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9/12/89

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ACT 312  
ARBITRATION BETWEEN:

Case No. 688 H-663

City of South Haven

and

Fraternal Order of Police - State  
Lodge of Michigan Labor Council  
(Lodge No. 119, South Haven Police  
Department)

OPINION AND AWARD

Appearances:

For the City: John Gretzinger  
500 Calder Plaza  
250 Monroe Ave., N.W.  
Grand Rapids, MI 49503

For the Union: Kenneth Zatkoff  
6735 Telegraph Rd., Ste. 330  
Birmingham, MI 48010

Chairman of Arbitration Panel: Kenneth P. Frankland

City's Delegate: John Gretzinger

Union's Delegate: Homer LaFrinere

## I. Introduction

This matter is before a panel of arbitrators appointed pursuant to the terms of Act 312, Public Acts of 1969 as amended for the purposes of hearing and deciding unresolved issues in the new contract dispute between the parties.

The Petition for arbitration was initiated by the Union on December 5, 1988, by Richard P. Weiler. An answer to the petition for Act 312 arbitration was filed on behalf of the City on December 19, 1988 by Mr. John Gretzinger. On January 11, 1989, Kenneth P. Frankland was appointed by the Michigan Employment Relations Commission to serve as Chairperson of the arbitration panel.

A prehearing conference was held on March 1, 1989 at which time the City designated John Gretzinger as its delegate to the panel and the Union designated Homer LaFrinere as its delegate to the panel. The parties agreed to a list of 8 comparable communities (Joint Ex 1, Coldwater, Dowagiac, Grand Ledge, Hastings, Hillsdale, Ludington, St. Johns and Three Rivers).

The panel conducted a formal hearing on June 5, 1989 and conducted an executive session on June 23, 1989.

Prior to the formal hearing, the parties were able to reconcile all but one issue and they executed a stipulated portion of an Act 312 award which is attached hereto and incorporated herein as part of the award.

The sole issue to be determined by arbitration was the Union's proposal to add a new Section 15 entitled Summer Work Schedule.

During the hearing, testimony was taken from several witnesses and exhibits were presented by the parties as documentary evidence. At the beginning of the hearing, the parties stipulated and the panel agreed that the time limit set forth on the Act was waived. Subsequent to the hearing, the Union presented its last best offer which was a request for some flexibility in the current shift scheduling procedure to allow an officer some weekends off during the summer months. The City's position was to maintain the current procedure of not allowing any officers weekends off during the summer months, thus remaining the status quo. At the executive session on June 23, 1989, the Chair was requested to prepare an Opinion and Award and when subscribed to by the appropriate consenting panel member, constitutes the award of the panel.

### DISCUSSION

#### A. BACKGROUND

The sole issue to be determined by this panel is whether or not there should be an addition to the contract so that officers would receive some weekends off during the summer months. This is deemed a non-economic issue.

At the present time, the members of the bargaining unit are scheduled to work on a rotation of six days on and two days off during the winter months (6-2). During the summer, which essentially is from May 1 to Labor Day, the scheduled is changed to a permanent schedule and no bargaining unit member receives a weekend off. The Union proposes to add a new section to the

contract so that the 6-2 rotation during the summer would also apply. The Union's basic position is that with the 6-2 rotation, every 43 days, an officer receives a four day weekend. From May 1, to September 30, under the current policy of permanent schedules, the City drops the 6-2 rotation and although officers receive 2 days off, none of the days off are on the weekend.

#### Union's Position

In support of its position, the Union offered the testimony of Sgt. William Trent. He indicated that there are five persons per shift and that normal work schedule is the 6-2 rotation. If you started on a Monday, you would get Sunday and Monday of the next week off and so on through the rotation. He testified that in 1987 the current summer schedule was instituted. Prior to that time, they always had four day weekends and he had been on the force for about 15 years.

He further testified that there were temporary officers and auxiliary officers he believed 10 auxiliary of 14 listed. Temporary and auxiliary officers compliment the normal 16 members of the unit (with one vacancy). He testified that the summer is a busy period and the officers patrol the beach area which is some 3 to 3 1/2 miles including some private beach areas. There are life guards on the public beaches. He testified that the Michigan State Police are available for emergencies and that the Sheriff's Deputies routinely pass through the South Haven limits. He

testified essentially that the Union wanted the 6-2 rotation for convenience of the family.

On cross-examination, he indicated that the Michigan State Police post is partially understaffed and that their cars are not always available to support South Haven. The County deputies are usually around for appearance purposes, visibility, and do not necessarily do any active patrolling. He indicated that he is married and his wife works part-time from 9 to 2:30, three or four days a week and she does not work weekends. With her schedule and his it is difficult to arrange familial obligations and a four day weekend would facilitate such activities.

He said that the Blueberry Festival which is the 2nd or 3rd weekend in July; is very busy. There may be 20,000 to 35,000 people in town. Normally, no one takes time off during that time period. Nor do people normally take any vacation during the summer. He did testify that those who did request vacations, at least as he understood it, were able to receive them.

He was asked the ultimate question. What's magic about weekends and he concluded that you always know what your days off are and that with a four day weekend, you can plan on visiting relatives, you don't have to use vacations in the summer, and you can "get away from the zoo out there". The summer is always busy, particularly after the students are out of school.

He believed that there was an adequate number of people and that under the 6-2 rotation, there should be sufficient coverage

when the auxiliary officers and temporary officers are taken into consideration. It was his belief that under the Union proposal, they could keep maximum manpower and still have the occasional weekend off. On redirect testimony, he indicated that he felt that the morale of the officers was low because most of the officers were married and without the long weekend, it was difficult for them to maintain their familial obligations. He indicated that all officers were loyal to the City and that they worked the big weekends; Memorial Day, 4th of July, Labor Day, and the Blueberry Festival, and although the incidents of crime appeared to be going up, he felt that they had sufficient manpower under the 6-2 rotation to accomplish the 2 weekends off during the summer and do a complete job.

The Union further offered the testimony of officer William Daggett. He was hired on 9/24/84 and previously had lived in the Pentwater and Ludington area. He compared the Ludington area in which he grew up with South Haven insofar as there were marinas, beaches, access to Lake Michigan, an influx of tourists during the summer. He indicated he was married last June and he is on the night shift. His wife works 8-5 Monday through Friday and since he is on a night shift, they rarely have an opportunity to do things as a family and the two weekends during the summer would be extremely helpful.

He says he believes that the officers are giving it their best shot, but it is disheartening not to have what he perceives to be

a mini-vacation, that is two 4 day weekends during the summer. He did agree that he never had trouble getting time off for the summer if he had requested a vacation or if other officers had requested a vacation.

#### The City's Position

The City argues that there is apparently no restrictions on shifts and that the management rights clause of the contract leaves the prerogative of shift scheduling to the City and to the Chief. They argue that there are very few cities that are comparable in summer time and that of all of the agreed upon comparables, the closest might be Ludington. Although there is about 6,000 persons in the community normally, in the summertime there is an excess of 20,000. The program to go to a permanent shift was instituted three years ago. The City made a determination that there was not adequate manpower under the 6-2 rotation and they switched to the permanent shifts. They hired one temporary police officer and a millage increase was voted by the Council for police and fire to allow them to add one full time officer and to expand the temporary police officer force. The fixed schedule gives the City better mix and the 6-2 rotation did not give the City enough flexibility to meet what they perceived to be required manpower.

The City pointed out that under this system, it still allows for vacations and to the best of the City's knowledge, vacations which had been requested had been honored and the officers still

get two days off, except that the two days off are during the week as opposed to a long weekend.

For this particular contract year, the City voluntarily reduced the fixed shift period to start on May 28 and to end on Labor Day. This is a perceived compromise in order to minimize the impact.

The City called Chief Tom Aldred as one of its witnesses. He has been with the City for 9 1/2 years as the Chief. He indicated that he had received direction from the City Manager and the Council to maximize the manpower on Friday evenings through Sunday mornings in order to adequately handle the massive influx of tourists. He testified that it is almost impossible to do follow ups, to take reports and to do those things which you would normally do during the winter.

Dispatchers who are not part of the unit work on a 6-2 rotation, there are 4 of them and there is one shift per week in which there is no dispatcher per se. The temporary officers do not receive weekends off, but receive two days off during the week. The Chief also testified that nobody receives time off during the Blueberry Festival, the 4th of July, Memorial Day and Labor Day. He did say that there is flexibility for those who might request a summer vacation and he cannot recall turning down a vacation although the officers have not requested summer vacations other than on a limited basis.



The Chief testified that the impact of the permanent schedule was that 2,864 man hours were needed. Under the 6-2 rotation, there would only be 2,416 hours available; a difference of 448 hours. He testified that in his professional opinion, the 6-2 rotation was not adequate to maintain a minimum level of service; that the normal rule of thumb is that they should have one police officer per 1,000 people. Using that as a basis the minimum number of man hours required, it was his opinion that the needs of the City could not be addressed with the 6-2 rotation, but only under the permanent pass program. He said last year they started on May 1, but this year they held off to May 28 to minimize the impact and inconvenience to officers. On a map in the office, he illustrated the north beach area, the south beach area on each side of the pool and he estimated that there are approximately 20,000 people or more within the City limits, which is a two square mile area, during the summer season.

On cross-examination, the Chief testified that normal strength is 16 police officers, apparently there is one vacancy. All officers are working weekends and therefore there is no opportunity for trades on the weekends. He did agree that the officers try not to take summer vacations, but if an officer requested, he would attempt to accommodate a summer vacation request. He did say that as the Chief, he gets weekends off. With respect to the 448 hours needed above the 6-2 rotation, that would amount to about one person per shift.

The only other witness for the City was Scott Ratter. He has been the City Manager for 2 years having moved from Carbondale, Illinois, with a population of about 27,000 people. He testified that in 1988 there was a millage increase for added police and fire. They added 1 temporary police officer, plus 1 permanent police officer, plus 1 dispatcher. He indicated that the Council told him that they thought the staff was inadequate on the summer weekends. In response to their requests to increase manpower, particularly on the weekends, in conjunction with the Chief, he recommended the switch from the 6-2 to the permanent staff. He said the first year it was his recommendation to add 4 temporary officers and to fill one regular vacancy. He indicated that that didn't solve the problem but had a very positive effect. On cross-examination, he said it was his idea to go to the permanent schedule and that if it was not the Chief's idea, then it was clearly his. He indicated that approximate \$80,00 to \$90,000 from the new millage went to the police and that even with the additional monies to fill the vacancy and to add the temporary officers, that in the City's opinion, the only way to meet the manpower needs was to continue the permanent schedule.

#### **RECOMMENDATION**

Act 312, of Public Acts of 1969 as amended, Section 8 requires that disputed economic issues be resolved by the panel with respect to the last offer of settlement proposed by one of the parties. As to economic issues, the panel must adopt the last offer which.

most nearly complies with the applicable factors prescribed in Section 9. As to non-economic issues, the panel is not restricted to the last offer, but still must use Section 9 and apply applicable factors.

The City initially argued that since this was a non-economic issue, 9 (c), (d) and (f) were not applicable and that the most relevant factor would be Subsection 9 (a), the lawful authority of the employer. It is this panel's conclusion that since this is a non-economic issue and since there was no testimony whatsoever with respect to the other factors contained in Section 9, the most relevant factor would be Section 9(a) and possibly Section 9(h), the Omnibus Clause.

In this context, the City also argued that the agreed upon comparable communities would play a less significant impact in this case than they would otherwise. The Union offered an Exhibit listing seven cities and the language in those contracts regarding shift scheduling. In each of the 7 communities, the Union suggested that the opportunity for some weekends off was prevalent in each contract. The City responded that although that may be the case, none of the contracts addressed the issue as set forth here; that is, whether there is a reason to go to a summer schedule that would reduce the opportunity for weekends off. The City suggested that only Ludington was potentially comparable because of its Lake Michigan exposure, its beaches, etc. and argued that the Ludington

language, "a regular week, shall consist of 5 regular work days in a 7 day period" was what the City proposed.

The Union did not respond in any significant manner to the argument that the Management's Rights Clause was a controlling element in this case. Rather, the Union's case is predicated upon the testimony of the two bargaining unit members and that this issue really hasn't come up in any other contracts. The Union contends that it is axiomatic that a rotation such as the 6-2 is so common place, that there is no prior history that can be produced, and no evidentiary materials, since this is a matter in their opinion, of first impression.

Accepting at face value that this is a matter of first impression, that there are no other bargaining units that have addressed the issue of a separate schedule for the summer, we must then look to the record developed. On the one hand, the Union simply presents its case that it is inequitable to force officers to forego long weekends during the summer, since it is not done any place else and no one has suggested that the 6-2 rotation cannot adequately meet the needs of the City. The principle argument in favor of the Union was that family considerations and low morale were significant compelling factors of why the City should not change. Sgt. Trent's comments that the officers just don't feel like putting up with a permanent schedule when they know for 13 weeks they will never a long weekend off was the crux of their

case. Officer Daggett's testimony with respect to inconvenience with familial obligations, was obviously genuine and sincere.

The City's position that the increased volume of tourism during the summer places a much greater demand upon the police force, particularly Fridays, Saturdays, Sundays and holidays was not rebutted. In fact, the officers who did testify agreed that there was significant increases during the summer and particularly on the weekends. Although vacations are possible, the officers rarely requested the same and they agreed that on the major holidays and during the Blueberry Festival, nobody takes time off. Per the testimony of the City Manager and the Chief, the City established that there was a solid public policy basis for the permanent shift; that is, that in their judgment, the 6-2 rotation did not provide adequate manpower to meet the needs of the City.

In particular, the City indicated that after the first year of no long weekends they found they still had inadequate resources and the City Council was receiving citizens' complaints and wanted more coverage. The City Council approved the additional 1.64 mills for general operating funds and allocated \$85,000 approximately to police and fire protection. The City hired 4 temporary officers, hired a new dispatcher to release an officer for full time duty and hired one full time officer. The City Manager's testimony was that notwithstanding these additions, the City still felt that there was an inadequate amount of resources for the weekends and why they felt it was appropriate to go to a permanent schedule. The most

significant testimony, however, was the Chief's testimony that under the 6-2 program they would be 448 hours short of manpower to meet their needs. Under the permanent schedule, in the Chief's opinion, the deficit could be avoided and they could meet the needs of the community.

When the panel takes a look at the total record developed, the more persuasive argument is presented by the City based upon the uncontroverted testimony of the decision makers and the statistical analysis presented by the Chief. Although there is no reason to question the good faith and sincerity of the Union's position, the Union did not propose specific schedules nor attempt to rebut the statistical presentation of the City.

The panel is persuaded that the Management's Rights Clause in the contract does give the City the authority to prescribe changes in shift schedules which they deem to be most efficient to meet the needs of the community. That being the case, Section 9 (a) of the Act, the lawful authority of the employer is a far more significant factor of all of the factors of Section 9 for the panel's consideration. It is certainly plausible that there is a vast increase of people during the summer months and particularly on weekends and the Chief and City Manager's testimony is compelling. Whether it was contested would be conjecture since nothing was offered to rebut their presentation. On this record, and that is all any panel can go on, the more persuasive and compelling

argument is that of the City, and accordingly, the panel would adopt the City's recommendation.

Since this is a non-economic issue, it is the prerogative of the panel to do something other than that which is offered by either party. Although there have been discussions amongst the panel members with respect to a compromise that might provide more flexibility and afford the officers one weekend off during the summer, it is the panel's considered opinion that having presented the matter to arbitration, the panel should decide the case based upon the facts presented. Should the City recognize the equities advanced by the Union, the panel would encourage some voluntary action by the City, but as stated above, the panel perceives its obligation under the Act to render an award which is based upon the record and which most closely follows the requirements of Section 9. That is what this panel has attempted to do.

**AWARD**

The position of the City is adopted, no addition to the contract on the issue of shift scheduling.

Respectfully submitted,

DATED: June 27, 1989

By: Kenneth P. Frankland  
Kenneth P. Frankland (P13643)  
Chairperson  
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Homer LaFrinere  
Homer LaFrinere, Union Delegate  
Concurs \_\_\_\_\_  
Dissents ✓

John H. Gretzinger  
John Gretzinger, City Delegate  
Concurs ✓  
Dissents \_\_\_\_\_