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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE STATUTORY
ARBITRATION BETWEEN:

TOWNSHIP OF OSCODA / CASE NO. D-79 L-3433

and /

FRATERNAL ORDER OF /
POLICE LABOR COUNCIL /

PANEL MEMBERS

William P. Daniel, Chairman

Kenneth J. Myles, Township Delegate

William R. Bannister, Union Delegate

APPEARANCES

Employer: Dennis B. DuBay, Attorney

Union: Michael R. Cluck, Attorney

This matter having been scheduled pursuant to Act 312, Michigan Public Acts of 1969, as amended, and having been heard on May 28, 1981, and the parties having presented all testimony, exhibits and briefs in this matter, the Panel after meeting and consideration of the record herein does hereby make the following as its findings and decision.

1. Compulsory Binding Arbitration.

The parties currently do not have contractual binding arbitration of labor disputes. The union seeks a full ranging arbitration clause to cover all grievances which might arise between the parties and remain unsettled at the last step of the grievance procedure. The employer

Oscoda, Township of

Daniel, William P.

at the time of hearing made its last offer in this regard - that there be included in the contract a binding arbitration clause as to those grievances pertaining to discipline and discharge cases.

There is not an economic issue between the parties and therefore the Panel is permitted to fashion a contractual specification as it may deem appropriate. However, in any case of selection of a last offer or the fashioning of new contract language it is encumbant upon the Panel to be governed by those criteria as set forth in the statute. All of those criteria do not necessarily apply as to each and every item of dispute in a particular case and that is true as to this specific issue. It is the opinion of the Panel that the factors set forth in the Act of some relevence in this matter would be:

> "(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.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration 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."

The union has presented extensive documentation of the presence of such a full arbitration clause in numerous public employment contracts from around the State of Michigan and in most cases the communities used are roughly comparable, at least for this purpose.

The employer relies upon comparables in the immediate geographic area, noting that several police departments in the "Township's labor market" do not have binding grievance arbitrations for police department employees. Furthermore, the Township points out that there is another collective bargaining agent for other employees of the Township and that that contract does not contain a binding arbitration clause.

If comparable communities were to be the sole basis upon which a decision was to be made in this case it would be difficult indeed, for each side has significant arguments and proofs in support.

However, the issue of grievance arbitration is far from being an ordinary item of dispute. In some communities it might have been a result of extensive

abuse of the grievance procedure by the employer or a failure to resolve any disputes voluntarily. In others it might have been a trade off in the process of collective bargaining and in others it might have resulted simply from the pressures of the particular local community and labor market or from the existence of grievance arbitration in other contracts with the same employer and its other unions. Because the concept has elements of philosophic differences and individuals may in good faith differ substantially on the value of such third party resolution of disputes, and in some cases elected officials may feel it is an improper delegation of their public duties, it is understandable that attitudes and hence the ultimate agreements may vary from community to community.

Here there is no showing that the public employees in the immediate vicinity have such a regular benefit as grievance arbitration nor is there a substantial majority of police units in the immediate geographic area which have this clause in their contracts. The fact that the other employees in the Township do not have binding arbitration strongly supports the attempt by the Township to maintain consistency. In this light the offer of the Township to move in the direction of the union's request in the form of a partial grievance arbitration - in cases of discharge and discipline, seems a particularly significant compromise on its part and one which should be given the fullest

consideration.

A second aspect which tends to commend the proposal of the employer is that there has been shown no strong or overriding reason why the employees would suffer detriment in the absence of a grievance arbitration clause generally or in cases other than discharge or discipline. Over the period of the last five years only two grievances have been appealed beyond the level of the immediate supervisor though the existing grievance procedure provides for other steps. Based upon the evidence and proofs presented it would appear that the parties have over the years been able amicably to resolve and compromise differences and there is no reason to believe that that would change. Certainly employees as a group have some insecurity and concern over the unfettered right of the employer to discipline or discharge them and the lack of some form by which they may obtain a complete hearing and impartial determination. Discipline and discharge problems or even the anxiety or concern over the potential of such problems may have detrimental effects, both as to morale and performance of the police department personnel. In this regard it would seem that a limited grievance arbitration provision would have salutary effects and be beneficial not only to the employees but also to the employer.

Because the comparables do not strongly dictate or support a full grievance arbitration clause in

this community, because the employer has up to this time in good faith refrained from providing grievance arbitration for any of its unionized employees and lastly because there is no immediate showing of bad faith grievance processing or undue detriment to the employees, it is found that a limited grievance arbitration clause pertaining to disciplinary action or discharge is appropriate and for that reason the last offer of the employer in this regard is hereby approved.

All other items pertaining to the collective bargaining agreement between the parties which had been in dispute prior to the date of hearing herein were resolved by the parties at the time of hearing and to the extent that such is set forth on the record, it is hereby adopted by the Panel as a stipulated award in this case.

The Panel members have met and consulted in regard to this matter and it is hereby noted that Township delegate Myles and Union delegate Bannister have waived their execution of this document specifically directing that the Chairman execute this award indicating the relative position of each of them.

It is hereby indicated that as to the primary dispute involved herein as to grievance arbitration, delegate Myles concurs and Delegate Bannister dissents.

DATED: August 14, 1981

William P. Daniel,
Panel Chairman