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8/19/74
ARB

Livonia, City of

CITY OF LIVONIA

-and-

LIVONIA POLICE OFFICERS ASSOCIATION

8/19/74

Appearances:

For City of Livonia--Frank B. Vecchio, Esq.

For Livonia Police Officers Association--Robert R. Thompson, Esq.

FACTS

Pursuant to recommendation of the Livonia Civil Service Commission, the City of Livonia Police Department in 1965 created the classification of Corporal and promoted 14 Patrolmen to such position. These Corporals continued until 1970 when, during labor negotiations, the Association demanded a five (5%) per cent raise for them. The City refused, but countered with the offer to promote all 14 Corporals to Sergeant which automatically would result in a five per cent increase in base wages. This offer of the City was rejected by the Association, whereupon the City unilaterally promoted the 14 Corporals to Sergeant in 1971. The classification of Corporal still remains, but has not been filled since May 3, 1971.

The present contract has been agreed upon effective December 1, 1973 through November 30, 1976 except for resolution of the following issue:

Should the City of Livonia budget and fill all 14 vacant Corporal positions or should the Corporal classification be abolished and eliminated from the contract.

The Arbitration Panel has determined that the issue is "economic" within the meaning of P.A. 312 1969; MSA 17.455 (38). In pursuance of that section the last offer of settlement of the parties is as follows:

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Kanner, Richard L.

LIVONIA POLICE OFFICER ASSOCIATION--Budget and fill 14 positions of Corporal at a five per cent increase over base wages of Patrolman.

OFFER OF CITY OF LIVONIA--That the rank of Corporal be abolished and eliminated from the Collective Bargaining Agreement; that all provisions of the Collective Bargaining Agreement be amended to reflect such change.

DISCUSSION AND POSITION OF PARTIES

The Association posits that since several past contracts contained the Corporal classification and the City has budgeted for 14 Corporal positions since 1966, custom and practice would therefore dictate that such positions would be continued in the present contract. The Arbitration Panel has concluded that the subject economic issue as presented for adjudication is an issue of first impression and therefore, should not be decided based upon the past conduct or contractual agreements of the parties.

The Arbitration Panel does not sit, insofar as the subject economic issue is concerned, as a grievance panel which then might be bound to take into consideration the doctrine of past practice of the parties. By our interpretation of P.A. 312, we are charged with the duty to determine current contract provisions. The Act sets forth in Section 39 nine factors upon which the Panel must base its findings. Such criteria does not set forth as a factor for consideration whether or not the disputed contractual provision was formerly included in past contracts between the parties.

The Association and the City both posit their main argument on two of the factors set forth in Section 39 of the Act, i.e.; Section (C) The interest and welfare of the public, and Section (D) Comparison of conditions of employment with public employment in comparable communities.

Police Chief Robert Turner testified for the City that the reason for the elimination of Corporals and their promotion to Sergeant was that Corporals had limited supervisory authority whereas Sergeants had full supervisory authority. He emphasized that the Police Department needed more

supervision in order that the Department better serve the public. He further stated that although the limited supervisory authority of the Corporals did act somewhat to train them in the duties of supervision, the first year of probation for a Sergeant was used to train them much more extensively in such duties. Therefore, he emphasized it was not important to have a Corporal classification in order to serve as a supervision training ground. Also, as a matter of sound police administration, he did not feel that Corporal and Patrolman should be in the same union for the reason that such would act to inhibit Corporals from registering complaints against Patrolman for any infraction of the rules. In his opinion the moral of Patrolman would not be detrimentally affected by the elimination of 14 Corporals as their promotion to Sergeant increased the Sergeant class from 14 to 28 which enabled the Patrolman to have an increased opportunity for promotion at an immediate increase of ten per cent rather than five per cent over base wages at the Corporal level. Further, the added extensive supervisory training of Sergeants and increased number of Sergeants should result in a greater feeling of security for the Patrolman.

The Association, on the other hand, contradicted Chief Turner on each point. Testimony was elicited from Patrolman Steve Fulgham to the effect that the Corporal's supervisory function was important although admittedly less than that of Sergeant. He pointed out that with the Corporal classification filled more Corporals were on the road at all times than are the Sergeants. The Patrolman's moral therefore is higher to the degree that more supervision is on the road with them. Also, promotion opportunities were greater with the Corporal classification as there would be less competition from 14 Corporals to fill vacancies in 14 Sergeant positions than from 80 Patrolmen to 28 Sergeants.

Mr. Leopold Kozuh, Vice President of the Police Officers Association of Michigan, testified that eight departments in the adjoining down-

river area of Wayne County, four had Corporals who were in the same bargaining unit as Patrolmen. No lack of inclination to enforce rules by Corporals against Patrolmen was noted in these communities.

The Association introduced statistics to the effect that of 254 Police Departments in the State, 22% have Corporals and of 33 Municipal Police Departments in Wayne, Oakland and Macomb County, 55.9% have Corporals.

OPINION

The Arbitration Panel is of the opinion that the public interest is certainly affected by police moral which directly contributes to police efficiency. However, the classification of supervision and the duties attributed to each such classification is usually the responsibility of management in both the private and public sector. The Association therefore carries a difficult burden in attempting to show that the elimination of a partially supervisory category (Corporals) will affect the efficiency of the police department. While it is usually argued by Police Associations that failure to gain either higher wages or better conditions of employment will detrimentally affect moral, such argument has probative value only where it is shown that other comparable communities have achieved the sought for benefit to the exclusion of the subject association. The Association's proof as to the number of departments having Corporals is not persuading in this respect. Only 22% in the State and 55.9% in Wayne, Oakland and Macomb Counties have the Corporal classification. Further no evidence was adduced that any National or State Police or the Federal Bureau of Investigation has stated that those departments not having a Corporal classification are deficient in moral or efficiency. Further, although it may be arguable whether promotional opportunities are greater from the Patrolman classification to Sergeant or from Patrolman to Corporal, the proof was not persuading that there was any

substantial difference. Evidently, a great number of other police departments not having the Corporal classification do not feel that they have less promotional opportunities.

CONCLUSION

The Panel is limited to consideration of the applicable factors out of the nine enumerated in the statute heretofore recited. The Panel finds that the following factors are applicable and reaches the following conclusions:

MSA 17.455 (39)

(C) "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

As to (C) above the Panel finds that the interests and welfare of the public are not affected by the elimination of Corporal positions and classification. Further, it finds that the financial ability of the government is not a significant factor in this conclusion.

(D) "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally;

(I) "In public employment in comparable communities."

As to (D) above the Panel finds that the comparison of other conditions of employment as to the Corporal classification in other Police Departments in comparable communities shows that the number having the Corporal classification is not persuading that the Livonia Police Department should have the Corporal classification.

(H) "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties and the public service or in private employment."

As to (H) above the Panel has taken into consideration that in private and public employment the determination of supervisory categories and duties is usually a management function.

The other factors enumerated in the above Section 39 are not applicable.

AWARD

The Panel directs that the rank of Corporal be abolished and eliminated from the Collective Bargaining Agreement; that all provisions of the Collective Bargaining Agreement be amended to reflect such change.

Richard L. Kanner

RICHARD L. KANNER, Arbitrator--Neutral

Frank B. Vecchio

FRANK B. VECCHIO--City Representative

Robert R. Thompson - Dissenting

ROBERT R. THOMPSON--Association
Representative

DATED: August 19, 1974