

Mich Police - Fire Arb
3/17/76

ARB

Riverview, City of

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF RIVERVIEW, MICHIGAN

-and-

SEAWAY LODGE NO. 154,
FRATERNAL ORDER OF POLICE

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Michigan State University

SUPPLEMENTAL FINDINGS OF FACT, OPINION AND AWARD
Pursuant to Act 312, Public Acts of 1969, As Amended

ARBITRATION PANEL

Leon J. Herman, Impartial Chairman
David Couture, City Designee
Howard J. Draft, Lodge Designee

Issued March 17, 1976

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On April 9, 1974 the undersigned was appointed by mutual agreement as Impartial Chairman of an Arbitration Panel established pursuant to Act 312 of Public Acts of 1969, as amended, to hear and resolve the issues pending between the parties relative to a new collective bargaining agreement. David Couture was named as the City's designee to the Panel and Howard J. Draft was named by the Lodge as its designee. Hearings were held, testimony taken and on December 13, 1974 Findings of Fact, an Opinion and the unanimous Award of the Panel were issued and distributed.

Appeal was had by the Lodge to the Circuit Court for the County of Wayne. In a hearing before Honorable James Montante, Judge of the Third Judicial District, on July 30, 1975 it was stipulated between the parties that the matter be resubmitted to the Panel with written final offers to be presented by both parties. The Panel was then to review the matter and issue a supplemental and possibly revised award, with the further understanding that such supplemental award would be final and binding upon both parties as provided in the statute.

Accordingly, the parties met on August 9, 1975 and agreed upon a modus operandi. Final last offers were to be exchanged on September 1st, modifications if desired by September 8th, and supporting briefs by September 29th. Conferences were held on September 21, December 18, 1975, January 19, March 15 and 17, 1976.

Extensions beyond the specified dates were granted as required by the parties. Both parties have stipulated that the Panel may have whatever time be necessary to consider the positions of the parties and make its report.

In its December, 1974 award the Panel presented a revised collective bargaining agreement. The Lodge requested that the basic 1971-73 agreement remain as written, except as it may be modified by this award.

The Panel has concluded that the agreement newly proposed, except as herein modified, better meets the needs of the parties and shall be permitted to stand.

Wages

The Lodge has made proposals for a salary scale for patrolman, uniform sergeant, detective/detective Youth Bureau, detective sergeant, liaison officer and probationer/new employee. The City proposes that only the classifications of patrolman and sergeant be listed for members of the bargaining unit. There is at present no liaison officer and no detective/detective Youth Bureau. The City has stated that it has no present intention to reinstate those classifications. It further rejects the sub-classifications of uniform sergeant and detective sergeant because both subclassifications are paid at the same rate. The only classifications within this unit currently in effect are patrolman, sergeant and probationer.

The Chairman agrees with the City that it has the sole right to determine whether a vacant classification is to be

filled. In view of the fact that the City has stated its intent not to revive the vacant classifications there is no point in establishing a salary range to cover them. Accordingly, the wage proposal by the Panel would cover only patrolman, sergeant and probationer. Wages for reinstated classifications should be negotiated when and if the classifications are revived.

The prior Opinion established a three-year agreement commencing July 1, 1973. The patrolman rate was set at \$14,085 for the first year, \$14,900 for the second year and \$15,850 for the third year. The rate for sergeant was \$1,000 higher in each year. Probationary patrolmen were to be paid \$11,817, \$12,632 and \$13,632, respectively, in the first, second and third years of the agreement. The City has already instituted these proposed salaries retroactive to July 1, 1973.

The Lodge now proposes rates for patrolmen over three years of \$14,150, \$15,100 and \$16,100. It asks a rate for sergeant of \$15,150, \$16,100 and \$17,100 for uniform and \$15,350, \$16,300 and \$17,300 for detective sergeant.

The Panel unanimously agrees that the rates as previously established and now in effect are fair and reasonable and should be continued for the life of the agreement.

Holidays

In the prior award the Panel allowed 11 holidays per year, effective July 1, 1973, with Columbus Day to be added as a 12th holiday on July 1, 1975. The Lodge now requests that the 12th holiday be added in the 1974-75 calendar year.

The Panel has proposed a 12th holiday beginning with 1975-76.

The Panel believes that its prior conclusion was fair and reasonable and shall be continued without change.

Manpower

The Lodge withdraws its demand and requests that manpower requirements remain as set out in the 1971-73 agreement. The City proposes that ARTICLE XIX, Section 4 be retained in its current form.

The Panel agrees that the manpower provisions of ARTICLE XIX, Section 4 shall remain as provided in the 1974 agreement, except that the second paragraph thereof shall read:

The sergeant and/or senior patrolman may work alone in a vehicle, provided that there is at least one two-man patrol unit working during the period between sunset and sunrise.

Mr. Draft dissents.

Sick Leave

The Lodge requests that sick leave credit be accumulated at the rate of one and one-half days per month for each month of service. The present rate of accumulation is one day per month.

The Panel unanimously agrees that the sick leave accumulation of one day per month is fair and reasonable and should be continued.

Shift Differential

The Panel in its December decision provided in ARTICLE IX, Section 2 that a flat rate per annum be paid semi-annually

to employees in lieu of a shift premium calculated in cents per hour. The payment was to be made to officers working rotating schedules.

The Lodge requests that a shift premium of \$.10 per hour for the afternoon shift and \$.15 for the midnight shift be paid rather than the formula now in use, to be effective January 1, 1975 and to be increased by \$.05 per hour as of January 1, 1976.

The Panel, Mr. Couture dissenting, agrees with the Lodge that a shift premium of \$.10 per hour for the afternoon shift and \$.15 per hour for the midnight shift be paid to all employees for the hours in which those shifts are worked. The payments are to commence as to each employee following the end of the six-month period for which a bonus has been allowed and paid.

Personal Business Days

The Lodge requests three personal leave days per year, to be taken upon 24 hours' notice to the employer. They may be taken at the employee's option and for any reason.

ARTICLE XI, Section 3 of the December agreement provides that an employee using five or less sick days between July 1 and June 30 in any year shall be entitled to five bonus leave days, not chargeable against his regular sick or vacation accrual, to be used in the following fiscal year.

The Panel believes that the December provision for bonus

leave days allows the employee more than adequate personal leave time. The request for personal business days is denied.

Court Time

ARTICLE XVI of the December agreement allows a minimum of two hours at time and one-half for court time. The Lodge contends that the average court time takes a minimum of three hours and asks that three hours be allowed.

The Panel unanimously rejects the request on the ground that an officer is entitled to payment for all time he spends in a court or administrative agency, with a minimum of two hours. It is recommended by the Panel, however, that the provision for meals in the second paragraph of ARTICLE XVI be amended to read that "Meals shall be paid at \$2.25 per day", rather than the \$2.00 which appears in the December agreement. This payment shall be prospective only.

Hospitalization

The Lodge requests that a dental plan be instituted as provided by Blue Cross-Blue Shield, to be fully financed by the City. It is alleged that eight downriver departments have such a plan. The City strongly objects on the ground that no city in the downriver area has instituted a dental plan and that the cost is too great a strain upon its current financial position.

The parties are about to enter into negotiations for a new collective bargaining agreement to be effective as of July 1, 1976. The Panel unanimously rejects the Lodge's request for

a dental plan without comment as to its value or advisability. It is suggested that the matter be deferred to the 1976 contract negotiations. As the Lodge points out in its memorandum, such a plan could not be effectuated in any event until July, 1976. The Lodge loses nothing by deferment to the next agreement.

Call-In Time

The Lodge has proposed that a new Section 3 be added to ARTICLE XIV to read as follows:

When directed by the Chief of Police to stand by for duty, all officers shall be compensated for the first two (2) hours at straight time rate. If required under this provision to stand by beyond two (2) hours, the rate for the additional time shall be at time and one-half.

The Panel feels that there is considerable justice in the Lodge's position. If an employee is directed to stand by outside of regular working hours, he is subject to the call and direction of his superior officer. For purposes of this agreement, and in view of the short time remaining before a new contract will take effect, the Panel unanimously recommends that a stand-by allowance of two hours at straight time pay be included in the agreement.

Gun Allowance

The Lodge requests a gun allowance of \$160 in 1973/74, \$320 in 1974/75. The City has rejected the proposal.

Unlike a number of other municipal police departments, the police in this unit are not required to carry their weapons when they are off duty. A gun allowance in such case would

represent nothing more than an increase in pay without compensating service on the part of the employees. The Panel, Mr. Draft dissenting, rejects the proposal.

Cost of Living Allowance

The Lodge has proposed that a new cost of living agreement be incorporated tied to the 1967 Consumer Price Index as 100, with a \$.01 increase for every .35 change in the Index to a maximum cap of \$.50. The City has rejected the proposal.

The Panel also rejects the proposal, not because of any inherent objection to the inclusion of a cost of living provision but because at this late hour it were best to defer the matter to the succeeding contract negotiations.

Pension

The present City pension plan is incorporated in the City Charter, which the City alleges it has no authority to renegotiate. It therefore refuses to agree to an improved pension plan as demanded by the Lodge.

The problem facing this Panel is that a pension plan is a complex program requiring intensive study and actuarial contribution. This Panel is in no position, in the time available to it, to consider such a proposal. In any event, a series of hearings would have to be held to study and modify the current plan. Again, it seems to this Panel that the wisest procedure would be to deny the request and leave the parties to negotiation of the issue during the five months it has available before the

current agreement would expire. Accordingly, without the expression of any opinion as to the propriety of the Lodge's proposal, the request is denied.

Copies of Agreement

The Lodge requests that the City provide each member of the unit with a copy of the agreement at City expense, plus one copy to the Lodge. This provision is already contained under the title "GENERAL", in Section 2.

Vacations

The Lodge has requested a vacation program which, except for Sub-Section 6 of Section 1 is identical with that contained in ARTICLE X of the December, 1974 agreement. That Sub-Section reads that: "After vacations are listed, they may not be changed without consent of the chief of police." No mention is made of the Sub-Section in the Lodge's proposal. The Panel unanimously directs that ARTICLE X of the December, 1974 agreement be continued without change.

Sick Leave

With respect to bonus days, the Lodge suggests that there be no restrictions on the use of bonus days to which an employee is entitled. There is no restriction shown in the December, 1974 agreement. It is further proposed that the unit member give the chief 72 hours' notice of intent to use a bonus day. The December, 1974 agreement provides for 30 days' notice.

The Panel proposes that bonus days be granted as

requested provided 30 days' notice be given. A unit member may give the chief 72 hours' notice of intent to use a bonus day, subject to the chief's approval, which shall not be withheld if it can be allowed without creating overtime cost to the Department.

Agency Shop

The Lodge proposes that a fourth paragraph be added to ARTICLE IV, "DUES AND DEDUCTIONS". That provision is already contained in ARTICLE IV of the December, 1974 agreement. It has been accepted by the City and in its reply brief by the Lodge as well. It is therefore no longer an issue to be determined.

Promotions

The Lodge has proposed a revised departmental promotion and assignment formula which the Panel has carefully studied. The Panel is of the opinion that the promotion formula, as contained in ARTICLES XXIV and XXV of the December, 1974 agreement, allows the employees equivalent advantages without minimizing the City's right to improve professional standards of the department. The Panel therefore directs that the promotional provisions contained in the December, 1974 agreement be continued, except that the date "January 1, 1969" contained in ARTICLE XXV, Section 14 be changed to "March 1, 1969". This will result in grandfathering all except two patrolmen now employed.

The Panel particularly rejects the Lodge proposal that a unit member transferred from the Uniform Division to the

Plainclothes Division forfeit all rights for testing to a higher classification within the Division from which he was transferred, and vice versa. Such a provision would establish a new set of classifications, determined by whether the employee works in Uniform or Plainclothes. In a department as small as this such a provision would be highly detrimental to the efficient operation of the force and would be unfair to affected employees. The request is unanimously denied by the Panel.

The same disposition was made of a further request that only members of the Uniform Division may take promotional examinations for vacancies in that Division, and only members of the Plainclothes Division may take promotional examinations for vacancies in their Division. The Panel sees no reason why there should be no crossover between Uniform and Plainclothes, nor does it see any justification for the proposed distinction based solely upon uniform. It is a fact that in this department uniformed patrolmen are often directed to work in Plainclothes. The effect of the Lodge's proposal would be far more confusing than any benefit it could possibly produce.

Grievance Procedure

It is proposed by the Lodge that step 3 of the grievance procedure be eliminated or modified, since it provides for little more than a recapitulation of what has already been argued. It is suggested instead that the matter be brought for hearing before the City Council.

The Panel agrees with the Lodge that one step of the grievance procedure could well be eliminated. It does not agree that any appeal should be taken to the City Council. The members of the department and the City Manager are well able to process their differences without appeal to a body which is not necessarily qualified to determine the merits of the dispute.

The Panel unanimously further directs that Section 1 of ARTICLE XXI of the December, 1974 agreement be amended to excise the second paragraph of Section 1, which provides that a unit member may present a grievance to the City without Lodge intervention. In ARTICLE III of the December, 1974 agreement "The City recognizes the Lodge as the sole and exclusive bargaining representative of the unit." As such representative the Lodge should have sole authority to determine which grievances are meritorious and warrant presentation to the City. It may not be left to individual officers.

The provisions in ARTICLE XXI for an Appeal Board is rejected by the City as too cumbersome. The Panel agrees and directs that ARTICLE XXI be modified to substitute a meeting of three Union members and three City officials as the last step preliminary to arbitration. *Appeal to arbitration shall be held within seven (7) work days thereafter.* *Q10*
ARTICLE XXI, Section 1 at Step 1 is amended by changing "five (5) days" wherever it appears therein to "seven (7) days".

Employee Bill of Rights

The Lodge has proposed language incorporating a Bill

of Rights for the protection of employees against unfair treatment. The Panel has approved the proposed Bill of Rights for incorporation in the agreement, with some modifications. The proposed Section 3, with respect to polygraph examinations, is deleted because the matter is substantially covered by State statute. The proposed Section 4 is considered to be too wide ranging to the point where the City could lose control of the matter. That proposed Section has been amended by the Panel.

The Panel directs that the following Bill of Rights be included in the collective bargaining agreement:

EMPLOYEE BILL OF RIGHTS

Section 1:

- (a) No employee shall be reprimanded or disciplined except for just cause.
- (b) Whenever an employee is alleged to have violated a rule or regulation of the department the charge, if any, shall be reduced to writing, and the employee shall have seven work days to respond to said charges.
- (c) If an employee be suspended he shall be promptly charged in writing specifying the exact violation or violations.
- (d) In every case he shall have the right to be represented by a Lodge representative before the discipline is imposed.

Section 2:

Whenever any complaint or charge shall be brought against an employee from external or internal sources which focuses the investigation upon an employee subject to this agreement, or under such circumstances that

if the facts alleged be true, the employee would be guilty of the commission of a crime or offense under the State or Federal law, or a traffic violation involving death or serious injury of a citizen, the following procedure shall be established for the obtaining of statements in connection with said complaint, and the employee shall specifically have the right to representation by the Lodge at every stage of the proceedings:

- (1) The employee shall be given a summary of the charges against him.
- (2) Before he is interrogated, or required to make any statement, he shall be allowed the opportunity to obtain the advice of counsel.
- (3) Any order to make a statement shall be a written order, the violation of which would constitute grounds for disciplinary action by the Department.

Nothing in the foregoing procedure shall limit the right of the Department to use such statement for Department disciplinary purposes.

The summary referred to in Paragraph (1) above shall set forth the name of the complainant, the time, date, and place at which the alleged offense or incident occurred, and a description of the offense or incident.

Section 3:


The City will provide its police officers with all protection and indemnity which its insurance carrier has agreed to provide.

Shift Scheduling

The Lodge proposes that shift scheduling be continued as provided in the 1971 agreement. The City asked that it retain the right to establish shifts within the hours shown in ARTICLE IX, Section 1 of the December, 1974 agreement.

The Panel agrees that the City position is correctly taken and directs that starting hours of shifts shall be within the periods stated in ARTICLE IX, Section 1 of the December, 1974 agreement.

The Panel further directs that plainclothesmen work an eight-hour shift, with the day shift beginning at 9:00 a.m., and that they be paid for a full eight hours, including lunch time. It is further directed that the sergeant and patrolmen assigned by supervision to Plainclothes ^{investigative} duty for periods of one week or more shall receive extra compensation for the time so assigned at the rate of \$700 per annum, retroactive to July 1, 1975. Mr. Couture dissents from this latter provision.



Step-Up Pay

The Lodge asks that a patrolman appointed to a higher position on a step-up basis for a short period of time should be compensated at the higher rate for the time spent in the job.

This request has been substantially incorporated in ARTICLE VII, Section 5 of the December, 1974 agreement and is hereby reapproved by the Panel. Step-up pay is similarly extended to a sergeant acting as lieutenant. Mr. Couture dissents to the provision as to sergeant.

Tuition Reimbursement

The Lodge asks that employees attending schools or in-service training classes be compensated at time and one-half if the training takes place in off-duty hours.

The Panel rejects the proposal and directs that ARTICLE XIX, Sections 7 and 8, be continued as is, except that all time devoted to out-of-town schooling be paid on a portal to portal basis. This provision shall not be made retroactive. Mr. Couture dissents to the modification.

Management Rights

The Lodge objects to the revised Management Rights clause contained in ARTICLE XXIII of the December, 1974 agreement, specifying particularly that it takes from the Lodge the right to negotiate wage rates.

The Panel has reexamined the Management Rights clause in ARTICLE XXIII and finds no reason to make any change therein. It gives the management the right "to establish wage rates for any new or changed classifications, subject to the grievance procedure", but this is a right which management always has. Any new classification must be compensated in some manner. The normal procedure is that the employer fixes the rate for any new job and the union grieves if it be dissatisfied. The Lodge has suffered no loss by this Management Rights clause and as far as the Panel is concerned, it is to continue without change.

Probationary Employee Rights

The Lodge protests that ARTICLE XVII, Section 4, does not give a probationary employee sufficient rights. It demands that no probationary employee be discharged without a fair hearing.

The Panel directs that ARTICLE XVII, Section 4 be continued without change, except that provision be made therein that a probationary employee shall be given a fair hearing before discharge.

It should be further provided that all probationary employees are entitled to all benefits of the agreement from and after the date of the award.

Probationary salaries shown in ARTICLE VIII, Section 1 of the December agreement are starting rates only.

Salaries for probationary employees shall be increased to the following after one year:

	<u>12 months</u>	<u>24 months</u>	<u>36 months</u>
1973-4	\$12,573	\$13,329	\$14,085
1974-5	13,388	14,144	14,900
1975-6	14,371	15,110	15,850

Miscellaneous

ARTICLE XXV, Section 15 is amended by substituting the words "plainclothes" for "Detective Bureau".

ARTICLE II, COVERAGE, of the December agreement is amended by substituting the words "Plainclothes" for "Detective".

ARTICLE XVIII, Section 3 of the December agreement is amended by adding "except that straight time shall be paid after eight hours break when starting a new shift schedule."

There are presently a sergeant and two plainclothes

patrolmen assigned to what was formerly known as the Detective Bureau. They are not, as the Lodge contends, junior patrolmen. They currently stand second and fourth on the seniority list. The Division and its members shall continue at the discretion of the chief.

Any future openings in the Plainclothes Division shall be posted for bid. Selection shall be made on the basis of ability. All other things being equal, consideration shall be given to seniority in making the selection.

The Lodge has, in conclusion, presented a number of further objections in its reply brief and in subsequent documents. It protests that ARTICLE V, BARGAINING ACTIVITIES, has been amended to the point where time off without loss of pay for Lodge representatives to process grievances has been eliminated. The City declares that this was not its intention. The Panel therefore unanimously directs that the Grievance Chairman be allowed time off, without loss of pay, to process grievances.

The Lodge complains that the word "wholly" was improperly inserted in ARTICLE XI, Section 2. The Panel agrees and directs that the word "wholly" be eliminated. The sentence would then read that " 'Sick Leave' shall be defined as a non-work or non-duty connected illness or injury which disables the unit member

from performing his duties within the Riverview Police Department."

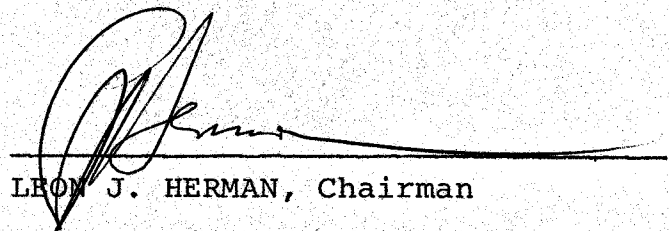
It is objected that the word "per" was replaced with the word "for" in ARTICLE XI, Section 4, so that a unit member is allotted three days with pay "for funeral for an immediate member of his family" instead of "per funeral". The Panel believes that the current provision is fair and should be continued.

The Lodge correctly points out that the word "not" was eliminated from the first sentence of the second paragraph of ARTICLE XI, Section 4. The Panel ascribes this deletion to typographical error and asks that it be forgiven. The sentence should read "Funeral leave as prescribed herein shall not be deducted from the sick leave or personal leave days."

If there be any matter mentioned in the various briefs and reply briefs which has not been specifically discussed, the Panel wishes to assure the parties that it has carefully considered everything which was presented to it and believes that it has fully covered all proposals. The Chairman calls attention in particular to the charge that certain matters were passed upon and approved by the Panel without prior notice to the Lodge. The Chairman states unequivocally that all matters and issues which were not discussed during the formal hearings were, as far as the Chairman was informed, presented to the parties and their positions

brought back for determination by the Panel. No decision was made on any matter until an opportunity was given to each Panel member to return to his constituents for discussion and recommendation thereon.

To avoid any further protest that the parties were not properly informed as to the matters decided upon by this Panel, the Chairman sent copies hereof in draft form to his co-members on the Panel and to the representatives of each party and allowed them 14 calendar days from the date of mailing to offer any comment or proposal which they felt was relevant. Following such 14-day period, and upon receipt of various proposals, the Panel met and executed a final Opinion and Award incorporating these supplemental findings, with such modifications proposed by the various representatives as it saw fit to adopt. Except as hereby expressly modified, it is the intent of the Panel that the Collective Bargaining Agreement appended to the December 13, 1974 Findings of Fact, Opinion and Award is to be continued without modification.



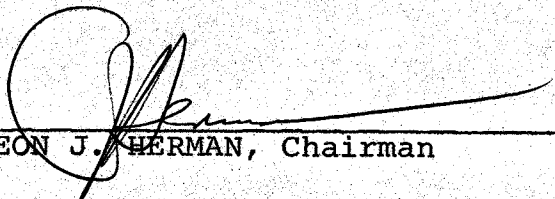
LEON J. HERMAN, Chairman

Southfield, Michigan
March 17, 1976

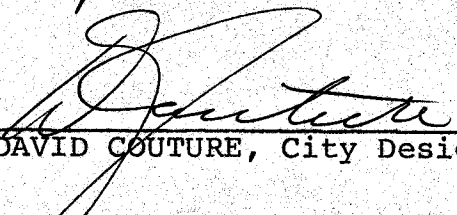
A W A R D

The Panel of Arbitrators herein, unanimously or by majority vote as indicated on the attached Supplemental Findings of Fact and Opinion, do award as follows:

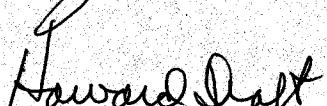
The parties are directed to execute the proposed collective bargaining agreement incorporated in the Panel's Findings of Fact, Opinion and Award issued December 13, 1974, as amended by the Supplemental Findings of Fact, Opinion and Award attached hereto.



LEON J. HERMAN, Chairman



DAVID COUTURE, City Designee



HOWARD DRAFT, Lodge Designee

Southfield, Michigan
March 17, 1976