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12/86/73

ARB
C-1

In the Matter of the Arbitration

Between

LOWELL POLICE OFFICERS ASSOCIA-
TION

And

CITY OF LOWELL

Leo Walsh

Lowell, City of

FINDING OF FACTS AND DECISION

BACKGROUND:

Lowell Police Officers Association, referred to hereafter as the Association, requested arbitration of an initial collective bargaining agreement between it and the City of Lowell, referred to hereafter as the City, pertaining to wages, hours and working conditions. The bargaining unit involved consists of all employees of the City police department except the Chief. These requests were contained in two letters. One was from James Hudson, president of the Association dated June 25, 1973 in which he requested arbitration for the City fiscal year commencing July 1, 1973 and ending June 30, 1974, under Section 3 of Act No. 312, Public Acts of 1969, RSA 17,455(31)-17,455(47). A copy of the letter was sent to Michigan Employment Relations Commission.

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RELATIONS LIBRARY

Walsh, Leo W.

The second letter was written by Carl Parsell, Executive Director of Police Officers Association of Michigan and was sent to Robert G. Howlett, Chairman of Michigan Employment Relations Commission. It requested arbitration of the same dispute but included a request for arbitration for the 1973-74 fiscal year as well as the 1972-73 fiscal year.

In a letter dated October 3, 1973 Howlett informed Leo W. Walsh that he was appointed chairman of a panel of arbitrators which included Philip F. Wood as delegate of the City, and James C. Pace as delegate of the Association, in accordance with the provisions of the aforementioned Act.

The Association has been voluntarily recognized by the City as the collective bargaining representative of the bargaining unit described above. The parties have bargained intermittently since December of 1969, and have had the assistance of mediators of Michigan Employment Relations Commission but have never reached complete agreement.

The arbitration hearing was held in the hearing room at the offices of Michigan Employment Relations Commission, 4th Floor, Trust Building, Grand Rapids, Michigan, on Tuesday, November 20, Wednesday, November 21, Wednesday, November 28, and Friday, December 7, 1973.

The presentation of the Association position was made by Carl Parsell; the presentation of the City position was made by Philip F. Wood of Clary, Nantz, Wood and VanOrden, attorneys at law.

UNRESOLVED ISSUES:

The City challenged the jurisdiction of the Board of Arbitration to arbitrate the unresolved issues for the fiscal year 1972-73 as requested by the Association. It contended the Association had not made a timely request for arbitration. This issue was resolved by withdrawal of this request for arbitration during the hearing.

The unresolved contractual issues at the commencement of the hearing were:

1. Compensation of members of the bargaining unit.
2. Number of paid holidays.
3. Paid life insurance for members of the bargaining unit.
4. Payment of the overtime rate of one and one-half times the regular hourly rate for any time of less than twenty-four hours of leave on any leave day.
5. Duration of agreement.
6. Including in the agreement the following maintenance of conditions provision:
Wages, hours and conditions of employment legally in effect at the execution of this agreement shall, except as improved herein, be maintained during the term of this agreement. The City

will make no unilateral changes in wages, hours and conditions of employment during the term of this agreement, either contrary to the provisions of this agreement or otherwise. No employee shall suffer a reduction in such benefits as a consequence of the execution of the agreement. This agreement shall supersede any rules and regulations governing the Department of Police.

The foregoing provision was proposed by the Association. The following provision was proposed by the City:

It is the intent of the parties hereto that the provisions of this Agreement, which supersedes all prior agreements and understandings, oral or written, express or implied, between such parties, shall govern their entire relationship and shall be the sole source of any and all claims which may be asserted in arbitration hereunder, or otherwise.

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Association, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with

respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

7. Including in the agreement the following incorporation by reference provision:
The parties further agree that all provisions of the City Charter, Ordinances and Resolutions of the City Council as amended from time to time, relating to the improving of working conditions and compensation of patrolmen are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth.

During negotiations the Association insisted on a one year agreement; the City had insisted on a three year agreement. During the hearing the parties mutually agreed to a one year agreement.

FINDING OF FACTS - DISCUSSION:

The Lowell police force consists of three employees, one sergeant and two patrolmen. The duties of these men are in most respects comparable to the duties of policemen in other communities. There is a Chief of police who works an eight hour shift along with the other policemen in the department including the sergeant. In order to maintain a man on duty at

all times it is necessary on weekends for overtime work resulting in substantial overtime work and pay for the patrolmen and sergeant. In the fiscal year 1972-73 Sergeant James Hutson earned \$1499.99 overtime. Patrolman James S. Pace earned \$609.44 overtime and patrolman Michael C. Olson earned \$1075.29 overtime.

Extensive data as to comparable wage rates and fringe benefits in other nearby communities was submitted to the Board of Arbitration. This data included Counties, large and medium size cities and small communities. One of the most useful criteria for determining appropriate wage rates in arbitration is the rates paid in comparable employment. It is recognized by the Compulsory Arbitration Act as one of the criteria for determining just wage rates set forth in Section 9 of the Act.

For purposes of making comparisons we have divided all of the communities and counties upon which data was submitted into three groups, Counties, Large and Medium Size Cities and Villages. Large and Medium Size Cities as used here for comparison are those with populations in excess of 15,000. Villages are those with populations of less than 15,000. We conclude that large and medium size cities have very little value for the purpose of comparison. There is some basis for comparing counties with small communities because there is less likelihood of some of the most difficult and dangerous

police work happening in both. Racial, drug and riot problems creating difficult and dangerous assignments for city police rarely if ever become police problems in counties and small communities.

An averaging of the benefits received in the monetary issues involved here in the three groups results in the following annual average wages and fringe benefits:

<u>Governmental Units</u>	<u>Patrolmen</u>		<u>Sergeant</u>		<u>Holidays</u>	<u>Life Insurance</u>
	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>		
Counties	7953	9,999	10,075	10,593	9.5	\$6,167.
Cities	9783	11,620	12,573	13,091	8.9	\$6,500.
Villages	8298	9,728	10,363	10,795	7	\$4,300.
City Final Offer	7600	8,900	8,900	9,400	6	\$4,000.
P.O.A. Final Offer	8500	10,000	11,000	11,000	8	\$10,000.

In the patrolmen and sergeant classifications in the foregoing chart only the high and low annual wages were used because with few exceptions that was the only information submitted to the Board of Arbitration.

The last wage offers submitted by the parties are:

	<u>CITY</u>			
	<u>Start</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>
Patrolmen	7,600.	8,000.	8,400.	8,900.
Sergeant	8,900.	9,050.	9,200.	9,400.

ASSOCIATION

	<u>Start</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>
Patrolmen	8,500.	9,000.	9,500.	10,000.
Sergeant	11,000	11,000.	11,000.	11,000.

The last offer of the City provided for the present arrangement of six paid holidays. Its last offer regarding life insurance provided for the continuance of the present arrangement of \$4,000 of life insurance with the premiums paid by the City.

From a study of the comparative average wages in villages with the last offers submitted by the parties, it is apparent that the City's offer is lower and the Association's offer is higher than the comparable average rates in villages. The starting rate for patrolmen in villages is \$8,298.00, in the City's offer it is \$7,600.00; in the Association's offer it is \$8,500.00. The City's starting rate offer is \$698.00 lower than the village average and the Association's offer is \$202.00 higher.

The Association's last offer for sergeant provides for 10% over the highest rate for patrolmen or \$11,000.00, with no provision for progression. The City's highest rate for sergeant is \$9,400.00 after three years. The average highest rate of villages for sergeants is \$10,795. and the lowest average rate is \$10,363. The Association's last offer

is \$1600. higher than the highest rate for sergeants in the City offer. It is \$637. higher than the village average lowest rate and \$205. higher than the village average highest rate.

In connection with the proposal of the Association of one wage rate without progression steps for sergeant, we observe that of the twenty-one communities submitted to us for comparison of wages and fringe benefits, seven have progression steps in the wage rates for sergeant. From this information it would appear that in most communities a sergeant vacancy is filled from the ranks of experienced patrolmen who have gone through the progression steps to reach the top of the patrolman wage rate before promotion to sergeant and are, therefore, regarded as fully qualified to perform the duties of sergeant when promoted.

The municipal police and fire department arbitration act under which this proceeding is brought provides in Section 8 (MSA 17,455(38)) as follows:

" . . . As to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Sec. 9. . . ."

Section 9 of the Act sets forth several standards to apply in guiding arbitrators to a decision. Among them is a

comparison of the conditions of employment with those of employees, both public and private, in comparable communities. We conclude that the wage rates contained in the last offer of the Association more closely compare with those in comparable communities submitted to us for comparison than those contained in the last offer of the City.

Were we not inhibited by the provisions of Section 9 requiring us to accept one of the last offers submitted by the parties on each monetary issue, we would have reached a different conclusion regarding the wage rates. We believe the wage rates in the Association's last offer are too high. However, they are more nearly in line with the rates in similar and comparable communities than those contained in the City's last offer.

We do not give serious consideration to the high overtime earnings of the members of the bargaining unit. Overtime is under the complete control of the employer. It could be reduced to a minimum, at any time, by unilateral action of the City by the greater use of reserves or by hiring additional police personnel or some other means. The City now has reserve officers who are on call to work on a part time basis.

Although the paid holidays are less in the City's last offer than the averages in the Counties, large and medium size cities and villages, under the circumstances it appears

that the City proposal of six paid holidays should be approved for the 1973-74 agreement.

In the City's last offer it proposed that the \$4,000. of life insurance on bargaining unit members with premiums paid by it be continued. Although this is less than the average provided in the Counties, large and medium size cities and villages, again, under the circumstances it appears that the City proposal should be approved for the 1973-74 agreement.

Other criterion set forth in Section 9 of the Act is the public welfare and the financial ability of the municipal employer. We conclude that the proposed increases in wages for the City police force would result in a more dedicated police force and improved police protection in the City. This will result in an improvement in public welfare.

The City had operating surpluses in 1971-72 of \$15,000. and in 1972-73 of \$23,000. It has a fund set aside of approximately \$45,000. received from the Federal government this year from the federal revenue sharing program. The City plans to use this money for future replacement of the City Hall, garage and police department. There is every reason to believe that additional such funds will be received by the City on an annual basis. They may be used for the payment of employee salaries and fringe benefits.

The City does not claim inability to pay improved wages for its police force.

The additional cost in police wages for 1973-74 by invoking these increases if put into effect as of July 1, 1973, would be \$5,956. The City's budget for 1971-72 was \$314,000., for 1972-73 it was \$313,117., and for 1973-74 it is \$440,301.

From the foregoing we conclude that the Association proposed increases in police wages is well within the City's ability to pay.

The Association proposes inclusion in the collective bargaining agreement a maintenance of conditions provision set forth herein in no. 6 of the unresolved issues. This proposed paragraph provides that working conditions unless improved by the agreement shall be maintained during the life of the agreement. It also provides that no unilateral changes in working conditions shall be made by the City either contrary to the terms of the agreement or otherwise. It further states that no employee shall suffer a reduction in benefits because of the agreement.

The foregoing provisions seem to express a fear on the part of the Association that it may have overlooked something in its negotiations with the City. If it has, it is not apparent from the presentation made to the Board of Ar-

bitration. In any event, it is the responsibility of the Association to see that the agreement protects its constituents in every reasonable way. We conclude that the contractual provision suggested by the City and set forth in number 6 of the unresolved issues, will best protect the interests of both parties.

The agreement will prohibit the unilateral changing of working conditions or the reduction of benefits provided in the contract without the insertion of this provision. It is, consequently, unnecessary surplusage.

With regard to superseding the rules and regulations of the Police Department, the agreement will supersede such rules where they are contrary to the terms of the agreement in any event. Such a provision is unnecessary.

The Association also proposes inclusion in the agreement of the adoption by reference provision set forth in No. 7 of unresolved issues.

It would provide that all official actions of the City relating to improving working conditions of patrolmen shall be incorporated into the agreement by reference. Including such a provision would again be surplusage. Any such action by the City has the force of law and need not be incorporated into the agreement by reference.

DECISION:

ISSUE 1

Wages of patrolmen shall start at \$8,500 annually,
after one year they shall increase to \$9,000, after two years
they shall increase to \$9,500, after three years they shall
increase to \$10,000. Presently employed patrolmen shall be
paid at the maximum rate retroactive to July 1, 1973.

Wages of sergeants shall be \$11,000. annually
commencing with appointment or promotion to the sergeant
assignment. The presently employed sergeant shall be paid
at this rate retroactive to July 1, 1973.

ISSUE 2

Paid holidays shall remain as presently in effect,
i.e., six days consisting of New Years Day, Memorial Day,
Fourth of July, Labor Day, Thanksgiving and Christmas.

ISSUE 3

Life insurance shall remain as presently in effect
i.e., Four Thousand Dollars (\$4,000.00) of life insurance
on each member of the bargaining unit with all premiums paid by
the City.

ISSUE 4

Withdrawn.

ISSUE 5

Resolved by stipulation of the parties that the

agreement shall be for a period of one year commencing July 1, 1973.

ISSUE 6

The waiver clause proposed by the City and set forth under issue 6 shall be made a part of the agreement.

ISSUE 7

An incorporation by reference provision shall not be made a part of the agreement.

BOARD OF ARBITRATION

James C. Pace
Member

Les W. Walsh
Chairman

Dated: December 26th, 1973.

Salary Schedule, Lowell Police Department

Paid bi-weekly, subject to time and one-half for overtime, after 40 hours.

Chief	Salaried...	\$519.23 (2 weeks)
Sgt.	Hourly	5.82
Patrolmen	Hourly	5.29 (2 Regulars)

Length of workweek, 40 hours.

Arbitrator Gives Healthy Raises To Lowell Police

An arbitrator's ruling has given Lowell's three police patrolmen a 23 per cent (\$1,872) wage increase and a 25 per cent (\$2,235) hike to the department's sole sergeant.

Lowell City Manager Blaine Bacon said the ruling will "create havoc" with the police department's \$68,000 budget for the current fiscal year.

The ruling by Leo Walsh, local attorney named by the Michigan Employment Relations Commission to arbitrate the contractual dispute between the city and Lowell Police Officers Association, is binding on both parties.

His decision hikes the department's three patrolmen, formerly paid \$8,788, to \$10,000 under the new one-year contract.

Bacon said the ruling, boosting pay of the sergeant to \$11,000, up \$2,235, places him on the same pay level as the chief of police, who cannot receive compensation for overtime although the sergeant can claim additional pay for extra duty.

The arbitrator's ruling and possible ways to cope with the additional strain on the department's salary allocations probably will be discussed at the City Council's Jan. 7 meeting, according to Bacon.

The union did not gain all the concessions it sought. Walsh denied the association's bid to increase city-paid life insurance for officers from \$4,000 to \$10,000 and to gain two more holidays, according to Bacon.

Where to get additional money for police salaries isn't Bacon's only woe.

Lowell's city budget was predicated on the city's continuing to buy gasoline at 13.9 cents per gallon, but the price since has bolted to 24.9 cents per gallon, Bacon explained. Much of the city's fuel is for police patrol and snowplowing.

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