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MIDLAND POLICE OFFICERS ASSOCIATION -and- CITY OF MIDLAND, MICHIGAN	Arbitration Proceeding under Act No. 312, Michigan Public Acts of 1969

1/8/71 Russell Smith

APPEARANCES

For the Union: Livingston, Gregory, Van Lopik & Higle (by Nancy J. Van Lopik), Attorneys.

For the City: Patrick H. Hynes, City Attorney.

OPINION

This arbitration proceeding has been conducted pursuant to Act. No. 312, Michigan Public Acts of 1969. The bargaining unit here involved consists of all police officers of the City of Midland, Michigan, excluding officers holding the rank of Lieutenant and higher.

This bargaining unit was originally represented by United Mine Workers of America, District 50, Local Union 13811. That union and the City entered into their last agreement effective as of July 1, 1967. This was a three-year agreement ending June 30, 1970, with annual wage "reopeners" in 1968 and 1969. Pursuant to such reopeners, new wage schedules were negotiated effective July 1, 1968 and May 5, 1969 (Tr. 7-8).

On April 23, 1970, a representation election was conducted by the Michigan Employment Relations Commission which resulted in the certification of Midland Police Officers Association (hereinafter sometimes called "the Union") as bargaining representative of the police officers unit, thus replacing the District 50 Union. By agreement the Union succeeded to the

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interests of the District 50 Union as party to the then existing collective bargaining agreement, which expired June 30, 1970. This proceeding resulted following efforts by the parties to negotiate a new agreement.

This Opinion has been written by the Chairman of the Arbitration Panel. Concurrence by either of the other members of the Panel in the Award does not necessarily indicate agreement with everything stated in the Opinion.

PROCEDURAL MATTERS

This proceeding was initiated by letter dated June 30, 1970, addressed by the Union to Midland City Manager Fred L. Yockey (Jt. Ex. 1). Subsequently, the Arbitration Panel was constituted, consisting of Winston L. Livingston (Delegate of the Union), David E. Burgess (Delegate of the City), and Russell A. Smith, Chairman (appointed by the delegates of the parties on July 30, 1970) (Jt. Exs. 2, 3 and 4). The City's Delegate, Mr. Burgess, died after the proceeding began, and on November 16, 1970, was replaced by Patrick H. Hynes.

The initial hearing in the matter was held August 7, 1970 at the Midland City Hall. At this hearing the parties stipulated that they had been "in mediation" for a period in excess of 30 days prior to the Union's demand for arbitration (Tr. 6). The hearing was devoted primarily to an attempt to define the issues to be decided by the Panel and to determine procedures to be followed.

It became apparent that the parties were in sharp disagreement concerning what were the issues to be submitted for Panel decision. The City contended that only three issues should be

considered and decided, all others having in effect been resolved. These three issues were identified as (1) disagreement over a "job posting" provision, (2) the Union's demand for an immediate 40-hour work week, and (3) dissatisfaction with increased monetary allowances for certain college degrees as being unfair to other personnel (Tr. 11-14; City Ex. 1). The Union, on the other hand, took the position that since a certain offer of settlement made by the City on June 30, 1970 was rejected by the Union membership on July 1, any issues which were not in fact resolved during the course of bargaining to the parties' mutual satisfaction were properly before the Panel for decision (Tr. 9, 15).

Directly relevant, in the City's view, were the facts, as contended by it, that an accord on the terms of a new agreement was reached between the bargaining teams of the parties on June 30, 1970, which, although not ratified at the Union membership meeting of July 1, was rejected only because of dissatisfaction as to the three items listed above. But the Union contended that even if agreement had been reached between the bargaining teams, the Union's bargaining committee could not "waive" the right of the membership to repudiate that agreement, and that since this had happened, all issues previously in dispute remained in dispute (Tr. 15).

During the ensuing discussion of this matter both on and off the record it was established that at the negotiating meeting of June 30 only two of the Union's four bargaining committee members were present. In light of this fact, the Panel unanimously took the position that even though agreement

had been reached at that meeting on a total package, "that kind of agreement, particularly with only half the Association's team there, can't really estop the Association claiming that there are additional issues present here where the Association membership turned down the proposals that were made. . ." (Tr. 20). As to this, the Chairman stated further (Tr. 21):

> . . . If there had been an agreement reached between--with the full membership of the Association's bargaining team present and most of them or a majority agreeing on some kind of a settlement, then maybe there would be an issue as to whether. . . under all the circumstances it ought to be held that the agreement reached should have been ratified because it was a good agreement and a fair agreement. In other words, I can see this is a possible issue to be presented before an arbitration tribunal.

The Panel then suggested that the parties make an attempt to reach agreement on a submission of issues for Panel determination, and the parties agreed to do so. It was understood that if such effort should not succeed, the Panel would "have to determine what the issues are on the basis of presentations made by the two sides. . ." (Tr. 22) It was stipulated that the hearing be recessed, that on or before August 21, 1970 the parties would advise the Panel whether or not they had been able to stipulate the issues to be decided by the Panel and that if they were unable to do so, written submissions would be made on August 28 directed to the question of the issues to be decided, to be followed on September 18 by principal submissions on the "merits" of each issue "raised by either side or stipulated to as the case may be", and that there would be reply submissions on September 25. It was further agreed that hearings

would resume on October 6, 1970. (Tr. 27-28). Subsequently, by agreement, the hearings were rescheduled to resume October 28, 1970 (Tr. 31).

The parties were not able to stipulate the issues to be decided by the Panel (Tr. 32), and at the hearing held October 28, the various written submissions which, in the interim, had been filed as agreed, were made part of the record (Tr. 32-34). (The principal and reply submissions on the "merits" are sometimes identified hereinafter as "B" and "RB", respectively.)

Testimony was then taken on the question of the issues to be decided by the Panel by way of supplementation to, or support of, positions taken by the respective parties in their written submissions on this question. This consumed most of the day, and there was little opportunity to present evidence or further argument (in addition to that which had already been presented in the principal and reply submissions) on the "merits" of the substantial number of issues submitted as potential matters for determination, although some of the testimony and other evidence presented arguably is relevant on the "merits" of certain issues as well as with respect to the question of what issues were to be decided. The Panel suggested, with respect to the issue of "job posting", that the parties make an effort to resolve the matter through further negotiation, and the parties agreed to do so (Tr. 174). The Panel also suggested that the parties undertake to prepare, jointly, some comparison data in addition to data which each had submitted. They agreed to do so, and that such data, when submitted, would become part of the record in this case. (Tr. 178-180) Finally, at the October 28 hearing,

it was agreed that the hearing would be recessed until November 25, 1970 (Tr. 191).

Certain events occurred thereafter which substantially altered the proceedings and ultimately permitted a disposition of the entire case to be made on the basis of decisions on a very few substantive issues. Shortly after the October 28 hearing the members of the Panel agreed, upon reconsideration, that the additional data which the Panel had requested need not be submitted, and informally advised the parties of this decision. On November 11, 1970, City Manager Yockey by letter advised the Chairman that the parties had reached agreement on the "job posting" issue. It became necessary to replace Panel Member Burgess because of his unfortunate and untimely death, and this was done, but some time elapsed in the process. The Panel, as reconstituted, met in executive session November 19, 1970 to review the case, and, based in part on the pressures of time and the desires of the parties, as transmitted through their Panel representatives, decided to make a renewed effort to limit the issues to be decided by the Panel. The parties were requested, through their respective Panel designee, to undertake further negotiations immediately in an effort to resolve as many issues as possible, and to specify for Panel submission those not resolved.

The parties, pursuant to this request, engaged in intensive and highly successful negotiations with the result that within a week they had agreed on all issues in dispute except three, which were to be decided by the Panel. This agreement was reduced to writing at a Panel meeting held November 27,

1970 in the form of a stipulation reading as follows:

The parties to the currently pending proceeding under Public Act No. 312, Michigan Public Acts of 1969, do hereby, through their respective counsel, agree and stipulate as follows:

I-That the following issues, only, are to be decided by the Arbitration Panel:

1-Should the City pay time and one-half for all hours over 40 worked in a work-week by police officers, it being understood that if the answer is affirmative, the hourly rate of the employee from and after the effective date of the award with respect to this issue shall be computed on the basis of the employee's annual salary as determined by the Panel's award on the "salary" issue?

2-What increase shall be made in the annual salaries of police officers?

3-What shall be the effective date of the Panel's decisions on the above questions?

II-That the parties, having engaged in further negotiations, have resolved all other matters previously in dispute between them, and have agreed as follows:

1-The term of the parties' next collective bargaining agreement shall be two years, and shall include a "reopener" provision permitting either party, upon 60 days' notice given prior to the expiration of the first year of the agreement, to demand negotiation (and, if agreement is not reached, to proceed to arbitration under Act No. 312) on the following subjects with respect to the second year of the agreement: (a) Holiday pay; (b) temporary job assignments; and (c) salary.

2-The City will pay to a police officer, as a special bonus, $300 per year after he has obtained an "A.A." degree, and $600 per year after he has obtained an "A.B." or equivalent degree, such payments to commence in the fiscal year following the year in which the degree is obtained.

3-The parties shall include in their agreement a job posting provision as agreed to by the Association's membership November 4, 1970.

4. The City's proposal of a modified "agency shop", made on June 30, 1970, shall be incorporated in the agreement, except that the words "a political party of their choice" shall be omitted.

5. The parties' agreement shall include a grievance procedure containing the language of Article VII ("APPEAL PROCEDURE") of the existing agreement.

6. Holiday provisions shall remain the same as in the existing agreement.

7. The parties shall include in their agreement the improvements with respect to life and hospitalization insurance offered by the City on June 25, 1970.

8. The parties shall include in their agreement provision for a shift differential payment of $13.00 per month for officers assigned to the afternoon or night shifts.

9. The parties shall include in their agreement the temporary job assignment language offered by the City on June 30, 1970.

10. The contract provision concerning Longevity Pay shall remain the same as in the existing agreement except that the respective percentages shall each be increased by 1%.

11. The "CITY RESPONSIBILITIES" provision (Article XIV) of the existing agreement shall be continued.

12. The "overtime" proposals made by the City as indicated at pages 17-18 of Appendix "A" of the City's Submission on Issues" shall be included in the parties' agreement.

13. The parties agree that attendance at funerals of police officers shall be permitted at the discretion of the Police Chief.

14. The sick leave provisions of the existing agreement (Paragraphs 12 and 13) shall be continued in effect except that Paragraph 13 (c) shall be omitted.

15. The parties agree that there shall be no specific reference to footwear in the new agreement.

16. The parties agree that a total of four years' experience, with the last year in the Department, shall be the minimum experience required for promotion from Patrolman to Sergeant.

17. Items 2, 8, and 10, above, shall be made retroactive to July 1, 1970. Further, health insurance provided in item 7 shall be retroactive to July 1, 1970 if this can be accomplished through an additional premium payment to Blue Cross and/or Blue Shield at a rate not greater than established rates, and it can be shown that any member of the MPOA would benefit from such retroactive coverage.

III-That the Award of the Arbitration Panel may be issued without a written supporting opinion, subject to the condition that such opinion shall be rendered within 45 days of the Award.

On the same day the Panel, in executive session, reached unanimous agreement on the three issues submitted to it for determination, and issued its award the terms of which are set forth hereinafter.

CONSIDERATION OF THE ISSUES

1. The 40-Hour Work Week Issue

The July 1, 1966 agreement between the City and the predecessor District 50 Union established a 40-hour work week. Scheduling practices, nevertheless, provided for a 42-hour work week, with the consequence that the work week included two hours of overtime. However, the agreement which became effective as of July 1, 1967 provided for a 42-hour work week as an average over a four week period, and for payment at time and one-half for all hours worked in excess of the 42-hour week and for time worked over eight hours in any one day (Jt. Ex. 5, Article IV).

The Union's demand in the 1970 negotiations was, in effect, for a restoration of the 40-hour work week, with payment at time and one-half for all hours worked over 40. (The demand did not, apparently, propose any alteration in the practice of

"averaging", so we assume this was not an issue.) The City's response was that the Union's proposal would be acceptable only if the costs were absorbed within a "9.1 percent package" which had been offered by the City in settlement of all "economic" issues (B 9).

The Union, in support of its demand, argued that "judicial notice" can be taken of the fact that the 40-hour week "is common in the private sector" and is "mandatory with respect to industries subject to the federal Fair Labor Standards Act" (B 23). It contended, further, that the 40-hour week "is also common in police departments in Michigan having a population of over 10,000, and in support thereof cited certain data reported by the Michigan Municipal League. The Union added that the work of a police officer "is particularly demanding", and that "rescheduling is not impossible, only difficult, and should be no reason for continuing the out-dated and unfair 42-hour week for police officers." (B 24).

The City recognized "that it may not be in the mainstream of practice on this issue," but contended that to adopt the 40-hour week would represent a substantial cost item in that it would be necessary to add two new patrolmen "to retain the present service levels". The City stated that to do so would involve a cost of some $20,016 annually, if, as offered by the City, there were an increase of 7% in base salaries. In view of 9.1% "package" settlements reached with other bargaining units of City employees, the City was determined to hold the total "economic" package granted to the police officers within

this over-all percentage, and thus, if the 40-hour week demand were granted, insisted on compensatory adjustments downward in other elements of its economic offer to the Union. (B 9-12)

On the merits, the Panel concluded that the Union had provided substantial support for its demand for a basic 40-hour work week in terms of accepted practice generally, and particularly practice, as demonstrated, in Michigan cities having a population of over 10,000. However, the Panel also recognized that a fairly substantial cost element would be involved if the City found it necessary to maintain its existing 42-hour work week (with payment for two hours of overtime each average work week) or if, upon rescheduling its force to accommodate to a basic 40-hour work week, it would be necessary to add two men to the force. An alternative, of course, which would materially reduce the cost, might be to schedule a basic 40-hour work week without increasing the force by means of work schedules which would involve fewer men on particular shifts.

It was the Chairman's view, as explained below, that the City had made a good case in support of its position that the total economic package granted to police officers should be substantially within the limits of the "9.1% package" offered by the City. On the other hand, it seemed to the Chairman that, consistent with this, the parties' new agreement should require that the 40-hour week be established not later than the beginning of the second year of the new agreement, and should recognize that during the period since July 1, 1970, police officers have been suffering an inequity in working a

42-hour work week without any premium compensation at all. Such recognition, in the Chairman's view, could and should be accomplished by requiring the City to pay these officers, as a special premium compensation, or bonus, for each such week worked an amount equal to one hour's pay at the officer's annual rate. This was the basis for Paragraphs 1 and 3 of the Award issued November 27, 1970.

2. The Salary Issue

Salary scale under prior agreement

Pursuant to the 1969 agreement with the District 50 Union, the annual salary schedules effective July 1, 1969, for bargaining unit personnel were as follows:

Class Title	Start	6 mo.	1 yr.	2 yr.	3 yr.
Spec. Serv. Officer	$6,830	7,115	7,395	7,675	7,955
Patrolman	8,430	8,735	9,035	9,335	9,635
Sergeant	10,115		10,360		

Union demand and City's offer

The Union demanded a 12% increase across the board, which would make the Patrolman's top salary $10,791 (B 26).

On June 25, 1970 the City offered a 7% increase across the board which, it states, was "in keeping with the 9.1% package" which was offered to the Union's bargaining committee.

Union's arguments

The Union contended that the offered 7% increase "must automatically be rejected as inadequate" as scarcely more than compensating police officers for the increase in cost of living which occurred between June, 1969 and June, 1970, and as failing to recognize that the cost of living has continued to increase thereafter (B 26). The Union asserted that as a matter of common

knowledge the demands made upon police officers have greatly increased and should be recognized in terms of fair compensation for the skills and services required. The Union relied, in terms of comparative data, upon surveys of salary and fringe benefits of police officers in 9 Detroit suburban communities and asserted that this comparison showed Midland "far behind". The suggested comparison group consisted of Melvindale, Lincoln Park, St. Clair Shores, Roseville, Westland, Allen Park, Ecorse, Madison Heights and Pontiac, which, according to the Union, had base salaries for a 5-year patrolman as of July 1, 1970 ranging from $10,309 to $11,550. (B 29).

The Union took cognizance of the probable argument by the City that suburban Detroit communities are not comparable to Midland, and of the probability that the City would contend that comparisons should more properly be made of communities close to Midland, such as Bay City and Flint. But the Union argued that Detroit and its suburbs "have recognized the need for higher police salaries and the professionalization of police departments" in contrast with most Michigan cities "outside of this metropolitan area", and that, for this reason, out-state comparisons are intrinsically invalid. (B 28). Moreover, the Union contended that "a police officer's job is basically the same everywhere" and that attempts to distinguish between large and small cities, and those outstate and within a metropolitan area are specious (B 29).

The Union advanced certain additional arguments, including the relatively high "per household" income level in Midland as compared with the average in the State, and the asserted fact

that Midland, "as a leader of communities in many respects" . . . should also be a leader in developing a professional police department" (B 30). "A substantial salary increase," the Union contended, was "essential if the City and its police officers are to attain their desired goal" (B 31).

The City's arguments

The City did not take the position that its financial limitations "are an obstacle to a just and reasonable establishment of salaries and benefits" (B 1). It did, however, claim that since 1968 "the local economy has been slowing down", and it made additional generalized assertions, including the following: Midland is considered "an attractive community" and "has had no problem in recruiting and retaining police officers; the crime rate in Midland, reflecting its "socially homogeneous population", is far less serious than that of Bay City, Saginaw and Flint; the salary and benefit levels set by the Panel "will inevitably affect future negotiations with the other three bargaining units" with which the City has collective bargaining relationships (B 2-3).

The City regarded as a relevant, although it conceded not controlling, fact that during the 1970 negotiations, and prior to the Union's initiation of this arbitration proceeding, the City had concluded agreements with Local 1315, International Association of Fire Fighters, the Midland Municipal Employees' Club (representing salaried employees), and Local 14009, Allied Technical Workers (representing hourly employees) providing, in each instance, for an "economic package" totalling 9.1% for the first year of the respective 2-year agreements. These

agreements provided for salary increases of 7% in the case of the Fire Fighters and the salaried employees, and 7.5% in the case of hourly employees with "reopeners" on salary and certain other economic items for the second year of the respective agreements. (Brief on Issues, pp. 1-3).

The City gave substantial attention in its presentation to the statutory criterion of comparisons with "public employment in comparable communities" [Act 319, Section 9(d)]. As to this, its position was twofold: First, that comparisons should be restricted, as an outer parameter, "to those communities designated as Area II Cities by the Michigan Municipal League", but even further limited, because of assertedly differing "economic and social pressures of the East Central Region in the State of Michigan, of which Midland is a part," to "that geographic area of the State within which Midland, as an employer, functions and competes for manpower". For these reasons, the City sought to establish as "the area of comparability" the area within a 50-mile radius of Midland and, within that area, "those cities with a population in excess of 5,000 and counties of 10,000 or more as indicated by either the 1960 Census or the preliminary 1970 Census figures, whichever are available." (B 4) The City then sought to show that its proposed increase of 7% was more than adequate. (B 42-44)

The City summarized its position as follows (B 48):

> In order to retain its bargaining integrity, the City holds to its June 25th seven percent salary adjustment as a fair offer in light of its June 25th agreement, the three other agreements with the other bargaining units, and a comparison with other cities.
>
> If, however, the Panel considers in its award more than the three issues mutually in dispute, the

> City withdraws its seven percent offer. Based upon the survey conducted on August 14, there is justification for a five (5) percent increase as it permits the City to retain its competitive posture.

Findings and conclusions

The settlements reached with other organizations representing groups of City employees cannot, in the Chairman's opinion, properly be regarded as controlling in view of the criteria for determination specified in Section 9 of Act No. 319. To give such other settlements controlling significance would in effect mean that the Union would suffer some loss of its independent status as collective bargaining representative of police officers. Yet, it cannot be doubted that such other settlements are one of the "factors" which, in traditional collective bargaining practice, are taken into account. As such, they are certainly among the variety of "factors" which, under the applicable statute, may be considered under Section 9(h), which states:

> 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.

Thus, the 9.1% total package settlements which, prior to the initiation of this proceeding, had been reached with other bargaining units of City employees constituted one of the "factors" to be weighed by the Panel in its determination of the salary issue in this proceeding.

It is also clear, however--both under Section 9(d) of the statute and in light of traditional collective bargaining practice--that "wage comparisons" are relevant. Indeed, such

comparisons in the Chairman's judgment might well be accorded greater weight than the fact that other groups of City employees had settled for a certain "package." But, as is not unusual in collective bargaining as well as in arbitration, fact-finding or other extra-bargaining procedures, one of the critical problems in relation to the use of this criterion becomes the matter of comparability in the selection of comparison data.

This was the basic problem as to the use of the "comparison" criterion in the instant case. Reduced to its central or core aspect, the question was whether the appropriate comparisons to be made are with communities in the Detroit metropolitan area or "outstate". The data submitted show that within the Detroit metropolitan area current salary levels for police officers tend to be higher than they are outstate, although in some instances it may be that percentage increases, as reflected in recent settlements, have not been higher.

The data submitted thus showed that if the Detroit metropolitan area salary levels were considered to be the appropriate basis of comparison, the City's offer of 7% would be too low. On the other hand, if the City's suggested comparison groups were considered to be appropriate, its offer of 7% would be sustainable. Even if the City's suggested comparison groupings were regarded as too narrow (for example as improperly excluding out-state cities in the Michigan Municipal League's "Area II" of population of 25,000 or more (which would take in Grand Rapids, Jackson, Kalamazoo, Lansing, Muskegon, and Wyoming), the City's offer of 7% would be sustainable, as shown by data published by the League.

It may be that the ultimate question will be whether and to what extent the Detroit metropolitan area settlements will or should have an impact on salary levels in the Midland area, whatever their impact may prove to be farther "outstate." At this juncture, however, in the Chairman's opinion, the fact of such impact has not been established either through collective bargaining or through arbitration. What is involved in this case is an "economic package" of 9.1% offered by the City, and accepted by organizations representing the other bargaining units with which the City has collective bargaining relationships. Except for the disposition, above stated, of the 40-hour work week issue, and its economic implications, the Chairman was not persuaded that a case was made for going beyond the 9.1% "package."

3. Effective Date of Decisions

The parties' stipulation of November 27, 1970, required the Panel to determine "the effective date" of the Panel's decisions on the two substantive issues submitted for decision. The foregoing analysis of the 40-hour work week issue indicates the Panel's views concerning the effective dates of the elements of its decision on this matter.

The Panel, with respect to the salary issue, determined that the 7% increase in salary levels should be effective as of July 1, 1970. This effective date seemed to be contemplated by the City's proposal in June, 1970, of a total economic package of 9.1%, including a 7% salary increase and consistent, insofar as revealed by the record, with the effective dates of

the settlements reached with other bargaining units of City employees. In any event, retroactivity of the 7% salary increase to July 1, 1970, seemed to the Panel to be clearly indicated as a matter of equity and in the light of all the evidence of record.

AWARD

The Panel's Award issued November 27, 1970 on the issues submitted to it for decision was as follows:

1. Not later than July 1, 1970, the basic work week of police officers shall be reduced from 42 hours to 40 hours without reduction in the annual salaries of such police officers existing at the time of such reduction.

2. Effective as of July 1, 1970, the salary levels of police officers shall be increased by 7%.

3. Effective as of July 1, 1970, and continuing until the City shall establish a basic 40-hour work week, each police officer working a basic 42-hour work week shall receive as a special premium compensation, or bonus, for each such week an amount equal to one hour's pay at his annual rate as increased pursuant to this Award. Such special payment shall not be included in determining the employee's basic hourly rate of pay for overtime purposes.

January 8, 1971

For the Arbitration Panel

Russell A. Smith
Chairman