

6/25/81 ARB

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ACT 312, P.A. 1969 ARBITRATION

In Re:

Act 312 Arbitration
Between:

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

THE CITY OF MOUNT CLEMENS

-and-

Case No. D 80 D-2269

TEAMSTERS, MICHIGAN LAW
ENFORCEMENT, LOCAL 129

George Roumell /

ARBITRATION PANEL'S FINDINGS OF FACT, OPINION AND ORDERS

APPEARANCES:

For the City of Mount Clemens:
Kenneth E. Scherer, Attorney
Douglas DeFrain, Assistant City
Manager
Brenda Pinskey, Student Intern

For Teamsters, Local 129:
Billy D. Mendenall, B.A. Local 129
Nick Rouis, Lieutenant
Max Patrick, Det. Lt.

INTRODUCTION

The City of Mount Clemens has a full time police department. Employed as command officers in that police department are four lieutenants. These lieutenants are in a separate bargaining unit with Teamsters, Local 129 as their recognized bargaining agent. The City and Local 129 were unable to arrive at an agreement for a successor Contract to the Collective Bargaining Agreement expiring June 30, 1980. As a result, a petition for Act 312 Arbitration was filed. The parties agree that all the procedures set forth in Act 312 have been followed

Mount Clemens, City of

Roumell, George T

and there are no challenges to jurisdiction. The parties have further agreed that there are only three issues in dispute. They agree that the succeeding Contract should cover two years, namely the 1980-81 and 1981-82 fiscal years, beginning July 1, 1980 and ending June 30, 1982. The three issues are wages for each of the two years, holiday pay for plainclothed lieutenants and administrative leave days. The Panel has ruled that each issue is an economic issue, and thus is subject to last best offer. See MSA 17.55(38).

Section 9 of Act 312 (MSA 17.455(39)) sets forth the criteria that the Panel must use in resolving issues. Among the considerations are the ability to pay [9(c)], comparison with public employees within the City, without the City and private employers in comparable communities [9(d)], the cost of living [9(e)] and other factors that are considered by fact finders [9(h)] which in the view of the Chairman of this Panel includes the bargaining history of the parties during the period that they have had a collective bargaining relation both currently and in the past. These criteria will be applied in analyzing the issues here.

Both parties have submitted proposed comparable cities. At the urging of the Chairman of the Panel, they have confined themselves to cities in the tri-county area of Southeastern Michigan, namely Macomb, Oakland and Wayne Counties, as the City of Mount Clemens is located in that area in Macomb County. There is, however, as is common in these types of cases, a dispute as to what cities should be comparables. The comparison cities including their population, size of police force and number of lieutenants used by the Union is set forth on the next page:

UNION COMPARABLE CITIES

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<u>CITY</u>	<u>POPULATION 1980 CENSUS</u>	<u>TOTAL POLICE FORCE</u>	<u>TOTAL NUMBER OF LIEUTENANTS</u>	<u>COUNTY</u>
FRASER	14,558	34 (Public Safety)	3 (Public Safety)	Macomb
ROSEVILLE	54,376	82	6	Macomb
MADISON HEIGHTS	35,376	60	5	Oakland
SHELBY TOWNSHIP	38,900	39	2	Macomb
CENTER LINE	9,286	26 (Public Safety)	2 (Public Safety)	Macomb
EAST DETROIT	38,209	48	4	Macomb
MOUNT CLEMENS	18,806	35	4	Macomb

The City has taken a somewhat different approach to the comparable cities in the geographical area just described. The City's list and criteria including same are set forth on the next page.

The City basically has limited itself to "Cities within Macomb, Oakland or Wayne Counties with a population between 10,000 - 30,000, and a police department of twenty or more employees." The City maintains that Mount Clemens with a population of 18,806 persons and a police force of thirty-five with four lieutenants fits within such a comparison. The City points out that it would be unfair to compare it with Roseville, having a police department of eighty-two, and a population of 54,376 persons and a command structure of six lieutenants, or Madison Heights, having a population almost double that of Mount Clemens, with 35,376, sixty police officers and five lieutenants. The City argues that size of population and size of police force have a bearing on the command responsibility and the concomitant wages paid.

Without deciding which comparables should be used, the Chairman believes that there is merit in both lists of comparables. Comparisons from each list can be used that will furnish a true guide as to the decision to be made here. Both parties have in fact picked three cities in common - Ferndale in Oakland County with a police force of thirty-four and a population of about 4,000 less than Mount Clemens; Grosse Pointe Park in Wayne County, which though not set forth in the Union list quoted above, was in the exhibits presented by the Union, has twenty-nine police officers with a population of about 5,000 less than Mount Clemens; and Hazel Park, Macomb County, having a force of forty-two officers and a population of about two thousand more than Mount Clemens.

LISTING OF COMPATIBLE CITIES

Definition: Cities within Macomb, Oakland or Wayne Counties
with a population between 10,000 - 30,000
and a police department of twenty or more employees

City	Population (1980 Census)	Total # Police Force	Total # Lieutenants or equivalent rank	County
Berkley	18,758	21	3	Oakland
Birmingham	21,000	22	3	Oakland
Clawson	15,090	22	4 ¹	Oakland
Ecorse	14,443	45	5	Wayne
Ferndale	26,202	52	5	Oakland
Grosse Pointe Farms	11,701	26	3 ¹	Wayne
Grosse Pointe Park	13,297	29	4 ¹	Wayne
Hamtramck	21,223	49	3	Wayne
Harper Woods	16,570	35	4	Wayne
Hazel Park	20,919	42	9	Wayne
Melvindale	12,313	25	4	Wayne
Novi	22,528	28	2 ¹	Oakland
River Rouge	12,674	41	4	Wayne
Riverview	14,534	24	4	Wayne
Trenton	22,734	49	6	Wayne
Wayne	21,140	39	6	Wayne
Average/Total of Above	17820	34	4	
MOUNT CLEMENS	18,806	35	4	Macomb

Notes:

¹Sergeant position equivalent to Mount Clemens Lieutenant.

In applying the criteria here, the Chairman recognizes that the City has not pleaded inability to pay. But likewise, he recognizes that the City, like many municipalities in the depressed economy of Michigan, does not have unlimited resources, and thus must follow a sound fiscal policy. The City also is completely built up and there is no room for economic expansion.

Likewise, the Chairman recognizes that the cost of living continues to be rampant having pressure on wages even in a depressed economy. With these criteria in mind, coupled with a review of the bargaining history, the Chairman on behalf of the Panel turns to the three issues in dispute.

ISSUE NO. 1

HOLIDAY SCHEDULING

There are four lieutenants in the Department. Three of the lieutenants are uniformed and act as command officers for the uniformed patrol. Since the City operates a twenty-four hour, seven-day a week police service, uniformed officers, including the three uniformed lieutenants, must work holidays which fall on their scheduled work days. As compensation, the officers receive their regular eight hours pay, eight hours of compensatory pay and eight hours of holiday pay.

The plainclothed lieutenant does not work with the uniformed officers, but oversees the operations of two detectives, one plainclothed sergeant and one plainclothed patrolman (Youth Officer). The plainclothed lieutenant normally works a five-day, Monday through Friday shift. When a holiday falls on one of his regularly scheduled work days, he is given that day off and receives eight hours holiday pay.

The Union wants the plainclothed lieutenant to be allowed to come in on holidays which occur during his scheduled work week and consequently receive compensatory time in addition to his holiday pay. The Union contends that this would put the plainclothed lieutenant on equal wage footing with uniformed lieutenants who work holidays. However, there are problems with the Union's position.

Although patrol functions must be performed all the time, the City has determined that the investigative functions performed by the plainclothed lieutenant are not necessary on holidays. Lieutenant Max Patrick, who once held the position of plainclothed lieutenant, was asked what the plainclothed lieutenant would do if he were allowed to work on holidays. Lieutenant Patrick replied "His responsibilities would be in charge of the non-uniformed personnel in both the Detectives Bureau and Youth Bureau". But, with the exception of the Youth Officer, none of the plainclothed personnel work on holidays. The detectives and the sergeant are given holidays off as is the plainclothed lieutenant. If the plainclothed lieutenant were to work on holidays, he would be in charge of a one-man force.

The Youth Officer, who does work holidays which fall during his scheduled work week, is a patrolman and is covered by a different collective bargaining agreement. In fact, the City states that it can use the Youth Officer for patrol duties on the holidays he works. Although this is rarely done, the tasks performed by the Youth Officer on holidays do not require a supervisor's presence. The City knows this and consequently does not have the plainclothed lieutenant work. The City's right to decide when and what police services are necessary is a basic management right, and not scheduling the plainclothed lieutenant to work on holidays is a sound decision.

Not only is the Union's proposal contrary to traditional

Management's rights, it is contrary to practice in most neighboring communities. Of the City's sixteen comparables, thirteen do not schedule plainclothed officers to work on holidays and only one of those thirteen, Clawson, gives the officers the option to come in.

Of the three City comparables that regularly schedule plainclothed officers for work on holidays, two, Harper Woods and Hazel Park, place them on call, which probably results in much less pay than is in question here.

Only one of the City's comparables, Riverview, regularly schedules plainclothed officers to work on holidays. The Union's position finds scant support from the City's comparables.

The Union's comparables are not wholly supportive of its position either. Hazel Park and Shelby Township each pay eight hours for each holiday whether worked or not and the officer works if it falls on his scheduled work day. Ferndale, Fraser, and Centerline all provide a lump sum payment which covers all holidays. East Detroit and Madison Heights provide time and one-half if the officer works and in East Detroit the officer must work if the holiday falls on his regularly scheduled work day. There is no indication that any of the above cities provide a benefit such as the Union is wanting here.

Only Roseville provides a holiday compensation scheme similar to the Union's request. That City provides eight hours pay for all holidays plus double time if the officer works on a holiday that falls on one of the officer's scheduled work days.

It may be that the plainclothed lieutenant, because he is not allowed to work on holidays, receives less annual compensation than uniformed lieutenants. But that is because of the nature of the work,

not because of an inequity in the Contract. This point is emphasized by the fact that the current plainclothed lieutenant bid into his position. He is not the least senior lieutenant and could have remained in the uniform division. But, he chose the life of a plainclothed lieutenant and the concomitant lost opportunity of working holidays.

There obviously is a reason why a senior lieutenant would bid into a plainclothed position even though it may not involve the same compensation as a uniformed lieutenant. The hours are steady, day shift Monday through Friday. Normally there is no weekend work, nor afternoon or midnight shift work. These factors could make the position attractive to some officers even though the compensation, holiday-wise, may be less. This is another factor that militates against the Union's position.

The Union's position has wavered considerably since the hearing, but its last best offer also falls under the above analysis.

The Union would have to present a much stronger case than it did here to abrogate an historical Management Right to schedule its work force according to need.

The City in its last best offer has proposed that the present policy remain. The Union in its last best offer proposed "plainclothed lieutenant receive eight hours compensatory time for each holiday, the same as uniformed lieutenants."

For the reasons set forth above, the Chairman votes with the City delegate in adopting the last best offer of the City.

ISSUE NO. 2

ADMINISTRATIVE LEAVE DAY

Exhibit 15 of the Union identifies the issue here, and in its total is as follows:

ISSUE: The Union is requesting that lieutenants of the Mt. Clemens Police Department be awarded one administrative leave day, effective July 1, 1980 and one administrative leave day effective July 1, 1981.

STATEMENT: The Lieutenants of the Mt. Clemens Police Department report for duty prior to the beginning of their respective shifts in order that they may be briefed on the events of the previous shift so that they can in-turn brief their subordinates. They do not turn in for overtime for this time.

Lieutenants are also often required to spend time after their respective shifts to clean up any unfinished business for which they do not turn in for overtime.

The Administrative Leave Days are to compensate these Lieutenants for the time they voluntarily donate.

In support of its position, the Union gives no comparables. However, the comparables of the City clearly establish that the position of the Union is unsound. Of sixteen cities surveyed, ten require command officers to stay past eight hours to fulfill administrative duties, six do not. Of the ten, none give additional compensation. The Union's rationale is based on the fact that the Mount Clemens lieutenants do stay beyond their shifts about thirty minutes a day in order to insure a smooth transition from one shift to another. It is a way of life in Mount Clemens. Thus far, the lieutenants have not been paid for same. The last best offer of the City is no change. The last best offer of the Union is to ask for "one day each contract year" as compensation for this effort.

Act 312 provides that any order of the Panel must be supported by "competent material and substantial evidence on the whole record". See MSA 17.455(42).

Whether the Chairman thinks that such a proposal is equitable is immaterial. It is what the evidence on the record supports. There is absolutely no evidence on this record that rises to the dignity of substantial evidence that would support the last best offer of the Union. The comparables do not support it. Under these circumstances, the Chairman must vote with the City delegate and accept the last best offer of the City, namely no change in the present practice.

ISSUE NO. 3

WAGES

The parties have agreed that the wages should be established for fiscal years 1980 and 1981. In addition, the last best offers have been submitted on a bi-annual basis, i.e. wage offers have been submitted for July 1, 1980, January 1, 1981, July 1, 1981 and January 1, 1982. The offers do not constitute wage packages, but rather each is a separate proposal.

The last best offers are as follows:

<u>City</u>	<u>Effective Date</u>	<u>Union</u>
\$25,824	July 1, 1980	\$26,149 ✓
26,974	January 1, 1981	27,318 ✓ 470
28,224 ✓	July 1, 1981	28,487
29,481 ✓ 4.4	January 1, 1982	29,655

There are several factors which must be considered in determining which offers are the most appropriate. One factor is the historical wage differential between the various ranks of Mount Clemens'

police officers. The evidence presented establishes the following historical differential between lieutenants and patrolmen:

<u>Effective Date</u>	<u>Differential</u>	<u>Effective Date</u>	<u>Differential</u>
7-1-71	21.9%	7-1-78	23.9%
7-1-72	21.8%	1-1-79	22.9%
7-1-73	21.8%	7-1-79	22.1%
7-1-74	28.0%	1-1-80	21.2%
7-1-75	26.6%		
7-1-76	23.7%		
7-1-77	24.9%		

The differential between lieutenants and patrolmen, excluding the aberrations 1974 and 1975, has ranged from 21.2 percent to 24.9 percent, with the average near 23 percent. It also appears that the differential declines during the life of the Contract. In fact, under the last Contract, the differential has dropped to 21.2 percent.

The last best offers submitted would result in the following differentials:

<u>City</u>	<u>Effective Date</u>	<u>Union</u>
21.5%	July 1, 1980	23.0%
21.5%	January 1, 1981	23.0%
21.9%	July 1, 1981	23.0%
22.3%	January 1, 1982	23.0%

Neither pattern coincides with the historical convergence of patrolmen's and lieutenants' salaries over the course of a Contract. The City's position is diametric to past wage patterns and actually departs from the historical differential pattern which has resulted from previous collective bargaining.

Another important consideration is the wage rates of police lieutenants in comparable cities. ^{1/} Although both sides presented

^{1/} The comparables that will be made here will be based upon the lieutenant rank in each city without consideration to shift differentials. It will assume a lieutenant working a day shift for consistency purposes.

numerous comparable cities, only Ferndale, Hazel Park, and Grosse Pointe Park were on both of their lists. They will be used by this Panel. In addition, River Rouge and Riverview, both from the City's list, also will be used. These two cities are close in size to Mount Clemens, have police forces comparable to Mount Clemens and have already established rates of pay for their lieutenants through 1982.

The following outlines the pay schedules for lieutenants in the above cities:

	7/1/79	7/1/80	1/1/81	7/1/81	1/1/82
Ferndale	26,200	28,296			
Grosse Pointe Park	23,516	25,633	25,633		
Hazel Park	25,987	27,626	28,148		
River Rouge	24,148	26,180	26,180	28,605	28,605
Riverview	23,966	26,632	26,632	27,930	27,930
Mount Clemens	23,874				
City Offer		25,824	26,974	28,224	29,481
Union Offer		26,149	27,318	28,487	29,655

Historically, the City of Mount Clemens' pay schedule has been less than any of the aforementioned cities except Grosse Pointe Park. On July 1, 1979, Mount Clemens was paying its lieutenants 1.5 percent (\$358) more per year than Grosse Pointe Park. Under the City's proposal, that differential would drop to 0.7 percent (\$191) on July 1, 1980. Conversely, the Union's pay proposal would increase the differential to 2.0 percent (\$516) on July 1, 1980.

Ferndale, which historically has paid more than Mount Clemens, was paying its lieutenants 9.7 percent (\$2,326) more per year on July 1, 1979. The City's proposal would decrease that margin only 0.1 percent to 9.6 percent (\$2,472). The Union's proposal would reduce the differential to 8.2 percent (\$2,147). ^{2/}

^{2/} There is a question whether the Ferndale wage for July 1, 1980 has been accepted by both parties as it is a tentative agreement. However, for the purposes of analysis, the Chairman has used this figure as a guide.

Similarly, Hazel Park was paying its lieutenants 8.8 percent (\$2,113) more per year than Mount Clemens on July 1, 1979. The City's proposals would drop this differential to 7 percent (\$1,802) on July 1, 1980, and then to 4.3 percent (\$1,174) on January 1, 1981. The Union's proposals would decrease the differential to 5.6 percent (\$1,477) on July 1, 1980, and then to 3 percent (\$830) on January 1, 1981.

Neither Grosse Pointe Park, Hazel Park, or Ferndale provide wage data beyond January 1, 1980. Therefore, it is impossible to speculate how the City's or Union's proposals will affect differentials with those cities beyond that date.

However, River Rouge and Riverview have issued salary schedules through January 1, 1982. Thus, a more thorough comparison can be made with these cities. The following chart summarizes the differences between the City's and Union's offers when compared with the salaries of River Rouge's and Riverview's lieutenants:

THE DIFFERENCE IN PROPOSED PAY FOR LIEUTENANTS
BETWEEN MOUNT CLEMENS AND RIVER ROUGE AND
BETWEEN MOUNT CLEMENS AND RIVERVIEW (Dollars)

	7/1/79	7/1/80	1/1/81	7/1/81	1/1/82
City's Offer - River Rouge	-270	-356	+794	-381	+876
Union's Offer - River Rouge	-270	- 31	+1,138	-118	+1,050
<hr/>					
City's Offer - Riverview	- 88	-808	+342	+274	+1,531
Union's Offer- Riverview	- 88	-483	+686	+537	+1,705

Key: + Denotes that Mount Clemens' lieutenants would receive that much more than comparable's lieutenants.

- Denotes that Mount Clemens' lieutenants would receive that much less than comparable's lieutenants.

River Rouge does not adjust its pay scales bi-annually.

Thus, at the beginning of each fiscal year, River Rouge will pay its

lieutenants more than Mount Clemens. But after each January adjustment, Mount Clemens will be paying its lieutenants more than River Rouge.

The comparison with Riverview demonstrates a different pattern. Not only do both parties' proposals make up the differential which Riverview's lieutenants once enjoyed, but they reverse the differential and result in a pay schedule well in excess of Riverview's.

Although no single comparison creates any great revelation, when examined in total, the comparables are helpful. Both the City and the Union wish to decrease the differential which the lieutenants of most other communities historically have enjoyed. The dispute occurs over how fast those differentials should be closed. Therefore, the proposal's effect on the differentials is very important in deciding which offers are most appropriate. In addition, one cannot forget the differential between lieutenants and patrolmen within the Mount Clemens police force. This factor must be consolidated with the analysis of the comparables.

Under these considerations, the Chairman cannot accept either the City's or the Union's proposals in total. For the first fiscal year, the City has proposed too little. If the City's proposals for July 1, 1980 and January 1, 1981 were selected, the differential between lieutenants and patrolmen, which has historically been higher at the beginning of a Contract than at its end, would be only 21.5 percent. This is not acceptable.

Another problem with the City's proposals is the effect which they have on the differentials with other communities. It is true that comparables are fluid and fluctuations may exist, but they do provide some guidance. It seems that both parties want the

lieutenants in Mount Clemens to better themselves in pay relative to the other communities. Yet, the City's offers for the first year of the Contract do not improve the Mount Clemens' lieutenants relative to Ferndale and actually make them worse off relative to Grosse Pointe Park.

Therefore, the Chairman votes with the Union delegate in electing the Union's wage offers for July 1, 1980 and January 1, 1981.

However, the Union's proposals for July 1, 1981 and January 1, 1982, must be rejected as too high. On July 1, 1981 and January 1, 1982, River Rouge will be paying its lieutenants \$28,605. On these same dates, Riverview will be paying \$27,905. These are two communities that were paying more than Mount Clemens on July 1, 1979.

Even the City's offer of \$29,481 for January 1, 1982 will exceed the pay scales of River Rouge and Riverview. The Union's proposal of nearly \$200 more, \$29,655, is unacceptable.

This point is illustrated again when one looks at Berkley. On January 1, 1979, Berkley was paying its lieutenants \$23,419, \$455 less than Mount Clemens. Berkley has settled for \$26,411 for July 1, 1981. The Union's position would up the \$455 differential to \$2,706. That is too large of an increase.

Although the City did not plead an inability to pay, these are economically depressed times in Southeastern Michigan. Settlements by other communities are indicative of these times. These factors militate against the Union's proposals for fiscal year 1981.

The City's proposals for July 1, 1981 and January 1, 1982 will result in a slight decline of the differential between lieutenants and patrolmen, as has occurred historically. In addition, the City proposals for the second fiscal year will continue to decrease the

differential between Mount Clemens and comparable cities. In fact, it will remove that differential in respect to Riverview and River Rouge.

As the Chairman views it, the City's last best offer of \$29,438 by January 1, 1982, compares most favorably with those cities that have been paying historically similar wage patterns for lieutenants.

Based on these comparables and the fact that the differential, pursuant to the City's offer for the second year, will follow the parties' historical pattern of declining, the Chairman will vote with the City's delegate in accepting the City's wage offers for July 1, 1981 and January 1, 1982. But, for the reasons set forth above, the Chairman will vote with the Union delegate on the wage offers for July 1, 1980 and January 1, 1981.

ORDERS

1. It is hereby ordered that the City's last best offer as to holidays be accepted.


GEORGE T. ROUMELL, JR.

Chairman


Charles D. Beer

City Delegate


Jerry Caster - Dissenting

Union Delegate

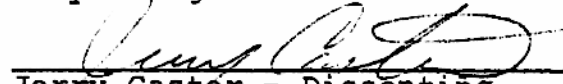
2. The City's last best offer as to administrative day is hereby accepted.


GEORGE T. ROUMELL, JR.

Chairman


Charles D. Beer

City Delegate



Jerry Caster - Dissenting

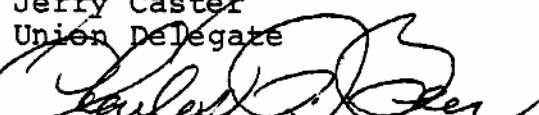
Union Delegate

3. The Union's last best offer for wages for July 1, 1980, i.e. \$26,149 is hereby adopted.

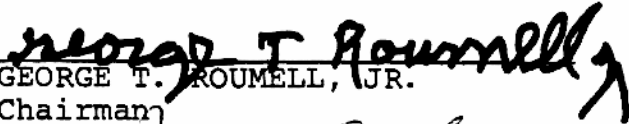

GEORGE T. ROUMELL, JR.


Chairman



Jerry Caster
Union Delegate


Charles D. Beer - Dissenting
City Delegate

4. The Union's last best offer for wages January 1, 1981,
\$27,318 is hereby adopted.


GEORGE T. ROUMELL, JR.
Chairman

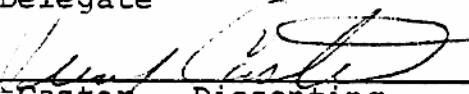

Jerry Caster
Union Delegate


Charles D. Beer - Dissenting
City Delegate

5. The City's last best offer as to wages July 1, 1981,
\$28,224 is hereby adopted.


GEORGE T. ROUMELL, JR.
Chairman

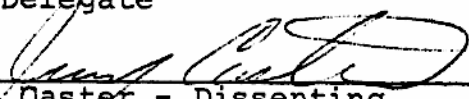

Charles D. Beer
City Delegate


Jerry Caster - Dissenting
Union Delegate

6. The City's last best offer for wages January 1, 1982,
\$29,481 is hereby adopted.


GEORGE T. ROUMELL, JR.
Chairman


Charles D. Beer
City Delegate


Jerry Caster - Dissenting
Union Delegate

Dated: June 25, 1981.