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In the Matter of the Arbitration Between:

CITY OF ST. JOSEPH

Employer

and

**LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,
(St. Joseph Patrol Unit),**

Union.

**Re Act 312 Arbitration
MRC Case No: 686 C-263**

St. Joseph, City of

Arbitration Panel:

**Fr. Joseph R. Deepsey, S.J., Chairman
Kevin McCarthy, City Delegate
James Quinn, Union Delegate**

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

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The hearing in this case was held on May 5, 1987 with respect to seven issues. After the hearing, the union discarded its demand concerning dental insurance. The City claimed dress code provisions were non-economic and hence non-mandatory subjects for collective bargaining under Act. 312

The issues therefore before the panel are wages, vacations, holiday pay, compensatory time in lieu of holiday pay, dress code, and drug and alcohol testing.

The arbitration panel in deciding this dispute must apply the legal standards set up in Section 9 of Act 312. The Union in its brief pointed out these factors as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (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 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, the 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 proceeding.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Union also pointed out that the Michigan Supreme Court in its decision City of Detroit vs. Detroit Police Officers Association 408 Mich 410- (1980), the Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in S9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory in the panel through the use of the word "shall" in SS8 and 9.

In effect then, the S9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in S9. Since the S9 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.

The arbitration panel must therefore address the issue of comparables in order to begin to apply the legally mandated criteria for making a decision. The parties have agreed that the cities of Adrian, Coldwater, Grand Haven, Norton Shores, Niles, Owosso, and Sturgis are external comparables.

The City wanted the list of comparables to include Benton Harbor and Muskegon Heights. The Union has reservations about their inclusion. The Union in its turn proposed that Mt. Pleasant be included.

In order to put the dispute in perspective, the rankings of top patrolman base wage (1986-87) including the last best offers of both the Union and City and all the proposed externals produce the following ranking:

TOP PATROLMAN BASE WAGE

(1986-87)

<u>Overall Ranking</u>	<u>City</u>	<u>Base Wage</u>
1.	Grand Haven	27,106
2.	Norton Shores	26,697
3.	Mt. Pleasant	26,470
4.	Niles	25,921
5.	St. Joseph (Union)	25,259
6.	Adrian	25,166
7.	St. Joseph (City)	25,136
8.	Muskegon Heights	25,001*
9.	Owosso	23,299
10.	Sturgis	23,296
11.	Coldwater	23,213
12.	Benton Harbor	22,502*

* Contract expired 6-30-86; in negotiations

The panel agrees with the City's argument that Benton Harbor and Muskegon heights should be included and Mt. Pleasant should be excluded. The principle reason for this is that the comparables used in 1982 and 1987 arbitration awards involving the City of St. Joseph should remain the same in order to promote continuity and predictability.

In addition, the Union argument that Mt. Pleasant should be included is rejected for the reasons given in previous arbitrations. They are twofold. Mt. Pleasant is the site of a

major state university and has twice the population of St. Joseph. It is also a considerable distance from St. Joseph.

Based on the transcript of the hearing and past hearings filed by the parties, the decisions rendered by the panel with regard to the issues are the following:

A. Wage Changes

- 1st year

In considering wage increases, they can be given in either absolute amounts or in percentages. The demands by the Union and the offers by the City are made in percentage terms. The panel must choose between the City's 2% offer and the Union's 2.5% demand. This .5 percent difference amounts to \$123 in absolute dollar terms.

In looking at the percentage changes in comparable cities for the 1986-87 period, only one has a 2% increase, 2 have 4% and one has 5%. The Union demand of a 2.5% increase is more in line with the comparables so the panel sides with the Union demand for the first year of the contract.

- 2nd year

Among the comparables who have settled contracts, one has 4%, one 3.5%, one 3%, and one 2.5%. There seems to be no central tendency here. But one of the other important factors in

wage settlements is changes in the consumer price index. The C.P.I. index increased 1.1% for 1986. This seems to be sufficient reason for the panel to adopt the City's offer of 3% for the second year. The police paychecks are not falling behind in purchasing power but are still moving ahead. There is no persuasive reason that the Union demand of 3.5% be accepted to move the bargaining unit farther ahead.

- 3rd year

In the third year, there are no comparable contracts settled. But the 4% offer of the City is still higher than the recent trend of the C.P.I. and more than anticipated C.P.I. increases. The panel endorses the City's 4% offer.

The cumulative increases the bargaining unit members will receive through this settlement will maintain their position relative to other comparative police officers' bargaining units and also protect their relative purchasing power as measured against other consumers through the C.P.I.

B. Personal Leave Day

The Union asks for a personal leave day be provided in addition to the vacation article in the contract. The City pointed out that only three (3) of the comparables provide paid personal days. The panel sides with the City. No

persuasive argument was advanced by the Union. Moreover, no other city employee of St. Joseph enjoys this benefit.

C. Holiday Pay

The Union asked to change holiday pay from twice base rate to two and a half times base rate. The City pointed out that of the lower paying cities with respect to base rate pay the higher holiday rate. Cities with the higher base rate generally do not. St. Joseph's base rate is among the higher paying cities. The panel therefore sides with the City.

D. Compensatory Time Off

The Union proposed the addition of a compensatory time off program to the holiday article of the contract, to allow employees to receive time off in lieu of pay for hours worked on recognized holidays. The City denied this benefit. Six comparable cities allow compensatory time off in lieu of holiday pay. Three others do not. The panel therefore agrees with the Union demand.

E. Dress Code

The Union proposed to limit the City's right to require officers to wear assigned hats and ties on duty between May 1 and September 30. The panel bypassing the City's issue of whether this is a mandatory subject of collective bargaining or not denies this demand of the Union. No convincing

argument was advanced for its inclusion in the contract. The vast majority of an officer's time is spent in an air-conditioned patrol car where he/she is not required to wear a hat. The requirement of a tie even in summer does not seem to be unreasonable under the circumstances described in the hearing.

F. Drug Testing

The City proposed that new language be added to the contract which would require bargaining unit members to be tested for drugs and alcohol if probable cause existed. The Union argued that the City already had this power under the "just cause" provisions of the contract, and hence there was no need for additional language. The panel agrees with the Union position. The Union argued that the Federal and State law in this area is still developing and that it is premature to develop contract language which might conflict with possible new legal developments. The panel agrees with this reasoning.

A. Wages Changes

1st Year
City offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

2nd Year
City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

3rd Year
City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

B. Personal Leave Day

City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

C. Holiday Pay

City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

D. Compensatory Time Off

City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

E. Dress Code

City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

F. Drug Testing

City Offer Norm M. McCarty Union Demand [Signature]
J.R. Dempsey

Sept 18, 1987