

12/11/80

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STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BEFORE  
A COMPULSORY ARBITRATION PANEL

CITY OF PORTAGE

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN  
PORTAGE POLICE OFFICERS ASSOCIATION

William Dance

DECISION AND AWARD

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STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
DETROIT OFFICE

CITY OF PORTAGE

These proceedings were commenced pursuant to the provisions of the Act entitled "COMPULSORY ARBITRATION OF LABOR DISPUTES, POLICEMEN AND FIREMEN", being Act 312 of the Public Acts of 1969, as amended, of the State of Michigan. This Decision and Award are made and entered pursuant to the provisions of said Act 312, as amended.

This Decision and Award is adopted as the Decision and Award of the Arbitration Panel hearing this matter by those members who affix their signatures hereto at the end of this Decision and Award.

PRELIMINARY STATEMENT

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It appears from the record and exhibits, made in the formal proceedings in this dispute, that the contract between the parties expired at midnight on June 30, 1979 (Joint Exhibit 2) and the parties have been in

Dance, William H

negotiations, mediation and arbitration since that time. It also appears that a Pre-Arbitration meeting between the parties and the panel was held in the City of Portage on May 20, 1980, at which time issues were defined and dates set for the commencement of the formal hearing.

It must be mentioned here that the Act 312 arbitration was requested by the Union, by the filing of a request with the Michigan Employment Relations Commission dated March 8, 1979. This request (Union Exhibit 2) set forth the Union issues in a rider attached thereto and this position was affirmed at the Pre-Arbitration meeting. However, at that meeting, the City indicated its schedule of issues and this schedule, in addition to identifying many of the same issues indicated by the Union, introduced additional issues, namely the following:

- a) Mandatory Union Dues or Service Fee
- b) Grievance Arbitration
- c) Paid Time for Bargaining
- d) Paid Time for Union Business
- e) Accumulation of Sick Leave
- f) Daylight Savings Time

The Union immediately raised the question as to the right of the City to add any issues, when the request for arbitration set forth the issues to be arbitrated and that no request for arbitration had been filed by the City? It was the Union's position that the City should be limited to the issues as set forth by the Union. The Chairperson asked Mr. Jaekle, the attorney for the Union, if he had any precedent to offer at this time for this position, in response to which Counsel for the Union stated that he believes the statute presents that position, but that there was no precedent that he

knew about. The Chairperson stated at the Pre-Arbitration hearing, that he would take the City's issues subject to any precedent being presented which would change that position and support the position offered by the Union. During the meeting, the Union conceded that the City issues (a) through (e) had been discussed in negotiations and in mediation. In view of this, the Chairperson indicated that the panel would certainly entertain those issues in the formal proceedings. However, there was a distinct conflict of testimony and opinion concerning the City issue of Daylight Savings Time. There was a dispute as to whether the issue had been discussed during negotiations with the Union and also whether it had been on the table during mediation proceedings, with the Union claiming No and the City claiming Yes.

This particular matter was argued by both sides, but the clear conflict of opinion remained. The issue was again raised at the commencement of the formal proceedings (Record: Vol 1 pages 3,4,5) and the Chairperson stated that the panel would reserve decision on the acceptance of Daylight Savings Time as an issue, but would receive evidence and then make a determination. Evidence was offered and as will appear later on, the issue was accepted as an arbitrable issue. Upon questioning by the Chairperson, neither party expressed an interest in presenting any brief on the question of the propriety of the acceptance of the issue by the panel (Record: Vol 5 - page 139).

Another problem, which had to be cleared up, arose with respect to wages. The Union was of the opinion that wages and COLA would be a single issue, while the City contended that wages and COLA were separate issues. The Union reasoning was that as the COLA is rolled into the wage proper at the commencement of the second year of the contract, that then

wages and COLA are actually the same thing. At least that is the understanding upon which the Chairperson proceeded. The City, on the other hand, claimed that the question relating to COLA constituted a separate issue, aside from wages.

It does appear that at some point COLA does become part of a figure for the computation of the following year's increase in wages. However, upon reflection, it is clear that the question of wages and COLA are easily separated and both parties did present evidence on wages and on COLA in separate testimony and therefore, it was the determination of the panel that these two economic issues would each be made the subject matter of a separate award.

A further matter to be preliminarily commented upon concerns the evidence introduced concerning the City's financial position. Mr. Jaekle, attorney for the Union, stated that, at the outset of these proceedings, the City had agreed it was not going to argue inability to pay. Mr. Callander, attorney for the City, without really commenting upon the question of agreement or not, responded that he was going to introduce evidence concerning the City's financial condition, not accompanied by any statement as to whether or not there is a claim of inability to pay. (Record: Vol 5 - pages 100-101). In the opinion of the panel, evidence concerning the financial condition of the City, regardless of whether ability or inability to pay is an issue, is acceptable in view of Section 9 (c) of Act 312. However, we also feel that Mr. Callander's statement cleared up any problem of agreement between the parties relating to such evidence.

The issues having been defined, the question was put as to whether or not any of them could be resolved. While the parties did not make any serious effort at this Pre-Arbitration meeting to resolve any of the issues, it did become clear, that perhaps the issues of Duration and Retroactivity might become stipulated items. Indeed, those issues were stipulated to by the parties at the opening of the formal proceedings and therefore were removed from the list of issues before the panel.

While each party submitted exhibits with a stipulation as to their admissability, their relevancy, materiality and weight were not stipulated. Those matters, then, are for the panel and its deliberation. The exhibits referred to were Union Exhibits 1-37 and City Exhibits 1-18. It was further understood that such stipulations did not prevent the introduction of further evidence or, more correctly, the offering of further evidence for admission. (Record: Vol. 1 - page 14).

Subsequent to the stipulation concerning Duration and Retroactivity, one more stipulation was entered into and that that was the provisions of Joint Exhibit 2, which were not an issue, would therefore not be before the panel, but, at the same time, same would be made a part of the panel's Award and such provisions would be awarded retroactively to July 1, 1979. (Record: Vol 1 - pages 17-21).

In this matter, there were five full days of hearings. A transcribed record of some 819 pages (including table of contents and certification) and numerous exhibits for each party as mentioned above. In addition, there were excellent briefs submitted by counsel for each party and clear,

expert testimony on a number of the issues. The parties were both well represented by counsel who are due a word of appreciation and thanks from this panel for the excellent preparation, courteous presentation and able representation each gave his particular client on each issue. The positions were clearly presented and the careful preparation by counsel, exhibited through the direct examination and cross examination, which was thorough and well considered. In addition, the panel had the benefit of intelligent, well prepared arguments on the issues and the positions of the parties.

#### ISSUES

The issues before the panel were the following:

##### UNION ISSUES

1. Wages
2. Longevity
3. Sick Leave
4. Life Insurance
5. Health Insurance
6. Dental Insurance
7. Overtime
8. Holidays
9. Vacations
10. Uniform Allowance
11. Pension
12. Funeral Leave
13. Work Schedule.

##### CITY ISSUES

1. Wages
2. COLA
3. Mandatory Union Dues or Service Fee
4. Longevity
5. Paid Bargaining Time
6. Paid Union Leave Time
7. Sick Leave Accumulation
8. Daylight Savings Time
9. Grievance Arbitration

### LAST BEST OFFERS

The parties exchanged their Last Best Offers and submitted the Last Best Offers to the panel. Those Last Best Offers are incorporated herein by reference thereto as fully as if each Last Best Offer were set forth fully in this section of this Decision and Award. The originals have been delivered to the Michigan Employment Relations Commission with the Commission's copy of this Decision and Award.

### STATUTORY MANDATE

In accordance with the mandate of Section 8 of Act 312, P.A. 1969, as amended, the panel identifies the Union issues numbers 1 - 12 as economic issues and the City issues numbers 1 - 8 as economic issues. The statute mandates that the panel shall adopt the Last Best Offer of Settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9 of Act 312 aforesaid.

In accordance with said Section 9, the panel MUST adopt either the Last Best Offer of the Union or the Last Best Offer of the City and is not permitted to engage in any mediation or negotiation at this point. The die is cast in that regard.

### DECISION AND AWARD

During these proceedings, considerable testimony, numerous exhibits and able argument were presented to the panel on each issue, economic as well as non-economic. We have studied the testimony, evaluated the witnesses, studied the exhibits and the briefs, and met to formulate and deliver our Decision. We have considered the mandate of the statute, and we base our Decision on the designated applicable factors set forth

in Section 9 of Act 312, as amended.

Therefore, considering the said Last Best Offers, we have concluded as follows on the various issues presented to the panel:

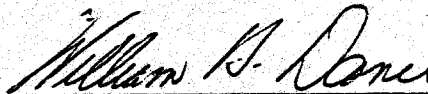
<u>ISSUE</u>	<u>AWARD</u>
1. <u>Wages</u>	City's Last Best Offer
2. <u>Longevity</u>	Union's Last Best Offer
3. <u>Sick Leave</u>	City's Last Best Offer
4. <u>Life Insurance</u>	City's Last Best Offer
5. <u>Health Insurance</u>	Union's Last Best Offer
6. <u>Dental Insurance</u>	City's Last Best Offer
7. <u>Overtime</u>	City's Last Best Offer
8. <u>Holidays</u>	City's Last Best Offer
9. <u>Vacations</u>	City's Last Best Offer
10. <u>Uniform Allowance</u>	City's Last Best Offer
11. <u>Pension</u>	City's Last Best Offer
12. <u>Funeral Leave</u>	City's Last Best Offer
13. <u>Work Schedule</u>	City's Last Best Offer
14. <u>Cost of Living</u>	Union's Last Best Offer
15. <u>Mandatory Union Dues of Service Fee</u>	Union's Last Best Offer
16. <u>Paid Time for Bargaining</u>	Union's Last Best Offer
17. <u>Paid Leave Time for Union Business</u>	Union's Last Best Offer
18. <u>Accumulation of Sick Leave</u>	Union's Last Best Offer



ISSUEAWARD

- |                                  |                         |
|----------------------------------|-------------------------|
| 19. <u>Daylight Savings Time</u> | City's Last Best Offer  |
| 20. <u>Grievance Arbitration</u> | Union's Last Best Offer |

Further, those provisions of Joint Exhibit 2, which were not in issue and therefore not specifically mentioned in this award to this point, are hereby awarded as set forth by the present language in said Joint Exhibit 2 and such provisions are awarded retroactively to July 1, 1979, pursuant to the stipulation of the parties with respect to retroactivity. (Record: Vol. 1 - pages 17-21). In each of the above awards with respect to each issue, the panel has adopted that Last Best Offer which in its opinion, and based upon all evidence and testimony, more nearly complies with the applicable factors described in Section 9, Act 312, P.A. 1969, as amended.



William H. Dance  
Chairperson



Gerald Keller  
Panel Member



Philip R. Carey  
Panel Member

STATE OF MICHIGAN  
BUR. OF EMPLOYMENT RELATIONS  
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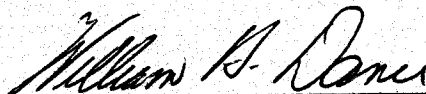
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Dated:

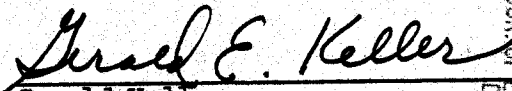
ISSUEAWARD

- |                                  |                         |
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| 19. <u>Daylight Savings Time</u> | City's Last Best Offer  |
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William H. Dance  
Chairperson



Gerald Keller  
Panel Member

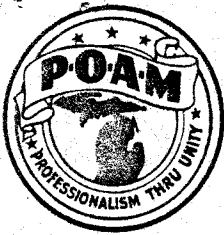
Philip R. Carey  
Panel Member

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Dated:



# POLICE OFFICERS ASSOCIATION OF MICHIGAN

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PONTIAC, MICHIGAN 48053

(313) 333-0911

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WILLIAM BIRDSEYE  
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*Executive Board*

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Dearborn Heights POA

PHILIP DEMBINSKI  
Manistee County DSA

JAMES DeVRIES  
Grand Haven POA

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Detroit POA

MARVIN DUDZINSKI  
Woodhaven POA

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LAWRENCE LIGGETT  
Oakland County DSA

L. J. McKEOWN  
Ypsilanti POA

GERALD RADOVIC  
Dearborn POA

PATRICK SPIDELL  
Clinton Twp. POA

STEPHEN SYLVESTER  
Detroit POA

RICHARD WEILER  
Detroit POA

December 17, 1980

William H. Dance  
1266 City National Bank Building  
Detroit, Mich 48226

Dear Mr. Dance:

Enclosed please find signed copy of your award of December 11, 1980 regarding the City of Portage and the POAM.

Please let this letter serve as an addendum to the award in that there was no room in the award for my dissents and concurrences.

Accordingly, I concur with the decision of the Impartial Chairman on issues 2 - Longevity, 5 - Health Insurance, 14 - Cost of Living, 15 - Mandatory Union Dues or Service Fee, 16 - Paid Time for Bargaining, 17 - Paid Leave Time for Union Business, 18 - Accumulation of Sick Leave and 20 - Grievance Arbitration. Further, I dissent with the decision of the Impartial Chairman on the remaining issues.

Thank you.

Sincerely,

Gerald E. Keller, President  
Police Officers Association of Michigan

cc: Philip Carey  
File

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COMBS, HUFF, CAREY & CALLANDER

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THOMAS T. HUFF  
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DOUGLAS L. CALLANDER  
C. REID HUDGINS, III  
JEFFREY P. CHALMERS

December 19, 1980

Mr. William Dance  
1266 City National Bank Building  
Detroit, Michigan 48226

Re: City of Portage & Portage Police Officers Association of Michigan  
Compulsory Arbitration

Dear Mr. Dance:

Enclosed you will find a signed copy of your Award of December 11, 1980 regarding the above titled matter, a copy of which I have forwarded to Mr. Keller.

As Mr. Keller has done with his letter of December 17, 1980, I would like this letter to serve as an addendum to the award for purposes of setting forth my dissent or concurrence on the individual issues.

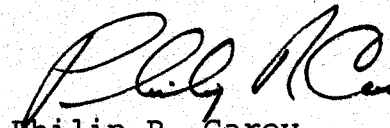
The issues on which I dissent are as follows:

- |   |  |
|---|--|
| 2. Longevity                            | 17. Paid Leave Time for Union Business |
| 5. Health Insurance                     | 18. Accumulation of Sick Leave         |
| 14. Cost of Living                      | 20. Grievance Arbitration              |
| 15. Mandatory Union Dues or Service Fee |  |
| 16. Paid Time for Bargaining            |  |

Further, I concur with the decision of the impartial chairman on the remaining issues. Thank you.

Very truly yours,

COMBS, HUFF, CAREY & CALLANDER

  
Philip R. Carey

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PRC/mv  
cc: Mr. Keller