

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312 Arbitration between:

Village of Beverly Hills

-and-

Beverly Hills Public Safety Officers Association

MERC Case No. D82 1-3684

OPINION AND AWARD

Introduction

This proceeding was initiated by petition of the Beverly Hills Public Safety Officers Association on January 11, 1983, pursuant to Act 312 of the State of Michigan, an Act to provide for compulsory arbitration of labor disputes in municipal police and fire departments. The parties had reached impasse in their efforts to negotiate a collective bargaining agreement to replace the one that expired on December 31, 1982. Hearings were held on October 4, 6, and 27, November 3, 10, and 22, and December 15 and 19, 1983, at the offices of the Village. The arbitration panel was composed of William Ager, III, Esq., Association delegate, Charles Keller, Esq., Village delegate, and Sol M. Elkin, impartial chairman. Mr. Ager and Mr. Keller also appeared as chief spokesmen for their respective parties.

Beverly Hills, Village of

Elkin, Sol M.

Post-hearing briefs, which included the final offers of settlement, were submitted on January 27, 1984. The Panel met in executive session on March 24, and April 5, 1984.

This Opinion and Award was drafted by the Panel Chairman, who is solely responsible for its contents.

The Issues in Dispute

Section 8 of Act 312 requires the arbitration panel to adopt the final offer of one of the parties on each economic issue in dispute, utilizing the applicable factors set forth in Section 9 of the Act. As to the non-economic issues, Section 8 directs only that the findings, opinions, and order be based upon the same applicable factors.

Shown below are the issues in this dispute and their designation by the arbitration panel as either economic or non-economic.

<u>Economic</u>	<u>Non-Economic</u>
Wages	Selection of Insurance Carrier
Retroactivity	Insurance: "Life of Agreement" language
COLA	Insurance: Definition of "Dependent Children"
Life Insurance	Sick Leave Accumulation
Medical Insurance for Dependents on Death of Active or Retired Officer	Education Benefits
Payment for Unused Sick Leave at Death	Holidays: Method of Payment
Longevity Payment	Management Rights
Extra Pay for Command Responsibilities	Grievance Procedure
Pay Differential for Specialist Positions	Miscellaneous Conditions of Employment

Economic

Lowering of Retirement Age
Clothing Allowance
Cleaning Allowance
Vacation

Non-Economic

No strike/no lockout clause
Residency
Agency Shop
Waiver Clause
Severability
Entire Agreement Clause
Termination

Comparability

The parties introduced into evidence extensive data in support of their respective positions, which data were thoroughly reviewed by the Panel and utilized in applying each of the criteria set forth in Section 9 to the issues in dispute.

Much of the data and the argument focused on the comparability factor. The Association originally proposed these communities as comparable to Beverly Hills:

Berkley
Bloomfield Hills
Fraser
Grosse Pointe Shores
Oak Park

The Village selections were:

Grosse Pointe Woods
Grosse Pointe
Huntington Woods
Farmington

Subsequently, the Association proposed to combine all nine communities for comparison to Beverly Hills, contending that in one way or another all are comparable to Beverly Hills. The Association argues

that all are relatively close geographically to Beverly Hills and compete in the same general labor market. It argues further that all are generally middle to upper class suburbs and are relatively comparable in terms of square miles, population, and officer to resident ratio. In short, in selecting comparable communities the Association would apply very broad criteria, limited in number, to encompass all of the public safety departments in Southeast Michigan, with the exception of Centerline. To a certain extent, all do share some similarity to Beverly Hills, yet the pronounced differences on many critical criteria from Beverly Hills and from each other casts serious doubt on whether the five communities favored by the Association are sufficiently similar to Beverly Hills as to be regarded as reasonably comparable. For example, on two important measures of a community's ability to pay, SEV per capita and 1979 per capita income, the amounts for Beverly Hills are \$18,343 and \$16,015, respectively. As comparables, the Association offers two such disparate communities as Berkley and Bloomfield Hills. For Berkley, the equivalent amounts are \$8,034 and \$8,472, and for Bloomfield Hills, \$48,433 and \$35,327 (Assoc Exh 8a). The 1982 Index Crime Rate (Index crimes per 100,000 population), which one can reasonably assume has a direct impact on working conditions for Public Safety Officers, is 3,259 for Beverly Hills. The Association would consider Grosse Pointe Shores as comparable with a rate of 1,494, about one-half of Beverly Hills' rate, and Oak Park with 6,918, about twice the rate for Beverly Hills (Employer Exh 8). By contrast, the Index Crime Rate for the four communities selected by the Village fall between 3,224 for Grosse Pointe Woods to 4,472 for Farmington, a range that encompasses the rate for Beverly Hills.

Certainly, all the public safety departments in Southeastern Michigan have some characteristics in common and it is widely acknowledged that determining comparability is far from an exact science. However, the Association, by grouping together practically all the communities in Southeastern Michigan that have public safety departments, ignores the wide variances within the group as to size, wealth, crime rate, etc. When the latter, customary criteria are applied, the four communities selected by the Village form a rather homogenous group, readily distinguishable from all the other communities. Beverly Hills is distinctly more comparable to the four Village selections than to the five selected by the Association or to a combination of the nine communities. Thus, while recognizing that comparability is only one of the nine mandated criteria to be used in this arbitration, the Chairman is persuaded that the group of communities identified by the Village is the more reasonable basis for comparison

Wages

The salary schedule for Beverly Hills Public Safety Officers at the termination of the last collective bargaining agreement on December 31, 1982, is shown below:

<u>1982</u>	
Start	\$20,840
12 months	22,682
24 months	24,513
36 months	26,375

As its final offer, the Village proposes increases of $3\frac{1}{2}\%$ and 5% for 1983 and 1984, respectively. The Association's final offer is 5% for 1983 and $5\frac{1}{2}\%$ for 1984:

	1983		1984	
	Village Offer	Association Offer	Village Offer	Association Offer
Start	\$21,569	\$21,882	\$22,647	\$23,086
12 months	23,476	23,816	24,650	25,126
24 months	25,371	25,739	26,640	27,155
36 months	27,298	27,694	28,663	29,217

In justifying its offer, the Village asserts that because of roll-ups the actual increases rise from $3\frac{1}{2}\%$ and 5% to 5.25% and 7.73%, respectively. It emphasizes that any increase will reduce the Village's general fund balance well below the 15% guideline adopted by the Council as necessary for fiscal responsibility. The Village entered into evidence extensive data comparing Beverly Hills officers' compensation not only to the four communities it selected as most comparable, but to police and public safety departments in 20 Southeastern Michigan communities with populations of 10,000 to 24,999, and also to the departments in five surrounding communities (Employer Exh 35-50). The data shows that Beverly Hills salaries, with the Village's 1983 wage offer, exceeds the average wage of all comparison groups.

The Association stresses that its salary proposal is an effort merely to maintain its relative ranking among the nine communities it regards as comparable. It notes that the average public safety officer's salary for 1983 for those communities was approximately \$27,560, as

compared with the Association's proposed salary of \$27,694. For 1984, the Association points out that its 5½% proposal again approximates the overall average for these communities and maintains the officers wage ranking. Furthermore, the Association insists that the Village can well afford the Association's wage offer as no evidence was presented that funding it might require a millage increase or reduction in services. Finally, the Association urges that adoption of the wage proposal is in the public interest, as it will maintain high officer morale.

Both parties are to be commended for presenting reasonable salary proposals. The Village presented extensive data purporting to show that its ability to meet the Association's wage and other economic demands is severely limited. But a review of the data, which need not be described here, persuades the Panel Chairman that, while the Village is not wealthy and its fund balance has been steadily declining in recent years, neither is it in danger of insolvency. It is clear that it does have the financial ability to grant an equitable wage increase.

A comparison of the opposing offers for 1983 at the top of the salary scale, to the nine Southeastern Michigan communities selected as comparable by the Association is shown below:

1983 Salary Schedule

Oak Park	\$30,013
Grosse Pointe Shores	29,202
Berkley	28,435
Bloomfield Hills	28,250
Fraser	27,800
Beverly Hills (Ass'n Offer)	27,694
Beverly Hills (Village Offer)	27,298
Grosse Pointe	27,080
Huntington Woods	26,401
Grosse Pointe Woods	26,208
Farmington	24,978

If all nine communities were to be used as the basis for comparison, as urged by the Association, then both offers fall in the middle range. There is a difference of only \$396 in the two offers, and in relation to these nine communities, there is no strong argument for choosing one over the other. However, the finding above that the four communities selected by the Village (the last four on the list of nine) are the most comparable to Beverly Hills, weighs in favor of the Village's offer, which is sufficient to rank Beverly Hills as the highest of that group.

Accordingly, the Panel majority adopts the Village's final offer on wages.

Retroactivity

As a separate issue, the Village proposes that its wage and longevity offers be payable on the date a valid Act 312 award becomes effective. The Association proposes to make these provisions retroactive to January 1, 1983.

The parties stipulated that COLA payments shall be retroactive to January 1, 1983.

The Village's essential position is that officers' wages in 1983 were competitive without retroactivity, and that a retroactive award would reduce the Village's fund balance to only approximately one month's expenses. The Village argues further that granting retroactivity would reduce the incentive for the Association to settle future contracts through bargaining.

In the Chairman's view, it is not possible to fix responsibility for the parties' failure to reach a negotiated settlement. Notwithstanding the added cost to the Village, as a matter of equity the officers should not suffer a financial penalty for this failure. Therefore, the Panel majority adopts the Association proposal of making the wage increases retroactive to January 1, 1983. Included are retroactive payments for all compensation that is indexed to wages, such as longevity, overtime, holidays, pensions, and payment for unused sick leave.

Cost of Living Allowance

The final offer of both parties is to continue the same COLA formula as in the expired contract. Therefore, this shall be part of this Award, with appropriate changes in the B.L.S. index.

Life Insurance

The expired contract provides for life insurance in the amount of \$20,000 for each officer, with double indemnity. The Village offers to increase the coverage to \$30,000, with a \$30,000 death and dismemberment provision. The Association would increase it to \$40,000, and retain double indemnity.

A review of the record shows that the Village's offer of \$30,000 of life insurance coverage compares favorably with the \$28,500 average for other Southeastern Michigan communities (Employer Exh 76-80). The Panel majority, therefore, adopts the Village's offer.

Medical Insurance for Dependents on Death of Active or Retired Officer

Under the expired contract, upon retirement hospitalization coverage continues for the officer, his wife, and dependent children.

The Association proposes the same coverage in the event of the death of an active or retired officer, as long as the spouse does not remarry and the children remain dependent. The Village opposes this, arguing that comparable communities do not provide such a benefit and, moreover, it could expose the Village to an unlimited liability for insurance coverage for the family of an employee with a very brief term of service.

Data submitted by the Village shows that none of the public safety departments in Southeastern Michigan provides health insurance coverage for the surviving spouse and children of an officer who dies from non-duty causes (Employer Exh 80). Although there are some discrepancies with data offered by the Association (Assoc. Exh 18), it appears that this is not a benefit enjoyed by officers in most comparable communities, and therefore the Panel majority rejects the Association's proposal.

Payment for Unused Sick Leave at Death

The expired contract provides for the payment at retirement of unused sick leave up to a maximum of 100 days. The Association would expand this provision to permit the same payment to a beneficiary at death. The Village opposes this change.

The Chairman agrees with the Association that there is an element of unfairness for a deceased officer's beneficiary to lose a benefit the officer had already earned and would have received if he had lived to retirement. The Panel majority, therefore, adopts the Association's proposal:

Longevity

The expired contract contains the following longevity payment schedule, based upon the top pay of the officer's own base wage:

2% after 5 complete years of service

4% after 10 complete years of service

6% after 15 complete years of service

8% after 20 complete years of service

The Association proposes to continue this provision unchanged in the new contract. The Village offers instead to substitute for the percentage formula a schedule of flat dollar amounts based on the existing maximum Public Safety Officer rate. In addition, the Village proposes a penalty clause on the longevity tied to the use of sick days. Essentially, the plan is that for each sick day over four taken for the year, longevity payment would be reduced by 2%.

The Village wishes to substitute dollar amounts for percentages in order to address the problem of roll-ups, which it believes is not sufficiently recognized in negotiations. It asserts that because of roll-ups, such as longevity payments based on percentages, a 1% base salary increase in fact becomes a 1.53% increase. As to the penalty clause, the Village contends that it has the problem of excessive use of sick leave by officers and that its proposal approaches the problem by means of incentives.

The substitution of a fixed dollar amount would, of course, represent a reduced benefit as salaries continue to move upward, unless the fixed amounts are renegotiated. Also, there is nothing inherently unfair in the percentage-based payments that would call for a change.

Regarding the penalty clause, there is no evidence that the officers have abused the sick leave privilege, even if they have used more of their sick days than have administrative personnel. Moreover, the plan makes no attempt to distinguish between leave days taken when an officer is actually sick or when he is not, as both are penalized equally. Finally, there is already an incentive not to take sick days as officers are partially compensated for unused sick days. Accordingly, the Panel majority adopts the Association's proposal to continue the entire longevity provision unchanged from the expired contract.

Extra Pay for Command Responsibilities

The parties have agreed to a shift differential of 60 cents per hour for officers occupying the position of Senior P.S.O. for a minimum of four hours. The differential is to be paid prospectively only.

This agreement is hereby incorporated into the Award.

Pay Differential for Specialist Positions

The Association proposes a 5% base pay differential, beginning January 1, 1984, to all officers assigned or promoted to certain specialized positions within the Department. The differential would be paid to uniformed and non-uniformed positions, including Detective Bureau, Youth Bureau, School Liaison, Fire Inspector, and any other designated or specialist position which the Village may create within the Department. The Village rejects this proposal.

The Association justifies the differential because of the specialized nature and the added command authority and responsibility of these positions. The Village responds that the positions at issue

are highly sought after and are no more demanding than regular Public Safety Officer work. Also, the Village asserts that some of the listed positions currently do not exist as full-time functions.

The Chairman is sympathetic to the concept expressed in the Association's offer, i.e., that positions more specialized, requiring more experience, and carrying greater responsibility, merit a pay differential. Judged only by the job description (association Exh 26), the position of Detective, for example, would be one of those positions that merit added compensation. The difficulty with the Association's proposal, however, is that it encompasses all positions that might be designated as specialist positions. There is no evidence in the record to show that the duties and responsibilities of each specialist position are such as to merit a pay increase. Also, there is nothing in the record regarding pay differentials in departments in comparable communities. The Panel majority therefore accepts the Village's position on this issue.

Lowering of Retirement Age

Under the expired contract, Public Safety Officers are eligible for retirement at age 55 with 25 years of service. The Association proposes a change to permit retirement at age 50 with 25 years of service. The Village opposes any change from the prior contract.

The Association's major argument is that Beverly Hills command officers are currently eligible to retire at age 50 with 25 years of service and therefore Public Safety Officers are entitled to the same benefit. The Village's response to that argument is that the command bargaining unit purchased this benefit in a prior contract by accepting

a reduction in all future salary increases, i.e., by reducing the historic percentage differential between their salaries and the salaries paid to public safety officers. The Village also points out that none of the four public safety departments that it regards as comparable have retirement at age 50 (Employer Exh 76), and only three other public safety departments in Southeastern Michigan offer this benefit (Employer Exh 78). Furthermore, the Village notes that this would be a very costly provision -- it estimates it would require an additional expenditure of 3.96% of an officer's salary to fund the earlier retirement age.

The Association's case rests wholly on the fact that the command officers already have this benefit. Such a comparison is certainly warranted, but its impact is diminished by two circumstances -- the command officers made concessions in the bargaining process in exchange for this benefit, and the earlier retirement age for command officers creates greater promotion opportunities for the lower ranks. Moreover, none of the four communities deemed most comparable have retirement as early as age 50, and only three of the nine communities selected by the Association as comparable offer this benefit. Furthermore, a review of the entire retirement program for Beverly Hills P.S.O.'s reveals that it compares very favorably with all other public safety departments in Southeastern Michigan. The average retirement benefit for Beverly Hills P.S.O.'s is 65.2% of salary (plus social security), which is the highest in that group (Employer Exh 74).

The Panel majority, therefore, adopts the Village's proposal to retain the retirement provision unchanged.

Clothing Allowance

The expired contract provides a clothing allowance for non-uniformed officers of \$350 per year. The Association proposes that beginning January 1, 1984, the clothing allowance be increased to \$400 per year. The Village offers to continue the same amount as in the previous contract.

The Association proposes that the Village provide for the cost of footwear; the Village refuses.

The Association urges that both of its offers are warranted in order to maintain equal benefits, as compared with the non-uniformed officers in Beverly Hills and with non-uniformed officers in comparable communities. The Village, on the other hand, contends that the present clothing allowance is equal to or better than most of the comparable and surrounding communities.

The operative fact here is that the current allowance has remained unchanged for several years and therefore a \$50 increase is reasonable. The Panel majority adopts the Association's offer of a \$400 clothing allowance.

As to the question of providing the cost of footwear, this is a request for a new benefit which the Association failed to justify. The Panel majority therefore, agrees with the Village's position of not adding this benefit.

Cleaning Allowance

The expired contract provides an annual cleaning allowance of \$250 for all officers. The Association proposes an increase in the

yearly allowance to \$350; the Village offers an increase to \$300.

The Panel majority finds that the Village's offer is the more reasonable, under all of the circumstances.

Vacation Leave

The final offer of both parties is to retain the identical vacation provision found in Article XIV of the expired contract. The Panel hereby incorporates that provision into this Award.

Selection of Insurance Carrier

For hospitalization and dental insurance, Article VIII of the expired contract gives to the Village the right to "select the insurance carriers, to select the insurance policy or policies, to change carriers and to become self-insured provided there is no reduction in the benefits currently provided and any change is negotiated with the Association."

The Village would revise this language to permit the Village to change carriers "provided the new coverage is substantially equal". The Village contends this would allow it to keep its insurance rates competitive while still protecting employees against cuts in benefits. The Association opposes any change.

In the view of the Panel Chairman, the Village has failed to show there is good reason to take from the Association strong protection against a reduction in benefits and the right to negotiate any change, as incorporated in the expired contract provision. Accordingly, the Panel majority concludes that the prior language shall remain unchanged, as urged by the Association.

Insurance: "Life of Agreement" Language

The Village proposes the addition of the language -- "for (during) the life of this Agreement" -- with respect to all types of insurance coverage, as well as certain other fringe benefits. Its purpose is to ensure that no one, including a retiree, will be able to claim a particular benefit is "vested" and not subject to change in the future. The Association opposes this addition.

In the opinion of the Chairman, the effect of this proposed language, with all its possible ramifications, has not been sufficiently explored by the parties. Moreover, the Village could adduce no convincing arguments for its adoption. The Panel majority therefore rejects this Village proposal.

Insurance: Definition of "Dependent Children"

Article VIII, Section I(A) of the expired contract provides hospitalization insurance "for the employee, the employee's spouse and the employee's dependent children", but includes no definition of dependent children. To avoid future misunderstandings, the Village proposes the definition shown below, which is based on the Blue Cross definition and codifies existing practice. The Association, on the other hand, believes it to be unnecessary.

Dependent children is defined as the employee's unmarried children by birth, legal adoption or legal guardianship (while they are in the employee's custody and are dependent on the employee) until the end of the calendar year in which they reach age nineteen (19). Employees with dependent children over age nineteen (19) may apply for coverage which would continue health and dental care only if the dependent child:

1. Is a full time student and is,
2. Unmarried and is,

3. Dependent on the employee for more than 1/2 his or her support and,
4. Resides with the employee, or is in temporary residence at school.

This dependent coverage shall cease at the end of the calendar year in which the dependent reaches age 25, or earlier if any of the above conditions are not met. It shall be the employee's responsibility to inform the Village of any change in status of a dependent child.

The use of the term "dependent children", which is obviously subject to varying interpretations, invites disagreement and disputes. As it is uncontroverted that the proposed definition merely codifies existing practice, the Panel majority adopts this Village proposal.

Sick Leave Accumulation

The expired contract provides that sick leave shall be earned at the rate of one day per month with the right to accumulate them to a maximum of 100 days. The Association proposes to permit the accumulation of days without limit, while the Village opposes this change.

The Association prefers the removal of the cap on sick leave accumulation so that an officer can have more days to redeem at retirement rather than being paid for unused days at the end of each year. However, the Panel is not persuaded that this is sufficient reason to change a long-standing practice and, accordingly, adopts the Village's position.

Educational Benefits

Article XX of the expired contract provides for reimbursement of tuition costs for law enforcement-related college courses, subject to the prior approval of the Director of Public Safety as to the

relatedness of the courses. The Association would continue this provision unchanged.

The Village proposes two changes: first, it would pay only State university tuition rates and, second, at the graduate level the course taken must specifically relate to public safety to be eligible for reimbursement.

In the opinion of the Panel majority, the existing language adequately protects the Village from misuse of this benefit and, accordingly, the Association's proposal is adopted.

Holidays

Article VI of the expired contract provides for 13 paid holidays, with payment for all to be made annually in one lump sum for each fiscal year in the first pay period in December. The Association proposes to continue this provision unchanged.

The Village notes that eight of these holidays (and possibly the employee's birthday, a paid holiday) fall after payment for them has been made. Thus, for officers leaving the Village's employment after December, repayment for the holidays must be sought. To avoid this, the Village proposes that payment for seven of the holidays be made in December and payment for the remaining six holidays be made in June.

The Panel majority finds the Village's rationale persuasive and adopts its proposal.

Management Rights and Responsibilities

Article III of the expired contract, which is the management rights provision, grants to the Village the right and responsibility

"to make and change rules and regulations and orders which are reasonable and not inconsistent with the terms and provisions of the AGREEMENT," and, "the right . . . to relieve employees from duty because of just cause or for other legitimate reasons" The Village proposes the deletion of the words "reasonable" and "legitimate", while the Association would continue intact the entire provision.

The Village's purpose is to eliminate what it regards as a potential for petty grievances and expensive arbitration cases over what is "reasonable" or "legitimate". However, it is difficult to understand how the disputed words have the potential for encouraging grievances. It is most unlikely, absent these words, that an aggrieved employee would find no other contractual basis for a grievance. Moreover, it is uncontroverted that the presence of these words in the contract have caused no problems in the past. As the Village has failed to show that these words have a realistic potential for future difficulties, the Panel majority adopts the Association's position on this issue.

Grievance Procedure

The expired contract has a four-step grievance procedure culminating in binding arbitration. The procedure includes an "Unusual Circumstances" provision which permits either side to bypass the first two steps and appeal directly to the Village Manager at Step 3.

The Association proposes to maintain the basic language of the provision. The Village, however, seeks two substantive changes: to delete the "unusual circumstances" provision and to add language requiring that grievances regarding a pay shortage be filed within six months from the date the shortage occurred.

The Village believes that the privilege to appeal directly to the Village manager is subject to abuse, and in the rare instances where it might be appropriate, it should be by mutual agreement and not be the request of one side. It also feels that six months is a reasonable limit on the time during which it should be liable for pay claims.

The Association's assertion that problems which the Village's proposals are intended to address have never arisen in the past was uncontroverted by the Village. Nor was the Village able to make out a convincing case that there is a strong possibility that problems will arise in the future. The Panel majority, therefore, adopts the Association's position of rejecting these two revisions to the grievance procedure.

Miscellaneous Conditions of Employment

In Article XXI of the expiring contract the Village agrees to

- (a) provide and maintain shotguns and screens in all patrol vehicles,
- (b) equip and maintain all patrol cars with four doors and airconditioning,
- (c) provide .357 magnum service revolvers for all officers, and (d) replace or repair items lost or damaged in the line of duty where officer negligence was not present.

The Association would retain this Article unchanged in the new Agreement, while the Village proposes its elimination. The Village has made known its intent to continue offering all the equipment needed for the P.S.O's to do their job and argues that therefore this provision is no longer needed.

The Panel majority finds the Village's rationale unpersuasive and adopts the Association's proposal that this provision be retained.

No Strike/No Lockout Clause

This is a new contract provision in which the parties agree in principle on a no strike/no lockout provision, including a definition of a strike, but differ on certain language. The first difference is in the opening sentence of Section I. The Association proposes:

"The ASSOCIATION agrees that it shall not cause, sanction or participate in any strike."

The Village version reads:

"The ASSOCIATION agrees that it shall not cause, sanction or condone, nor shall any member of the Association take part in any strike."

A further difference is found in Section 2 of the proposed provision. The Association proposes as follows:

Section 2. The VILLAGE agrees that it will not engage in any lockout of the bargaining unit employees and will not interfere with, discourage, restrain or coerce employees because of their membership in the ASSOCIATION.

The Village proposes:

Section 2. The VILLAGE agrees that in consideration of the foregoing, during the life of this Agreement, the VILLAGE will not lock out employees except in case of violation of Section (1), above."

The Village's proposal for Section I which applies directly to Association members as well as to the Association itself, is the stronger prohibition. As a strike or lockout of a public safety department obviously would be intolerable, this stronger language as urged by the Village is deemed to be more appropriate and is hereby adopted by the Panel majority.

However, the Village's proposed Section 2 is only a qualified commitment not to lock out employees. Also, whether Section 1 has been violated in a particular situation could be subject to conflicting interpretations. The Association's proposed Section 2 avoids this ambiguity and also contains appropriate anti-discrimination language. Accordingly, the Panel majority adopts the Association's proposed Section 2.

Residency

The Village proposes the addition of a residency provision requiring officers to live within a six mile radius of Beverly Hills. It would include a "grandfather" clause, restricting application of the provision to officers hired after January 1, 1984 and to officers who change their place of residence in the future. The Association opposes any residency requirement.

The Village emphasizes the need for this restriction in order to minimize response time when additional personnel must be called during emergencies. It notes that the Village has no formal mutual aid agreements with other departments nor does it have a police auxiliary or a volunteer fire department.

The Village's wish for a residency requirement is understandable. Some of the officers live a considerable distance from Beverly Hills and there is always a potential for an emergency when they would not be quickly available. Nevertheless, there are a number of reasons why a residency requirement should not be part of an imposed settlement. Any restriction on the freedom to choose one's place of residence would have such a damaging effect on morale as to be a major consideration against

its adoption. Moreover, although there is a certain amount of housing available within the six mile radius that is affordable on an officer's salary, much of the area includes affluent communities with housing beyond an officer's financial capability. Also, the Village failed to show that any of the comparable communities impose a residency requirement on its officers. Finally, the Village cited no previous instances where a problem actually arose because of slow officer response in an emergency situation.

For these reasons, the Panel majority rejects the residency provision, as urged by the Association.

Agency Shop

Article IV of the expired contract provides as follows:

ARTICLE IV - ASSOCIATION ACTIVITIES

Section I Any employee who chooses not to become a member of the ASSOCIATION, which election is made by not making application for membership in the ASSOCIATION shall, as a condition of employment, pay to the ASSOCIATION an amount equal to the ASSOCIATION'S regular monthly dues and assessments uniformly applied to the Members as a contribution toward the administration of the AGREEMENT for the full term of this AGREEMENT.

The Association proposes retention of the identical language. The Village would retain an agency shop provision but would revise the language in two significant respects. These statements would be added:

"Inasmuch as the Association states that the cost of negotiation, execution, administration, and enforcement of this Agreement is fairly reflective of the employees' regular monthly membership dues that are paid by the members of the Association, therefore the parties adopt the philosophy of including the "Agency Shop" principle in this Agreement." . . .

"However, if at any time during the continuance of this Agreement, the "Agency Shop" principle, as outlined above, is declared illegal

by any court of record in the State of Michigan, then and in that event, the Village may refuse to deduct such payroll deduction, unless any employee who wishes to continue on a voluntary basis may do so, and the Village shall process such voluntary contributions."

The Village argues that it seeks only to bring the agency shop provision into compliance with current statutes and court rulings. The Association takes the position that the old language is not illegal at this time and that if later it were found to be illegal, the severability clause could then be invoked. The Association notes there are currently cases on this issue on appeal, and since the law is not settled it would be better to postpone any changes until the next negotiations.

Although the Village argues that its proposed revisions are needed for legal reasons, the Chairman notes that agency shop provisions similar to the one in the expired contract are not uncommon in public sector contracts in Michigan. Also, it is undisputed that the old language has served the parties well heretofore without engendering any disputes. The Panel majority is not persuaded that the provision in the expired contract is legally defective and adopts the Association's proposal to continue it unchanged in the new Agreement.

Waiver Clause

The expiring contract contained no waiver clause and the Association proposes that none be added to the new agreement. The Village proposes a waiver provision it considers to be quite standard. The first two sentences are taken verbatim from the current collective bargaining agreement with the Beverly Hills Municipal Employees Association:

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Village and the Association, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement and with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge and contemplation of either or both of the parties at the time that they negotiated or signed this Agreement. This Agreement may be modified by mutual consent in writing by the parties, and provision of this Agreement shall be subject to any changes made necessary by reason of State or Federal legislation.

The Association asserts that the problems the proposed provision is intended to address have never arisen in the past and do not exist now, and therefore it is not needed. It also contends it should not be required to waive any of its rights, as it would if the proposal were adopted. In the opinion of the Panel Chairman, where, as in the case at hand, no showing has been made that the contested provision is needed to resolve a continuing problem or to forestall a future problem that reasonably can be anticipated, it is preferable that new contract provisions not be imposed on an unwilling party. Moreover, shortly after the contract based on this P.A. 312 award is executed, the parties will begin negotiations for a new contract, at which time there will be another opportunity to reach agreement on this and other proposed language issues. Accordingly, the Panel majority adopts the Association's position of not adding a waiver clause to the contract.

Severability

Article XXIV of the expired contract provides that

"In the event it is determined that any provision in this Agreement is invalid and unenforceable, the balance of this Agreement shall remain in full force and effect."

The Association proposes retention of the same basic language, revised only to include this Act 312 Award and any stipulations between the parties. The Village, on the other hand, seeks a fuller and more detailed expression of the same concept, in what it regards as quite standard contract language:

If any Article or Section of this Agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section shall be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained shall not be affected thereby.

Absent a showing that the language in the expired contract was inadequate to serve the parties' needs, it is the decision of the Panel majority that the old language be retained unaltered in the new contract, as proposed by the Association.

Entire Agreement Clause

This is a new contract provision proposed by the Village, to which the Association also objects. It is taken verbatim from the Beverly Hills Municipal Employees Association contract:

This Agreement supersedes and cancels all previous agreements, verbal or written or based on alleged past practices, between the Village and the Association and constitutes the entire agreement between the parties. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

The Association asserts that there are many practices that have never been formally identified or discussed by the parties and therefore this proposal could have far-reaching, unanticipated consequences detrimental to the Association.

In the opinion of the Panel Chairman, the issues raised by this proposal would be better addressed in the parties' negotiations for the next contract. Accordingly, the Panel majority adopts the Association's position of omitting it from the current contract.

Termination

Article XXIII of the expired contract states:

The conditions of this Agreement shall be in effect from July 1, 1980 and shall remain in force until December 31, 1982. This Agreement shall be retroactive to July 1, 1980.

The Village proposes to expand that provision as shown below.

It is also found verbatim in the Beverly Hills Municipal Employees' Association contract.

Expiration Date. This Agreement shall become effective on _____ and shall continue in full force and effect up to and including _____.

Notice to Modify, Amend, or Terminate; Automatic Renewal. This Agreement shall continue after _____ unless notice is given in writing by either the Association or the Village to the other party at least sixty (60) days prior to _____ or any anniversary date thereafter, of its desire to modify, amend, or terminate this Agreement. If such notice is given, this Agreement shall be open to modification, amendment, or termination as such notice may indicate, on _____ or the subsequent anniversary date, as the case may be. In the event that one of the parties gives the sixty (60) day notice to modify or amend, as set forth above, either party may give subsequent notice to terminate on or after _____ or the subsequent anniversary date, as the case may be, by giving the other party a ten (10) day notice in writing.

As with the other new language provisions proposed by the Village, it is opposed by the Association, which prefers to continue the old language without change.

This is another proposed language change that can best be left to the parties to resolve at their next negotiations. It is the opinion of the Panel majority that the substance of the language in the expired contract be retained, showing that the new Agreement shall take effect on the date of the execution of this Award and shall continue in full force and effect up to and including December 31, 1984.

Summary of Award

1. Wages: For 1983, there shall be a 3½% across the board increase over the preceding year, as proposed by the Village.

For 1984, there shall be a 5% across the board increase over the preceding year, as proposed by the Village.

2. Retroactivity: Wages, including all compensation that is indexed to wages, such as longevity payments, overtime, holidays, pensions, and payment for unused sick leave, shall be retroactive to January 1, 1983.

3. Cost of Living Allowance: The formula found in the expired contract shall be retained without change.

4. Life Insurance: Life insurance coverage shall be increased to \$30,000.

5. Medical Insurance for Dependents on Death of Active or Retired Officer: This Association proposal is rejected.

6. Payment for Unused Sick Leave at Death: Payment to a deceased officer's beneficiary shall be made under the same conditions as for a retired officer, as proposed by the Association.

7. Longevity: The longevity provisions shall remain unchanged from the expired contract.

8. Extra Pay for Command Responsibilities: For officers temporarily occupying the position of a command officer for at least four hours, there shall be a shift differential of 60 cents per hour. This is to be paid prospectively only.

9. Pay Differential for Specialist Positions: A pay differential for officers assigned to certain specialized positions, as proposed by the Association, is denied.

10. Lowering of Retirement Age: The Association's proposal to lower eligibility of retirement to age 50 is denied.

11. Clothing Allowance: This amount shall be raised to \$400, retroactive to January 1, 1984. The Association's proposal to add a footwear allowance is denied.

12. Cleaning Allowance: This shall be increased to \$300, effective January 1, 1984.

13. Vacation Leave: The identical vacation provision found in Article XIV of the expired contract shall be continued.

14. Selection of Insurance Carrier: The language found in Article VIII of the expired contract shall remain unchanged.

15. Insurance: "Life of Agreement" Language: The Village's proposal to add this language is rejected.

16. Definition of "Dependent Children": The definition as proposed by the Village, which is set forth above, is adopted.

17. Sick Leave Accumulation: The language pertaining to sick leave accumulation as found in Article XIII of the expired contract shall be retained unaltered in the new contract.

18. Educational Benefits: The language of Article XX of the expired contract which pertains to educational benefits shall be retained in the new Agreement.

19. Holidays: Payment for the thirteen (13) paid holidays shall be made in June and December, as proposed by the Village.

20. Management Rights and Responsibilities: The alteration of the language of Article III of the expired contract as proposed by the Village is denied. This Article shall be incorporated into the new contract without revision.

21. Grievance Procedure: The changes in Article XVII sought by the Village is rejected. This Article shall be incorporated unchanged into the new contract.

22. Miscellaneous Conditions of Employment: The Village's proposal to eliminate this Article is denied. It shall be retained in the new Agreement, as urged by the Association.

23. No Strike/No Lockout Clause: This provision shall include the following language:

"The Association agrees that it shall not cause, sanction or condone, nor shall any member of the Association take part in any strike."

"The Village agrees that it will not engage in any lockout of the bargaining unit employees and will not interfere with, discourage, restrain or coerce employees because of their membership in the Association."

24. Residency. A residency provision shall not be added to the Agreement.

25. Agency Shop: This provision shall remain unchanged from Article IV of the expired contract.

26. Waiver Clause: This proposed provision shall not be added to the Agreement.

27. Severability: The language of Article XXIV of the expired contract shall be incorporated unchanged in the new Agreement.

28. Entire Agreement Clause: This proposed provision shall not be added to the new Agreement.

29. Termination: This Agreement shall take effect upon the execution of this P.A. 312 Award and shall continue in full force and effect up to and including December 31, 1984.

JURISDICTION

The Panel reserves jurisdiction to resolve any disputes that may arise in the implementation of this Award.

CONCURRENCES

The Association delegate concurs with the Chairman on the following issues:

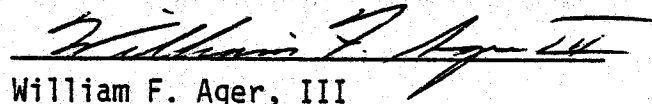
- Retroactivity
- Payment for Unused Sick Leave at Death
- Longevity
- Clothing Allowance (Increase to \$400)
- Selection of Insurance Carrier
- Insurance: "Life of Agreement" Language
- Educational Benefits
- Management Rights and Responsibilities
- Grievance Procedure
- Miscellaneous Conditions of Employment
- No Strike/No Lockout Clause (Section 2 only)
- Residency
- Agency Shop
- Waiver Clause
- Severability
- Entire Agreement Clause
- Termination

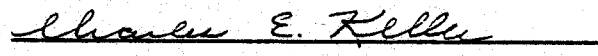
The Village delegate concurs with the Chairman on the following issues:

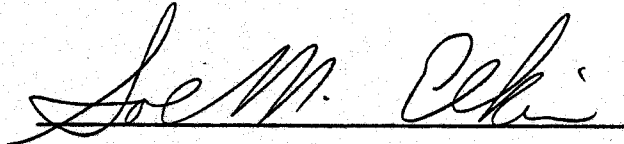
- Wages
- Life Insurance
- Medical Insurance for Dependents on Death of Active or Retired Officer
- Pay Differential for Specialist Positions
- Lowering of Retirement Age
- Clothing Allowance (Footwear)
- Cleaning Allowance
- Definition of "Dependent Children"
- Sick Leave Accumulation
- Holidays
- No Strike/No Lockout Clause (Section 1, only)

The Panel is unanimous on these issues:

- Cost of Living Allowance
- Extra Pay for Command Responsibilities
- Vacation Leave


William F. Ager, III
Association Delegate


Charles E. Keller,
Village Delegate


Sol M. Elkin,
Chairman

May 14, 1984