5/7/79
ARB

IN THE MATTER OF:

City of Ironwood, Michigan

and

Police Officer's Assn. of Michigan

State of Michigan

Arbitration -- Case #G78 D-102

Under Act #312 Public Act of 1969

ABRITRATION OPINION AND AWARD

Panel of Arbitration: David E. McDonald, Delegate of City of Ironwood, Michigan, The Employer

Fred Timpner, Delegate of the Police Officer's Assn. Of Michigan, The Union

Dawson J. Lewis, Chairman

Introduction

Pursuant to the provision of Act 312 - Public Acts of 1969, the Chairman of the Arbitration Panel was appointed by the Michigan Employment Relations Commission to serve as Chairman of the Panel of Arbitrators in the dispute involving contract negotiations in the above matter by letter dated December 11, 1978.

The Petition for 1969 P.A. 312 Arbitration was filed July 25, 1978 by the Police Officer's Association, the labor organization representing the employees.

Pursuant to notice duly given, hearings were held in the City of Ironwood, February 16, 1979 and February 17, 1979.

Ironwood, City of

Appearances:

Jay Eshenroder - for the Employer

Kenneth E. Long - for the Employer

Leo Guian - for the Employer

Glen Jeakle - for the Union

Robert Rooney - for the Union

Leroy Johnson - for the Union

In the petition filed July 25, 1978 for arbitration the Union cited thirteen issues that were in dispute between the parties.

1. A two year contract from April 1, 1978 to March 31, 1980. (As the City is requesting a one year contract and the Union is requesting a two year contract, we would respectfully request that the arbitrator decide this issue before both sides are forced to make a last offer.)
2. Retroactivity (April 1, 1978).

3. Wages: 1st year - Effective April 1, 1978 a 15% across the board increase.

2nd year - Effective April 1, 1979 a 14 % across the board increase.

4. Longevity: 2% after 5 years, 4% after 10 years, 6% after 15 years, 8% after 20 years.

5. Shift Differential: 15¢ for afternoons, 20¢ for midnights, 20¢ for special shifts.

6. Pay for accumulated Sick Time.

7. Hospitalization to be updated to include MVF II.

8. Dental - Blue Cross dental program paid for by the City.

9. Optical - Blue Cross optical program or its equivalent paid for by the City.

10. Educational compensation - for every 12 semester hours of credit for one year towards longevity payment up to a maximum of 120 hours.

11. The above items are to be added to the present labor agreement without additional changes.

12. The Union is asking that an agreement on minimum manpower be included in the contract.

13. The Union is asking that a previous agreement as to pension under Act 345 be added to the contract.

Discussion

The Employer would not stipulate the above listed issues were properly before the arbitration panel, arguing that the demand for a two year agreement and those issues pertaining to terms in the second year of the agreement had not been negotiated to an impasse and contended they had maintained a consistent position that they would agree to only a one year contract; they claimed the matter had only been talked about once or twice in a very casual manner.

The representatives of the Employer stated they had not considered the discussions as serious negotiations on the question of length of contract and had not reviewed their position relative to this issue with their principals, the Commissioners, who must approve any final settlement reached.

The Union argued the question had been bargained in good faith and there had been numerous occasions when they had made their position clear on the matter. Union witnesses testified as to discussion in meetings with the Employer, some of which were with a State Mediator present.

The Union further pointed out this issue was included in the

list of issues in the petition for arbitration which was filed July 25, 1978.

The issue was stated in the petition as follows: "(1) A two year contract from April 1, 1978 to March 31, 1980. (As the City is requesting a one year contract and the Union is requesting a two year contract, we would respectfully request that the arbitrator decide this issue before both sides are forced to make a last offer.)"

The Union contended, in view of the fact that the Employer had been served with the notice that the petition for arbitration had been filed (July 25, 1978) they had adequate time to request a meeting or meetings to further negotiate on this question before the arbitration hearing date was set, over six months later; therefore, the Employer's claim that the issue was not properly before the arbitration panel was without foundation.

The Employer's representative admitted they had received notice that the petition for arbitration had been filed by the Union and although they had reviewed the issues which the Union claimed were in dispute, they had not made any serious effort to resume negotiations and clearly and unequivocally state their position regarding this issue or attempt to settle the dispute as to the length of contract.

The Arbitration panel, after hearing arguments relative to this issue, agreed to consider the matter and render a decision before considering the other issues before them; it was obvious that the balance of the issues could not be decided or argued until such decision was reached. The hearing was recessed and the panel convened to review the positions of the parties.

After a careful review of the arguments presented to the panel, the decision of the majority was that: (1) the issue was properly before the arbitration panel and (2) the Union's position that the agreement should be for a two year period from April 1, 1978 to and including March 31, 1980, should be upheld. Mr. McDonald, the Employers delegate, dissented.

The reasoning for supporting the union's position was that there was clear evidence that the parties had discussed the question

several times prior to the filing of the petition, whether or not these talks were in depth discussions or whether the Employer representative thought they were just conversation, seemed of secondary importance.

The facts are that the Employer had over six months to negotiate on this issue and try to resolve it; a prudent managment would have immediately tried to resolve the question with the Union when they received notice. A petition containing this and other issues pertaining to a two year contract had been filed and certainly they should have alerted their principals that the Union was firm in their position that the agreement should be a two year contract.

Further, the Employer had time to bargain on the matter when they were notified an arbitrator had been selected to chair the panel of arbitrators; this notice was dated December 11, 1979. All they had to do was request postponement of the arbitration hearing to give the parties the opportunity to continue collective bargaining. It is understood by M.E.R.C. that such requests are in order and in fact are encouraged by M.E.R.C., the belief being that an agreement reached between the parties is much better than an award rendered by an arbitrator.

It is the opinion of the Chairman that the best interests of the parties would not be served if the Employers position was upheld. The parties had been negotiating for over ten months; the notification from the Union to the Employer that they wished to open negotiations was dated January 16, 1978. A one year agreement, as demanded by the Employer, would mean the parties would immediately be back in negotiations as the contract would have only one month or less to go when the arbitration award was handed down.

Further, the parties had reached agreement on a number of items during the negotiations and if bargaining was to resume immediately, these matters could be reopened and another long delay in reaching a settlement might occur.

The cost to the Employer and the Union, in time and money, to immediately resume bargaining did not seem justified to the Chairman and a one year adjustment period provided by a two year agreement seems in the best interest of the City and the Union.

The hearing was resumed and the Union, in accordance with criteria set forth in Section 9 of Act 312, presented arguments supported by testimony and well documented evidence in the form of numerous exhibits in support of their positions relative to the remaining issues.

The Employer in opening their presentation, stated an additional issue should be added; this issue pertained to the COLA clause in the contract. The Employer wanted the clause deleted from the new agreement.

The Union objected contending this matter had not been brought up in negotiations and therefore could not be introduced.

The Employer agreed the demand had not been discussed previously but contended, in view of the ruling relative to length of contract, the clause should be deleted.

The ruling, made by the Chairman of the Panel, was that this issue could not be added to the list of issues in dispute inasmuch as it had not been bargained on and the Union had not had the opportunity to negotiate on the question.

The Employer then stated they were not prepared to present their position relative to the remaining issues and requested a recess to review their position. The hearing was recessed until the following morning, February 17, 1979, with the admonition that the parties be prepared to stipulate as to the issues in dispute and both parties were warned they must be prepared, after hearing arguments, to state their final and best offer on all remaining issues, at the close of the hearing, in accordance with the provision of Act 312.

Upon resumption of the hearing on Saturday, February 17, 1979, the parties stipulated the following issues were in dispute:

1. Retroactivity (April 1, 1978)
2. Wages
   A. 1st year -- 12% increase across the board effective April 1, 1978.
   B. 2nd year -- 10% increase across the board effective April 1, 1979.
3. Longevity: 2% after 5 years, 4% after 10 years, 6% after 15 years, 8% after 20 years.

4. Shift differential: 15¢ for afternoons, 20¢ for midnights 20¢ for special shifts.

5. Pay for accumulated sick time.

6. Hospitalization up dated to include MVF II.

7. Dental -- Blue Cross Delta Plan -- paid for by the City.

8. Optical -- Blue Cross optical plan or equivalent -- paid for by the City.

9. An agreement on minimum manpower be included in the contract.

10. A previous agreement as to pension plan under Act 345 be added to the contract.

11. Vacation -- the method of taking vacation time off.

The Union resumed presenting their positions relative to issues and in doing so made reference to a request, made the previous day, that all dates in the present agreement be changed to reflect the changed periods of time in the new contract.

Closer examination of this request revealed that they had reference not only to dates of agreement and termination, which would be changed, but dates pertaining to the Cost of Living Clause. It was the deletion of this clause that the Employer wanted to add to the issues on the previous day; a request had been denied by the Arbitrator.

The COLA clause reads: "Effective on the last pay day in July, 1977, October, 1977, January, 1977, April, 1978, the base salary will be increased by 1¢ per hour for each full .4% increase in the published (U.S. City average) cost of living index, said increase to become a part of the base pay. The July, 1977, adjustment is to be based upon the June, 1976, U.S. Consumer Price Index. All subsequent adjustments after July, 1977, shall be based upon the June 1977, U.S. Consumer Price Index. The City shall pay the cost of living adjustments, up to 5% of the base hourly wages."

A careful examination of the clause and the demand made by the Union clearly indicated a mere change of dates was not in order and such changes should be made by mutual agreement between the parties. The clause in question was for a one year period and the new agreement will be for two years, therefore, a new COLA clause would have to be negotiated by the parties.

The Chairman ruled that this demand constituted a new issue

and again, as had been ruled in the instance when the Employer wanted to delete the clause, this could not be considered by the arbitration panel until the parties had the opportunity to negotiate on the matter.

The parties were informed the hearing could be recessed and the matters remanded to the parties for further negotiations to give them the opportunity to resolve the issue. The parties requested a recess to review their respective positions.

After a period of time the parties indicated they wished to resume bargaining on this and other issues. The matter was remanded to the parties for further negotiation.

After a period of time the parties requested the hearing be resumed and they jointly stipulated that agreement had been reached on all but two of the issues; these two remaining issues were:

9) An agreement on minimum manpower be included in the contract.

10) A previous agreement as to pension plan under Act 345 be added to the contract.

The agreement referred to regarding minimum manpower was contained in a letter dated July 18, 1977, signed by Kenneth E. Long, City Manager. This letter reads:

Ironwood Police Officers Association
Ironwood, Michigan

Gentlemen:

In accordance with an agreement reached between the City and the Association in the presence of Walter Quillico, State Mediator, on March 17, 1977. It is agreed that during the term of this contract the minimum shift for personnel in the police department will be one man on the desk and two men on patrol.

If it is necessary to change the minimum such change will be subject to negotiations between the parties.

Very truly yours,

Kenneth E. Long

(A copy of the letter was submitted as Union exhibit #8.)

Explanation of the agreement pertaining to the pension plan revealed the only problem was that the police officers who were participants in the plan had not had full and complete details

as to the provisions of the plan. It was suggested that the City send out a written and clear summary of the plan to each officer and post the summary in a conspicuous place. This the City agreed to do and the Union stated this would satisfy the demand and this issue was withdrawn by mutual consent leaving only one issue to be decided by the Arbitration Panel.

Arguments on the remaining issue (minimum manpower) were entertained.

The Union, through witnesses, argued that this agreement was necessary for the safety of the officers and was needed for the protection of the Citizens of Ironwood.

It was shown there are seventeen officers in the department, including the Chief. The complement is as follows:

1 Chief
1 Assistant Chief
3 Captains
1 Crime Prevention Officer
11 Patrolmen

There are four scheduled shifts -- 7 am to 3 pm -- 3 pm to 11 pm -- 7 pm to 3 am (Special shift) -- 11 pm to 7 am.
The patrolmen work six days on and two days off -- all rotate on shifts (days, midnights, afternoons.)

On the 7 am to 3 pm shift (days) there is one desk officer and two patrol cars (two men to a car.)

3 pm to 11 pm (afternoons) there is one desk officer and one patrol car with two men; on occasions an additional patrol car will be added.

11 pm to 7 am there is one desk officer and one patrol car with two men, (if a car is on the Special shift there will be an overlap with two cars on the road.)

The Union contends because of the ski areas adjacent to the City, there are a large number of transients and police duties do not only cover the population of Ironwood. They further argued because of a mutual assistance pact with neighboring communities the officers often have to go outside the city limits of Ironwood.

The Union further argued since a desk officer had to be on duty if the agreement was not continued to have a minimum of three men on a shift, an officer on patrol could be working alone and

this was too dangerous.

The Union further claimed one man in a car could not properly perform the necessary duties; arrests were difficult and control of prisoners would be hampered and the danger of have one man confront a dangerous or a drunk suspect without a back-up should be avoided.

The Employer conceded that it would be better for all concerned if the minimum manpower could be maintained but they argued that financial considerations must be taken into account and they must be flexible in determining the manning of the department because, while they would like to keep the present complement of officers, it may not be possible to do so in the future.

It was pointed out the City of Ironwood is facing serious financial difficulties; the population is declining and the tax base is being eroded. There is little or no large industry in the area and little prospect of companies employing large numbers of people coming into the area. They cannot see any prospect for any additional sources of income for the City in the future.

It was pointed out by the City there are Sheriff-deputies in the County and the State Police maintain a 17-18 man force close by and they presented testimony that other surrounding communities regularly used one man patrol car.

The City said there was no plan to reduce the force at this time, but they must reserve the right to make reductions if necessary. They pointed to the management Rights clause which states: "Management shall have responsibility and authority to manage and direct in behalf of the public the operation and activities of the public agency to the full extent authorized by law. Such responsibility and activity shall include but not be limited to the right of the public employer to:

1. Direct the work of its employees.
2. Establish policy.
3. Hire, promote, demote, transfer, assign duties, equipment and tools and retain employee.
4. N.A.
5. Maintain the efficiency of public operation.
6. Relieve its employees from duties for reasons of economy.
7. N.A.
8. N.A.
9. N.A.
10. Determine the size of the workforce.
11. N.A.

The Employer argued to incorporate the agreement in dispute into the contract would seriously erode the management Rights clause and hamper their ability to meet changing conditions and reduced financial resources.

In reviewing the arguments and evidence presented by both parties, it is the opinion of the chairman that the Employer's position pertaining to the agreement on manning must be sustained.

While one must be sympathetic to the concerns of the Union and the officers as to the safety of officers patroling alone, it must be recognized that this is not an uncommon practice - surrounding communities regularly have one man patrol cars operating; other law enforcement agencies find it necessary to send out one man patrols and while every one recognizes the possible dangers, trained officers know when and how to avoid danger in most situations.

The even more persuasive argument is that concerning the management Rights clause. Clearly to include the disputed agreement in the contract would modify change or negate several provisions of the clause, namely:

1. Direct the work of its employees.
3. Hire, promote, demote, transfer, assign duties -- and retain employees. (Underlining added.)
6. Relieve its employees from duties for reasons of economy.
10. Determine the size of the work force. (Underlining added.)

If these provisions are to be changed it must be done by the parties and there is no evidence that the parties intended to change the management Rights clause; there is no mention of the affected clause or any intent to modify it in the letter of intent signed by Mr. Long.

It would not be in the best interests of the parties to have what would be a contradiction of a major clause included in the agreement without a clear written understanding the parties intended to modify or change those provisions of the management Rights clause. Such would only lead to confusion and possible problems at some later date. If the parties wish to change this clause it is within their power to do so.

Further, Section 9 of the Act sets forth criteria to be applied to resolving disputes of terms of an agreement and directs that arbitration findings be based on these criteria. Among the criteria

cited is "The interests and welfare of the public and the financial ability of the unit of government to meet these costs."

If the disputed agreement were to be included in the award; the unit of government (the City of Ironwood) could find itself unable to meet changing conditions and increased costs because of the limitations place on them by this agreement.

It is the opinion of a majority of the Panel that the position of the Employer in this matter must be sustained. The demand that the agreement dated July 18, 1977 pertaining to minimum manpower requirements be included in the contract is hereby denied. The Employer delegate Mr. McDonald concurs. The Union delegate Mr. Timpner dissents.

Consent Award and Order

The following consent award and order encompasses those issues agreed to by the parties and the orders pertaining to those issues in dispute.

The agreement between the City of Ironwood (the Employer) and the Police Officers Association of Michigan (the Union) shall be for the two year period April 1, 1978 to and including March 31, 1980.

Effective April 1, 1978 the base salary schedule for Patrolman-Captain and Assistant Chief shall be increased by 9% across the board.

Effective April 1, 1979 the base salary schedule shall be increased by 4% across the board.

Effective September 1, 1979 the base salary schedule shall be increased by 3% across the board.

Effective April 1, 1979 the present longevity compensation plan shall be amended to include 1% of base salary after five years of service.

Effective April 1, 1978 employees shall receive educational compensation as follows: for every 12 semester hours of credit one year towards longevity payment, up to a maximum of 120 hours.

The Employer (the City of Ironwood) is to provide a letter to the Association outlining the pension benefits under the current pension system.

The shift differential compensation presently included in the current agreement will be included in the new agreement between the parties.

Blue Cross-Blue Shield coverage will be provided by the Employer in accordance with terms of the Group Operating Agreement -- Coverage Agreement dated July 7, 1978 between the City of Ironwood and Blue Cross-Blue Shield of Michigan. (Copy attached.)

The agreement relative to minimum manpower included in the letter to Ironwood Police Officers Association dated July 18, 1977 and signed by Kenneth E. Long, shall not become a part of the contract.

The COLA language in the 1977-78 agreement shall be continued without change in the new agreement in accordance with the following agreement between the parties:

"The parties agree that the current language on cost of living shall not be removed from the contract during its present term. But all payments on Cost of Living shall be suspended during the term of this contract.

In the process of any negotiations including arbitration over a successor agreement neither parties position shall be enhanced or diminished by reason of the suspension of payment of this cost of living.

Signed,

	Kenneth E. Long
Fred Timpner	City Manager
P.O.A.M. Secretary	City of Ironwood, Michigan

All revisions of the contract previously negotiated and agreed upon and which both parties jointly stipulated had been settled shall be, by reference, made a part of this award and shall be incorporated in the agreement dated April 1, 1978 and including March 31, 1980.

All provisions of the prior 1977-1978 agreement between the parties, other than those revised or added in the above order, shall be continued in the two year agreement dated April 1, 1978 to and including March 31, 1980 without change.

Concurring in the above findings, conclusions and award as ordered except where dissents are noted in the text: Mr. McDonald Panel Member dissents on order relative to length of contract, Mr.

Timpner, Panel Member dissents on order relative to minimum manpower.

Dawson J. Lewis 5/7/79

Dawson J. Lewis Arbitrator

David McDonald

David McDonald Panel Member

Fred Timpner

Fred Timpner Panel Member

GROUP OPERATING AGREEMENT
COVERAGE AGREEMENT

This Document will supplement the Group Operating Agreement between Blue Cross and Blue Shield of Michigan (formerly Michigan Hospital Service–Michigan Medical Service) and

CITY OF IRONWOOD (NAME) Ironwood (CITY) Michigan (STATE)

It is agreed that coverage available (see Item #5 of Group Operating Agreement) on and after July 7, 1978 to the eligible and enrolled persons in this group are described by the following Certificates, Riders, or such revisions of same as may be made in the future.

BLUE CROSS CERTIFICATES

Comprehensive Hospital Care Certificate 959 (17-51) Semi Private
(If none, indicate none)

Blue Cross 65 Group Benefit Certificate 2017 (17-97)

BLUE CROSS RIDERS

D45NM 2288 (17-73)
(If none, indicate none)

G65-D 2014(17-94)

F 613 (17-29)

SA 244 (17-8)

BLUE SHIELD CERTIFICATES

MVF I Preferred Group Benefit Certificate 1879 (50-471)
(If none, indicate none)

Blue Shield 65 G-I Certificate 738 (50-222)

Prescription Drug Group Benefit Certificate 0087-7 ($2.00)

BLUE SHIELD RIDERS

FC 1945 (50-486) VST 4664
(If none, indicate none)

SD 4651 (4-72) ML 1892

FAE 4637 PD-EL 94

BLUE CROSS AND BLUE SHIELD CERTIFICATES

Master Medical Supplemental Benefit Certificate - Coverage Plan Option I (4792-8)
(If none, indicate none)

Master Medical 65 Certificate 2258

BLUE CROSS AND BLUE SHIELD RIDERS

MMC-PD (4786-0)
(If none, indicate none)

COB-3 0540

Fred Timpe
Ron Fong

FOR BLUE CROSS AND BLUE SHIELD OF MICHIGAN

(ENROLLMENT REPRESENTATIVE) B108

Grp: 19048

DATE June 5, 1978

(UNDERWRITER)

DATE

FOR: City of Ironwood
Ironwood, Michigan

BY: Kenneth E Fong

TITLE City Manager

DATE June 5, 1978

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