

4/2/73  
ARB  
Midland City of

In the Matter of the Arbitration between  
THE CITY OF MIDLAND

-and-

MIDLAND POLICE OFFICERS ASSOCIATION

4/2/73  
This arbitration was conducted pursuant to the Police and Fire-Fighters Arbitration Act (Act No. 312 Public Acts of 1969), in a dispute involving contract negotiations between the City of Midland, Michigan and the Midland Police Officers Association. A hearing was held in Midland, Michigan on January 3, 1973, after the parties had agreed to a series of postponements in an effort to narrow the issues. A transcript of the hearing was made by Donald Gangler, a certified shorthand reporter and copies furnished to the Arbitration Panel. Post-hearing briefs were filed by the parties and the final one was received February 15, 1973. The Arbitration Panel met in Detroit, Michigan on March 16, 1973.

ARBITRATION PANEL

E. J. Forsythe, Chairman  
David DeWitt, City Representative  
James Allen, Union Representative

APPEARANCES

For the Police Officers Association

Richard E. Craven, Esq.  
Philip Brooks, Patrolman and Witness  
Dennis Milliman, Patrolman and Witness  
Robert Adair, Patrolman and Witness

For the City of Midland

Earl R. Boonstra, Esq.  
Donald Marcek, Chief of Police and Witness  
Roger Briggs, Captain and Witness  
Ray Quada, Administrative Assistant to City Manager and Witness

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## BACKGROUND AND POSITION OF THE PARTIES

Prior to the hearing on January 3, 1973, the parties met in an attempt to resolve certain of the then open issues. The issues remaining are discussed below.

### CHECK OFF--PAYROLL DEDUCTION OF DUES

The City proposes that Article I, Section 4(a) be deleted. The City's position in respect to this issue is that the collection of dues, fines, initiation fees, and assessments is strictly the responsibility of the Association. The City contends that it should not be compelled to assume those responsibilities which go to the very heart of the relationship between the Association and its individual members. Moreover, the City says the responsibility involved imposes a cost of bookkeeping and payroll time upon the City.

The City argues that the recent decision by the Michigan Supreme Court in declaring agency shop provisions in public employee labor agreements invalid, is applicable to the deletion of the Check-Off Deduction of Dues provision.

### MANAGEMENT RIGHTS

The City's proposal in respect to Management Rights requests that the arbitration panel delete the current language in Article XIV and substitute the City's proposal for a Management Rights clause.

The City says its proposal in respect to revising the current Management Rights language is submitted to the panel for its consideration on a conditional basis. The City feels that the current Management Rights language is adequate so long as the current Grievance Procedure

continues in full force and effect without amendment as proposed by the Union.

The City says that should the arbitration panel render a decision amending the current Grievance machinery, it strongly contends that coincidentally the Management Rights clause must be adjusted to insure the City sufficient flexibility in administering the police department.

Therefore, the City requests the panel give all consideration to the City's proposal for a revised Management Rights clause if the panel makes any revision in the current Grievance Procedure.

The City's proposal reads as follows:

The City, on its own behalf and on behalf of its Electors, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the constitution of the State of Michigan and of the United States. Further, all rights which ordinarily vest in and are exercised by employers except such as are specifically relinquished herein are reserved to and remain vested in the City, including but without limiting the generality of the foregoing the right (a) to manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of materials, tools and equipment to be used, and the discontinuance of any services, material or methods of operation; (b) to introduce new equipment, methods, machinery or processes, change or eliminate existing equipment and institute technological changes, decide on materials, supplies, equipment and tools to be purchased, (c) to sub-contract or purchase any or all work, processes or services, or the construction of new facilities or the improvement of existing facilities; (d) to determine the number, location and type of facilities and installations; (e) to determine the size of the work force and increase or decrease its size; (f) to hire, assign and lay off employees, to reduce the work week or the work day or effect reductions in hours worked by combining lay offs and reductions in work week or work day; (g) to permit municipal employees not included in a bargaining unit to perform bargaining unit work when in the opinion of management this is necessary for the conduct of municipal

services; (h) to direct the work force, assign work and determine the number of employees assigned to operations; (i) to establish, change, combine or discontinue job classifications and prescribe and assign job duties, content and classification, and to establish wage rates for any new or changed classifications; (j) to determine lunch, rest periods and cleanup times, the starting and quitting time and number of hours to be worked; (k) to establish work schedules; (l) to discipline and discharge employees for cause; (m) to adopt, revise and enforce working rules and carry out cost and general improvement programs; (n) to transfer, promote and demote employees from one classification, department or shift to another; (o) to select employees for promotion or transfer to supervisory or other positions and to determine the qualifications and competency of employees to perform available work.

#### DURATION

The City's proposal is structured as a two year agreement. It says that such an arrangement will afford both parties needed "breathing room" before being required to meet once again to negotiate a new agreement.

The City notes that all other City Unions have agreed to two year agreements, including the Firefighter's Association, the Employees Club District 50, Allied and Technical Workers.

The position of the Association is that the agreement shall be in effect from July 1, 1972 to July 1, 1973.

#### ASSOCIATION REQUEST THAT EMPLOYEES BE GRANTED TIME OFF WITH PAY TO PREPARE FOR NEGOTIATIONS

It is the Association's position that members shall be allowed time off during working hours without loss of pay to prepare for and conduct negotiations and to handle grievance matters. At one point, the Association asked for time off during work hours without loss of pay to attend Association monthly meetings and to attend Police Officers Association of Michigan meetings and seminars with pay.

In respect to the Union's demand for paid time off in order to prepare for negotiations, the City contends that such a procedure would be entirely unworkable since the City would have no effective control over the amount of time spent.

The City maintains that if it paid the Association officers and representatives for other than conducting negotiations or handling grievances, it would be in violation of Public Act 193, No. 176, of Public Acts, 1939, and implies the illegal direct or indirect financial support of an employer to a labor organization may be a violation of the Act. The City says that if it paid police officers and representatives for other than conducting negotiations or handling grievances, it would be in violation of the Michigan Act, in addition to the present Labor Mediation Act involving municipal employers.

#### RETROACTIVITY

The Association seeks retroactivity of any provisions formulated to July 1, 1972. The City's argument in respect to this issue is that the City Charter precludes such an arrangement. The City argues that it has no authority, nor does the panel, to assume contractual obligations of a retroactive nature.

#### SHIFT DIFFERENTIAL

The Association's proposal would be an amendment of language appearing at Article IV, Section 10(c), page 6 of the Agreement. The Association requests that police officers shall be paid two percent (2%) premium per hour over their base rate for all hours worked between 3:00 p.m. and 11:00 p.m., and shall be paid a four percent (4%) premium per hour

over their base rate for all hours worked between 11:00 p.m. and 7:00 a.m.

The City's position in regard to shift differential is that a flat shift differential of \$15.00 for officers permanently assigned to the afternoon shift and \$25.00 for officers permanently assigned to the midnight shift is fair and equitable. The City says this arrangement would result in a \$788.00 credit over and above the amount presently being spent under the flat \$13.00 per month shift differential.

#### LONGEVITY

The Association requests that a new step be added to the current longevity schedule which would call for a 1% payment after three years of service.

The City's position in regard to the Association's longevity demand is that there is no justification for the increase sought by the Association. It says a comparison with other surrounding communities indicates that the City of Midland program is in line with comparable communities, and it submitted a table of cities in the area to so indicate.

#### HOLIDAY PAY

The Association requests that employees be paid 2 1/2 times their hourly rate for all hours worked on a holiday.

The City's current program of holiday payment calls for 2 3/8 times the employee's straight time hourly earnings for all the time he works on a given holiday.

The City notes that the Firefighters do not enjoy as liberal a method of payment in respect to work holidays as do the police.

## PERSONAL LEAVE

The Association requests that its members shall be entitled to two personal leave days per year with pay. The City says this request amounts to nothing more than a request for additional vacation time. The City contends that it already provides its policemen with sufficient time off with pay.

The City says that all the other City Unions have agreed to the revisions proposed by the City in respect to the composition of the Merit Board.

## VACATION

The Association proposes an amendment to Article VI, Section 12, page 8, which reads as follows:

5 - 10 years of service	---18 days vacation with pay
10 - 15 years of service	---20 days vacation with pay
15 - 20 years of service	---22 days vacation with pay
20 or more years of service	---24 days vacation with pay

The City's position in respect to vacations is the following:

1 to 5 years of service	- 12 days
6 to 10 years of service	- 16 days
11 to 15 years of service	- 18 days
16 to 20 years of service	- 20 days
20 years or more of service	- 22 days

The City submits that its proposal would put the Association in line with all other City Unions. It says its proposal represents a liberalization of the previous vacation program and conforms to the vacation schedule negotiated and agreed upon with all other City Unions.

## APPEAL PROCEDURE

The Association asks that arbitration be substituted for the decision of the City Manager as the last step of the current Grievance Procedure contained in Article VII, Section 18.



The City says that it has offered to change the makeup of the Merit Board to more closely reflect the interest of the Association. It says that when the City Council must next consider an appointment to fill an expired term on the Merit System Board, it shall select one individual for Merit System Board membership from the three names submitted by the City's Collective Bargaining agencies.

#### WAGES

The City's position in respect to wages is that the members of the Association should receive a salary increase of 5.5%. Such an increase coupled with other economic improvements proposed by the City would place the Association members on a favorable basis comparable with employees belonging to other City Unions including firefighters, hourly employees and clerical employees.

The City says the firefighters received an overall increase of 5.56% salary, clerical and salaried employees received a total compensation increase of 5.63%, and hourly employees an increase of 5.50% in total compensation. The City says furthermore, a 5.5% salary adjustment would comport with Federal Guidelines in respect to wage increases over and above base period levels.

The City says that the Firefighters settled for a salary increase of 6.52% but that they did not receive any other form of economic improvement in the form of fringe benefit liberalizations such as now are sought by the Association and agreed to a conversion of their sick leave whereby it was reduced for a credit of \$1,982.00. Other than salary, the City says they received a revised vacation schedule but that the total compensation was 5.56%.



The City's Cost Analysis of MPOA Demands from Enclosure 4 reads:

<u>Benefits</u>	<u>Base Year Costs 71-72</u>	<u>Cost of Improvements</u>	<u>Roll Up 6.52 Incr.</u>	<u>Total Cost 72-73</u>
Salaries	\$364,261	\$23,750 (a)	\$	\$388,011
Longevity	4,737	649 (b)	309	5,695
Retirement	77,612		5,060	82,672
Blue Cross	21,214			21,214
Life Insurance	2,919			2,919
Workmen's Comp	9,468			9,468
Vacation	22,428	2,200 (c)		24,628
Shift Differential	4,368	-788 (e)		3,580
Sick Leave	16,821	1,660 (e)		18,481
Certificate Pay	1,200			1,200
Holiday Pay	12,495	900 (f)	815	14,210
Overtime	16,232		1,058	17,290
Assoc. Business		515 (g)		515
Personal Leave		2,800 (h)		2,800
TOTAL COMP	\$553,755	\$31,686	\$7,242	\$592,683
Total Improvement Cost - \$31,686				
Total Roll-Up Cost - 7,242				
				38,928 = 7.02%
				553,755
Total Increased Benefit Cost - \$38,928				

Improvement and Roll-Up Costs based upon:

- (a) Salary Increase - 6.52%.
- (b) Longevity - 1% after three years.
- (c) Vacation - MPOA Proposal.
- (d) Shift Differential - \$15 Afternoon, \$25 Midnight.
- (e) 60-120 Sick Leave Program.
- (f) Holiday Pay increase from 1-3/8 to 1- 1/2 times base pay.
- (g) Association Business Leave - 12 days.
- (h) Personal Leave - 2 days.

# The City's Cost Analysis of A Possible Salary Increase and Fringe

Benefit Improvement Package from Enclosure 5 reads:

<u>Benefits</u>	<u>Base Year Costs 71-72</u>	<u>Cost of Improvements</u>	<u>Roll Up 5.5 Incr.</u>	<u>Total Cost 72-73</u>
Salaries	\$364,261	\$20,034 (a)	\$	\$384,295
Longevity	4,737	649 (b)	260	5,646
Retirement	77,612		4,269	81,881
Blue Cross	21,214			21,214
Life Insurance	2,919			2,919
Workmen's Comp	9,468			9,468
Vacation	22,428	1,300 (c)		23,728
Shift Differential	4,368	-1,208 (d)		3,160
Sick Leave	16,821	1,660 (e)		18,481
Certificate Pay	1,200			1,200
Holiday	12,495	900 (f)	687	14,082
Overtime	16,232		893	17,125
Personal Leave		1,400 (g)		1,400
TOTAL, COMP.	\$553,755	\$24,735	\$6,109	\$584,599

Total Improvement Cost - \$24,735	<u>30,844</u> = 5.56%
Total Roll-Up Cost - <u>6,109</u>	<u>553,755</u>

Total Increased Benefit Cost - \$30,844

## Improvement and Roll-Up Costs based upon:

- (a) Salary Increase 5.5%.
- (b) Longevity - 1% after three years.
- (c) Vacation - According to City Proposal
- (d) Shift Differential - \$15 Afternoon, \$20 Midnight.
- (e) 60-120 Sick Leave Program.
- (f) Holiday pay Increase from 1-3/8 to 1-1/2 times base pay.
- (g) Personal leave - 1 day.

The City says that in its position statement it related salaries in Midland to other comparable cities and counties within a fifty (50) mile radius, and summarizes as follows:

Patrolman Salaries (City Exhibit 1, Table 11)

	<u>Start</u>	<u>Maximum</u>
Midland	\$9,020	\$11,135
Average of other cities within 50 mile radius	\$8,544	\$10,104

The City's final economic proposal is spelled out in detail in its post-hearing brief.

In summary it reads as follows:

TOTAL COMPENSATION.....	\$553,755
Cost of Improvements.....	\$ 24,735
Roll Up 5.5 Increase.....	\$ 6,109
Total Increased Benefit Cost.....	\$ 30,844
Total Cost 1972-73.....	\$584,599

The City says the Improvement and Roll-Up Costs are based upon:

First Year

- (a) Salary Increase 5.5%
- (b) Longevity -1% after three years
- (c) Vacation --According to City proposal
- (d) Shift Differential --\$15 Afternoon, \$20 Midnight
- (e) 60-120 Sick Leave Program
- (f) Holiday Pay increase from 1-3/8 to 1-1/2 times base pay
- (g) Personal Leave ---1 day

Second Year

- (a) Salary Increase 6.5%

The City argues that its economic proposal meets the Union's demand in five fringe benefit areas in addition to the salary issue, i.e. longevity, vacation, shift differential, holiday method of payment, and personal leave time. It says the Union receives effective the second year, an

increase of 6.5% which is equivalent to the increase received in 1972-73 by the Firefighters Association.

The Association's proposal on Compensation is a 6.52% increase in base wages, base wages equalling \$23,750.00. The Association says that to indicate good faith and some understanding of the economics involved, it withdrew its request for modification of the City's sick leave language, it withdrew its desk sergeant request, it withdrew its additional request pertaining to health insurance, its additional request pertaining to funeral leave, withdrew its request pertaining to promotions, and agreed to withdraw its request for three additional holidays.

The Association argues that Midland Police Officers compare less favorably with the Association family income in Midland than to the other areas, and is generally behind other bargaining units throughout the State.

## OPINION AND AWARD

The issues presented to the panel are outlined above under the title BACKGROUND AND POSITION OF THE PARTIES setting forth the position of the parties, which was documented with numerous exhibits presented by both sides at the hearing.

The Panel met in Detroit, Michigan on March 16, 1973 and the Chairman was asked to write an Opinion and Award on the issues presented on the basis of presentations at the arbitration hearing and the discussions held with other members of the Arbitration Panel.

As to the officers involved, it is held that this is a professional type of responsibility, and that the question of fair pay must be determined on what type of work policemen perform in Midland regardless of what any other department of the City is paid. It is also held that the City has not demonstrated that it cannot afford the increase from a budgetary standpoint since a number of the fringes the Association requested will not be a part of the Contract.

The City stated that its position was that 6.37% was reasonable for the policemen assuming that as in the case of the firemen fringe benefits were not included. It is noted that the firemen did receive a vacation adjustment.

The City asked for a two year Contract and that is to be included in this Contract with a salary increase of 6.52% retroactive, to July 1, 1972 with the same percentage that is a 6.52% salary increase for the second year of the Contract, July 1, 1973 through June 30, 1974. The City did state that this could be met if the fringe benefits requested

were not included. Certain ones of them are not included.

The City's position in respect to vacations is upheld as stated in the City position which is:

1 to 5 years of service	12 days
6 to 10 years of service	16 days
11 to 15 years of service	18 days
16 to 20 years of service	20 days
20 years or more of service	22 days

This provision is not to result in the diminution of any vacation rights of any officers in the bargaining unit.

In the matter of Holiday Pay, it is the disposition of this Panel that the Association will receive the holiday payment of 2-1/2 times (this includes base pay) their hourly rate for all hours worked on a holiday for the second year of the Contract, from July 1, 1973 through June 30, 1974. This same recommendation is made in the matter of Personal Leave Days, that is, two Personal Leave days to be granted in the second year of the Contract.

The shift preference will be in the amount of \$15.00 for the Afternoon Shift and \$25.00 for the Midnight Shift.

The longevity matter is granted as set out by the City, that is, 1% after three years. The 60-120 Sick Leave Program as offered by the City is granted.

Based upon the evidence, documents and meetings of the Panel, it is believed that this is a Contract which the City can support and the Association can adopt. Each has made concessions, and in the matter of Collective Bargaining, the Association made certain economic gains salary wise while at the same time giving up on certain issues in the economic package. The City realized a two year Contract from this Agreement.

As to other matters, the Check Off and Payroll Deduction of Dues will be continued as contained in Article I, Section 4(a) of the last Agreement.

The Association will continue to receive time off during working hours without loss of pay to conduct negotiations and to



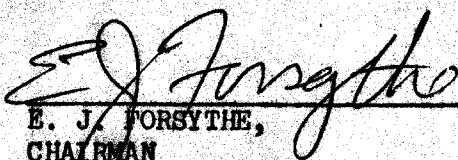
handle grievance matters. The request of the Association for time off during work hours without loss of pay to attend Association meetings or related seminars, is not granted in this Contract.


The Association demanded that arbitration be substituted for the decision of the City Manager as the last step in the current grievance procedure included in Article VII, Section 18.

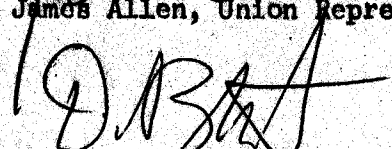
The City's position is granted by this panel which is that the Union shall have the right in joint action with other collective bargaining agencies of the City government having this provision in their agreements to put forth three names of qualified individuals for the City Council's consideration as a member of the Merit System Board. The first list shall be presented June 1, 1973 or sooner if a vacancy should occur, and signed by the Presidents of each of the collective bargaining units. Individuals named shall each meet the qualifications of Section 2-51 and 2-54 of the Midland Code of Ordinances. When the City Council must next consider an appointment to fill an expired term in the Merit System Board, it shall select one individual for Merit System Board membership from the three names submitted by the City's collective bargaining agencies. During the life of this Contract, the individual so appointed shall be replaced by the City Council only with an individual from a list of three names as described above. Failure to provide a list within ten (10) calendar days of a request or failure to present the names of three qualified individuals shall void this section.

The Union Panel Member wants it noted for the record that the Association will give the new system of representation on the Merit System "a try" for this Contract and of course reserves the right to request arbitration in the next Contract.

The Chairman of the Arbitration Panel is authorized to say that  
the City member dissents from the above Awards.

  
E. J. FORSYTHE,  
CHAIRMAN

  
James Allen, Union Representative

  
David DeWitt, City Representative  
(Dissenting)

April 2, 1973



WILLIAM G. MILLIKEN, Governor  
BARRY BROWN, Director

STATE OF MICHIGAN

## DEPARTMENT OF LABOR

### EMPLOYMENT RELATIONS COMMISSION

400  
TRUST BUILDING, GRAND RAPIDS, MICHIGAN 49502 - Phone 459-3531

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#### COMMISSIONERS

ROBERT G. HOWLETT,  
Chairman  
LEO W. WALSH  
MORRIS MILMET

FOR IMMEDIATE RELEASE  
September 26, 1972

Robert G. Howlett, Chairman of the Michigan Employment Relations Commission, announced the appointment of Dr. E. J. Forsythe as Chairman of the arbitration panel in the current collective bargaining dispute between the City of Midland and the Midland Police Officers Association. Dr. Forsythe is to head the panel created pursuant to the Police and Fire Fighters Arbitration Act which became effective October 1, 1969.

Dr. Forsythe is professor of Industrial Relations at Wayne State University and is in charge of Executive Development Programs. Dr. Forsythe was Chairman of the Governor's Commission on Employment Problems of Older Workers, and a member of the Governor's Compensation Study Commission which resulted in substantial revisions in the Workmen's Compensation Law. He has also served as chairman of the Academic Advisory Committee to the President's Committee on Equal Employment Opportunity.

Dr. Forsythe has been an arbitrator since 1957, and is a member of the National Academy of Arbitrators. He received his Ph.D. degree from the University of Missouri.

The City of Midland is represented by Earl S. Boontra, Esq., and has chosen David S. DeWitt as its representative to the panel. The Midland Police Officers Association is represented by Richard E. Craven, Esq., and has appointed James W. Allen as its delegate to the arbitration panel.

