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*Madison Heights, City of*

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In The Matter Of:

CITY OF MADISON HEIGHTS, MICHIGAN

-and-

THE COMMAND OFFICERS ASSOCIATION OF  
MADISON HEIGHTS

AFFILIATED WITH:

TEAMSTERS UNION, LOCAL NO. 214

FINDINGS OF FACT, OPINION AND AWARD  
Pursuant to Act 312, Public Acts of 1969 as amended

ARBITRATION PANEL

Leon J. Herman, Impartial Chairman  
Orlando Vargas, City Designee  
Paul Gully, Association Designee

ISSUED: April 4, 1974

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LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

This is a proceeding in arbitration pursuant to Act 312 of Public Acts of 1969 as amended. Orlando Vargas was named by the City as Designee to the panel in place of Estol Swem. Paul Gully was appointed by the Association as its Designee. On August 10, 1973, the undersigned, Leon J. Herman, was appointed by mutual consent as Impartial Chairman of the Arbitration Panel.

A prehearing conference was held on September 18, 1973, and a formal hearing held and testimony taken on March 7 and 8, 1974 at City Hall in the City of Madison Heights. Final offers were submitted on March 23, 1973. Thereafter, conferences between the members of the Panel of Arbitrators were held. A verbatim record of the proceedings was made and a transcript delivered to the panel.

Estol Swem, City Manager, represented the City of Madison Heights. Joseph A. Valenti, President of Teamsters Local 214, appeared on behalf of the Association.

Testimony on behalf of the Association was presented by Joseph A. Valenti, President of the Local, Lieut. James Sweibert and Detective Sgt. Russell Pearce. Estol Swem, City Manager, and Leonard Schweitzer, his administrative aide, testified on behalf of the City. Full opportunity for examination, cross examination and redirect examination was offered to both parties. Two full days were spent in the course of the hearing with 14 exhibits submitted. The transcript consisted of 99 pages.

Both parties entered in good faith into the proceeding. No issue of arbitrability was raised. No question was raised as to the legality or authority of the arbitration panel to determine the issue

presented. Time limits were extended as required to meet the restrictions of the statute.

Local 214 of the Teamsters Union has been the bargaining agent for the Command Officers for a number of years. It claims the right of representation for all Command Officers below the rank of Assistant Chief. For 1973-74 the parties have agreed upon all issues with respect to wages, hours and other terms and conditions of employment with the exception of the issues presented by stipulation to this panel for determination.

The City agrees that it has the lawful authority and obligation to negotiate and conclude an agreement in consonance with the award of this panel. The parties have stipulated that the panel may consider the issues presented and render an award thereon which both will accept; that all proceedings of this Panel of Arbitrators have been properly taken in compliance with the governing statute and that this award is duly processed and is binding upon the parties. At the close of the hearing the City agreed that it would take no affirmative action with reference to the issues involved pending the determination of the panel.

It should be emphasized at this point that all comments, opinions and interpretations of factual evidence stated herein are solely and exclusively the responsibility of the Impartial Arbitrator unless specifically attributed to another member of the panel.

The Union has presented sixteen unresolved issues for determination:

- |                                      |                                      |
|--------------------------------------|--------------------------------------|
| 1. Agency Shop                       | 9. Uniform and maintenance allowance |
| 2. Holidays                          | 10. Cost of living                   |
| 3. Call in time                      | 11. Shift differential               |
| 4. Administrative leave              | 12. Retirement                       |
| 5. Payment of accumulated sick leave | 13. Personal leave days              |
| 6. Hospitalization                   | 14. Wages                            |
| 7. Eye and dental care               | 15. Educational attainment           |
| 8. Longevity payments                | 16. Duration                         |

The City has offered seven items for determination in this proceeding:

1. Insurance for dependents
2. Time intervals between minimum and maximum rates
3. Salary spread between Sergeant and Detective Sergeant
4. Definition of grievance
5. No strike clause
6. Contract terms final
7. Law saving clause

By agreement between the parties and the panel, Union Items Nos. 1 and 16 and City Items Nos. 4 through 7 are noneconomic. All other items are economic items in which the parties have submitted a last offer of settlement under Section VIII of the Act.

The statute pursuant to which this proceeding came into being and under which this panel functions poses certain specific criteria which the panel must consider in arriving at a conclusion:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- 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.
  - (ii) In private employment in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
  - f. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties have stipulated that the panel may consider the issues above listed and render an award thereon which both will accept; that all proceedings of this panel of arbitrators have been properly taken in compliance with the governing statute, and that this award is duly processed and is binding upon the parties.

The interest and welfare of the public and the financial ability of the City to meet the increased costs resulting from implementation of this award have been considered and determined.

Comparison of wages, hours and conditions of employment, in both the private and public local sectors, as well as in comparable communities, is discussed hereinbelow, as are increases in cost of living as a factor in the determination of this panel.

By mutual agreement the 1969-70 agreement has been continued in full force pending receipt of this award. Relations between the parties have continued in status quo. No objectionable practice has been charged against either party.

Other factors considered by the parties and the panel are listed in the opinion.

ISSUE NO. 1  
AGENCY SHOP

The Union argues that an agency shop has now been recognized as a proper subject of bargaining by the state legislature. It has become a customary stipulation in public contracts throughout the state. The agency shop should be granted as an element of good labor relations so that all members of the bargaining unit, whether or not members of the association, will contribute their fair share to the cost of administration of the contract and of negotiation of future contracts.

The City is opposed to the agency contract provision. It submits that it has dealt in all fairness with the Local and has recognized the Union throughout the term of the previous contract. There should be no need for further agreements to establish that the relationship between the City and the Union is good.

The Chairman is of the opinion that the relationship between the City and Union should be formalized by the institution of the agency shop. While no problem has as yet occurred, it may well yet arise in the future, and should this be so, the Union is entitled to the protection which the legislature has declared available to it.

I therefore propose that the agency shop be granted and included as a provision of the contract to be concluded.

Mr. Gully consents. Mr. Vargas dissents.

ISSUE NO. 2  
HOLIDAYS

The 1972-73 contract provides for the following holidays:

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Veteran's Day  
Thanksgiving Day  
Christmas Day  
1/2 Day Before Christmas Day  
1/2 Day Before New Year's Day  
The Officer's Birthday

The Union proposes that effective July 1, 1974, the full day before Christmas and one-half day on Good Friday be added to the holiday schedule. The City's final offer is that holidays be continued as is.

The City, however, also has included a demand that a paragraph equivalent to Article 24 of the City contract with the Madison Heights Police Officer's Association be included in the agreement. The Article requires that each police officer be available for one hour per month for training time with no more than two such sessions in any one fiscal year. The Union has rejected the proposal.

The Chairman believes that the Union offer as to holidays should be granted. He further believes that the City's offer as to training time should be adopted.

Mr. Gully concurs as to the holiday offer and dissents as to the

training time offer. Mr. Vargas dissents as to the holiday offer and concurs as to the training time proposal.

ISSUE NO. 3  
CALL IN TIME

The 1972-73 agreement contains an Article 13, Provision For Call In Time, whereby the officer receives a minimum of two hours at time-and-one-half. Other provisions are made for attendance at Municipal Court.

The Union's last proposal is that call in time be increased from two to four hours inclusive of court appearances. The City asked that no change be made.

The Chairman is of the opinion that the call in time provision contained in Article 13 of the 1972-73 agreement is fair and reasonable and should be continued without change.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 4  
ADMINISTRATIVE LEAVE

The Union argues that administrative leave for command officers is becoming more and more prevalent. Command officers are required to report well in advance of the start of their shift without compensation to be available for briefing and debriefing. Over the year the time may be computed at a substantial amount. The Cities of Inkster, Garden City and Ann Arbor have already approved administrative leave time for their command officers. It is proposed that the time be taken only by consent



of the shift commander and the Chief of Police in order that their administrative work not be disrupted. The Union's last offer is that administrative leave of five days be awarded to all command officers.

The City points out that there is no such provision in the 1972-73 contract and objects to its inclusion in the pending agreement.

The Chairman agrees with the City that the administrative leave time should not be allowed. To allow it in this department would mean that all other department heads, executives and administrators would make the same demand, causing the City to be badly handicapped in its operations if so many days were allowed in addition to holidays. He recommends that the proposal be denied.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 5  
PAYMENT OF ACCUMULATED SICK LEAVE

By Article XV of the 1972-73 agreement, officers may accumulate sick leave up to 174 days. Upon retirement, an officer with accumulated sick leave may receive reimbursement in cash for one half of his total accumulated sick leave or use the time as part of his retirement.

The Union's last offer is that an employee be paid 100% of his total sick leave accumulation upon retirement or death. The City's final offer is that the provisions of Article XV be continued without change.

The Chairman feels that the City's position is the correct one. Payment for sick leave time is an anomalous matter in any event. An employee is supposed to work when he is well. He is paid for a certain

number of sick days when he does not work. The fact that he has remained well should not be a credit for which he is entitled to compensation. Understandably, however, employers have, in practice, reimbursed their employees upon retirement for part or all of the unused sick leave on the theory that such a provision would induce the employee to be on the job rather than spend time at home under claim of illness. The Chairman believes that payment for half the time would be just as strong an inducement. He, therefore, proposes that the accumulated sick leave payment continue as in the previous contract.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 6  
HOSPITALIZATION

The Union has proposed as a final offer that in addition to the present Blue Cross-Blue Shield coverage the employer provide for a prescription rider effective as of July 1, 1974 and pay the full cost thereof. It points to the contract executed between the City and the Madison Heights Police Officers' Association where in Section 19 the City agreed that beginning with the fiscal year 1974-75 it would pay a maximum of \$3.50 per month per employee toward the \$2.00 deductible prescription drug rider provided by the Blue Cross-Blue Shield, with any balance to be paid by the employees through payroll deduction.

The City objects to the proposal on account of the increased cost involved.

The Chairman is of the opinion that the City cannot with good grace allow the prescription rider to police officers and deny it to

command officers. In fairness, all should have the same benefit. The Chairman therefore proposes that a prescription drug rider substantially as allowed to members of the Madison Heights Police Officers' Association be granted to the members of this bargaining unit.

ISSUE NO. 7  
EYE AND DENTAL CARE

The Union has proposed, and incorporated as a last offer, that the City pay the full cost of the Teamster program of eye and dental insurance for employees and their dependents. The cost is \$3.00 per week per employee. It is further proposed that the plan be inaugurated in July, 1974. The City has rejected the proposal.

The Chairman is in agreement with the City that the cost of the program is high in proportion to the benefits received and that it would constitute a severe drain upon City resources. The City has not claimed inability to pay, but this does not mean it should be assessed with so expensive a program. The Chairman recommends that the proposal be denied.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 8  
LONGEVITY PAYMENTS

In the 1972-73 contract provision was made in Article XXIV for Longevity Pay Based Upon Length of Service. Upon completion of five years' service, the employee receives an increase of 2% of base pay; after ten years, 4%; after 15 years, 6%; and 20 years and over, 8%.

The Union's last proposal is that these percentages be increased to 3, 4, 6 and 8%, and that another category of 25 years of service and over be added at 10% of base. It further asks that payment be made effective as of the hiring date of the employee rather than the July and December dates specified in the 1972-73 agreement.

The Chairman agrees with the Union that payment on fixed dates rather than on the anniversary of the hiring date is in many cases unfair to the employee in that he may lose as much as ten or eleven months of longevity pay while waiting to reach the payment date. The bookkeeping problem may have accounted for the earlier procedure but this is no longer a factor, since the City is now operating with a computer which can encompass its provisions with little or no difficulty.

The City objects to any change in the current procedure or in the current rates.

The Chairman agrees with the City that the longevity provisions and percentages contained in the 1972-73 contract are both fair and ample and should be continued without change. He agrees with the Union, however, that longevity payment should be based upon an anniversary date index and the longevity bonus paid on the employee's anniversary date.

Mr. Vargas concurs as to continuation of the previous longevity formula but dissents as to the change in payment practice. Mr. Gully concurs as to the change in payment practice but dissents as to the percentage formula.

ISSUE NO. 9  
UNIFORM AND MAINTENANCE ALLOWANCE

The 1972-73 agreement contained in Article 21 a provision for payment of \$250 per annum, payable semi-annually, as a uniform allowance to include the purchase of uniform, shoes and other items not furnished by the department. The Union proposes that this amount be increased to \$300 annually. The City objects.

It is noted that the City allowed police officers in the Madison Heights Police Officers' Association contract a uniform allowance of \$250 per annum for purchase of uniforms plus a cleaning allowance of \$50 per annum, subject to presentation of receipts. I do not feel the City should be quite as meticulous in dealing with command officers. I therefore propose that the City pay these officers a uniform allowance of \$300 to cover both purchase and cleaning of clothing, payable \$150 semi-annually on the first day of July and December in each year.

Mr. Gully concurs. Mr. Vargas dissents.

ISSUE NO. 10  
COST OF LIVING

In its current contract with the Department of Public Works employees, the City has granted a cost of living allowance payable

quarterly. It is based upon the 1967 index which is calculated at 100. The COLA payment shall consist of one cent per hour for each 0.4 change in the index with a ceiling of ten cents.

The Union asks as its last offer that this COLA provision be granted to the command officers of the Police Department. The City objects.

The United States Labor Department has reported that living costs have gone up ten percent in the past year and that the average hour's earnings buying power has been reduced by 3%. The Government anticipates that the cost of living will increase even further during 1974. In such circumstance, I believe that a COLA provision is a necessary economic safety factor for these employees and I recommend that the last offer of the Union be adopted.

Mr. Gully concurs. Mr. Vargas dissents.

ISSUE NO. 11  
SHIFT DIFFERENTIAL

The Union has proposed that the City pay a shift differential of 10 cents per hour for the afternoon shift; 15 cents for the night shift, and 20 cents per hour for the swing shift. The City has rejected the proposal. The Union has shown no municipality in which shift differentials are paid to police officers. It appears to be a fact of police life that salaries shall include any shift differential and that police are generally rotated on the various shifts without extra compensation. The Chairman therefore feels that this request should be denied.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 12  
RETIREMENT

The Union's last best offer with respect to retirement is an increase of 1/2 percent on the maximum allowable under Act 345. The City has objected primarily on the ground that a change in the retirement program would upset the balance which has been maintained between this unit and other branches of the City government. The Chairman believes the City's point to be well taken and recommends that the request be denied.

Mr. Vargas concurs. Mr. Gully dissents.

ISSUE NO. 13  
PERSONAL LEAVE DAYS

The Union's final offer on personal leave days is that the City grant one personal leave day per year effective July 1, 1973. The City objects to the allowance of leave days.

It is noted that the contract with the Madison Heights Police Officers' Association grants one personal leave day with pay per year. The Chairman believes it only fair that the command officers be given the same benefit retroactive to July 1, 1973. In view of the short period of time elapsing from the date of this award and the next fiscal year beginning July 1, 1974, it is proposed that the officers in this unit be permitted to carry over their 1973 personal leave day into the 1974-75 fiscal year if they so desire. There should be no carry over of leave days beyond this one period.

Mr. Gully concurs. Mr. Vargas dissents.

ISSUE NO. 14  
WAGES

On the issue of wages, both parties have submitted wage scales in the various municipalities surrounding Madison Heights. In Ferndale a Lieutenant is paid \$17,858 and a Sergeant, \$16,088. A Detective Sergeant is paid the same rate as a Sergeant.

In Troy the Sergeant and Detective Sergeant are paid \$16,940 per annum. a Corporal is paid \$15,400. It would appear that the Sergeant and Corporal classifications are equivalent to Lieutenant and Sergeant in this jurisdiction.

In Warren, which is a much larger city, Lieutenants are paid \$18,918 and Sergeants \$17,197.

In Royal Oak, again a larger city, Lieutenants receive \$15,776 and Sergeants, \$14,926. A Detective Sergeant is paid \$15,126.

The pay rates in Hazel Park are \$17,055 for Lieutenant and \$15,365 for Sergeant.

Under the Madison Heights 1972-73 contract, Sergeants were paid \$16,350, Detective Sergeants were paid \$17,050 and Lieutenants were paid \$17,825. The Union's last offer on wages is as follows:

Effective July 1, 1973

	<u>Start</u>	<u>6 Months</u>
Sergeant	\$15,099	\$15,660
Detective Sergeant		16,443
Lieutenant	16,610	17,226

Effective January 1, 1974

Increase all ranks \$100 per annum, payable in a lump sum separately from regular payroll.



Effective July 1, 1974

	<u>Start</u>	<u>6 Months</u>
Sergeant	\$16,188	\$16,790
Detective Sergeant		17,582
Lieutenant	17,707	18,374

Overtime shall be paid for all time after and above eight hours per day and forty hours per week.

The Union proposal is equivalent to 6.2% increase in the first year and varies from 6.6% to 7.2% in the second year of a two year proposal.

The City has accepted the Union's proposal for the July 1, 1973 salary but has rejected without counteroffer the remaining portions of the Union's wage proposal. In the circumstances, the Chairman can see no alternative but to approve the Union offer in full, retroactive to July 1, 1973.

Mr. Gully concurs. Mr. Vargas concurs as to the 1973 payment but dissents otherwise.

ISSUE NO. 15  
EDUCATIONAL ATTAINMENT

Under the 1972-73 agreement between the City and the Union, the City paid to command officers who have attained higher education the equivalent of 1% of base salary for a police certificate, 2% of base for an associate degree and 4% of base for a B.A. Degree. The Union's last offer is that employees who have obtained a police certificate receive \$100 and those employees awarded an associate degree receive an additional \$200 per annum. The City has refused to agree to the proposal but has made no counter offer.

It would appear to the Chairman that a higher educational attainment among command officers is a substantial asset to the City. The people who are in control of police units should have a wider education and a better cultural background. It would seem that anything the City does to further such educational opportunities would be of considerable benefit to the community. The Chairman therefore proposes that the Union's last offer be approved.

Mr. Gully concurs. Mr. Vargas dissents.

ISSUE NO. 16  
DURATION

The Union has insisted throughout this proceeding that it will not consent under any circumstances to anything other than a one year contract beginning as of July 1, 1973. The City has been just as adamant in demanding a three year agreement. The parties have stipulated that the duration of the contract is a non-economic item.

The Chairman reminds the parties, as he told them during the hearing, that by the time this proceeding is concluded and a decision is in the hands of the parties, the month of April will be pretty well gone. They will still have to execute a contract in accordance with the terms of the award, which will delay matters even further, probably until May at the very earliest. By the end of June a new contract would have to be concluded.

It seems hardly efficient to put in so much time for a contract which can last no more than a month or two. The Chairman therefore

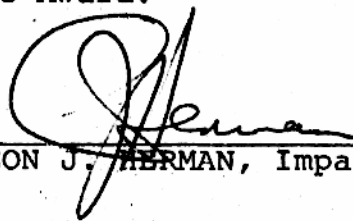
recommends that a two year contract be executed effective as of July 1, 1973 upon the terms and conditions above set forth.

Mr. Vargas concurs. Mr. Gully dissents.

The City has also presented some issues for determination. The first three, which are economic, are substantially disposed of in the previous determinations. As to the non-economic items, it proposes that a grievance be defined, to which the Chairman agrees; that there be a no-strike clause, with which the Chairman agrees; that a statement be included to the effect that the terms of any contract which may be entered into be final and binding upon the parties, with which the Chairman agrees, and that a law saving clause be executed whereby any section found illegal shall not affect the legality of the remainder of the contract and the parties shall attempt to agree upon a provision in substitution. With this also the Chairman agrees.

On all points raised by the City, Mr. Vargas concurs; Mr. Gully dissents.

The consent or dissent of each panel member as to each issue, as indicated in the foregoing opinion, is to be construed as his consent or dissent to the items shown in the Award.

  
LEON J. HERMAN, Impartial Chairman

Southfield, Michigan  
April 4, 1974

AWARD

UNION ISSUES:

1. The City shall grant an Agency Shop to the Union.
2. The full day before Christmas Day and one half day on Good Friday shall be added to the holiday schedule.
3. There shall be no change in call in time provisions.
4. The request for administrative leave is denied.
5. There shall be no change in the formula for payment of accumulated sick leave.
6. The City shall provide and pay for a \$2.00 deductible prescription rider to its Blue Cross/Blue Shield coverage, the cost not to exceed \$3.00 per month per officer. Any additional cost shall be assumed and paid by the individual officers.
7. The request for eye and dental care insurance is denied.
8. The current longevity program shall be continued without change, except payment shall be based upon the employee's anniversary date of hire.
9. The uniform and maintenance of clothing allowance shall be increased to \$300 per annum.
10. A cost of living formula of one cent per hour increase for each 0.4 change in the 1967 Cost of Living Index, capped by a ten cent ceiling, shall be included in the agreement, effective July 1, 1974.
11. The request for a shift differential is denied.
12. A change in the retirement program is denied.
13. Each officer shall be allowed one personal leave day per year with pay, with no carryover into the succeeding fiscal year except for the 1973-74 year, which may be carried over into 1974-75.
14. Wages of the members of this bargaining unit shall be increased as directed in Issue No. 14 of the attached Opinion.

Overtime shall be paid for all time after and above eight hours per day and forty hours per week.

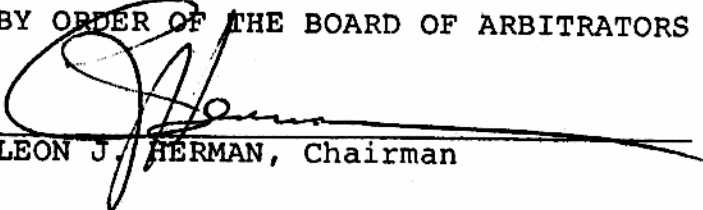
15. Employees who have obtained a college police certificate shall receive \$100 per annum. Employees who have obtained an associate degree shall receive an additional \$200 per annum.
16. The parties shall enter into a collective bargaining agreement for two years beginning as of July 1, 1973. All economic awards are to be made retroactive to July 1, 1973 except as otherwise directed in the attached Opinion.

CITY ISSUES:

1. The proposal relating to dependents' insurance is denied.
2. The time interval proposal is denied.
3. The salary spread proposal is denied.
4. The contract shall contain a grievance definition.
5. The contract shall contain a no strike clause.
6. The contract shall contain a provision that all terms are final.
7. The contract shall contain a law saving clause.

All contractual provisions previously agreed to shall be incorporated in the new contract.

BY ORDER OF THE BOARD OF ARBITRATORS

  
LEON J. HERMAN, Chairman

I agree with the foregoing Award to the extent indicated in the attached Opinion.

  
ORLANDO VARGAS, Member

April 4, 1974

I agree with the foregoing Award to the extent indicated in the attached Opinion.

  
PAUL GULLY, Member