

8-2-89

STATE OF MICHIGAN

STATUTORY LABOR ARBITRATION PANEL

(Pursuant to P.A. 312, Public Acts of 1969, as amended)

In the Matter of Arbitration Between:

CITY OF PORT HURON

Case No: D88 A-288

-and-

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE

OPINION AND AWARD

Chairman of Arbitration Panel: Barry C. Brown

City Delegate: Douglas Alexander

Union Delegate: Michael Somero

Representing City: Andrew T. Baran

Representing Union: David K. Sucher

Hearing Held May 25, 1989

Pre-hearing conference: February 27, 1989

Briefs Received: July 14, 1989

Opinion and Award Issued: August 2, 1989

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Port Huron, City of

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

I. STATEMENT OF THE CASE:

This matter came on for hearing before a panel of arbitrators appointed pursuant to the terms of Act 312 , Public Acts of 1969, as amended (MCLA 423.23., et seq; MSA 17.455 [31], et seq), for the purpose of hearing and deciding unresolved issues in a Collective Bargaining Agreement renegotiation involving the parties shown above. Pursuant to the statute, Barry C. Brown was appointed by Director Thomas Roumell of the Michigan Employment Relations Commission to serve as the impartial chairman of the arbitration panel. The City designated Mr. Douglas Alexander, Assistant to the City Manager, as its delegate to the panel. The Labor Council, Michigan FOP designated Mr. Michael Somero, FOP Field Representative, as its delegate to the panel. So constituted, the panel held a hearing on May 25, 1989. At this hearing, it was determined by the panel, as required by Section 8 of Act 312, that the issues in dispute were economic and, therefore, subject to the last best offer provisions. The parties submitted such last best offers to the panel on June 1, 1989. The panel now must consider and decide upon the economic issue predicated solely on these final offers by each side.

By July 14, 1989, the parties had mailed their briefs to the chairman of the arbitration panel who in turn forwarded them to opposing counsel and the other panel members. It should be understood that the panel members representing the City and the Fire Fighters disagreed with certain of the findings and awards set forth hereinafter. Each generally supported the last best offer of the

party by whom he was appointed to the panel. Accordingly, the signature of either of the partisan panel members at the conclusion of this Opinion and Award does not represent a concurrence in each and every element of the final Award, but does constitute a recognition that there exists a majority vote in support of each item contained in the final Award.

II. BACKGROUND.

The City and the communications service operators were signatory to a Collective Bargaining Agreement with an expiration date of June 30, 1989. However on July 1, 1988 there was a wage reopener. Prior to that day the wage reopener negotiations for new salaries had been undertaken. After bargaining and one mediation meeting the parties reached an impasse. In a letter dated December 8, 1988, a demand was made for interest arbitration under Act 312. On January 5, 1989, the Michigan Employment Relations Commission appointed Barry C. Brown to serve as the neutral chairman of the arbitration panel, and the parties to the Collective Bargaining Agreement appointed their representatives to the panel. No issue with respect to the proper appointment or the constitution of the arbitration panel was raised during the course of these proceedings. Neither was any question raised about the arbitrability of the issues raised by the City or the communications service operators. The parties have agreed that only the last year of the contract is involved here. The parties have also stipulated that the wage increase determined by the panel will be retroactive to July 1, 1988.

The parties agreed to waive the timelines of Act 312 in this matter. However, the MERC regulations required a specific approval by a commisisoner if the decision was to be issued more than six months after the chairman's appointment. The chairman sought an extension and on May 11, 1989 Commissioner Roumell granted an extension of time to issue the award until September 1, 1989.

III. CURRENT CONTRACT PROVISIONS:

"ARTICLE II - COMPENSATION

SECTION 2-1 COST OF LIVING AND COMPENSATION RATES

The rates of compensation for employees in this bargaining unit are attached hereto as Appendix "A" and agreed to be a part of this agreement. (Negotiated October, 1987)

Section 2-1.1 Cost of Living

Effective July 1, 1984, and thereafter during the period of this Agreement, each employee covered by this Agreement shall receive a cost-of-living allowance as set forth in this Section.

Section 2-1.2

The cost-of-living allowance shall not be added to the base rate for any classification, but only to each employee's straight-time hourly earnings.

Section 2-1.3

The amount of the cost-of-living allowance in effect shall be included in computing overtime, vacation, and holiday pay. The cost-of-living adjustment shall not apply in computing life insurance coverage or any other economic benefit included in this contract.

Section 2-1.11

A "freeze" will be placed on cost-of-living adjustments during the duration of this agreement.

SECTION 2-4 LONGEVITY COMPENSATION

Longevity payments will be made to all employees with continuous full-time service according to the following schedule:

- (a) 2½% per year applied to annual base pay being received by the employee after five (5) years of continuous full-time service.
- (b) 5% per year applied to the annual base pay being received by the employee after ten (10) years of continuous full-time service.
- (c) 7½% per year applied to annual base pay being received by the employee after fifteen (15) years of continuous full-time service.
- (d) 10% per year applied to the annual base rate being received by the employee after twenty (20) years of continuous full-time service.

SECTION 7-2 TERMINATION AND MODIFICATION

This Agreement shall remain in full force and effect until June 30, 1989. Wages only shall be subject to reopening for the period July 1, 1988 to June 30, 1989.

APPENDIX "A"

COMPENSATION RATES FOR COMMUNICATIONS SERVICE OPERATOR

Period of July 1, 1986 thru June 30, 1987

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
\$15593	\$15983	\$16383	\$17202	\$18062

The above rates reflect 5% increase to maximum rate.

Period of July 1, 1987 thru June 30, 1988

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
\$16061	\$16462	\$16874	\$17718	\$18604

The above rates reflect 3% increase to maximum rate."

IV. LAST BEST OFFERS

A) City: The last best offer of the City of Port Huron to its police dispatcher unit in the referenced proceeding is:

- 7-1-88 wage increase of 3%;
- 1-1-89 wage increase of 1%.

This will provide a top pay rate of \$19,354, effective January 1, 1989.

B) Union: The Union is requesting the following base wage increase: Effective 7/1/88: 5% across-the-board.

IV. FINDINGS AND CONCLUSIONS:

This panel carefully reviewed each of the eight factors set forth in Section 9 of Act 312. Those factors are listed below:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) A comparison of the wages, hours and conditions or employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other communities generally:
 - (i) In public employment in comparable communities
 - (ii) In private employment in comparable communities
- (e) The average consumer prices for goods and services commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances presented during the pendency of arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration and otherwise between the parties, in the public service or in private employment.

The panel also noted that under Section 10 of Act 312 that its decision must be supported by competent, material and substantial evidence on the record as a whole. This requirement was emphasized by

the Michigan Supreme Court in City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980). The court in that case stated the following:

"The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory in the Panel through the use of the word "shall" in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the Panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of the case. Although, of course, all "applicable" factors must be considered. Id, p. 484."

The parties' proof and arguments focused on the comparability factor (d). The employer did not assert an inability to pay the demands of the union. Neither was there a claim that the lawful authority of the city would be diminished or affected in any way if the union's wage increase requests were to be granted. The union noted that the cost of living (CPI) index had increased about four percent in the last calendar year and it was also noted that the communications service officers do not receive a cost of living allowance as a part of their compensation package. The overall compensation of the unit members was shown in the current collective bargaining agreement, a portion of which is presented above. The only change which occurred during the pendency of the 312 arbitration proceedings was the expiration of the current agreement on June 30, 1989. The parties have been engaged in bargaining for a total new contract as this 1988 wage reopener was still being debated.

There are nine communication service operators in the bargaining unit. These employees are often informally referred to as the "dispatchers". The average seniority of the employees in the unit is 5.4 years. The top person has a 1976 seniority date and the low person on the list has a 1988 seniority date.

The union had sought a 7% across-the-board wage increase in the initial bargaining with the city. The city has consistently offered a 3% across-the-board wage increase. The city supported its offer with the argument that other city employees had accepted a 3% raise for 1988-89. They presented the following exhibit in support of this argument:

	Non-Union	Patrolmen	Firemen	Other Unionized	Communications Operators
1983-84	2.5%	6.7%	3%	3%	3%
1984-85	5%	4%	4%	4%	4%
1985-86	5%	7.5%	3.5%	5%	5%
1986-87	3%	5%	5%	3%+1%	5%*
1987-88	3%	3%	3%	3%	3%
1988-89	3%+1%	3%+1%	3%+1%	3%	3%+1% (proposed)
1989-90	?	4%	4%	?	?
1990-91	?	4%	4%	?	?

*Greater wage increase in lieu of pension improvements granted other MERS covered employees. See attached memorandum of understanding.

VI. COMPARABILITY

Union's Position:

The union argued that St. Clair County did not contain other cities like Port Huron and so it looked to other cities in Southeastern Michigan for its basis for comparisons. It stated that it chose only

cities within the population range of 20,000 to 40,000 in the Detroit metropolitan area. They said that they then used the following socio-economic factors to determine the five communities it believed most resembled the City of Port Huron:

1. Population
2. Land Area/Density
3. Income
4. State Equalized Valuation
5. Total Department Size
6. Housing
7. Dispatcher Responsibilities

Using these factors they argued that the following data shows the cities they have chosen to be very much like Port Huron:

<u>City</u>	<u>1986 population</u>	<u>Area</u>	<u>Median Household</u> <u>Income</u>	<u>SEV(M)</u>	<u>Housing Units</u>
Hazel Park	20,200	2.7	\$17,409	\$144	7,184
Romulus	24,100	21.0	\$21,265	\$341	6,286
Southgate	30,390	6.6	\$25,227	\$291	10,724
Wyandotte	31,350	4.4	\$19,433	\$291	12,767
Ypsilanti	23,130	4.1	\$14,226	\$195	5,921
Port Huron	33,367	7.9	\$14,780	\$294	11,822

The FOP then asserted that the following wage analysis should be used to show comparability of base wage and benefits for dispatchers:

<u>City</u>	<u>Top Pay</u> <u>Effective</u> <u>1/1/89</u>	<u>COLA</u>	<u>Shift</u> <u>Differential</u>	<u>(10 years)</u> <u>Longevity</u>	<u>Total</u>	<u>Rank</u>
Hazel Park	20,696	624	0	1,066	22,386	2
Romulus	22,050	0	416	0	22,466	1
Southgate	17,140	0	0	0	17,140	8
Wyandotte	21,299	0	173	200	21,672	3
Ypsilanti	21,533	0	0	0	21,533	4
Average	20,534					
Port Huron (current)	18,604	0	243	930	19,777	7

<u>City</u>	<u>Top Pay Effective</u> <u>1/1/89</u>	<u>COLA</u>	<u>Shift</u> <u>Differential</u>	<u>(10 years)</u> <u>Longevity</u>	<u>Total</u>	<u>Rank</u>
Port Huron (U-7%)	19,906	0	243	995	21,144	5
Port Huron (C-3%)	19,162	0	243	958	20,363	6

The union also provided the following comparison of dispatcher responsibilities for the five communities and Port Huron as follows:

	PORT HURON	WYANDOTTE	SOUTHGATE	ROMULUS	YPSILANTI	HAZEL PARK
Shifts	Swing weekly	Swing weekly	Swing weekly	Bid each 3 months Permanent straight by seniority	Permanent straight by seniority	Straight aft/ days-no mid.
Computer	All LEIN/SOS/MCIC	All except warrant entry/cancellations	All	All	All	All
Staffing Per shift	2 Civilians/shift All shifts	1 Civilian/1 Certi- fied officer	1 Civilian/1 Lieut. 1 Sgt.	1 Civilian/ 1 Sgt. or Lt.	1 Civilian/ 1 Sgt. or Lt.	1 Civilian/ 1 Certif. Off. Civ only works afternoons
Lunch Break	20 min paid	1 hour paid	1/2 hr. paid	1/2 hour paid	1/2 hour unpaid	1/2 hr. paid
Phone Responsibilities	All City office calls after hrs + emery calls	Police mainly, fire occas. no City office	Police, EMS, fire occas. no City office	Police, fire, EMS no City office calls	Police only	Police only
Breathalyzers	Must be certified at loss job Responsible for all (not P.O.'s)	None	None	None	None	None
Emerg. services responsibility	Police, fire, EMS All City services	Police only, fire occasionally, no EMS	Police, EMS, fire occasionally	Police, fire, EMS	Police only, fire pending if more pay	Police only
Uniforms	(No unif. allow) Provided, replaced periodically	Provided + 400/yr uniform allowance	Provided	Provided + 100/yr uniform allowance	No uniforms worn	No uniform worn
Phone Lines	10	6	5 (getting modi- fied 911 system)	10	12 (no 911)	6
Radio Frequencies	6 + monitor 4	2	2 + monitor 1	2 + monitor 4	1 + monitor 6	1 + monitor ethers
Source	Judi Haas, Union Rep., PHPD Dispatch Civilian	Karen Kloss, Union Member, Wyandotte Civilian Dispatcher	Elizabeth Malone Southgate, Civilian Dispatcher	Ed Klimasewski Union Member Romulus, Civilian Dispatcher	Rosie Williamson Union Chairperson Ypsilanti, Civilian Dispatcher	Officer Kirchoff Hazel Park Police

The City's Position:

The City contends that other Act 312 panels have already determined which communities are most comparable to Port Huron. In 1980 a panel chaired by Thomas LoCicero determined the Detroit-area cities proposed by the firefighters union to be inappropriate. This panel said that Battle Creek, Bay City, East Lansing, Holland, Jackson, Midland, Muskegon, Portage, Ypsilanti and Marysville were "comparable communities". Another panel chaired by Robert Browning issued a decision on this topic

in 1982. Again the panel rejected the firefighter's union's heavy reliance on communities in the Detroit area. This 1982 panel also excluded Marysville, Holland and Ypsilanti but it used the other cities which had been the basis for comparison in 1980.

In 1987, panel chairman, Mark Glazer, made a thorough examination of the comparability issue. He stated the following about the use of outstate cities (area 2) as the basis for comparison:

"Police arbitrations involving Port Huron also continued the Area 2 comparables. Arbitrator Roumell in Case No. D83 D-1107 employed Area 2 cities, including many of those proposed by the City in this arbitration. Further, Arbitrator Beitner in a subsequent police arbitration held that the Area 2 cities, although they no longer had that designation, were appropriate. He said:

The panel has concluded that the comparables argued for by the City are of greater applicability than those urged by the Union for several reasons. The parties have traditionally bargained using the MML Area II Cities as comparables. The City has been involved in two Act 312 Arbitrations with its firefighters and one prior 312 Arbitration with the police officers' union and in each case the parties used the Area II Cities as comparables. Furthermore, they discussed the Area II cities throughout most of their negotiating on this current contract before arriving at an impasse.

Specific factors such as population, SEV (State Equalization Value), SEV per capita, general fund budget, police department budget, and other important characteristics establish the similarity of the Area II Cities with Port Huron.)

The Union argues that the prior Awards are flawed, particularly because the Michigan Municipal League no longer employs the Area 2 designation. It suggests that the S.M.S.A. (Standard Metropolitan Statistical Designation) is more relevant and that Port Huron should be compared to other cities in the 25,000 to 50,000 population range in the Detroit-area. The City, however, maintains that St. Clair,

Port Huron's County, is only a "fringe" county under the S.M.S.A. and that other factors reveal a greater relevance to its proposed comparables.

The bargaining and arbitration history of the parties reveals a reliance on the City's comparables. Furthermore, these cities do exhibit a demonstrated relevance to Port Huron. If the Panel were to peremptorily change to the Union's comparables, it would be impossible to determine Port Huron's correct place among them."
MERC Case No. D86 D-1105

The city also argued that if the union's stated criteria had been used objectively in metropolitan Detroit communities, then the cities of Inkster, Dearborn Heights, Plymouth and Garden City should have been included in the union's list because these cities are much more like Port Huron than some of the cities chosen by the Union. The city showed that these cities were also communities which paid less to their dispatchers and that would explain why they had been omitted in the union's exhibits. The city demonstrated this as follows:

<u>City</u>	<u>Salary</u>	<u>5 Years Longevity Pay</u>	<u>Subtotal</u>	<u>Less: Employee Pension Con- tribution</u>	<u>Net Salary</u>
Dearborn Hgts.	13,500	0	\$14,500	0	\$13,500
Garden City	18,088	175	18,263	904	17,359
Inkster	16,650	175	16,825	500	16,325
Plymouth	17,447	200	17,647	0	17,647
Average	16,421	138	16,559	351	16,208
Port Huron with Proposed Increase of 3% + 1%	\$19,354	\$484	\$19,838	0	\$19,838

The employer also asserted that the union's comparison had not fully taken into account all salaries at the top step 1-1-89 and they offered this comparison:

<u>City</u>	<u>Salary</u>	<u>5 Years Longevity Pay</u>	<u>Subtotal</u>	<u>Less: Emp. Pension Con.</u>	<u>Net Salary</u>
Hazel Park	\$21,320	\$414	\$21,734	\$1,107	\$20,627
Romulus	22,050	0	22,050	1,103	20,947
Southgate	17,140	0	17,140	343	16,797
Wyandotte	21,299	0	21,299	0	21,299
Ypsilanti**	19,997	0	19,997	937	20,918
Average	\$20,361	\$83	\$20,444	\$698	\$19,746
Port Huron With Proposed Increase of 3% + 1%	\$19,354	\$484	\$19,838	0	\$19,838

The employer also contended that the most relevant comparison here is to the other employees of the City of Port Huron, particularly the other uniformed personnel. They said that the other contract settlements showed a clear pattern of what was deemed appropriate by the negotiators and representatives of the other bargaining units. The city argued that this comparable ought to be attributed the most weight by the panel.

VII. DISCUSSION

The city is most persuasive that the pattern of settlements for the other city employees should also govern here. The city's current offer of 3% + 1% is better than the flat 3% which has been the 1988-89 wage increase for some city employees.

Additionally Port Huron is still an "outstate" community and a comparison heavily weighted with Detroit area communities is not fair or appropriate. This panel agrees with the panel decisions of the past -- that is, Port Huron is best compared to cities its size which are not in the suburban Detroit area.

However, even if we use all of the Detroit area communities, as the employer did in its rebuttal of the union's comparison, we see that the employer's offer of 3% + 1% is reasonable and the dispatchers 1988-89 salaries will be at an appropriate level. Contrary to the union's assertions, the CSO's net wages, after the city's proposed wage increase, will not sink below the average for this classification.

The panel was impressed that the overall compensation for the Port Huron CSO's was competitive with Detroit-area cities and consistent with that paid to other Port Huron city employees. This is a one year wage determination and the parties will be soon reaching a decision on their new contract. The union offered no good reason to break the pattern of wage increases set by the other Port Huron bargaining units. For all of these reasons the city's last best wage offer is held to be the one which best meets the standards of Sections 8, 9 & 10 of P.A. 312 of the Acts of 1969.

AWARD

Appendix A of the collective bargaining agreement shall be amended to show a 3% increase effective on July 1, 1988 and a 1% increase effective on January 1, 1989.

PANEL OF ARBITRATORS

X
concurr

dissent

concurr

X
dissent

Barry C Brown
BARRY C. BROWN, CHAIRMAN

Douglas Alexander
DOUGLAS ALEXANDER, CITY DELEGATE

Michael Somero
MICHAEL SOMERO, UNION DELEGATE