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Marysville, City of

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ARBITRATION IN ACCORDANCE WITH ACT NO. 312, PUBLIC ACTS, 1969

In the Matter of the Arbitration :

- between - :

CITY OF MARYSVILLE, MICHIGAN :

- and - :

EMPLOYEES OF THE MARYSVILLE POLICE DEPARTMENT
REPRESENTED BY THE FRATERNAL ORDER OF POLICE :

RECEIVED
MAY 24 1971
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

APPEARANCES:

HOWARD CLYNE, ESQ., 304 S. Kennefic, Yale, Michigan 48097
and
DEAN LUCE, ESQ., 412 Michigan National Bank Bldg., Port Huron,
Michigan 48067
Appearing for City of Marysville, Michigan

EDWARD P. JOSEPH, ESQ., 727 S. Grand Traverse Street,
Flint, Michigan
Appearing for Employees of the Marysville
Police Department Represented By The
Fraternal Order of Police

ARBITRATION PANEL

William B. Gould, Chairman
Herbert H. Gilroy, Delegate for Order
Douglas Mowat, City of Marysville Delegate

INTRODUCTION

On January 29, 1970, Chairman Robert G. Howlett of the Michigan Employment Relations Commission appointed William B. Gould Chairman of this panel. The first hearing was conducted on February 12, 1970, at which time Messrs. Gilroy and Mowat were designated as Order and City delegates to the arbitration panel, respectively. Further hearings were held in Marysville on February 12 and March 12, 1970, hearings being closed on the latter date. Briefs were filed by attorneys for both parties on May 15, 1970. The parties have mutually agreed to extend the time in which the arbitration panel might render an opinion and an award in this matter until July 13, 1970.

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This arbitration panel is provided with statutory criteria to follow in the issuance of opinion and award in Section 9 of Act No. 312:

Section 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (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.

ISSUES

1. The City of Marysville has preserved its constitutional objections to Act No. 312. In its brief, however, the City waives its prior objection relating to the practice followed in the initiation of the arbitration procedures "and the time requirements, including the appointment of the Panel Chairman as well as the questions relative to a properly constituted panel."

THE PREAMBLE

2. The panel orders that the preamble is to remain the same as in the previous Agreement. The date is to be modified in accordance with the order below concerning duration. The management rights issue is considered separately.

ARTICLE I

3. Article I, as written in the previous Agreement, is to be included in its exact form in the 1970-'72 Agreement with the exception of the time off for the bargaining clause. This issue to be resolved with the insertion of the following clause in Sec. 3 (A):

All employees covered by this Agreement, while officers of St. Clair County Lodge No. 129 or who are appointed as member of the Marysville's Police Department collective bargaining negotiating committee, not to exceed two, may be allowed time-off with pay for official lodge business; in negotiations and/or conferences with the City administration or bargaining unit legal advisors, and without requirement to make up said time; provided that permission from the appropriate City official must be sought and

obtained; provided further that such permission shall not be unreasonably denied.

The panel believes that the City is correct in contending that permission for 3 rather than 2 police officers is excessive in light of the fact that the City has a 7 member Police Department. On the other hand, the panel believes that excluding mediation, fact-finding and arbitration in court action from "local lodge business" unduly qualifies the meaning of that phrase. We recognize the potential for abuse and excessive absences in connection with this clause. Thus, we have included a phrase requiring permission and that that permission not be refused unreasonably. We stress the fact that this clause is intended as a substitute for the City's proposals on excluding time spent on mediation, fact-finding, arbitration and court action. In other words, we believe that a rule of reason must apply to this area. Most differences concerning such a matter should be resolved easily and sensibly by mature representatives of both parties.

ARTICLE II

4. Article II of the previous Agreement is to be contained in the '70-'72 Agreement exactly as written previously. However, Article II, Sec. 2, paragraph 8, Rule 14 may be inconsistent with the First Amendment and therefore the panel orders the parties to negotiate a new clause on this matter.

ARTICLE III

5. Article III of the previous Agreement is to be contained in the '70-'72 Agreement in exactly the same manner.

ARTICLE IV

6. Article IV of the previous Agreement is to be contained in the '70-'72 Agreement in exactly the same manner. The Order has proposed that Sec. 3 be altered. However, the panel rejects the Order's proposal, inasmuch as no evidence has been adduced as to the undesirability of the current promotion system as it operates. Nor has the Order adduced evidence establishing a pattern which has emerged in other comparable districts or other criteria which this panel might take into account under Sec. 9 of the Act. Therefore, the panel rejects the Order's request on Article IV.

ARTICLE V

7. Article V shall be retained exactly as written in the previous Agreement. Although the City has proposed some changes on this Article, the panel

believes that there is little difference in the City's proposal and the previous one and sees no real justification for changing the contract.

ARTICLE VI (A)

8. Article VI (A) should read as follows:

The regular work week is scheduled for all employees of the Marysville Police Department shall average forty (40) hours consisting of eight (8) hour tours of duty. Whenever possible, the schedule is to be posted in advance on a quarterly basis by the department head. The first shift shall be 7 a.m. to 3 p.m. The second shift shall be 3 p.m. to 11 p.m. The third shift shall be 11 p.m. to 7 a.m. It is understood and agreed that the scheduling of such shifts shall be the sole prerogative of the City and that the City shall have the right to change such shift schedules in the future; provided that the City shall be obligated to notify and discuss with the Order such changes before they are instituted.

The panel believes that the above provision properly provides both the Order with advance notice of schedule for employees whenever possible, thus preserving City flexibility for unforeseen situations which may require an alteration of scheduling. Moreover, the Order's request that shift schedules designated in the Agreement is accepted by the panel. However, pursuant to the City's request, such subject matter is specifically treated as a management prerogative. The only limitation upon such management prerogative is that the City is obligated to notify and discuss prior to a change in shift schedule. The panel believes that Article VI (A) thus provides the employees with a degree of certainty and exactness concerning their own shift schedules and, at the same time, provides the City with the proper amount of latitude and flexibility on this matter.

ARTICLE VI (A) SECTION 2

9. The panel believes that Article VI (A) Section 2 should remain exactly as written in the previous Agreement. Inasmuch as the Order has submitted no evidence to support or rationalize its proposed amendments to Section 2 the panel must reject them. The panel also orders that Sections 3 and 4 be retained as set forth in the previous Agreement.

ARTICLE VI, SEC. 5

10. Work Schedule Article VI, Sec. 5 should be retained as written in the previous Agreement. The Order has requested that the words "as far as possible" be deleted. Inasmuch as no evidence has been adduced that the City has abused the current procedure, Section 6 of the Agreement is also to be retained as written.

ARTICLE VII,

11. Grievance Procedure, should remain exactly as written in the previous Agreement with the exception of deleting the words "logical reason" in Sec. 4 and substituting the words "the cause." The panel believes that this proposal purports more generally with most grievance procedures in general industrial relations and practice in public and private employment. Thus, the panel orders that the substitution be implemented.

ECONOMIC ISSUES

Section 9 of Act No. 312 sets forth certain criteria upon which the arbitration panel shall base its findings, opinion, and order. These criteria are applicable to all of the issues considered by the panel. However, because the economic issues--particularly the question of salary increases--are more complex, we believe that an effective analysis of the contentions of the parties is best articulated in connection with each of the criteria. Therefore, the economic issues shall be analyzed specifically in terms of appropriate criteria in Section 9.

Preliminarily, however, it is important to consider a contention which was raised by the City at the outset of the hearing and which is repeated again in its brief. Section 10 of the Act places limitations upon the effective date of the award of this arbitration panel. Section 10 states the following in pertinent part:

Increases in rates of compensation awarded by the arbitration panel under Section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

The negotiations which have led to this arbitration began in May 1969. The parties have not arrived at any settlement of the issues involved in these negotiations and thus, although the demands of the Order were aimed at the City's budget for July 1969, the fact of the matter is that the commencement of the arbitration is subsequent to that fiscal year and therefore, under a strict reading of the statute, increases cannot be awarded for the 1969-'70 fiscal year.

Unfortunately, the result of such a reading of the statute is particularly harsh inasmuch as this is the first year of the statute and since Act No. 312 was not passed until August and did not become effective until September 1969. Thus, any negotiations which did not culminate in a settlement prior to the fiscal year ending June 30, 1969, cannot go to statutory arbitration for that fiscal year. The statute's operative date is much too late for that.

The result is a harsh one, but this panel does not see any way to avoid it. (Although much of the record deals with an alleged stipulation which might have a bearing on this matter, the Order does not rely upon it and we therefore do not consider it.) Thus, the panel agrees with the City's contention, i.e., that the effective date of the panel's award must be July 1, 1970 at the earliest. Since arbitration was initiated prior to this fiscal year, no doubt exists as to the ability of this panel to issue an award which is effective as of that date.

Despite the inability of the panel to make the award effective as of any date prior to July 1, 1970, it should be pointed out that Section 9 (h) states that the panel "shall base" its findings upon "[s]uch other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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." One of the obvious factors to be taken into account in either collective bargaining or fact finding is that the employees in the bargaining unit have not received any wage increase in the previous year. Thus, at least in respect to salaries, this panel in its award will attempt (a) to ascertain the rate which comports most nearly with all the relevant requirements of Section 9.

THE LAWFUL AUTHORITY OF THE EMPLOYER

In connection with this matter insofar as rates of pay are concerned, the only argument made by either party is that put forth by the City previously mentioned, i.e., that Section 10 prohibits an award by this panel effective prior to July 1, 1970.

STIPULATIONS OF THE PARTIES

Nothing entered by either party beyond proposals made in the May 18 briefs.

THE INTEREST AND WELFARE OF THE PUBLIC IN THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THESE COSTS

The City points out to the panel that there is "currently...an anti-tax climate and a psychological ceiling on the property tax." Moreover, the City further points to the fact that the resident tax payers have recently, in February 1968, turned down at the polls extra operational millage for the school district and defeated a necessary bond proposal for school plant improvements. These events, says the City, serve to buttress the City's contention that additional monies cannot be raised to implement raise increases along the lines demanded by the Order.

Further, the City points out that it has a "Proposed Capital Improvements Program, 1968-74" which includes a new municipal building, a proposed civic center, an expansion of the Waste Water Treatment Plant, an addition of a secondary treatment and phosphate removal, further street construction and reconstruction of streets, correction of deficiencies in the City's network of water and sewers, investment for non-existent sidewalks and repair of existent sidewalks.

The City states that "[c]onservatively, this cost will be in the millions."

The City admits that it does not levy the total millage which is authorized by the Charter. But it questions whether this fact is a pertinent factor for this arbitration panel. The Order states that the City need not necessarily be required to tax at the maximum allowable millage but that, nonetheless, revenues must be made available for an equitable settlement. The Order points out that the City Manager has testified that the Capital Improvements Program simply represents the optimum improvement with "little likelihood of systematic construction."

COMPARISON OF THE WAGES, HOURS, AND THE 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

At the hearing, the Order induced testimony and evidence regarding wage comparisons of police in other municipalities. However, in its brief, the Order states the following:

The F.O.P. Does not believe that wages comparisons serve as a significant tool in arriving at a fair and reasonable wage. It may very well be a factor; but no more. The F.O.P. believes that the duties and responsibility of the position far outweigh whether some city pays more or less. Wage comparisons are subject to so many factors that their value is minimal.

The City, for its part, has submitted voluminous data dealing with comparable rates paid and fringe benefits received by police in other cities. The City relies upon the Michigan Municipal League's compilation of wage and salary data and its categorization of the cities as falling into three distinct geographic areas within the state. The City thus purports to utilize Area No. 2 "in which we are a part and the population group being with which we are found...." The City thus contends that its rate per hour considering all economic benefits is \$4.97 which is the third highest rate among the following cities which fall within the Area 2 population category: Essexville, Charlotte, Mason, Grandville, Tecumseh, Marshall, and Fenton.

Further, the City relies upon exhibits which indicate that private companies pay security employees less than what some police employees are being paid in the area.

THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES,
COMMONLY KNOWN AS THE COST OF LIVING

The City submitted evidence to the effect that the cost of living variances which established on the Food Index increased 3.3 percent from February 1968 to February 1969 and that the non-food cost increases during the same period increased the All-items Index in the amount of 5.2 percent.

THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE
EMPLOYEES, INCLUDING DIRECT WAGE COMPENSATION, VACATION,
HOLIDAYS, AND OTHER EXCUSED TIME, INSURANCE AND PENSIONS,
MEDICAL AND HOSPITAL BENEFITS, CONTINUITY AND STABILITY
OF EMPLOYMENT, AND ALL OTHER BENEFITS RECEIVED

It should be pointed out that the average income of Marysville police officers in 1969, including the off-duty side-arm allowance constituted \$10,272.68. The average income less the off-duty side-arm allowance was \$9,908.68. In connection with the fringe benefits alluded to above, the City has presented a comparative analysis of benefits received by the City police officers as well as benefits received in comparable communities.

* * * * *

At this juncture, it is useful not only to outline the existing benefits and what exists in surrounding communities but also to point out the Order's demand in connection with such and to issue our award.

In connection with fringe benefits, the City has submitted data comparing Marysville with the communities of Essexville, Charlotte, Mason, Grandville, Tecumseh, Marshall, Fenton, Marine City, Algonac, St. Clair, Port Huron, and St. Clair County sheriffs. The Order has submitted no data.

CLOTHING ALLOWANCE

The current allowance for Marysville is \$150 and the Order has demanded \$200. The Order states that the increase "simply represents the general decrease in the purchasing power of a dollar. It should be noted that this is not paid in money to the employees but represents a purchase order given to a uniform outlet." However, the City has introduced evidence which indicates that, of the communities noted above, only Fenton and Marine City have more generous benefits. All others provide less of a clothing allowance. Since the Order does not contradict the City's evidence or submit other data of its own, the panel must reject this request in accordance with the criteria established by Section 9. The panel orders that the clothing allowance from 1970-'71 constitute \$175 as proposed by the City.

SICK LEAVE

The City's evidence indicates that it, like most other public employers in comparable communities, provides its police with 12 days sick leave per year or one day of sick leave for each completed month of service. The panel believes that Article IX, Sick Leave, should remain intact. It is extremely difficult to compare the sick leave information provided by the City with other communities in the area. In regard to some communities, the cost of sick leave benefits for Marysville appears to be less, but, the Order has provided us with no further breakdown or any other data which could provide us for a basis to improve existing sick leave benefits. It may be that improved sick leave benefits are warranted. But the panel has no evidence upon which to base such a conclusion. Therefore, as stated before, Article IX is to remain intact.

OFF-DUTY COMPENSATION

The City of Marysville provides considerably more off-duty compensation than do any of the comparable communities cited in its exhibit. Indeed, besides Marysville, only Essexville provides any compensation at all. (\$120). The panel agrees that the City's proposal concerning side-arm pay is the best means to resolve this matter and we therefore order its adoption as follows:

Article XIV, Section 3. SIDE-ARM PAY.

A. In the event the City shall require any employee to carry a side-arm while off duty when within the limits of the City of Marysville, such employee shall be compensated at the rate of \$1 per day for each day said employee carries such side-arm as so required. Failure to carry such side-arm, which will be furnished by the City, shall constitute grounds for disciplinary action. Officers owning such side arms and now being used by them in such work, will be paid \$75 each for such side-arms sold and surrendered to the City within 30 days from the date of this agreement.

The panel believes that the question of whether sidearms are to be worn off duty is a management prerogative for the City. The panel also believes that the question of compensation for police is a negotiable matter.

VACATIONS

The panel believes that the Order has not introduced any evidentiary basis to support its demands for changes in Article VIII. Therefore, the

panel adopts the City's proposal on Article VIII intact. It should be pointed out, in this connection, that Marysville's vacation benefits compare favorably with those of surrounding communities.

LIFE INSURANCE

The Order has proposed that life insurance benefits be increased from \$2,000 to \$10,000 (in Article XI) inasmuch as "...the amount now provided is not realistic considering the increase in the hazards of the position in recent years." The panel believes that the present level of life insurance benefits be retained. The panel bases its conclusion on the fact that (1) the Marysville life insurance program compares reasonably well with those of others in surrounding communities, (2) no other evidence has been adduced by the Order upon which to base an improved benefit program.

HOSPITALIZATION

The panel orders that the previous agreement on this subject matter contained in Article XII of the previous contract be carried over into the 1970 Agreement. We do not believe that there is adequate evidence upon which to base a change.

COURT TIME

The panel has received no evidence upon which to base a decision on this matter and therefore leaves Article XIII, as written in the previous contract, as it is to be carried over into the '70-'71 Agreement.

LONGEVITY

The Marysville police presently receive \$75 per year after five years of service and \$150 per year after ten years of service. The Order contends that certain improvements should be made inasmuch as longevity is a "significant incentive towards continued employment and certainly operates to encourage officers to remain with the Department." The Order therefore proposes the following longevity schedule:

| | | | |
|-----------------------|---|-----|--------------------|
| Five years of service | - | 2% | of annual earnings |
| Ten " " " | - | 4% | " " " |
| Fifteen " " " | - | 6% | " " " |
| Twenty " " " | - | 8% | " " " |
| Twenty-five " " " | - | 10% | " " " |

The panel believes that the present longevity schedule is satisfactory. The panel notes that the municipalities of Essexville, Charlotte, Tecumseh, Marshall, Marine City, Algonac, and St. Clair have no longevity payments whatsoever. Moreover, it would appear that only Grandville contains a clearly superior schedule (\$130 for five years and \$260 for ten years). Port Huron provides \$650 subsequent to twenty years, but no benefits as early as police in Marysville receive. In light of these factors, the panel orders that Article XIV Section 1 be continued in the present Agreement.

NIGHT AND AFTERNOON PREMIUM

Police officers presently receive a night premium in the amount of five cents per hour for the afternoon shift and ten cents per hour on the midnight shift. The Order proposes that this be made fifteen and twenty cents respectively. The City counterproposes that a ten cent premium be paid for both the afternoon and midnight shift.

Here again, according to the uncontradicted information supplied by the City, Marysville's benefits are clearly superior to every municipality except Fenton. Therefore, the panel orders that the payment for both afternoon and night shift be a ten cent per hour differential.

JUVENILE OFFICERS

Neither party has submitted any evidence on this matter therefore the panel orders that the previous Article XIV, Section 4 remain intact for the new Agreement.

WAGES

The panel believes that the City's proposals are consistent with all but one of the statutory criteria. We have examined the evidence that the City has submitted on a comparison of wages, hours, and conditions of employment in both public and private employment in comparable communities

| <u>CLASS TITLE</u> | <u>START</u> | <u>SIX MONTHS</u> | <u>MERIT ONE YEAR</u> | <u>MERIT TWO YEARS</u> | <u>MERIT 3 YEARS</u> |
|--------------------|--------------|-------------------|-----------------------|------------------------|----------------------|
| Police Sergeant | \$9,400 | \$9,650 | \$9,850 | | |
| Patrolman | 8,000 | 8,250 | 8,450 | \$8,850 | \$9,250 |

DURATION

On all non-economic matters the Agreement's duration shall be from July 1, 1970 through June 30, 1972. On all economic matters, the Agreement's duration shall be from July 1, 1970 through June 30, 1971. This means that the parties are obligated to bargain in advance of the 1971 budget concerning Article VII through XIV. The panel believes that the parties deserve a respite from the rigors of collective bargaining concerning non-economic issues. But the economic picture is too uncertain for us to render an award which would cover 1971-'72.

NON-DISCRIMINATION CLAUSE

For the reasons provided by the Order, we order that the parties should incorporate in their contract a Non-Discrimination clause as set forth by the Order and its proposals.

MANAGEMENT PREROGATIVES

The panel believes that the City is entitled to a management prerogative clause but one not so far reaching as that proposed by the City. The panel therefore orders that the parties incorporate in their Agreement the following contract provisions:

The management of the Police Department and the direction of the working forces, including the right to hire, suspend, or discharge for proper cause or transfer, and the right to relieve employees from duty for lack of work, or for other legitimate reasons, are vested exclusively in the City; provided that this will not be used for purposes of discrimination against any member of the Order nor will it be interpreted to contradict any provision of this Agreement.

CONCLUSION

The panel orders the parties to implement the above in a written collective bargaining agreement by July 20, 1970.

The panel reminds the parties that the expected procedure for resolving differences concerning new contract terms is collective bargaining, not arbitration. Arbitration should be utilized by the parties only when all

other procedures have been exhausted and been found to be wanting. The panel therefore exhorts the parties to resolve their economic differences in 1971 through collective bargaining without resort to arbitration or the utilization of a third party impartial if possible. This is the desired method for resolution of collective bargaining differences. The parties, since they know their own problems better than any outsider can, are in the best position to solve them mutually.

William B. J. J. J.
Chairman

J. J. J. J.
Order Delegate

Douglas H. Mount
City Delegate

JUL 9