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Marshall City of

STATE OF MICHIGAN

ARBITRATION UNDER ACT NO. 312

PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of the Statutory Arbitration between
CITY OF MARSHALL

-and-

JUSTICE MARY COLEMAN LODGE NO. 153
NON-SUPERVISORY AND SUPERVISORY DIVISIONS
FRATERNAL ORDER OF POLICE

ARBITRATION OPINION AND ORDERS

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This arbitration is pursuant to Public Act No. 312, Public Acts of 1969, as amended by Act No. 127, Public Acts of 1972, providing binding arbitration for determination of unresolved contractual issues in municipal police and fire departments.

By letter dated October 1, 1975, the Chairman of the Michigan Employment Relations Commission appointed Alan Walt Chairman of a Panel of Arbitrators in a dispute involving contract negotiations between the City of Marshall and the Marshall Police Supervisors and Non-Supervisors. Thomas L. Combs, Esq., and Dan E. Hankins, Esq., were appointed City and Union delegate, respectively, to the

Arbitration Panel. Pursuant to notice duly given, an organizational meeting was held January 23, 1976, in Jackson, Michigan, followed by arbitration hearings on February 26 and April 6, 1976. Thereafter, the Arbitration Panel met in executive session on May 3 and 11, 1976.

STATUTORY STANDARDS

Section 9 of Act 312 [MCLA 423.239; MSA 17.455(39)], establishes the criteria to be applied by the Arbitration Panel in resolving disputed questions and formulating its awards:

- (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.

ISSUES

The following issues are unresolved and were presented to the Panel in the course of the hearing:

Non-Supervisors

- 1. Vacation leave
- 2. An additional sergeant's position
- 3. Longevity pay
- 4. Personal leave days
- 5. Salary increase
- 6. Contract Term

Supervisors

- 1. Vacation leave
- 2. Longevity pay
- 3. Personal leave days
- 4. Contract Term

5. Education bonus
6. Shift differential
7. Forty-five hour workweek
8. Maintenance of wage separation between patrolman and sergeant

The parties agree all issues save the non-supervisory unit demand for an additional sergeant's position are economic and that the Arbitration Panel is obligated to adopt that party's last offer which, in its opinion, more nearly complies with the applicable factors described in Section 9 of the Act. The Association submits its demand for an additional sergeant's position is also economic, a contention disputed by the City on the basis that since the sergeant's position is not a non-supervisory classification, it does not have economic consequences for that bargaining unit. In addition, the City contends the Arbitration Panel is without jurisdiction to consider this demand.

GENERAL AND DEPARTMENTAL BACKGROUND

The City of Marshall had a 1970 population of 7,253. The municipality functions under a City manager form of government with a fiscal year from July 1 through June 30. In 1974, its total state equalized valuation was \$45,301,836, which increased to over \$48,000,000 in 1975. The tax base of the City is 37% industrial, 21% commercial, 40% residential, and 2% agricultural. While the

City's tax base increased 12% in 1974, the increase in 1975 was 7%. In the current fiscal year, it levied 15.38 mills and is authorized to levy 23 mills without vote of the people.

There are three sergeants in the supervisory unit and ten patrolmen in the non-supervisory unit. The first labor contract between the City and the present bargaining agent was a two year agreement extending from July 1, 1974 through June 30, 1976. The agreement provides

"all economic items, except sick leave, shall be reopened for purposes of negotiation on or before May 1, 1975, for the sole purpose of establishing the applicable rates for those economic items to become effective July 1, 1975."

In the first year of the current contract (1974-75), patrolmen received wage increases ranging from 8.26% to 9.11%, for an average of 8.8%. The pay incremental levels of patrolmen were reduced from 5 years to 4 years. Sergeants received a 17% wage increase. Other City employees were granted 8% pay increases for fiscal year 1974-75.

CONTRACT TERM

The Union seeks a two year contract for fiscal years 1975-76 and 1976-77. Its demand is based on the fact that these proceedings occur late in the 1975-76 fiscal year with the result that bargaining unit members may not fully realize benefits awarded through

arbitration. By extending the contract for a two year period, terminating June 30, 1977, the parties would not be required to immediately engage in new negotiations or statutory arbitration proceedings. The City opposes an award incorporating the 1976-77 fiscal year, contending that under the provisions of Act 312, the Arbitration Panel is without authority to extend its orders beyond a single fiscal year and, further, that the issues presented in these proceedings specifically arise under the wage reopener for the second year of a two year contract. Accordingly, no basis exists to consider any other contractual period.

Findings and Conclusions

The Arbitration Panel believes it is limited to consideration of economic issues for the 1975-76 contract year only, by virtue of the wage reopener invoked by the Union. It also has some question concerning its legal authority to consider contractual issues extending beyond a single fiscal year but in view of the reopener for the 1975-76 contract term, will limit its orders to that year only.

ORDER

The Union demand for a wage package extending through the 1976-77 fiscal year is denied.

VACATION LEAVE

Police officers in both units presently receive the following vacation leave:

0-1 year	1 week
2-5 years	2 weeks
5-15 years	3 weeks
15 years and over	4 weeks

The Union seeks the following vacation leave:

0-1 year	5 working days
1 but less than 4 years	10 working days
4 but less than 10 years	15 working days
10 but less than 20 years	20 working days
20 years and over	25 working days

The City would retain the present vacation leave provision except to add an additional week after 20 years of service.

Findings and Conclusions

The Union demand involves costs of \$1,161 for patrolmen and \$403 for sergeants whereas the City's offer involves no additional costs for the non-supervisory unit in the contract year under consideration and a cost of \$375 for the supervisors' unit. In reviewing comparative data submitted by both parties, the Arbitration Panel is aware that some communities provide additional vacation time to police officers. However, the Panel does not believe the

present vacation schedule is inequitable and in view of other economic benefits provided hereinafter, will not grant the Union's demand.

ORDER

The current vacation leave provision shall be continued and in addition, non-supervisors and supervisors shall receive an additional week of vacation leave after 20 years of service.

LONGEVITY PAY

There presently exists no longevity pay program extending to these bargaining units. The Union seeks the following plan:

After 5 years	2% of base rate
After 10 years	4% of base rate
After 15 years	6% of base rate
After 20 years	8% of base rate

The City opposes the longevity pay program sought by the Union and in lieu thereof, offers a performance incentive plan which provides 1% of base wage after 5 years and an additional .2% each year thereafter until a maximum of 5% is reached after 25 years of service. As it presently exists for other City employees, the performance incentive entails an annual review of the performance of each employee to determine if he "was deserving of a percentage increase

... each year." In the event a police officer is refused the performance incentive in any particular year, that decision can be protested through the grievance machinery of the contract to final and binding arbitration.

Findings and Conclusions

Of 15 other cities reviewed, all but 4 provide longevity programs for police officers. The Panel believes establishment of such program for members of these bargaining units is an appropriate manner of recognizing continued service to the community. While the demand of the Union finds support in the programs existing in some other communities, that specific plan will not be adopted in view of costs considerations. If considered as an issue separate from all others, the Panel would be inclined to order its adoption but in view of other economic benefits awarded hereinafter, it cannot do so.

However, the Arbitration Panel does not favor creation of a "merit" type longevity program since it believes the primary purpose of such plans is to recognize continued service. Furthermore, as it exists for other City employees, an employee who does not receive benefits under the performance incentive plan for two consecutive years may be terminated. The Panel does not believe failure to receive incentive benefits should be utilized as a basis

for separation from service but rather that such determinations shall continue to be made under other provisions of the labor contract specifically directed to discharge or severance of seniority.

Accordingly, the Arbitration Panel will order into effect the economic portion only of the City's incentive program while denying the review and termination aspects thereof. The plan shall be designated as a longevity pay program in the contracts drawn pursuant hereto.

ORDER

The Union demand for longevity is denied.

The economic portion only of the City offer of a performance incentive plan hereby is adopted. That program shall provide members of both bargaining units with a longevity payment of 1% of base wage after 5 years of service, with annual increments of .2% each year thereafter to a maximum payment of 5% at 25 years. This plan shall be entitled "Longevity Pay Program".

Entitlement to longevity payments ordered hereunder shall be a matter of right and is not discretionary, nor shall any bargaining unit member's eligibility therefor be subject to review, evaluation, or denial.

PERSONAL LEAVE DAYS

Bargaining unit members are not currently entitled to personal leave days. The Union seeks two additional personal leave days in

the 1975-76 contract year, the first effective July 1, 1975, with the second day granted January 1, 1976. The City opposes the grant of personal leave days, citing the fact that this benefit will cost \$1,080 for patrolmen and \$2,418 in overtime for sergeants.

Findings and Conclusions

Testimony reflects that because of the nature of their employment and the type of shifts worked, police officers are subject to unusual strain and stress which may be somewhat alleviated by the receipt of additional leave time -- both personal leave days and vacation time off. While the Panel does not dispute that evidence, it is also cognizant of the economic demands involved in these proceedings and in view thereof, does not believe the additional cost of this benefit can be justified.

ORDER

The Union demand for two personal leave days is denied.

ESTABLISHMENT OF AN ADDITIONAL SERGEANT'S POSITION

Three shifts are maintained in the Police Department: a day shift, from 7 a.m. to 3 p.m.; an afternoon shift, from 3 p.m. to 11 p.m.; and a night shift, from 11 p.m. to 7 a.m. There are three

sergeants in the supervisory unit, two of whom command the day and afternoon shifts. The officer in charge of the night shift is a patrolman employed approximately seven years who does not receive sergeant's wages. The third sergeant acts as a "swing man", relieving the other shift commanders, including the patrolman in charge of the third shift.

In lieu of demanding command pay for the patrolman in charge of the third shift, the Association seeks the creation of an additional, or fourth, sergeant's position. It submits the patrolman commanding the third shift has not been assigned those duties on a temporary basis but has and is serving in a command position while receiving patrolmen wages. The City contends that until two additional sergeant's positions were established about two years ago, only one sergeant position existed and two of the shifts were commanded by patrolmen. Furthermore, if the sergeant on the first or second shift is absent or off duty, he is relieved by a patrolman who serves in the capacity of a sergeant. The City opposes the Association demand, contending it is not a mandatory subject for bargaining and is not properly before the Arbitration Panel.

Findings and Conclusions

The Arbitration Panel believes that establishment of an additional sergeant's position should not be considered as a demand by

the non-supervisory unit. While the standards for promotion to, and promotional policies or regulations for, sergeant are bargainable areas for the patrolman's unit, the establishment of an additional supervisory position is not. In so holding, it should not be concluded that this issue could not be considered had it been submitted by the supervisory unit since, in the opinion of the Panel, manning requirements are bargainable and may be submitted for resolution under Act 312.

ORDER

The Union demand on behalf of non-supervisors for establishment of an additional sergeant position is denied.

EDUCATION BONUS

Under the labor contract with the non-supervisors, the following wage incentive is provided to officers who have completed police administration course work at Kellogg Community College or college credits accepted by said college for police administration:

12 credit hours	4% of base salary
24 credit hours	6% of base salary
30 credit hours	7% of base salary
Associate Degree (Law Enforcement)	8% of base salary

Sergeants presently do not receive the education bonus and the

Union seeks inclusion of that benefit in their collective bargaining agreement. The City opposes extension of this demand to the supervisors' unit, contending a cost of \$1,960 would be required.

Findings and Conclusions

The Arbitration Panel finds that extension of the education bonus to the supervisors' unit can only have a salutary effect. Not only will it establish equity in an area where its denial really cannot be justified but it patently results in officers obtaining greater levels of qualification and ability in law enforcement and police administrative work. While a significant cost is attached to the benefit, the Panel believes its award is justified.

ORDER

The education bonus provisions of the patrolmen's contract are hereby extended to members of the supervisory bargaining unit.

SHIFT DIFFERENTIAL FOR SUPERVISORS

The collective bargaining agreement for the patrolmen's bargaining unit provides that officers assigned to the afternoon shift receive a 1% differential, and officers assigned to a split shift -- from 7 p.m. to 3 a.m. -- and those assigned to the night shift receive a 2% differential.

The Union seeks extension of this benefit to members of the supervisors' bargaining unit which the City opposes, citing the additional cost of \$560.

Findings and Conclusions

The Arbitration Panel believes extension of the shift differential to sergeants recognizes the necessity for certain officers to work hours generally felt less desirable than the day shift. While some officers may prefer afternoons, midnights, or the split shift, the Panel believes this benefit should be enjoyed by both police bargaining units.

ORDER

The Union demand for extension of the shift differential benefit presently received by non-supervisors to the supervisory bargaining unit is granted.

FORTY-FIVE HOUR WORKWEEK

Under the 1974-76 supervisors' contract, sergeants may be required to work an additional 5 hours a week, or up to 45 hours, without additional pay. If required to work in excess of 45 hours, they are paid at time and a half to a maximum of \$1,000.

The Union seeks to establish a 40 hour workweek for supervisors with all additional hours compensated at premium rates. It contends

additional hours over 40 often are required because of the necessity to perform or complete non-administrative duties, that is, regular police work, which reduces the time within a scheduled shift for completion of supervisory and administrative functions. The City opposes any change in the current 45 hour workweek for sergeants, contending it is often unnecessary for supervisors to work over 40 hours and when they do, such time may be scheduled as best suits the sergeant.

Findings and Conclusions

In view of other economic benefits granted, the Arbitration Panel will not reduce the workweek for sergeants from 45 to 40 hours. This demand potentially can be costly, the City estimating an annual expense of \$10,500 for overtime in excess of the 40 hour workweek. The record reveals that if sergeants complete their supervisory and administrative duties by the end of the regular shift, they are not required to work any hours in excess of 40. While it may be naive to assume all their work can be compressed into a 40 hour workweek -- in fact the parties have recognized the likelihood that additional hours will be required by providing the 45 hour workweek -- the record evidence reflects that supervisors have some flexibility in scheduling work beyond the regular shift. Furthermore, where normal police work, as opposed to supervisory

and administrative duties, is performed by a sergeant, he may be able to defer some or all work remaining at the end of his shift to the next shift sergeant in order to complete required administrative duties. In its presentation, the City recognized that supervisors are primarily responsible for completion of supervisory and administrative duties, which matters should be given priority.

ORDER

The Union demand for reduction of the supervisory officers' existing 45 hour workweek to a 40 hour workweek is denied.

SALARIES

The following salary schedule existed for the classification of Patrolman in the 1974-75 contract year:

Starting	\$ 8,551.92
6 months	\$ 8,993.00
1 year	\$ 9,444.76
2 years	\$ 9,906.00
3 years	\$10,397.00
4 years	\$11,002.00

The current salary schedule (1974-75) for the Sergeant classification is: probationary (6 months) - \$12,500; after six months - \$13,000.

The Union demands a 5% wage increase for patrolmen through the

three year level and a 9% increase at the top, or four year level, of the salary schedule. If granted, the annual salary for a three year patrolman would be \$10,917 while a full paid patrolman would be increased to \$11,992. The Union demand for the supervisors' unit is a wage rate which would continue the same dollar differential (not percentage differential) currently existing between fully paid patrolmen and the sergeant classification. The Union position will result in a full paid sergeant receiving an annual salary of \$13,990.

The City has offered a 4% increase across-the-board in both bargaining units. If granted, the full paid patrolman would receive \$11,442 while the annual salary of the fully paid sergeant would be \$13,520.

Findings and Conclusions

Both parties have submitted salary schedules in other communities and each urges that salaries prevailing in certain communities should be considered for comparative purposes while others should not. The Panel has also considered the average weekly earnings of private sector employees in the Marshall area as submitted in the course of the hearing as well as the fact that the Consumers Price Index rose 14 points between July, 1974 and July, 1975.

While the Arbitration Panel is cognizant of the fact that

other City employees, including firefighters, were awarded a 4% increase for the 1975-76 fiscal year, it has concluded that to grant the City's 4% across-the-board wage salary offer would result in salaries for both bargaining units which would not be competitive with wage rates existing in a number of comparable communities located in fairly close geographic proximity to the City of Marshall. In view of that fact, as well as the pertaining private sector wage rates in the Marshall area, the Arbitration Panel finds the Union salary demands more nearly comport with the record evidence and, accordingly, they will be granted.

ORDER

The Union demand for the non-supervisory bargaining unit of a 5% salary increase through the three year level and a 9% increase at the four year level is granted.

The Union demand that the dollar differential existing between the fully paid patrolmen and the sergeant classifications under the 1974-75 salary schedule be maintained is granted.

The City's salary offers for both the non-supervisory and the supervisory bargaining units are denied.

RETROACTIVITY

The parties agree that all economic issues for the 1975-76 contract year were properly submitted to arbitration under the provisions of Act 312. Accordingly, the following Order pertaining to retroactivity is adopted.

ORDER

All orders granting economic benefits to members of both the non-supervisory and supervisory bargaining units shall be retroactive to July 1, 1975.

THE ARBITRATION OPINION

This opinion has been prepared by the Arbitration Panel Chairman and represents his analysis of the record and exhibits. The Panel has met in executive session to discuss and review the transcript, the exhibits, and the respective arguments and positions of the parties. The City and Union panelists concur or dissent in the foregoing Orders as hereinafter set forth.

The Arbitration Panel Chairman and the City panelist concur and the Union panelist dissents on the following Orders:

Vacation Leave

Establishment of an Additional
Sergeant's Position

Longevity Pay Program

Personal Leave Days

Contract Term

Forty-Five Hour Workweek

The Arbitration Panel Chairman and the Union panelist concur and the City panelist dissents on the following Orders:

Non-Supervisors' Salaries

Maintenance of Wage Separation
between Fully Paid Patrolmen
and Sergeant Classifications

Education Bonus

Shift Differential

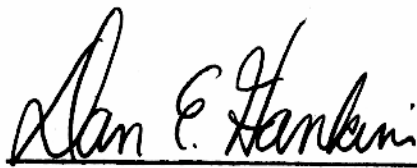
The City panelist has prepared written dissents on the issues of Salaries, Education Bonus, and Shift Differential which are appended hereto and incorporated as part of this opinion.



Alan Walt
Arbitration Panel Chairman



Thomas L. Combs
City Panelist



Dan E. Hankins
Union Panelist

DATED: May 11, 1976

DISSENTING OPINION

This dissenting opinion will not include the philosophical differences discussed with my colleagues on this arbitration panel as it relates to the appropriateness of decisions rendered under Public Act 312 nor will it contain extensive commentary relative to the advisability of the granting of economic benefits contained in the majority opinion other than to respectfully point out that I feel my colleagues have failed to consider the total impact of the granting of the union wages to an isolated bargaining unit as they relate to the labor relations for all remaining employees employed by the City of Marshall.

It is unfortunate that the remaining employees do not have available to them the same "hammer" so as to insure they will receive similar benefits. A failure on the part of an employer to recognize the impact of this determination as it relates to wages, shift differential and educational benefits can certainly have a devastating effect upon the operation of the City government and will most assuredly have a long-standing economic impact which I feel my colleagues have failed to take into consideration in their granting of certain economic benefits.

Therefore, I would respectfully register my dissent in that I would grant the last position of the City as it pertains to wages for all members of both bargaining units as well as refusal to grant the educational benefits and shift differential benefits covered in the sargents' agreement. In all other respects, I will concur with my colleagues and the reasoning contained therein with the single exception that I do not feel that the determination rendered as related to the performance incentive (longevity), while conceptually acceptable to this panelist, is within the power of the panel to change as it does not totally reflect the last offer rendered by the City.

Respectfully submitted,



Thomas L. Combs

TLC/mrt