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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION
(Public Acts of 1969, As Amended)

In the Matter of the Arbitration
Between:

ST. CLAIR SHORES COMMAND OFFICERS
ASSOCIATION

-and-

CITY OF ST. CLAIR SHORES

George Roumell /

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
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ARBITRATION PANEL'S FINDINGS OF
FACTS, OPINION, AND ORDER

APPEARANCES:

FOR THE CITY OF
ST. CLAIR SHORES:

Robert M. Fraser, Esq.

FOR THE ST. CLAIR SHORES
COMMAND OFFICERS ASSOCIATION:

Bernard A. Friedman, Esq.

The previous collective bargaining agreement between the St. Clair Shores Command Officers Association which consists of command officers at the rank of Sergeant and Lieutenants and the City of St. Clair Shores expired on June 30, 1976.

The parties could not reach agreement and, therefore, invoked the procedures of Act 312 of Public Acts of 1969, as amended. The parties were able to reach agreement on most issues, including all economic issues. Therefore, this panel has been convened for the purposes of resolving five (5) non-economic issues.

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

Roumell, George T.

St. Clair Shores, City of

The non-economic issues are as follows:

1. Transferred to permanent vacancies and newly created positions;
2. Temporary transfers;
3. Involuntary transfers;
4. Modifications in grievance procedure; and
5. The conversion of vacation time into sick time.

ISSUE OF TRANSFERS

The central issue separating the parties revolves around the first three issues set forth above, namely, the issue of transfer from job to job within the bargaining unit. This involves transfer to permanent vacancies and newly created positions, temporary transfers and involuntary transfers.

The inability of the parties to settle the issues emanates from the fact that the bargaining unit consists of Command Officers of the St. Clair Shores Police Department having either the rank of Lieutenant or Sergeant. Under Michigan law, they are permitted to be organized and recognized for the purposes of collective bargaining. Yet, there is no question that they are management personnel and the City treats them as such. Therefore, the City wishes to be able to assign the Command Officers who are supervisors in any manner desired, consistent with the efficient operation of the Department.

The situation becomes more complex when one notes that a number of the officers have been in their positions for some time and do not wish to change jobs. This point was highlighted by an Arbitration Opinion and Award dated December 16, 1977, wherein on the

existing contract, Arbitrator Julian A. Cook held that a transfer of a certain Sergeant from the Juvenile Bureau did not violate the contract as there was no prohibition against the transfer. In that case, the Sergeant involved had been assigned to the Juvenile Bureau for some ten years.

The issue becomes more acute when one notes that the detectives in the Department are classified as Detective Sergeants. They are, therefore, Command Officers. Yet, they have developed skills geared to detective work and, therefore, the sergeants involved do not wish to be transferred to other divisions of the Department. The Department is organized into a Juvenile Bureau, Investigation-Detective Bureau, Road Patrol, Traffic Division and Crime Prevention. It is the resistance by the officers from being transferred between the divisions that causes the dispute here.

On the other hand, the Department wishes to be able to transfer the officers because they are supervision and because this Department believes that the transferring of the officers would benefit the Department in that each officer involved in the transfer would get a broader experience in the Department's operations. The Department points out that when officers are seeking promotions and are promoted the broader experience would be beneficial in assuming more responsibilities as higher ranking Command Officers. The response of the officers is that there are officers who do not wish to take further promotional exams and thus this argument, according to the Union is not necessarily valid. ^{1/}

^{1/} See discussion at pp. 9-14 of Hearing Transcript.

If this was a private sector case, there is no question that the City's position would prevail for supervisors in the private sector are not permitted by law to organize and it is common to transfer supervisors at will. The question here is whether in the public sector in Michigan where supervisors can be organized there should be a limitation on the right to transfer supervision.

The problem here is that the panel is bound to base its findings and opinions and order on certain criteria as set forth in Section 9 of the Act, MSA 17.455 (39), MCLA 423.239. Subsection (d) seemed to be the most applicable here and provides as follows:

"(d) Comparison of the 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 employees generally:

- (i) In public employment in comparable communities.
- (ii) In private employment in comparable communities."

In addition, Section 12 of the Act, MSA 17.455 (42), MCLA 423.242, provides the "basis for review and effect on the order" in part provides that an order may be set aside if it "is unsupported by competent, material and substantial evidence on the whole record;". Herein lies the problem. The Chairman of the panel understands the concern of the Command Officers. The Chairman also understands the concern of the Department to give its officers broad experience and to be able to manage the Department by assigning the Command Officers to the Department where they are needed.

As the Chairman views the record, he finds no comparables as to how other Police Departments in other cities operate in regard to the involuntary transfer of Command Officers. Without a record of such comparables, the Chairman, to change the existing contract language to prohibit involuntary transfer for departmental needs, would be rendering an award not based on "substantial evidence on the whole record" as required by the statute. Thus, the Chairman had no authority to propose a change in the existing language. Until there is substantial evidence on record supporting the change in the contract language, the Chairman is constrained to adopt the City's position.

The only thing the Chairman can do is to agree to a provision as to involuntary transfers that would at least give the officer a chance to discuss the matter with the Chief of Police prior to the transfer. This offers the officers some protection and is consistent with the record.

On the other hand, in the matter of bidding for permanent and newly created vacancies, there is language in the Police Officers contract with the City of St. Clair Shores that does provide for a transfer review board. There is also a provision for temporary transfers not to exceed 45 days. Though the record did not indicate the experience in other communities, the Chairman would conclude that it would be proper to consider the comparables within the City and the Police Department itself. Having done this, a majority of the panel (the Chairman and the City Delegate) will adopt language and an order that

reflects views expressed herein as to involuntary transfers and also as to bidding for permanent or newly created positions as well as the Department's right to make temporary transfers.

The Delegate of the Command Officers dissents.

MODIFICATION OF THE GRIEVANCE PROCEDURE

The problem in the grievance procedure is really twofold. The Command Officers are concerned about the failure of the City to answer grievances in that if a matter goes to arbitration, with the failure of answers, the Command Officers may be faced with evidence neverbefore presented. As to the grievance procedure, the parties are not in an advocate position. Both the City and the Command Officers recognize the problem and apparently are willing to allow the panel to adopt language concerning same.

This is what can be done, consistent with language that is usually found in collective bargaining agreements. The grievance procedure should have the following clauses in it:

(a) If the City's representative does not answer at any step within the time limits set forth herein or as mutually extended by the parties in writing, the grievance will be moved automatically to the next step in the grievance procedure.

(b) The Arbitrator shall not consider any evidence submitted by either party which was not produced in the grievance procedure unless such evidence has not been known to the party submitting the proposed new evidence.

Both of these clauses will answer the objections of the Command Officers to the present grievance procedure.

CONVERSION OF VACATION TIME INTO SICK TIME

This issue centers around the proposition that Police Officers in their contract are able to convert their vacation time each year into an equal amount of sick time. The Command Officers ask for parity with the Police Officers.

There is a provision in the contract that now provides that Common Officers receive longevity days. It would seem to be more in keeping with the intention of the parties and a point that was very carefully discussed at the panel meeting that instead of giving the Common Officers the same benefit that the Police Officers get, that the longevity days instead could be converted to sick time.

Therefore, the order of the panel will be that the following language be included in the contract:

"Command Officers may convert their longevity days earned each year into an equal amount of sick time. This shall be made in writing prior to the end of the calendar year."

ORDERS OF PANEL

The following language is hereby ordered to be inserted in the parties contract:

Transfers

(A) 1. In the event of vacancies or newly created positions in the classification of Sergeant or Lieutenant which are planned to be filled by transfer of personnel, the Association shall be advised in writing of the vacancies at least twenty-eight (28) calendar days prior to filling such vacancies. The Employees shall have twenty-eight (28) calendar days from the written notice to the Association to indicate their interest in the vacancies.

2. In making transfer assignments, consideration will be given to fitness for the assigned duties and responsibilities and seniority.

3. In the event the selection for transfer is made of an officer having less seniority than an officer having greater seniority, and who has filed a written request for consideration, the officer with the greater seniority may request that a transfer board be empanelled to decide if selection for transfer is valid or invalid.

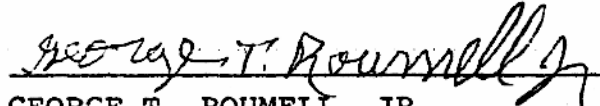
The transfer board for the rank of Sergeant shall consist of two (2) Sergeants and two (2) supervisory personnel (below the rank of Chief) with neither supervisor being of the same rank.


The transfer board for the rank of Lieutenant shall consist of two (2) Lieutenants and two (2) supervisory personnel (below the rank of Chief).

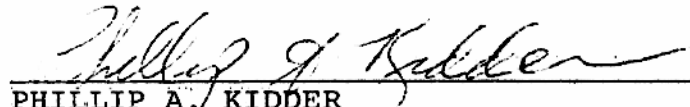
4. In the event of a tie vote by the four (4) members, the Chief of Police or in his absence the Inspector will act as the fifth vote. The decision of the panel shall not be a matter for the grievance procedure.

(B) If operational needs of the Police Department as determined by the Police Chief so requires, temporary transfers may be made not to exceed forty-five (45) days without notification as provided above and without meeting the requirements of Sections 2 and 3 above. If temporary assignments exceed the forty-five (45) days, the notice provisions and all other provisions of Sections (A) 1 - 3 shall apply.

(C) In making lateral transfer assignments consistent with the operational need of the Department and for rotation purposes, consideration will be given to fitness for the assigned duties and responsibilities and seniority. Employees shall have the right to discuss with the Police Chief the basis for such assignments. The decision of the Police Chief in the matter of lateral transfer of assignments shall be final and not subject to the grievance procedure.


GEORGE T. ROUMELL, JR.
Chairman


ROBERT E. JONES
City Delegate
Concurring

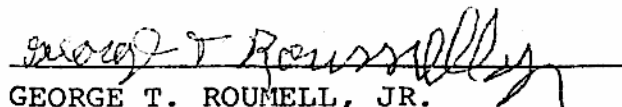

PHILLIP A. KIDDER
Union Delegate
Dissenting

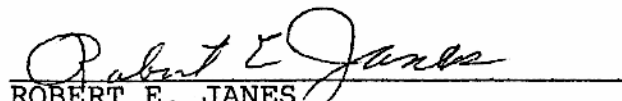
Modification of the Grievance Procedure

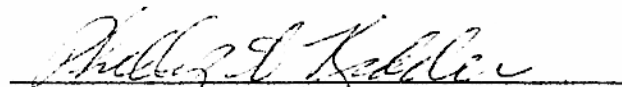
(a) If the City's representative does not answer at any step within the time limits set forth herein or as mutually extended by the parties in writing, the grievance will be moved automatically to the next step in the grievance procedure.

(b) The Arbitrator shall not consider any evidence submitted by either party which was not produced in the grievance

procedure unless such evidence has not been known to the party submitting the proposed new evidence.

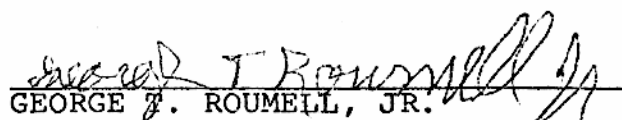

GEORGE T. ROUMELL, JR.
Chairman



ROBERT E. JAMES
City Delegate
Concurring

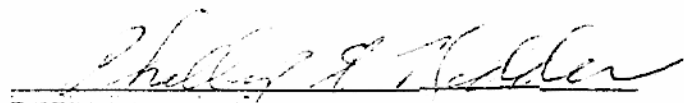

PHILLIP A. KIDDER
Union Delegate
Concurring

Conversion of Vacation Time Into Sick Time

Command Officers may convert their longevity days earned each year into an equal amount of sick time. This shall be made in writing prior to the end of the calendar year.


GEORGE T. ROUMELL, JR.
Chairman


ROBERT E. JAMES
City Delegate
Concurring


PHILLIP A. KIDDER
Union Delegate
Dissenting

DATED: April 10, 1978.