the proper organization and conduct of the department.

\* \* \*

- (m) Shall have such other powers as are herein prescribed or may be necessary hereunder for the proper discharge of his duties.

"No intent to except the police commissioners from the operation of validity enacted city ordinances can be gleaned from the language of the charter. Consequently, if a residency requirement for most city employees is within the legislative powers of the common council granted by the charter, police officers as well as other city employees are subject to the requirement.

"The ordinance makes residence within the city a mandatory condition of employment for all police officers of the City of Detroit".

"The enactment of the residence requirement represents a decision by common council that certain benefits are acquired for the city by requiring most city employees to reside within the municipality".

"By asserting that even when a waiver is in the best interest of the city and that even when it is allowed to an employee in the classified service under the same circumstances, a waiver will be denied to a police officer solely because he is a police officer, the ordinance is self-defeating. Such a classification is devoid of rationality. Any legitimate governmental purpose must be in the best interest of the city. By denying that which is in the best interest of the city to police officers the classification forgoes any claim it might have to a reasonable relation to a legitimate governmental purpose.

Detroit Police Officers Association v. City of Detroit, 391 Mich 44 (1974)

This case concerns the interpretation of the statutes regarding MERC, its former body PERA, City Council and so on. The city came to the conclusion in the beginning that the city is not required to bargain over recruiting requirements for patrolmen. The duty to bargain extends only to those terms and conditions of

employment that affect employees after they have commenced an employment relationship.

"The primary obligation placed upon the parties in a collective bargaining setting is to meet and confer in good faith. The exact meaning of the duty to bargain in good faith has not been rigidly defined in the case law. Rather, the courts look to the overall conduct of a party to determine if it has actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement".

"The laws does not mandate that the parties ultimately reach agreement, nor does it dictate the substance of the terms on which the parties must bargain. In essence the requirements of good faith bargaining is simply that the parties manifest such an attitude and conduct that will be conducive to reaching an agreement".

"After the parties have met in good faith and bargained over the mandatory subjects placed upon the bargaining table, they have satisfied their statutory duty.

"The enactment of an ordinance, however, despite its validity and compelling purpose, cannot remove the duty to bargain under PERA if the subject of the ordinance concerns the 'wages, hours or other terms and conditions of employment' of public employees. If the residence ordinance were to be read to remove a mandatory subject of bargaining from the scope of collective bargaining negotiations, the ordinance would be in direct conflict with state law and consequently invalid. Therefore, if, as we will consider below, residency is a mandatory subject of bargaining, a city ordinance cannot foreclose collective bargaining on the subject."

"We are not persuaded that the residency requirement, regulating as it does the conduct of police officers throughout their years on the force, may be correctly labeled a 'continuing recruiting requirement'. In addition, we expressly reject the city's argument that any term or condition of employment may be so labeled. A recruiting requirement, whether it is age, mental competency, physical characteristics or residency, focuses on that point in time at which a candidate for employment is hired. At that moment the new recruit must meet established standards. Once an applicant has met these standards and has been hired as an employee, the 'recruiting requirements' as such do not continue

to regulate his or her right to hold the job. Employment standards are, of course, lawful, but they must be treated as a term and condition of employment.

Moreover, it is our conclusion that residency in the context of this case is not a recruiting requirement at all. Although the city contends that residency is a recruiting requirement, it allows new officers one year from their date of employment to establish residency in the City of Detroit. The residency requirement is a condition imposed by the city that police officers must comply with in order to maintain their already acquired employment. We accordingly affirm the decision of MERC and the stipulation below by the City that the residency requirement is a term and condition of employment as understood in §15 PERA. Residency is a mandatory subject of bargaining under PERA and collective bargaining cannot be avoided through the enactment of a city ordinance."

State, County & Municipal Employees Local 339 v. City of Highland Park 363 Mich 79.

This case concerns inadequate facilities for housing employees and discharge. The ordinance was declared unconstitutional as arbitrary and unreasonable as to non-resident employees because of lack of available adequate housing facilities which they could afford.

"In 1941 the defendant city's council adopted a resolution authorizing the city department heads, within their discretion, to permit city employees working under their supervision to reside outside the city upon proper showing that such employees were unable to pay the high rentals charged in Highland Park during the current war emergency".

"It was plaintiffs' claim in their bill of complaint and before the trial court that the ordinance as sought to be enforced against said employees was arbitrary and unreasonable, violated the due process provisions of article 2, §16, of the Constitution of the State of Michigan (1908) and of the Fourteenth Amendment to the United States Constitution, and violated said employees' right to equal protection of the laws as guaranteed by article 2, §1, of the Constitution of the State of Michigan and by the Fourteenth Amendment to the United States Constitution. It was also plaintiffs' claim that, by defendants' failure to enforce the council resolution of 1951, defendants were estopped to enforce the 1956 ordinance."

"The chancellor's opinion succinctly states his findings, based upon which he concluded the ordinance was arbitrary and unreasonable, and therefore unconstitutional, as it was sought to be applied against the 163 civil service employees represented by plaintiffs."

"It may be said, however, that the court, in the absence of any express charter provision requiring employees to reside in the city, and where reliance here is placed on general home-rule powers conferred by statute, is justified in considering and passing upon, as it does here, the reasonableness of the municipal ordinance."

"That the chancellor correctly stated the law of this state to be that the court may consider and pass upon the reasonableness of a municipal ordinance based upon general home-rule powers and not specifically authorized by charter or statute."

McCarthy v. Philadelphia Civil Service Commission, 96 U.S. Supreme Court Reporter 1154

This involves a fire department employee who after 16 years of service moved from the residence of Philadelphia which was against the rules and municipal regulations and they fired him. The Supreme Court held that the regulation was not unconstitutional. The Michigan Supreme Court held that Detroit's city limit requirement for police officers was not irrational and did not violate the due process clause or the equal protection clause of the Fourteenth Amendment. However, I don't believe this is really a matter of constitutional law. They discussed the constitutional rights to travel interstate. The case also discusses the residency requirement and a one year waiting period requirement are distinct and independent prerequisite. This too is just a question of who has the power in the eternal quest for power.

## CASE COMMENTS

Musto v. Redford Township, 137 Mich. App. 30 (Sept. 1984)

The Township required the applicant to be a resident for one year before he could file an application. The basic principal derived from this case is "In these days of high mobility and rapid communications, the arguments of defendants are not able to pass a test of rationality."

D.P.O.A. v. City of Detroit, 385 Mich 519 (1971)

The court found that the residency requirement discriminates arbitrarily against the police officers as contrasted with all other city employees by denying them the same constitutional waiver of residency and in so doing denies them the full protection of the laws. This case is a good example of an underlying struggle for power which goes on in every local government involving the council and the mayor.

Detroit Police Officers Association v. City of Detroit, 391 Mich 44 (1974)

The case discusses the interpretation of statutes regarding MERC, the city council and others. The city decided that it was not required to bargain over residency requirements. The court indicated that the city first had to use the bargaining procedure before it could pass such a requirement. The court states that it is not essential that the parties reach an agreement by arbitration or mediation but there must be good faith bargaining before seeking the assistance of the court. The city cannot avoid complying with the duty to bargain in good faith. The court found that the city cannot avoid the statutes of the state requiring bargaining by enacting a city ordinance.

State, County & Municipal Employees Local 339 v. City of Highland Park 363 Mich 79

This case involves inadequate facilities for housing employees. The ordinance was declared unconstitutional as it was arbitrary and unreasonable to non-resident employees because of the lack of available adequate housing facilities which they can afford.

McCarthy v. Philadelphia Civil Service Commission, 96 U.S. Supreme Court Reporter 1154

In this matter a fire department employee, after 16 years of service, moved from the city of Philadelphia and was fired

because the move out of town violated rules and municipal regulations. The Supreme Court held the regulation was not unconstitutional. The Michigan Supreme Court held, that the Detroit city limit requirement for a police officer was not irrational and did not violate the due process clause or the equal protection clause of the Fourteenth Amendment.

cases.3