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ARBITRATION OPINION

ARBITRATOR THOMAS J. BARNES

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MERC Case No. G88 F-510

In the Matter of:

CITY OF MANISTEE,

Employer,

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

Union.

UNDER ACT 312, PUBLIC
ACTS OF 1969, AS AMENDED

MERC Case No. G88 F-510

OPINION AND AWARD

CHAIRMAN:

Thomas J. Barnes

EMPLOYER DELEGATE:

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UNION DELEGATE:

Patrick Spidell

FOR THE EMPLOYER:

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FOR THE UNION:

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ISSUE

The only remaining issue for Act 312 decision between the parties is a residency requirement. This is the sixth time the residency issue has been submitted to Act 312 arbitration for the firefighters (76-78, 78-82 and 85-88) and police (75-77, 85-88 and present). The expired Agreement between the parties provides as follows on residency:

"Section 16.4. Residency. An employee may reside anywhere within the City of Manistee or within any of the four (4) named townships of Manistee County: MANISTEE, FILER, STRONACH, and BROWN TOWNSHIPS. Employees hired after July 1, 1987, must reside in the City of Manistee for the first 24 months after completion of their probationary period."

The POAM proposes the above clause be continued for the new two-year Agreement. The City proposes that this provision be modified in three respects: (1) to require all new hires to live within the City of Manistee; (2) to require that any employee presently living outside of the City, if they sell their residence, to move within the City; and (3) to require employees presently living within the City to continue to do so.

City Position

The City has had a long involvement with the residency policy with its union and non-union employees dating back to the early 1970s. Without reiterating that history, the city urges that the 1975 312 Award which liberalized the residency requirement to permit employees to live within four named townships outside the City was predicated upon a housing shortage in the City of Manistee at that time. The City points to its witness in this Act 312 hearing who testified that there is no current shortage of housing as there was in 1975 and that all other bargaining unit and non-bargaining unit employees have been brought into conformity with a unified residency policy.

The City further points out that the unionized, non-Act 312 employees represented by the United Steelworkers are currently under a residency provision which was voluntarily agreed to and

requires all new employees to maintain a bona fide residence and domicile within the City of Manistee prior to the completion of the probationary period. With regard to supervisory and non-union employees the City adopted a policy (January 21, 1986, as revised August 16, 1988) which requires all newly hired employees and any new supervisory employees to establish residence within the City of Manistee within a period of six months.

Finally, with respect to the firefighters' contract, all firefighters hired after July 1, 1982, must reside within the City of Manistee and employees hired prior to that time can reside outside the City but at a location "not greater than five (5) miles from the City's limits." The City in essence argues that the evolutionary trend of the residency requirement for all of its employees, union and non-union, supervisory and non-supervisory is inexorable.

Union Position

The Union points to two principal arguments for maintaining the current contract language on residency. First, the Union points out that the current housing situation, while better than it was in 1975 when an Act 312 arbitrator liberalized the residency requirement, nevertheless is not a situation where there is a significant amount of affordable housing for police officers earning \$20,000 to \$25,000 a year. Second, and more significant, the Union observes that since the current language was the product of a an Act 312 award, albeit one which the parties agreed on the residency requirement, that that Agreement

has not existed for a sufficient period of time in which to determine whether it will work. That is, the requirement that new employees live in the City for a period of 24 months has not been in existence long enough to determine whether it will work. Only one employee has been hired (on July 27, 1988) and it remains to be seen whether the 24-month rule will effect an amicable resolution of this matter as new employees are hired. Further, some evidence that mandatory residency is not needed is demonstrated by the fact that not one of the present employees has moved out of the City into one of the four townships in many years.

AWARD

There are three categories of bargaining unit employees to consider in fashioning any residency requirement, viz: (1) new hires; (2) employees currently living in the City; and (3) employees currently living outside the City in one of the four townships (perhaps the 7/88 new hire is still a fourth category). It is clear that the premise on which the residence requirement is based finds its supports not in response time (that is virtually insignificant as applied to the Police Department at the City of Manistee) but, rather, as an economic and social policy of the City Council. The evidence at the present time is more supportive of the City position that there is no present housing shortage in the City of Manistee. While it is equally clear that the situation could change significantly in the next couple of years as new employers are added, there is record

testimony that there is existing housing available in the City at an affordable price level for members of the bargaining unit.

New Hires

The City's position is adopted. Given the above, there will be no perceived immediate harm to new employees who may be hired to be required to live in the City in terms of available housing.

With respect to the comparables, it is quite clear that of the six comparable used by the City, five (all but Big Rapids) require new hires to live in the City. While the bargaining unit has a number of employees who were employed in the mid-60's, there is likely to be little attrition in the next several years. For that reason it is unlikely that there will be significant new hires, certainly during the term of the Agreement, which will end June 30, 1990. Since the comparables strongly support the City's position and since all other new hires with the City, union and non-union are required to live in the City, the conclusion is inescapable that the same requirement can be fairly applied to new hires in the Police Department. While the Union is correct that its voluntary agreement to an Act 312 award in the last contract to have a 24-month rule for new hires deserves a chance to work, only one new employee has been hired. That employee, according to the parties, purchased a home and was informed prior to hiring that the City was seeking mandatory residency for all new hires, including him. In the foreseeable future there are not likely to be any significant additions to the Police Department so the specter of divisions within the bargaining unit

based upon who has a right to live outside the City and who does not should not present an immediate substantial problem.

Employees Currently Outside the City

With respect to those incumbent employees (3 out of 10) who are currently living outside the City, the Union's position to continue the status quo is adopted. Several of the City's comparables support this proposition. Big Rapids permits its employees to live within a radius of 10 miles of the police station. In Cadillac, employees hired before July 1, 1978, may live in the city, or four adjacent townships. In Petoskey, incumbent employees must live within five miles of the corporate limits and, if they move, they must move within two miles of the corporate limits.

Most significantly, the City of Manistee's current contract with the IAFF carried over a prior Act 312 award which allowed firefighters hired prior to 7/1/82 to live five miles from the City limits. While the City's proposal to require all incumbent police officers who currently live outside the City to move into the City if they should change their residence is not unreasonable, such a requirement has not been imposed on the firefighters, where response time is concededly more important than in the police situation. This decision will affect not more than the current three incumbent employees who currently live outside the City and will not work a hardship upon the City in any way save that it will have the same inconsistency with respect to firefighters hired prior to 7/1/82 who similarly have

a right to live outside the City unaffected by whether they sell their current residences. In this connection it can be noted that there is very considerable overlap between the 5-mile firefighter radius and the four townships incumbent police officers can reside in (all of Filer and Manistee townships are within 5 miles of the City limits and about 3/4ths of Stronach and about 1/3rd of Brown are).

Employees Currently Living in City

This group represents the closest question, although the comparables tend to support the City's position. However, it would be quite unfair to require these officers to be frozen into City residence when there has been no imminent warning this was coming and since the last agreement between the parties on this was voluntary, albeit part of an Act 312 award. Thus, it is necessary to fashion an award which will accommodate both parties' interests.

Harmony within the bargaining unit (which accrues as well to the City's benefit) can be best served by allowing these employees the same status as their peers for a limited time period. These employees may entertain thoughts of buying another residence within the four townships and they should have a reasonable period of time to do that. Certainly the length of the contract (until 6/30/90 or 18 months from now) is too short a time period to effectuate a residence move out of the City.

Five years from the effective date of this contract (or until 6/30/93) should be a fair time span for these employees to

decide and act upon a plan to move their residence to one of the four townships. An intent to establish residence in one of the four townships, however, can best be made legitimate by requiring proof of a bona fide arm's length real estate agreement to purchase a residence or land for a residence in one of those townships.

The residency provision will thus read as follows:

"Section 16.4. Residency. An employee hired prior to 7/1/88 may reside anywhere within the City of Manistee or within any of the four (4) named townships of Manistee County: MANISTEE, FILER, STRONACH, and BROWN TOWNSHIPS. An employee currently living within the City as of 7/1/88 is required to maintain his City residency provided, however, that he may locate his residence outside the City if he enters into an arm's length bona fide real estate agreement to purchase a residence, or land for a residence, in one of the four named townships on or before June 30, 1993. Employees hired after 7/1/88 must reside within the City of Manistee."

Dated:

Feb 6, 1989

Thomas J. Barnes

Thomas J. Barnes
Impartial Chairman

Dated:

FEB 1-1989

Patrick J. Spidel

Patrick Spidel, POAM Delegate
(~~Concurring~~) (Dissenting) in
Award

Dated:

Jan 31, 1989

John H. Gretzinger

John H. Gretzinger, City of
Manistee Delegate (Concurring)
~~in Award~~ in Award

Issued at Grand Rapids, Michigan on January 31, 1989.