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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

PORTAGE POLICE OFFICERS ASSOCIATION,
Labor Organization/Petitioner

-and-

MERC CASE NO. G94 F-4010

CITY OF PORTAGE,
Employer/Respondent

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE
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ACT 312 AWARD

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PANEL DELEGATES

Mark J. Glazer, Impartial Chairperson
Michael F. Ward, Association Delegate
Thomas P. Hustoles, Employer Delegate

APPEARANCES

For the Association:
Michael F. Ward, Attorney at Law

For the Employer:
Thomas P. Hustoles, Attorney at Law

BACKGROUND

On December 2, 1994 the members of the Portage Police Officers Association filed for Act 312 arbitration. The Unit consists of patrol officers and detectives. Thereafter, the City filed an answer and submitted its own set of issues.

The panel is required by Act 312 to apply the following factors:

- a. The lawful authority of the employer;
- b. Stipulation of the parties;
- c. The interests and welfare of the public and financial ability of the unit of government to meet those costs.
- d. Comparison of 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 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, continuity and stability of employment, and all other benefits received;
- g. Changes in any of the foregoing circumstances presented during the pendency of the arbitration proceedings;
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determina-

tion of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact findings, arbitration or otherwise between the parties, in the public service or in private employment.

These factors need not be afforded equal weight, as the Michigan Supreme Court stated in Detroit v. Police Officers Association, 105 LRRM 3083. The Court explained that the section 9 factors need not be given the same consideration. It stated at 3102-3103:

Since the §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 a case, although, of course, all 'applicable' factors must be considered.

Arbitration hearings were held on August 1, August 2 and August 21, 1995. Comprehensive post-hearing briefs and reply briefs were submitted by the parties.

COMPARABILITY

The parties stipulate to the City of Kalamazoo, which is a public safety department, the Kalamazoo County Sheriff Department and the Kalamazoo Township Police Department as comparables. Additionally, the City has offered ten additional communities: Battle Creek, Bay City, Burton, East Lansing, Holland, Jackson, Kentwood, Midland, Port Huron and Wyoming.

The City in prior negotiations and in a prior Act 312 has utilized its list of comparables. The proposed comparables (excluding the three stipulated communities) are within a reasonable

range of Portage in terms of population, square miles, SEV, revenue, expenditures, housing values and crime rates. Most importantly, the proposed comparables reflect the collective bargaining relationship between the parties, insofar as proposed comparables have been used in collective bargaining. This is an important factor pursuant to section 9 (b) of the Act.

Accordingly, the panel will accept all thirteen communities which have been proposed, but need not afford all the communities equal weight depending upon the issue.

CITY ISSUE 1

SMOKING

The City seeks contract language which bar the use of tobacco products while an officer is on duty. The major concern is that officers should serve as a proper role model for youth. A secondary concern is that some officers do not wish to share patrol cars with smokers. It is noted by the City that the Portage Fire Department has a more extensive non-smoking provision. It is also suggested that smoking causes officers to use excessive sick time.

The Association seeks to continue current contract language, which bars smoking where it may be detrimental to good conduct, appearance, and procedure or prohibited by law. Officers are also prohibited from smoking at public events except out of public view, and they are prohibited from smoking on public streets. The Association also points out that officers are now barred from smoking in Portage buildings. The Association denies that

there is sufficient evidence to support the City's position.

DISCUSSION OF SMOKING

There isn't any indication on the record that the comparable communities have the smoking language which is sought by the City; this is a factor, therefore, which would favor the Association. However, the firefighters have more restrictive language on smoking, which is a factor that favors the Employer.

Concerning the interests and welfare of the public, section 9(c), the City contends that police officers create a poor role model for youth when they smoke; however, this position wasn't established by empirical evidence. Further, empirical evidence wasn't introduced to establish that smoking causes a higher use of sick leave for Portage police officers.

Most importantly, the current policy allows the City to ban smoking where it affects good conduct or a procedure, and it would appear that if smoking caused a problem for a fellow officer or the public, it could be dealt with under the current language.

After a careful review of all of the section 9 factors, it is concluded that the last best offer of the Association to retain the status quo on smoking should be awarded.

AWARD ON SMOKING

The last best offer of the Association on smoking is awarded.



MARK J. GLAZER
Impartial Chairperson

Michael F. Ward (Concurring)
MICHAEL F. WARD
Association Delegate

[Signature] (Dissent)
THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 1

MEDICAL LEAVE OF ABSENCE

The Association seeks to add language to section 7.2 of the contract as follows:

While on this approved medical leave of absence, the employee shall be entitled to paid medical insurance benefits provided by this Agreement and shall be allowed to keep his/her gun, badge and I.D. cards.

It is maintained that it is an extra hardship for an employee to pay his/her medical expenses while on a medical leave. It is further emphasized that the Employer is saving costs while an employee is on a leave, and that this expense has already been budgeted by the City. The Association comparables of Kalamazoo, Kalamazoo County and Kalamazoo Township are said to support the Association's proposal. The majority of other comparables are also said to support the Association's position. The Association additionally maintains that it is necessary that an officer retain his/her gun for protection while on a leave.

The City feels that the Association's proposal fails to

indicate whether dental insurance is included. It also believes that the cost would be excessive, insofar as medical insurance has a significant monthly cost as does dental insurance. It is suggested that if two officers are off on sick leave each year, this would cost the City \$226.00 per officer. The City notes that none of the other bargaining units in the City have the requested benefit, and that of the comparables, only four have additional sick leave benefits.

DISCUSSION OF MEDICAL LEAVE OF ABSENCE

A review of the comparables reveal that the Association's preferred comparables (Kalamazoo, Kalamazoo County and Kalamazoo Township) would provide the benefit that is sought. Also, Battle Creek allows for twenty-four months of sick leave, which is the amount of sick leave found in the Portage contract. However, Battle Creek terminates sick leave benefits at six months, and the other comparables terminate sick leave benefits prior to the date sought by the Association. Additionally, Portage allows an employee to use sick days and vacation days on the books prior to the need to use sick leave.

Therefore, approximately four of the comparables have the requested benefit, and seven do not have the degree of the benefit that is sought. As a result, comparability would not support the Association's request. This is also true of the internal comparables, since none of the other Portage bargaining units have the requested benefit.

Section 9 (f) provides that the overall package granted to

the bargaining unit should be taken into consideration. When this is done, the proposed benefit is not appropriate at this time.

After consideration of all the section 9 factors, it is concluded that the Employer's last best offer should be awarded on medical leave of absence.

AWARD ON MEDICAL LEAVE OF ABSENCE

The City's last best offer on medical leave of absence is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate

 (CONCURE)

THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 2

WORK RELATED INJURY COMPENSATION

The Association seeks to increase the amount of Employer-paid wages for worker's compensation injuries from thirteen weeks to twenty-six weeks. It is noted by the Association that at least two officers had duty-related injuries over thirteen weeks

under the present agreement. The Association also contends that an employee on worker's compensation saves the City money, since he/she isn't replaced.

The comparables are said to prove that four cities provide a wage supplement indefinitely, four do so for fifty-two weeks, two do so for twenty-six weeks and one does so for at least ninety days. One city does not make up the difference at all.

The City argues that the cost of the Association's proposal would be prohibitive. The City also contends that five comparables provide no supplemental coverage.

DISCUSSION OF WORK RELATED INJURY COMPENSATION

A review of the external comparables reveal that Wyoming, Kalamazoo Township, Burton, Kalamazoo, Jackson, Kalamazoo County, Midland and Battle Creek provide superior benefits than those currently enjoyed by Portage officers. Bay City's 80% payment for an indefinite period can also be seen as a superior benefit. This leaves East Lansing, Kentwood and Holland behind Portage.

When external comparability is reviewed, the preponderance of the comparables support the Association's offer. Further, the interest and welfare of the public are supported when officers injured in the line of duty receive reasonable compensation. Also, there is evidence that the City tends to place worker's compensation patrol officers on light duty, which would ameliorate any cost to the City.

Finally, the historic average from the last contract would


not create a significant burden for the City under 9 (f) so as to require the denial of this benefit to the patrol unit.


After careful consideration of all the section 9 factors, it is concluded that the last best offer of the Association should be awarded.

AWARD ON WORK RELATED INJURY COMPENSATION

The last best offer of the Association on worker's compensation supplement is awarded.


MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 3

DEPARTMENTAL INVESTIGATIONS

The City proposes to delete paragraphs (D) and (E) of Article IV on departmental investigations. Paragraph D requires an officer to be apprised of an investigation within thirty days of the complaint and (E) requires investigations to begin within ten days of receipt of allegations, and to end thirty days after the

officer has knowledge of the investigation.

The City maintains that the current language could jeopardize an ongoing criminal investigation, because of its early notice requirements. Also, it is contended that completing an investigation within thirty days is often difficult to achieve, because an ongoing investigation will obviously take longer than a brief period of time. It is emphasized that employees are protected by the just cause language of the contract.

The Association argues that the original language was awarded in an Act 312 proceeding in 1985. The Association further contends that the Department cannot point to a situation where the current contract language has proved to be a problem.

DISCUSSION OF DEPARTMENTAL INVESTIGATIONS

The primary City argument is that a criminal investigation concerning a Portage officer could be jeopardized by the existing contract language; the Association contends that a criminal investigation exists outside of a departmental investigation and would not be affected.

The record fails to reveal that the current contract language, which has been on the books for ten years, has produced a problem for the Department. Under section 9 (h) it would not be expected that the Employer would achieve its proposed language without some sort of a balance in collective bargaining. Absent such a balance, and without support from comparability, the current contract language should remain. In particular, it should be emphasized that there does not appear to be a problem with

the current contract language in terms of the efficacy of departmental investigations.

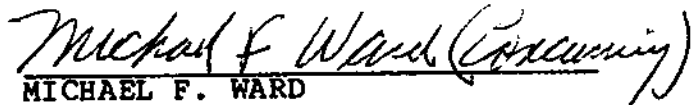
After a review of the section 9 factors, it is concluded that the last best offer of the Association on departmental investigations should be awarded.

AWARD ON DEPARTMENTAL INVESTIGATIONS

The last best offer of the Association on departmental investigations is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 4

NEW MEDICAL LEAVE LANGUAGE ON RETAINING BADGES, ETC.

The City proposes new language on sick leave, which would allow an officer to retain badges, guns and I.D. cards for up to six months. The City feels that an officer on leave who retains a gun past six months, might expose the Department to liability based upon the officer's lack of ability to fully perform as an

officer due to his/her disability. Also, it is suggested that an officer might not return his/her equipment at the end of a leave, and that after six months it is uncertain that an officer will ever return equipment.

It is maintained by the Association that none of the comparables require an officer to turn in equipment after six months. The Association also contends that an officer on leave might have to defend himself/herself. It is further denied that there is any possibility of the City incurring liability, and that the City could direct an officer not to use his/her police powers while on leave.

**DISCUSSION OF NEW MEDICAL LEAVE LANGUAGE
ON RETAINING BADGES, ETC.**

In the absence of evidence that the current language has produced a problem, or that the comparables support the Employer's position, the status quo should be retained. This is a result that would be expected under 9 (h) of the Act.

After consideration of the section 9 factors, it is concluded that the last best offer of the Association on returning equipment during leave should be awarded.

**AWARD ON NEW MEDICAL LEAVE LANGUAGE
ON RETAINING BADGES, ETC.**

The last best offer of the Association should be awarded concerning new language to be applied to the medical leave provision concerning the returning of equipment.


MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 3

LIFE INSURANCE AND FALSE ARREST INSURANCE

The Association seeks to increase life insurance from \$20,000.00 to an amount equal to an employee's yearly salary, and to provide for \$1,000,000.00 of false arrest insurance as opposed to the \$100,000.00 currently found in the contract. It is noted that Kalamazoo Township provides \$45,000.00 in life insurance, Kalamazoo provides \$20,000.00 and Kalamazoo County provides \$10,000.00.

The City argues that its life insurance plan is within the range of the comparables and is consistent with internal comparability. It is further suggested that the cost would be excessive to base life insurance on an employee's yearly salary. The City further emphasizes that it provides false arrest coverage under

its \$10,000,000.00 general liability policy, which is best kept out of the contract.

**DISCUSSION OF LIFE INSURANCE
AND FALSE ARREST INSURANCE**

The City makes a strong point about excluding a \$1,000,000.00 liability coverage plan from the contract. Since the City protects the officers as part of a multi-million dollar liability package, it appears to be unnecessary to require a separate \$1,000,000.00 policy to be found in the contract. Moreover, a \$1,000,000.00 policy in the contract could increase the amount of settlements against the City: this is a factor to be considered under both sections 9 (h) and 9 (c).

Further, the life insurance proposal of the Association, which is predicated upon salary, is only supported by three of the comparables.

Upon review of the section 9 factors, it is concluded that the Employer's last best offer should be awarded on life and false arrest insurance.

**AWARD ON LIFE INSURANCE
AND FALSE ARREST INSURANCE**

The Employer's last best offer on life and false arrest insurance is awarded.



MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD

Association Delegate

 (CONCURRE)

THOMAS P. HUSTOLES

Employer Delegate

CITY ISSUE 4

ASSOCIATION LEAVE

The City proposes to delete the twenty-four days of Association leave provided in the contract, based upon cost reasons and comparability. It is emphasized that seven comparables provide no Association leave and Portage is the fourth highest in benefits. It is noted that the command officers only provide for forty-eight hours of Association leave. It is suggested that the cost of the present leave is no less than \$3,636.00.

The Association argues that it has paid for its leave as part of the overall compensation that it receives. It is further suggested that the comparables support some form of Association leave.

DISCUSSION OF ASSOCIATION LEAVE

Under the Employer's last best offer, the Association would have less of a benefit than the command officers in Portage and

less of a benefit than nine of the thirteen comparables. Thus, section 9 (d) supports the Association. Further, historically, the parties have provided Association leave time. This is a significant factor under section 9 (h). Finally, the cost of the Association leave has been computed as part of the overall compensation package. This is a factor in favor of the Association under section 9 (f).

After consideration of the section 9 factors, it is concluded that the last best offer of the Association on Association leave should be awarded.

AWARD ON ASSOCIATION LEAVE

The last best offer of the Association on Association leave is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 4

VACATION ENTITLEMENT

The Association seeks to increase the amount of vacation

entitlement it receives by reducing eligibility requirements from fourteen years to ten years in section D and adding another twenty hours at this step. Also, new steps would be added providing for 160 hours at fifteen years, 180 hours at twenty years and 200 hours at twenty-five years. The Association contends that the comparables support this proposal.

The City contends that it would be too expensive to award the Association's offer, and that its last best offer to retain the status quo is supported by the comparables. The cost to the City of the Association's offer is said to be approximately \$9,470.00 for one year or .5% per officer.

DISCUSSION OF VACATION ENTITLEMENT

Vacations are a cost item which must be considered as part of the overall package. When the overall award is considered, including other increases such as the worker's compensation supplement, an additional .5% would not be appropriate under section 9 (f) of Act 312.

After a review of the section 9 factors, it is concluded that the last best offer of the City should be awarded on vacation entitlements.

AWARD ON VACATION ENTITLEMENT

The last best offer of the City concerning vacation entitlement is awarded.



MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 5

ARBITRATION

The City seeks a loser pay arbitration provision, which would provide for cost sharing when there is a split decision. It is noted that the Teamsters have such a provision in Portage, that there is a table agreement on this issue with the TPOA, and that the City is seeking to obtain a loser pay provision from all bargaining units. The City contends that there is a public policy reason for discouraging unnecessary arbitrations.

The Association asserts that only two of the thirteen comparables have loser pay provisions.

DISCUSSION OF ARBITRATION

Section 9 (d) on external comparability favors the Association; moreover, at the present time the overall situation in the City does not support the Employer's position pursuant to internal comparability.

There isn't anything on the record to suggest that the Association is improperly using the arbitration process. Accordingly, neither 9 (c) or 9 (h) would support the Employer's last best offer.

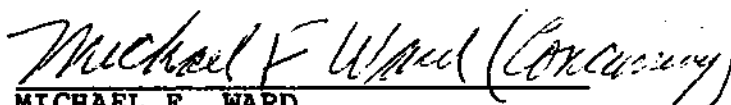
After a review of all of the section 9 factors, it is concluded that the last best offer of the Association on arbitration should be awarded.

AWARD ON ARBITRATION

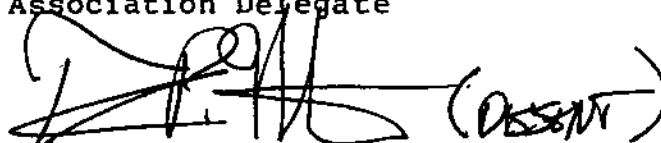
The last best offer of the Association on arbitration is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 5

WORK SCHEDULES

The Association seeks a ten hour day, with a four day week as opposed to the current eight hour, five day week. If the parties are unable to agree upon a schedule, the issue would

then be submitted to arbitration. It is noted that Kalamazoo County and Kalamazoo Township have ten hour work schedules and the City of Kalamazoo has a twelve hour work day schedule. The Association denies that the cost of its proposal would be significant.

The City contends that the Association's proposal would require it to purchase additional vehicles costing \$111,000.00. Also, it is suggested that the patrol officers would be out of sync with the command officers, who don't want a ten hour day.

DISCUSSION OF WORK SCHEDULES

Pursuant to section 9 (d), the preponderance of the comparables would not support ten hour shifts. Further, the relevant internal comparable, the command officers, do not have a ten hour shift.


Most importantly, the record reveals that there is a \$111,000.00 vehicle cost associated with the Union's proposal. Under sections 9 (c) and 9 (h), it would not be expected that an arbitrator would award ten hour shifts in light of such a significant vehicle expenditure. At the present time the issue is best left to collective bargaining.

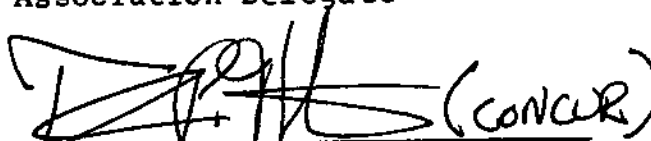
After a consideration of the section 9 factors, it is concluded that the last best offer of the Employer on work schedules should be awarded.

AWARD ON WORK SCHEDULES

The last best offer of the City on work schedules is awarded.


MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 6

MEDICAL LEAVE OF ABSENCE (FMLA)

The City seeks to add language to the medical leave of absence provision, which would incorporate its FMLA policy (Family Medical Leave Act). This policy was previously issued on March 15, 1994. The City contends that currently all employees are covered by the Act and its policy.

The Association denies that there is a need to have contract language. It is further noted that only three of the thirteen comparables have similar language. The Association is also concerned that the City could change its policy.

DISCUSSION OF MEDICAL LEAVE OF ABSENCE (FMLA)

There doesn't seem to be any objection to the Family Medical Leave Act policy that has been promulgated by the City. The

Association, however, is concerned that the policy could be changed in a way that would be contrary to its interest. Nevertheless, the policy that is referenced in the City's proposal is clearly the existing policy: if there were a new policy, it could be grieved the same as any action by management.

Accordingly, under section 9 (h) it would be expected that the Employer's proposal would be accepted, absent any harm to the Association.

After a review of the section 9 factors, it is concluded that the Employer's last best offer on FMLA should be adopted.

AWARD ON MEDICAL LEAVE OF ABSENCE (FMLA)

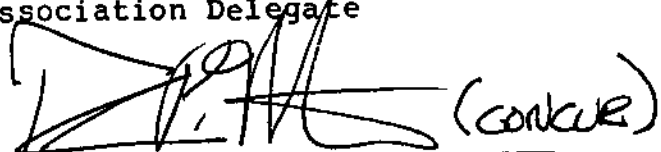
The Employer's last best offer on medical leave of absence (FMLA) is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 7

CLOTHING ALLOWANCE AND SHOE ALLOWANCE

The Association proposes to add \$25.00 to the clothing allowance to equal \$700.00 and to create a \$50.00 per year shoe allowance. In regard to comparability, the Association argues that Kalamazoo is at \$800.00, the County is at \$800.00 and Kalamazoo Township receives \$700.00. Concerning shoes, it is noted that Kalamazoo County furnishes shoes and Kalamazoo Township pays \$125.00, Burton pays \$100.00 per year and Kentwood provides footwear.

The total cost of the Association proposal is seen by the City as being excessive. It notes that there are nine officers eligible for a clothing allowance and thirty-three officers would be eligible for the shoe allowance. It is emphasized by the City that the Command Officers in Portage only receive cleaning and that Portage ranks fourth among the comparables in clothing allowance.

DISCUSSION OF CLOTHING AND SHOE ALLOWANCE

The most significant increase which is sought is the \$50.00 shoe allowance, which would cost for thirty-three officers approximately \$1,650.00. The increase in the clothing allowance for nine officers would be approximately \$225.00 per year.

It appears that the majority of comparables provide no shoe allowance or shoes. Therefore, comparability would not support the most significant area of the Association's offer. Further, the other officers in the cities surrounding Portage do not receive a shoe allowance. In consideration of the other increases that have been awarded, 9 (d) and 9 (f) would not support the

Association's offer.

After a review of the entire section 9 factors, it is concluded that the Employer's last best offer on clothing allowance and shoe allowance should be awarded.

AWARD ON CLOTHING AND SHOE ALLOWANCE

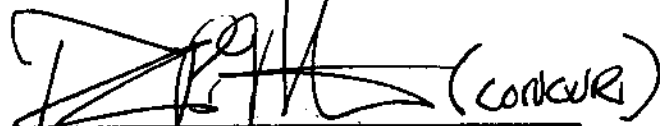
The Employer's last best offer on clothing and shoe allowance is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 7

PERSONAL LEAVE OF ABSENCE

The City seeks to delete the provision in Article 7.1 which allows the bargaining unit to receive one personal day per year. This would provide the City with a savings of \$6,363.00 annually. It is noted that only the command officers in Portage have a personal day. The Association asserts that it was charged with the cost of a personal day when it negotiated the last contract. The Association also notes that the majority of the comparables

provide for some form of a personal day. The City suggests that the comparables actually have floating days, and that therefore comparability favors it.

DISCUSSION OF PERSONAL LEAVE OF ABSENCE

The paid personal day is part of the overall compensation which has historically been paid to patrol officers. Thus, sections 9 (f) and 9 (h) will favor its retention. A review of the internal comparables reveals that the command officers also receive a paid personal day. Finally, the comparables do not support the return of the personal day.


After a review of the section 9 factors, it is concluded that the last best offer of the Association on personal days should be awarded.

AWARD ON PERSONAL LEAVE OF ABSENCE

The last best offer of the Association concerning a personal day is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 7

RESIDENCY

The Association seeks a residency requirement which provides for a forty-five minute response time; currently, there is a fifteen mile radius requirement. The vast majority of the comparables are said to support the Association on this issue. The Association maintains that the City of Kalamazoo has a forty-five minute drive time requirement.

The City notes that the current residency requirement has existed for fifteen years, and allows officers to be involved with the region. The City is also concerned about the response time for officers. It is noted that the command officers live within fifteen miles. The City argues that four of the ten comparables lack a residency requirement and the rest require the officers to live within a relatively close area.

The Association offers as the basis for its residency proposal the belief that it would provide its members with more freedom of choice in regard to housing, and that it will assist the City in the hiring process. It is noted that a forty-five minute residency requirement would allow an officer to live near Lake Michigan.

The City contends that there has been no shortage of officers applying for Portage positions with the existing requirement. It also contends that response time is crucial for such units as the critical response unit. It is further noted that the residency requirement has been in the contract since the late 70's or the early 80's.

DISCUSSION OF RESIDENCY

A review of the comparables reveals that seven of the comparables would favor the Association proposal, and in particular, Kalamazoo County, the City of Kalamazoo and Kalamazoo Township. However, six of the comparables favor the Employer. Therefore, external comparability slightly favors the Association.

Section 9 (h) of the Act, however, would favor the Employer insofar as the current residency language has been in the contract for a considerable period of time.

The record fails to reveal that the City is being deprived of qualified candidates as the result of its residency requirement. Moreover, a strong reason for changing the residency requirement hasn't been established on this record: there is no indication that officers can't find affordable housing or decent schools for their children, or that they are otherwise being forced to live in undesirable conditions.

There is a suggestion that officers would be able to live near Lake Michigan under the Association's proposal. In City of Birmingham -and- IAFF (Glazer) the desire of firefighters to be closer to their boats in Oakland County was a factor in a residency issue. However, this record doesn't show how many officers, if any, would live near Lake Michigan if the residency requirements were changed.

As a result, I find the historical precedent of the parties as reflected in section 9 (h) to be the determinative reason for retaining the current contract language on residency.

After a review of the section 9 factors, it is concluded


that the last best offer of the Employer on residency should be awarded.

AWARD ON RESIDENCY

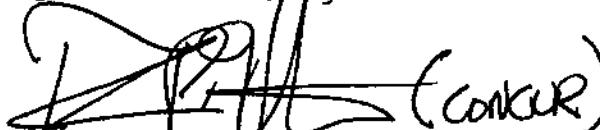
The last best offer of the Employer on residency is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 8

OVERTIME SCHEDULING

In its offer, the City proposes to fill unscheduled overtime with the existing shift, rather than offering overtime to the shift where the vacancy will occur. It is noted that the City had to pay two grievances where the supervisor was unable to call the appropriate officer on the next shift due to operational considerations.

The Association denies that there is any showing that the command officers in the two grievances were prevented by operational needs from calling the proper person. Further, it is

suggested that the Employer's use of the word "normally" in its offer could lead to problems and that this issue is best handled through negotiations.

DISCUSSION OF OVERTIME SCHEDULING

The City suggests that operational problems have, and could in the future, make it difficult to call the officer on the next shift to fill-in for unscheduled overtime. The Association contends that there shouldn't be a problem due to car phones.

There is nothing on the record to indicate that the City's proposal will negatively affect overtime equalization and seniority. It is maintained that the word "normally" in the City's proposal could create problems; however, a dispute arising under that word could be dealt with through the normal grievance process.


Absent a detrimental affect on the bargaining unit, and considering the operational gain to the Employer by allowing it to hold over officers as opposed to calling in officers from the next shift, this is the type of contract change which would normally be considered in collective bargaining under 9 (h) of Act 312. Further, the Association has achieved a potential dollar gain in the worker's compensation issue in this arbitration, which currently isn't offset by any deduction. As a result, section 9 (f) would favor the Employer on this issue.


After a careful consideration of the section 9 factors, the last best offer of the Employer on overtime scheduling should be awarded.

AWARD ON OVERTIME SCHEDULING

The last best offer of the City on overtime scheduling is awarded.


MARK J. GLAZER
Impartial Chairperson


MICHAEL F. WARD
Association Delegate

 (CONCUR)
THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 8

SHIFT DIFFERENTIAL

The Association seeks in this issue to introduce a 1% shift differential for officers starting work after noon but before 8:00 p.m., and a 2% shift differential for officers starting work between 8:00 p.m. and 6:00 a.m. It is emphasized that the City of Kalamazoo and Kalamazoo County both have shift differentials (Kalamazoo's applies to the 7:00 p.m. shift; Kalamazoo County deputies receive 2% if they work the afternoon shift and 1% if they work the midnight shift). The other comparables are also said to support the Association's offer.

The City contends that percentage-based shift differentials should be rejected because they are unpredictable, and therefore cannot be budgeted for. It is further argued that the comparables would not support a percentage-based shift differential

plan. The City also notes that the cost of the proposed plan would minimally be \$12,296.00 per year.

The City contends that only the Teamsters of the internal comparables provide a shift differential. It also argues that six of the external comparables do not provide a shift differential, and of those that do, only a fixed amount system is utilized.

DISCUSSION OF SHIFT DIFFERENTIAL

External comparability under section 9 (d) of the Act is essentially in balance, with six of the comparables lacking a shift differential and seven providing for one. Internal comparability is not a significant factor.

The percentage based system proposed by the Association runs counter to the historical bargaining between the parties, where the City costs out the entire value of the contract. The percentage system is somewhat open-ended. Therefore, section 9 (h) would not support the Association's proposal.

Finally, the overall compensation under 9 (f) would not require a percentage-based shift differential at this time.

After consideration of all of the section 9 factors, it is concluded that the last best offer of the City should be awarded.

AWARD ON SHIFT DIFFERENTIAL

The last best offer of the City on shift differential is awarded.



MARK J. GLAZER
Impartial Chairperson

Michael F Ward (Wassentony)

MICHAEL F. WARD
Association Delegate

Thomas P. Hustoles (Concur)

THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 9

COLLEGE INCENTIVE

The City seeks to delete the current college reimbursement program, which is applied at \$650.00 per year, and instead to replace it with a tuition reimbursement program. The current total cost of the program is \$13,000.00. The command officers have the same plan as the patrol officers; the firefighters are capped at \$500.00. The Portage officers rank fourth among the comparables.

It is the City's position that the current program merely compensates officers for past classes, without providing them with an incentive to take additional course work.

The Association asserts that officers are continuing to take classes and obtain advanced degrees under the current program, for self-advancement and in order to obtain promotions. It is emphasized that officers would lose 1.6% of their pay under the Employer's proposal. The Association contends that the City has knowingly hired officers with college classes. The internal

and external comparables are also said to support the Association's position.

DISCUSSION OF COLLEGE INCENTIVE

Internal comparability under 9 (d) supports the Association insofar as the command officers have the same program that the City seeks to eliminate for the patrol officers. Further, the firefighters have a form of the plan that the City seeks to eliminate.

Section 9 (f) would also favor the Association insofar as the current plan is part of the overall compensation provided to patrol officers, and is a plan that has been carefully costed out by the City. There isn't an equivalent gain to the Association, which would offset the potential loss of income under the City's plan.

Section 9 (h) supports the Association's position insofar as there is a long history of providing the current benefit to the bargaining unit. It would be expected that any change in this long practice would be the result of some equivalent gain by the bargaining unit.

After careful consideration of the section 9 factors, it is concluded that the last best offer of the Association on college incentive should be awarded.

AWARD ON COLLEGE INCENTIVE

The last best offer of the Association on college incentive is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

ASSOCIATION ISSUE 9

LIGHT DUTY WORK

The Association seeks new contract language which would require the City to provide light duty for an officer who is off work due to a non-duty related injury. This provision would become effective once the officer's sick leave had expired. It is emphasized by the Association that the City is only permitting officers on worker's compensation to engage in light duty. The Association also points to the two year medical leave language in the collective bargaining agreement and the facts of the recent Elton Thomas grievance.

The City argues that there isn't enough necessary work to require it to assign light duty tasks in non-duty related injury cases. It is further asserted that the police department has the same policy that is applied throughout the City. The City

also notes that sick employees are eligible for long-term disability insurance until they reach age 65.

Finally, the City argues that the cost of the Association's proposal is prohibitive because the regular work of the light duty employees would have to be filled on an overtime basis. The cost of one six month occurrence of light duty is said to be significant.

Five comparables are argued not to award light duty in non-worker's compensation cases; others are argued to have no mandatory policy and others are only said to provide light duty for a limited period of time.

DISCUSSION OF LIGHT DUTY WORK

Neither internal nor external comparability under 9 (d) supports the Association's proposal. Further, since there could be a significant cost to the City under the Association's plan, section 9 (f) would not support the proposal, absent a commensurate cost saving for the City.

Finally, the parties have agreed to the current provision on light duty work in the collective bargaining agreement. Pursuant to 9 (h), there isn't any existing trade which would balance the potential high cost of the Association's proposal.

After a review of the section 9 factors, it is concluded that the last best offer of the City on light duty work should be awarded.

AWARD ON LIGHT DUTY WORK

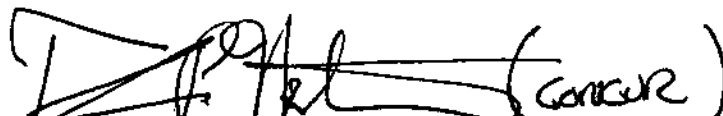
The last best offer of the City on light duty work is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

CITY ISSUE 10

PROMOTIONS

The City seeks to reduce the promotion eligibility requirement for detectives from three years to two years, and for sergeants from five years to four years. Additionally, the City proposes to change the promotional exam by weighing performance more over the oral and written examinations. The performance evaluation would change from 20 to 50 points, the written portion would be reduced by 25 points and the oral by 20 points.

The purpose of the City's proposal is to increase the eligibility pool and to allow new hires with experience the chance for promotions. Further, it is felt that job performance is a better indicator than test results.

The Association contends that there is no demonstrated need to change the current system. It is further suggested that per-

formance evaluations are less objective than tests.

DISCUSSION OF PROMOTIONS

The evidence reveals that the current group of supervisors are excellent: the Employer suspects that the pool of candidates could be improved, but it lacks empirical data to support this belief at this time. Therefore, it would not be expected under 9 (h) of the Act that a change would be made. Further, under 9 (c) it has not been established that the interest of the public will be necessarily furthered by the City's proposal.

After a review of the section 9 factors, it is concluded that the last best offer of the Association on promotions should be awarded.

AWARD ON PROMOTIONS

The last best offer of the Association on promotions is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

GENERAL CONSIDERATIONS FOR ECONOMIC OFFERS

DURATION OF THE CONTRACT

The Employer offers a three year contract from July 1, 1994 to June 30, 1997. The Association offers a two year contract from July 1, 1994 to June 30, 1996.

The City asserts that there was a three year contract from July 1, 1989 through June 30, 1992. The Association contends that during negotiations for this contract a three year agreement was never proposed, and that for the past twenty years there has never been a three year contract. The City maintains that due to the length of this Act 312 proceeding, it would be counter-productive to place the parties immediately back into negotiations.

Insofar as there has been either a complete history of two year contracts, including awards from Act 312 proceedings, or a predominate history of two year contracts, the bargaining history of the parties under 9 (h) of the Act would support a two year contract.

AWARD ON DURATION

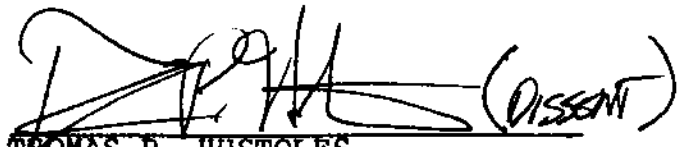
A two year contract is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

COLA

The Association seeks to continue COLA language dating from an Act 312 award from the 1970's. It is emphasized that each negotiation or Act 312 since the 70's has continued COLA language. The Association contends that it has paid to continue the COLA language found in the collective bargaining agreements.

The City believes that COLA creates a burdensome cost and operational situation. It maintains that COLA further deprives the City of the ability to make necessary budgetary forecasts. It is noted by the City that the last contract froze COLA, and that COLA only became applicable upon expiration of the contract. The City also argues that the internal and external comparables, other than the command officers, lack COLA.

Again, 9 (h) of Act 312 would support the continuation of COLA. There has been a long standing practice in the collective bargaining agreements and in Act 312 proceedings wherein COLA has been continued. Absent a mutually agreed upon decision by the parties to delete COLA in exchange for some other gain, it would not be expected in typical collective bargaining that the Association would relinquish COLA. Therefore, COLA should continue under the circumstances of this case.

AWARD ON COLA


COLA is continued as sought by the Association.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

PENSIONS

The Association seeks to adopt a percentage method for payment of the money purchase pension plan, which would be based upon gross income; the City seeks to continue figuring the money purchase plan based upon a fixed amount in relation to the base salary.

The Association requests 13% of gross pay for 1994 and 13.5% of gross pay for 1995. The City offers to increase its pension contribution by .561% of base salary in 1994 and .877% of base salary in 1995. This would result in a figure that is something less than the 13.8% of the base salary that is proposed under a three year plan, with a .879% pension improvement in the third year. It is emphasized by the City that there are only two comparable jurisdictions which employ a money purchase plan: Kala-

mazoo County and Kalamazoo Township. The City asserts that these jurisdictions are paying 11.9% and 12.9% respectively.

The City agrees that the Portage officers receive less pension benefits than the command officers and the firefighters, but it argues that the patrol officers have sought over the years higher wages in lieu of pensions, and that few officers have retired from the bargaining unit.

The Association asserts that Kalamazoo Township paid 12.5% of gross pay in 1994 for pensions and 13% in 1995. Kalamazoo County is said to pay 12.9% of gross pay in both contract years. The Association also argues that internally police lieutenants receive 15.49% of the base and sergeants receive 16.63% of the base. It is finally noted that firefighters receive 14.91% of the base.

DISCUSSION OF PENSIONS

Exhibit 59 B suggests that Kalamazoo Township deducts longevity payments from the gross in computing its 13% pension payment; the Association doesn't make a similar proposal. Therefore, the Association proposals of 13% and 13.5% of the gross exceeds the external comparables of Kalamazoo Township and Kalamazoo County.

Internally, the fire department and the police command have better pension benefits: the Employer suggests that this is the quid pro quo for superior wages for the patrol officers.

Pursuant to 9 (f), the overall package awarded to the Association, and in particular wages (to be discussed later) would

not support its offer on pensions. Further, the external comparables pursuant to 9 (d) would not support the Association sufficiently in light of the pension improvements that have been offered by the Employer. Finally, under 9 (h) the Association has shown a historic preference for wages over pension benefits; therefore, the wage offer in this proceeding would have a priority over pensions, absent a showing that the Association had a particular pension concern at this time.

Most importantly, the Employer has closed part of the gap with the external and internal comparables with its pension offer. It hasn't closed it entirely, but the differential in pensions between the Association and internal and external comparables is a factor in favor of the Association to be considered under 9 (h) and 9 (f) when wages are viewed.

After consideration of the section 9 factors, it is concluded that the last best offer of the Employer on pensions should be awarded.

AWARD ON PENSIONS

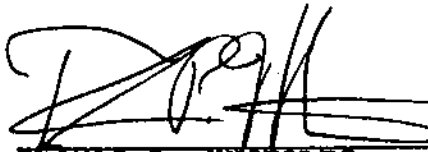
The last best offer of the Employer on pensions for two years is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate


THOMAS P. HUSTOLES
Employer Delegate

(CONGUE)
(HUSTOLES) TPA

WAGES

The City offers a 0.978% wage increase for 1994 coupled with an already received 1.261% COLA payment for a total of 2.239%. In 1995 it offers, based upon projected COLA payments, 2.124%.

The Association requests 2% in 1994 plus COLA. Based upon the Employer's COLA figures, this equates to 3.261%. The Association, however, costs the wage increase in 1994 at 2.7%.

For 1995, the Association asks for 2.5%. Under the Employer's figures, this is projected at 3.891%. Under the Association's figures, this is projected to be 3.2%.

The Association notes that the City of Kalamazoo in 1994 received 3.5%, Kalamazoo Township obtained 3.25% and the Sheriff's Department in Kalamazoo County 3%. In 1995 the Association contends that Kalamazoo received 3.25%, Kalamazoo Township received 3.25% and Kalamazoo County received 3.5%. It is further emphasized that the firefighters received 4% in wages in 1994 and 4.5% in 1995. The Association also notes that in 1995 the average increase for ten comparables was 3.23%.

The City asserts that the last increases in wages for eleven of the comparables in 1995 was 2.95%.

DISCUSSION OF WAGES

The parties disagree concerning the data; however, even if the City's 1995 data is accepted, the average increase for the comparables in that year was 2.95% as opposed to the City's 2.124% offer. Therefore, external comparability would support the Association in 1995.

In 1994, the total 2.8% package offered by the City, including pensions, is lower than the package offered to the firefighters, the TPOA and the teamsters. Consequently, internal comparability would support the Association in 1994.

The Association notes that the firefighters received 4% in wages in 1994 and 4.5% in 1995. Additionally, the firefighters received other benefits totalling .185% in 1994 and 1.156% in 1995. The City contends that this was in exchange for permitting the deputy chief to leave the bargaining unit and for allowing a forty hour week. Further, the City contends that firefighters needed to improve their relative position, since they are in the middle of the group of comparables as opposed to the patrol officers, who are at the top.

It is unnecessary to quantify the value of the firefighters concessions to the City for purposes of this proceeding. That is because it has been agreed that the patrol officers are willing to accept lower pensions in relation to the firefighters in order to achieve an advantage in wages.

Without the increase sought by the Association, the historic relationship between the firefighters and the patrol officers would become unbalanced in terms of wages.

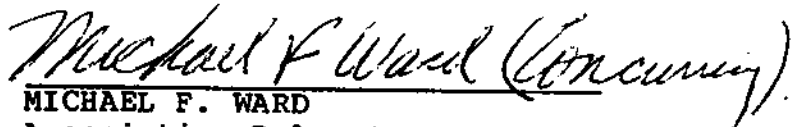
Further, under 9 (h) and 9 (f) of the Act the award on pensions in this proceeding anticipated an improvement in wages. A drop in the relative position of the patrol officers in wages, without the patrol officers achieving pension parity with the external comparables, would not be a result that would be expected in collective bargaining. Further, the overall rank of this unit concerning wages has primarily been the result of collective bargaining. There hasn't been a compelling reason established in 312 for lowering the relative position of the patrol officers in wages.

AWARD ON WAGES

The Association's two year wage last best offer is awarded.



MARK J. GLAZER
Impartial Chairperson



MICHAEL F. WARD
Association Delegate



THOMAS P. HUSTOLES
Employer Delegate

Dated: March 28, 1996