

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

THE CITY OF SOUTHFIELD

Employer

-and-

SOUTHFIELD POLICE COMMAND OFFICERS'
ASSOCIATION,

Union

Case No.D87 G-1840

DEC 29 PM 2 07

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
Dennis B. DuBay, City Delegate
Stanley R. Steinke, Union Delegate and its President

APPEARANCES:

City: Dennis B. DuBay of Keller, Toma, Schwarze, Schwarze,
DuBay & Katz, P.C.

Union: Daniel J. Hoekenga and Dirk F. Zuschlag of Hiller,
Hoekenga and Amberg, P.C.¹

CHRONOLOGY:

The Interim Operating Agreement between the parties was effective for the period beginning July 1, 1984 and ending June 30, 1986; negotiations and a mediation session (held on October 21, 1987) were unsuccessful and led to the filing of the Petition in this case on December 3, 1987; the Chairman was appointed by

¹ The Union was represented at the pre-hearing conferences and at the hearing by John A. Lyons, Jr., Attorney for the Michigan Council, Fraternal Order of Police. At that time the Union was affiliated with the FOP. It discontinued that affiliation in early July, 1988. The final offers of settlement and the brief were filed by its current law firm.

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the Commission on December 23, 1987; a pre-hearing conference was held on February 2, 1988 at which time the matter was remanded to the parties for further negotiations pursuant to Section 7 (a) of Act 312 on the condition that the parties engage in collective bargaining on February 11 and 13, 1988; on February 13 the parties entered into a Partial Stipulated Act 312 Award a copy of which is attached hereto as Appendix A; on February 24, 1988 a second pre-hearing conference was held, the Partial Stipulated Award was approved and arrangements were made for the hearing to dispose of the unresolved issues; the hearing was held on June 10, 1988; final offers of settlement and briefs were mailed by each of the parties to the chairmen on July 11 and September 28, 1988, respectively; the Panel met in executive session on December 1, 1988; and this Opinion and Award issued December 16, 1988.

O P I N I O N

Introduction

The parties stipulated that their new collective bargaining agreement "shall be in effect from July 1, 1986 to and including June 30, 1988." (Appendix A, Page 1, No. 2). The Agreement is, for all intent and purposes a retroactive document. The parties also stipulated that each would submit four specified issues as the subject of this Act 312 proceeding. The Union's issues are: Shift Selection, Computation of Retroactive Payments for Retirement, Union Time, and Duty Disability Benefits. The City's issues are: Health Insurance Predetermination Rider, Police Chief Promotion, Retiree Health Insurance, and a Contract Reopener for Duplicate Coverage. These issues will be discussed below.

As is generally the case, this Opinion has been written by the Chairman. The Panel (by at least a majority of its members) has ruled on each of the outstanding issues--as noted in the Award--with any dissent by a panel member being indicated.

Background

The City of Southfield in Southern Oakland County is an area of 25.3 square miles and sits near the geographical center of Metropolitan Detroit, being the counties of Wayne, Oakland and Macomb. In 1986 Southfield's population was estimated at 73,000--a slight drop from the last official census in 1980 that showed a population of 75,500.

Some of the other vital statistics of the community show total occupied housing of 29,680 units. The median value single family dwellings is \$66,300 and median household income is \$26,500. The State Equalized Valuation of real and personal property in the community--a measure of its wealth--was 1,809,700,000 for 1987. The breakdown of this amount into its four component parts is: Industrial-27,350,800; residential-604,053,700; commercial - 856,933,700; personal - 321,445,500.

Southfield delivers services to its residents and others with the help of approximately 600 full-time employees. Most of the employees are represented for the purposes of collective

bargaining by one of five separate labor organizations, including the Union.

The police department is the largest single department in the City both in terms of expenditures and personnel; it has an annual budget of ten million dollars and 156 employees. The department is headed by a chief and three captains each of whom is in charge of a major division (patrol, investigations, and support). These four employees are ineligible for representation by a labor organization as they are either managers or executives.

The command officers unit in this proceeding consists of three classification: Lieutenants, sergeants, and corporals. There are currently 15 lieutenants, 18 sergeants and 1 corporal and that is the order of authority. The sergeants in turn supervise approximately 122 patrol officers.

The Statutory Standards

In determining the terms and conditions of a collective bargaining agreement the Panel does not have free reign to dispense equity or to impose what a majority of its members consider to be industrial justice. Its decisions must be based on the applicable standards delineated in Section 9 of Act 312.

Indeed, the often quoted statement of Justice Williams in City of Detroit v. Detroit Police Officers Association, 498 Mich 410 (1980) succinctly describes the methodology for such decision making:

[T]he Panel's decisional authority has been significantly channeled by Section 9 . . . that section trenchantly circumscribes the arbitral tribunal's inquiry only to those disputes including wage rates or other conditions of employment braced by a newly proposed or amended labor agreement, and commands the Panel to base its findings, opinions and order relative to these narrow disputes on the eight listed factors as applicable . . .

Heeding the directive of the Statute and the Court, the Panel has found that only four of the criteria--(b), (c), (d) and (h)--apply in this case and it has predicated its decisions thereon.

One of the most important of these factors and perhaps the most difficult one to quantify is (d) (i). This provision directs the Panel to compare the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with those of employees performing similar services and with other employees generally in public employment in comparable communities. The term "comparable communities" is not defined or explained. It has been left for determination to the resourcefulness of each panel.

The procedure generally adopted in Act 312 cases is to first see if the parties can agree on a list of comparables. If so, it is afforded substantial weight as a stipulation (factor (b)). If they are unable to do so, as is frequently the case, each party submits a proposed list of comparable communities together with supporting documentation.

Obviously the parties select communities that favor their respective positions on the issues and the rationale for such selections is limited only by creativity and imagination of the advocates. For example, the City submitted, among others, the following criteria: residents with college degrees, residents with 1-3 years of college, residents with some college, residents who are managers and professionals, and those in technology, sales and administrative support. The Union produced figures showing the population for 1980, 1984 and 1986 and the percentage changes from 1980 to 1984 and from 1980 to 1986.

In evaluating the information supplied by the parties to determine comparable communities the comment of the court in Spaulding v. University of Washington, 740 F.2d 686 (9th Cir.); cert. denied, 105 S.Ct. 511 (1984) seems particularly insightful:

We are still sobered by the warnings that statistical evidence has an inherently slippery nature, can be exaggerated, over-simplified, or distorted to create support for a position that is not otherwise supported by the evidence. (Citations omitted.)

In prior cases where the parties have nominated some of the same communities, the Chairman has used those for establishing a composite against which the balance of the nominees can be compared. That has been done in the instant proceeding as both parties "stipulated" that Farmington Hills, Pontiac, Royal Oak and Troy are comparable to Southfield.

A composite of the 4 communities and Southfield produced a range in each of the factors that the Chairman found to be relevant. These fall into three principle categories: Characteristics of the community, financial information, and data concerning the police department. The Union's nominees of Livonia, Sterling Heights, Taylor and Westland and the City's nominees of Birmingham, Bloomfield Township, Madison Heights, West Bloomfield Township and Waterford Township were measured against the so called "range of comparability."²

Using the criteria shown on Appendix B, the cities of Taylor, Waterford Township and Westland fell with the range on a sufficient number of factors to bear a reasonable resemblance

² The City selected its communities on the basis of those with a population of 20,000 in Oakland County. Its selection is arbitrary. I did not consider the cities of Ferndale and Hazel Park that were also nominated by the City as they bear virtually no resemblance to Southfield or to the composite. I have likewise not considered the City's alternative position, made for the first time in its brief, that would use all communities previously found appropriate in 312 proceedings involving its police and fire departments.

to the composite and they have been added to the list. Those three communities together with Farmington Hills, Pontiac, Royal Oak and Troy will be used as comparable communities for testing the proposals made by each party to change the collective bargaining agreement. We now consider those proposals.

Union Issue No.1: Shift Assignments (Non-Economic)

Under the current arrangement (not set forth in the Agreement) sergeants in the Patrol Division may annually select their shifts. The Union seeks to extend this benefit to the lieutenants in the Patrol Division.³ The Union finds support for its position in three areas. First, all of the other employees in the Patrol Division select their shifts; patrolmen select semi-annually and the sergeants annually. The City has fostered a team concept and the claim is made that it is improper to have one member of the team denied this benefit. Third, the majority of the comparable communities permit this classification of command officer to select shifts.

The City contends that lieutenants are not part of the team but rather mid-level managers. Currently, lieutenants rotate among the shifts, spending eight months on each. It says that

³ There is currently one corporal in the Patrol Department who works on the day shift. This provision would apply to the corporal only if others in the same rank are added to the force and assigned additional shifts.

from a managerial standpoint it wants employees to experience working with different lieutenants. Finally, it argues that under the rotation system newly elevated lieutenants are assigned the day shift where they may work under the direct supervision of higher echelon management until completing their probationary periods.

No substantial reason has been offered for denying lieutenants the right to select shifts. The City's fear of an employee selecting a shift to work with a particular lieutenant is unpersuasive. Employees ordinarily select shifts for other reasons; the most common one being that it meets their personal and family needs. Since a majority of the comparable communities permit shift selections, the Union's position will be upheld with some modification.⁴

The Union's proposal is too broadly stated and on its face could apply to each of the divisions. The Agreement will provide as follows:

23.2 Patrol Division. An employee may, at the option of the City, be slotted to work the day shift during his or her probationary period. Notwithstanding Section 23.1 above, a transfer of shifts in the patrol division shall take place annually on May 1. By April 1, all transfers, assignments and shift selections, complete with the work schedule, shall be posted. An employee desiring a transfer of shifts shall file a request forty-five (45) calendar days prior to May 1.

⁴ The Panel has the authority to revise a non-economic proposal.

The most senior employee within each rank shall be given preference.

23.2 Shift Vacancies - Patrol Division. All vacancies in shifts which may occur during the year shall be filled in the same manner as the annual transfer of shifts. Employees who are on special assignment which involves a change in shift shall not be automatically entitled to return to their prior shift where the assignment has lasted twelve (12) months or longer.

Union Issue No. 2: Retroactive Payment For Retirees (Economic)

The pension benefits of an employee who retires is determined on the basis of the best three years of the employee's last ten years of service. This is called the Final Average Compensation (FAC). At the time of retirement the employee may elect to use the cash or accrual method for computing retroactive payments as part of the FAC. If the employee selects the accrual method all retroactive payments are attributed to the periods involved and the FAC is recalculated.

The problem, according to the Union, occurs where there is more than one retroactive payment and the employee has elected the cash method of calculation. Under that method, the entire amount is treated as though it were earned in his or her last year of employment (even though in reality it is compensation for an earlier period or periods). If another retroactive payment is received it will only be considered for FAC if the employee agrees to have it as well as the prior retroactive payment recalculated on an accrual basis. The Union contends this penalizes the employee.

According to the City, the current method of computation is more liberal than that governing employees in all of the communities nominated by either party as being comparable to Southfield. Moreover, it argues that the cash method allows an employee to treat the first retroactive payment in an artificial manner and that to permit the employee to treat a subsequent payment in the same fashion is uncalled for. A majority of the panel must agree with this position.

None of the comparable communities has the type of configuration requested by the Union. Indeed, as the City notes, the current plan is the most liberal of any of those in effect at this time. It is also significant that none of the so-called internal comparables (other City bargaining units) have the requested benefit. Finally, the Pension Plan's actuary commented as follows on the Union's proposal:

[S]ome members would receive greatly enhanced pensions while others would be unaffected. Good benefit design should not lead to such an outcome. (City Exhibit

Retiring employees are given the opportunity to have their pensions calculated in a manner that will lead to the highest possible benefit. Denying the Union's request does not work a hardship or inflict a penalty on any retiree. Based upon the foregoing factors, the City's final offer of the status quo is accepted.

Union Issue No. 3: Union Time (Economic)

The Union's proposal would increase the number of employees on its Grievance Committee from two to three. It would increase the amount of compensatory time-off per week from two hours to four hours. It would remove the cap of 104 hours from the accrual of compensatory time-off. And it would remove from the Agreement the prohibition that Union business be conducted outside of working hours.

The rationale for this change was explained by the Union's witness as follows: "We wish to have the same contract language that the patrol officers have in regard to Union time off whereas their negotiating team is not docked for any time used in contract negotiations." When asked to explain what he meant by not being docked for contract negotiations the witness stated: "There's no bank that hours are deducted from. If it happens to be a day off--a scheduled day off that a member of the team has to come in and go through negotiations, such as today with myself, then they would get a reciprocal day, scheduled work day off in lieu of." (Transcript, p. 19).

I credit the Chief of Police who testified that employees in both units are treated identically; an employee who negotiates on a leave day receives no recompense; an employee scheduled to

bargain during a regular work day is released without charge against the Union's time bank; and an employee on midnights who is scheduled to bargain during the day is given either the day before or the day after off as a compensation day without charge against the bank of Union time.

The Union submitted no other probative evidence showing that the number of hours that it was being credited was insufficient to permit it to carry out its mission or that it could not adequately represent employees with the number of persons currently on the grievance committee. The City proposal of status quo will be accepted.⁵

Union Issue No. 4: Duty Disability (Economic)

Under the Agreement an officer is entitled to full salary if he is off work as the result of a duty disability. However, the benefit is reduced if the employee is (involuntarily) placed on a duty disability retirement. The thrust of the Union's proposal is to remove this reduction and guarantee a disabled officer full salary to age 65.

⁵ Corresponding provisions among the comparable communities do not support the Union's position; none have more than 104 hours for association business unrelated to grievance handling and contract negotiations. No justification was offered for granting the Union four hours off per week--the same number as given to representatives under the Patrol contract where the latter is three times larger than the former.

The rationale for proposing this benefit is two-fold. First, the Union persuasively argues that in a recent decision adopting the so-called "firemen's rule" in Michigan (Kreski v. Modern Electric Supply Co., 429 Mich 347 (1987)) the Court held that police officers may not recover damages for injuries arising out of the risks inherent in their respective professions. In doing so, the Court noted that police officers act in the public interest and therefore the public should bear the costs of injuries sustained by those officers while discharging their duties. This, of course, translates into the City paying directly, or through insurance, for the proposal at issue.

The second reason for the Union's claim is that the patrol officers have this greater benefit: It is by virtue of an arbitrator's award interpreting the contract between the City and the patrol officers in FMCS Case No. 84K/29654 issued on June 21, 1986. In that case, the arbitrator held that the City was required to pay full benefits to Officer Sebastian Ales even though he had been placed on retirement status.

The City contends that the award in the Ales case was erroneous;⁶ that it is of no precedential value; and, in current negotiations with the patrol officers correcting this error is

⁶ A Circuit Court entered an Order enforcing the Award from which the City did not appeal.

one of its highest priorities. The City also argues that no other city unit or comparable community has a benefit as extensive as that sought by the Union.⁷

It goes without saying that the Panel is mindful of the high risks taken by police officers in carrying out their everyday duties and responsibilities. It also recognizes that the Kreski decision and especially the Court's remarks about who should bear the burden arising from such disability may ultimately result in revised and improved benefits to police officers. Nevertheless, a panel majority concludes that it is premature for it to adopt the Union's proposal.

It is significant that not one other comparable community has a benefit as far-reaching as the one proposed here. That is the principle reason for the Panel's decision. To a lesser extent, the Panel is reluctant to memorialize in this contract a provision based on arbitral interpretation where the City claims that it is vigorously seeking to remove the effects of the decision in negotiations currently in progress with the patrol officers (and this issue may be the subject of an Act 312 proceeding).

⁷ Under the plan, a person who is disabled from continuing as a police officer receives this benefit even though not necessarily disabled from other employment.

The more prudent course is to temporize on this issue. The matter of enhanced benefits for a duty disabled officer is tied to insurance and corresponding costs. Since the Agreement for which this proceeding is being held expired on June 30, 1988 and the parties are now negotiating for a replacement, the Panel believes they can best deal with this issue in negotiations.⁸ For these reasons, the City offer of the status quo will be accepted.

City Issue No. 1: Predetermination Rider (Economic)

The City is self-insured for health benefits. To contain costs it proposes the addition of a pre-determination rider. The effect of this change is to require advance approval for elective, non-emergency, inpatient hospital admissions and to regulate the length of confinement. The Union argues that the rider reduces its members' benefit because it is made more difficult to use and disrupts the doctor-patient relationship.

The Panel must reject the City's proposal. Not one of the comparable communities has the pre-determination rider. The

⁸ The parties have done this on prior occasions. See, for example the second paragraph of Section 38.10 giving the Union the option to adopt subsequent provisions negotiated between the City and the Police Officers Association. Given the Kreski case, one would think that Command Officers should be treated at least as well as patrol officers with respect to this disability benefit.

small potential savings to the City (estimated to be \$3,000) is not sufficient to impose conditions that make access to benefits illusory and more difficult to obtain.⁹ Accordingly, the Union's offer of the status quo will be accepted.

City Issue No. 2: Police Chief Promotion (Non-Economic)

Section 11.1 of the Agreement reads as follows:

Promotions shall be made in accordance with the provisions of Act 78, P.A., 1935, as amended, except as provided in this Agreement.

The City proposes that Act 78 not apply to the filling of the police chief position. The Union opposes this for jurisdictional and substantive reasons.

We first examine the threshold issue of jurisdiction. The Union contends that the issue involving the chief is a permissive rather than a mandatory subject of bargaining. A mandatory subject of bargaining is one that vitally affects wages, hours or other employment terms and conditions and does not fall within "the core of entrepreneurial control." Fiberboard Paper Products Company v. NLRB, 379 US 202, 223 (1964); Chemical

⁹ The City claims that Public Safety Technicians accepted the predetermination rider in exchange for improved optical and dental benefits. It argues that predetermination should be imposed since the improved optical and dental programs were given to the Union in the partial stipulated Act 312 Award. In the scheme of negotiations, it is likely that these improvements were granted in exchange for other considerations.

Workers Local 1 v. Pittsburgh Plate Glass Co., 404 US 157, 179 (1971); Detroit Police Officers Association v. City of Detroit, 61 Mich App 487, 490-494 (1975), lv. app. den. 396 Mich 989 (1976).

A permissive subject, on the other hand, is one over which the parties may bargain, but cannot be forced to do so. The claim is thus jurisdictional; an Act 312 Panel is required to limit its awards to mandatory subjects of bargaining. Local 1277 AFSCME v. City of Centerline, 414 Mich 642 (1982). If the Union is correct, the Panel is foreclosed from adopting the City's last offer of settlement.

The Union's argument is far from frivolous. It begins by noting that the positions of captain and chief are outside of the bargaining unit. Since the captains are "executives" and therefore not "employees" within the meaning of the Public Employment Relations Act they cannot organize and possess no bargaining rights. The same conclusion applies, a fortiori, to the chief.

The Union relies on a decision of the Commission in City of Lincoln Park, 1982 MERC Lab Op 479, 491 in which a basic tenet was restated:

[A] bargaining unit has the right to demand bargaining on promotions to non-unit positions, but not if the positions are excluded from collective bargaining as executive.

"Since the captains in Southfield are excluded as executive, as is the chief, and since the chief must come from the captain rank [pursuant to Act 78], the Lincoln Park rule controls. There is no bargaining obligation that the City can enforce in this proceeding." (Brief, p. 39).

There is a cosmetic appeal to the Union's argument that, but for Act 78 considerations, would require adoption. In other words, by excluding Act 78 from the equation, it is apparent that the Union would be foreclosed from insisting on bargaining over promotions or promotion criteria for unit employees to move to the position chief.¹⁰ But Act 78 cannot simply be overlooked. Section 12.2 (2) thereof provides in relevant part as follows:

Vacancies in positions in the . . . police department above the rank of . . . police officer shall be competitive and shall be filled by promotions from among persons holding positions in the next lower rank in the department who have completed 2 years in that rank and who have at least 5 years in the department. . . In the event of only 1 person in the next lower rank, 1 or more persons in the second lower rank who have completed at least 5 years in department may compete for the vacancy. (emphasis added).

Thus, Act 78, and the Agreement by virtue of its incorporation therein, makes it possible for a lieutenant to

¹⁰ Compare Detroit Police Officers Association v. Detroit, 61 Mich App 487 (1975) where the Court held that promotions are such an important topic of employment relations that even promotions out of a bargaining unit are mandatory subjects. They were mandatory because the affected employees continued as employees within the intendment of the Act, albeit supervisory employees.

become the chief. It is this contingency--remote as it may be--that requires bargaining on the subject.

It is, of course, understandable that the Union prefers that the situation continue unchanged. However, the Panel majority concludes that under the particular circumstances of this case, the City is entitled, through negotiations, to attempt to override the proviso (quoted and emphasized above) that requires lieutenants to be considered for the position of chief. Support for this conclusion may be found in Local 1383 v. City of Warren, 411 Mich 642 (1981). The Court held that a promotional scheme negotiated between the fire fighters union and the city took precedence over the conflicting provisions of Act 78. In doing so, it held that PERA "predominated over . . . conflicting statute(s) . . ." (at 664). Under the limited circumstances of this case, the City has the right to bargain over removing lieutenants from eligibility for the position of chief.

That leaves for consideration, the merits of the dispute. The City has argued persuasively that it should be permitted to select the police chief on the basis of merit and not solely on the criteria established by Act 78. I agree with this position for essentially the same reasons that I expressed in the Act 312 case involving the City and its fire fighters (No. D84 E-1617) parts of which are quoted below (with footnotes from the original text deleted):

Under the current arrangement, promotions are made after open competitive examination among persons in the next lower classification who have completed two years in the rank and have five years in the department. If there are not two persons in the next lower rank, then those in the second lower rank can compete. The Civil Service Commission conducts a written examination and there is an oral examination by Fire Chiefs from other communities. No educational or training prerequisites may be required. The two parts of the examination are weighted equally and a combined score of seventy makes an individual eligible for appointment.¹¹

In contrast, applicants for most other Department Head positions in the City must meet high educational and experiential requirements. They must then undergo intensive assessment center testing performed over several days that includes a variety of job simulations or submit to extensive and repeated interviews. The successful candidate is then selected by the City Administrator with the advice and consent of the City Council.

The Fire Department, with 100 Fire Fighters, is one of the largest departments in the City and with an annual budget of six million dollars, one of the costliest to run. The Fire Chief is essentially an administrator who must deal with the myriad problems of the Department; budget, personnel, organization, equipment, materiel and supplies. The Chief must also interact with his counterparts in other departments, his superiors and with the general public. Thus, the job requires not only fire fighting experience and the ability to command, but it requires extensive managerial skills as well.¹²

The City contends that the procedure for selecting the Chief is too restrictive; the number of eligible candidates is limited and the system may result in the appointment of a marginal candidate. When the position of Assistant Chief was recently posted, only four of the six lieutenants applied and one is five years beyond retirement age. In addition, a combined score

¹¹ These same criteria are used for selecting the Police Chief.

¹² The Police Department has more employees and a higher budget than any other department in the City. The duties and responsibilities of the Police Chief are virtually identical to those of the Fire Chief.

of seventy percent on the equally rated written and oral examination makes a person eligible for the position and, if that is the highest score achieved, the individual would become chief.¹³

With the growth of the City, the increase in finances, and the focus on administrative skills, it is important that the person selected as Chief have superior qualifications for the job. The successful candidate will have both the experience and education for the position. The men who are lieutenants may very well have the necessary qualities and qualifications to be Chief. No one suggests otherwise. Indeed, one of them may even be selected when there is a vacancy because it is the City's policy to promote from within the organization.

The person selected as Chief will benefit from knowing that he (or she) is considered the best candidate for the job. That, too, should have a positive affect on the staff. This change will encourage lieutenants and others to further prepare themselves if they aspire to the position. I regret the possibility that some of the lieutenants may feel disappointed by this change.¹⁴ In the process of collective bargaining, however, they must know that unless a benefit is vested, there is no guarantee that it will continue intact. Often, provision are negotiated that change the way things have been done in the past. In a viable society, change is bound to occur and fortunately or unfortunately--depending on ones outlook, this item is one of them.

The position of Chief is outside the Fire Fighter bargaining unit. As the head of the Department, the Chief is part of management. He answers to the Public Safety Director and those above that position. Therefore, it is difficult to insulate the position

¹³ In 1978, there were two applicants for the position of Police Chief. One applicant failed the test while the other barely passed--scoring seventy-one. The latter individual had to be appointed.

¹⁴ The Union argues (as did the Fire Fighters) that the change will have a deleterious effect on the command officers below the level of chief who aspire to the position. (Brief, p. 42)

from politics.¹⁵ That does not mean that the job should become a political football, changing with every change in Administration. Rather, it means that the Chief must be responsive to the needs of several constituencies; the command officers, the fire fighters, the administration, and above all the citizens of Southfield. A competent administrator will be able to transcend petty politics.

In the instant case the Panel majority has given the greatest weight to the internal comparables and to factor (h).¹⁶

The City's final offer of settlement reads as follows:

Notwithstanding, Article XI, Section 1, the provisions of Act 78, Public Acts of 1935, as amended, and the regulations adopted thereunder, shall not apply to the filling of the Police Chief position, it being understood that the City may fill the position of Police Chief either from within, or from outside of, the bargaining unit.

The provisions of Act 78, Public Acts of 1935, as amended, shall not apply to the position of chief.

The City's proposal is stated too broadly. The only subject that the Union can bargain over is the lieutenants eligibility for promotion to chief. Conversely, the Union has no right to eliminate Act 78 insofar as it applies to persons outside of the bargaining unit, namely captains and the chief. Thus, it has no

¹⁵ The Union also argued that the position would become subject to politics.

¹⁶ The comparable communities test is inconclusive. In 3 of the communities that have not adopted Act 78 the Chief is appointed. The other five communities have adopted Act 78, but in Taylor a separate agreement has modified the method of selecting the chief with the Mayor appointing from among the four candidates with the highest score.

statutory authority to agree that the provisions of Act 78 shall not apply to the position of police chief except as it pertains to this unit.

The City claims the parties stipulated that this issue was economic. I am unsure how it arrived at this conclusion. In my letter to Counsel on February 25, 1988 I set forth the pre-hearing agreements, understandings, and stipulations of the parties. They stipulated that all of the other issues were either economic or non-economic but no agreement was reached on the matter of the Police Chief. I do not find that by referring to this issue as "economic" in the sub-heading of its brief, the Union was stipulating to that fact.

Be that as it may, the chairman concludes that while a promotion ultimately may involve increased wages and benefits, bargaining over eligibility for a promotion is a non-economic subject. Accordingly, the Panel shall exercise its authority to modify the City's offer as follows:

11.4 Nothing contained in Article XI, Section 1, shall apply to the filling of the Police Chief position; the City shall have the right to fill the position from within or without the bargaining unit.

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City Issue No. 3: Retiree Health Insurance (Economic).

Under the Agreement a retiring employee receives payment at the then current rate of pay for 65% of accumulated sick leave to

a maximum of 1200 hours. The surrender of the balance of the entitlement was the quid pro quo for the employee receiving employer paid health insurance on retirement.

The City contends this is unfair as retiring employees have varying amounts of accumulated sick leave and some may have no sick leave at all. It proposes that employees have a minimum of 800 hours in their sick leave bank for this benefit to take effect or that they contribute a corresponding dollar amount to pay for health care. The Union contends that this rollback would raise the costs, thereby reducing the benefit, of retiree medical coverage for its members.¹⁷

The City's proposal is not supported by the internal or external comparables. While it is true that the patrol officers surrender a higher percentage of their sick leave, there is no minimum required accumulation of hours. Therefore, they are in pari passu with the Command officers. None of the comparable communities provide a condition similar to that requested by the City. Since the Panel considers these two factors of paramount importance there is no basis to change the existing practice and the Union's offer of the status quo will be accepted.

¹⁷ The Union apparently misunderstands the City's position, stating that it wants 800 hours in exchange for the benefit. As I read the City's proposal it wants to insure the receipt from all employees of 280 hours.

City Issue No. 4: Contract Reopener (Economic)

The City proposes a contract reopener in the event a benefit becomes required by law which duplicates, in whole or in part, one provided in the Agreement for. The parties would then bargain over benefit or its affect. The City's proposal is based on speculation. None of the other City units nor any of the comparable communities have this provision.

In view of the fact that the Agreement which is the subject of this Act 312 proceeding has already expired and the conditions upon which the proposal was made have not come to pass, the Union's offer of the status quo will be accepted.

A W A R D

For the reasons set forth in the Opinion, the Panel adopts the following final offers of settlement:

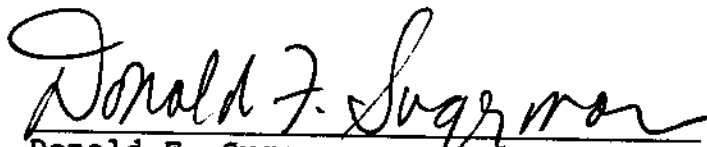
Union Issue No.1: Shift Assignments (Non-Economic)


The Union's offer, as modified, is accepted. The Agreement will be amended to read:


23.2 Patrol Division. An employee may, at the option of the City, be slotted to work the day shift during his or her probationary period. Notwithstanding Section 23.1 above, a transfer of shifts in the patrol

division shall take place annually on May 1. By April 1, all transfers, assignments and shift selections, complete with the work schedule, shall be posted. An employee desiring a transfer of shifts shall file a request forty-five (45) calendar days prior to May 1. The most senior employee within each rank shall be given preference.

23.2 Shift Vacancies - Patrol Division. All vacancies in shifts which may occur during the year shall be filled in the same manner as the annual transfer of shifts. Employees who are on special assignment which involves a change in shift shall not be automatically entitled to return to their prior shift where the assignment has lasted twelve (12) months or longer.

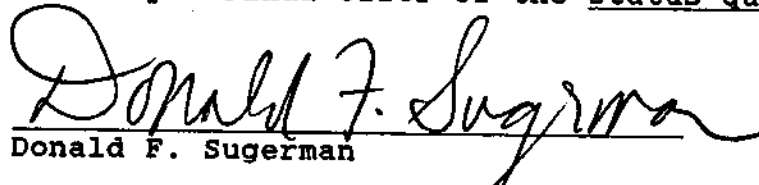

Donald F. Sugerman

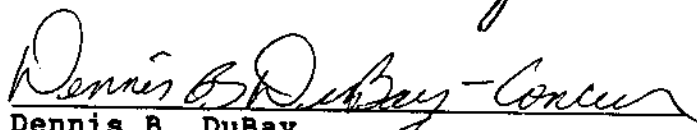

Stanley R. Steinke

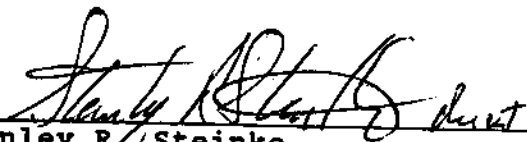

Dennis B. DuBay

Union Issue No. 2: Retroactive Payment For Retirees (Economic)

The City's Final Offer of the status quo is accepted.

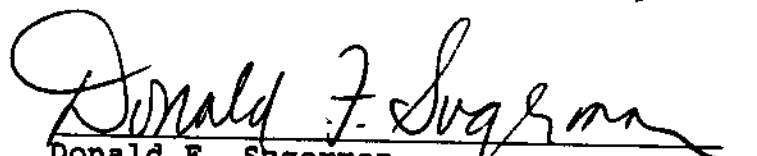

Donald F. Sugerman



Dennis B. DuBay

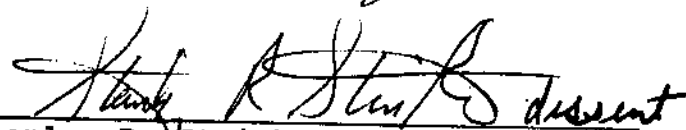

Stanley R. Steinke

Union Issue No. 3: Union Time (Economic)

The City's Final Offer of the status quo is accepted.

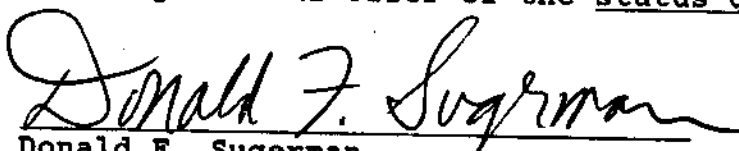

Donald F. Sugerman



Dennis B. DuBay


Stanley R. Steinke
DFS/12/21/88

Union Issue No. 4: Duty Disability (Economic)

The City's Final Offer of the status quo is accepted.

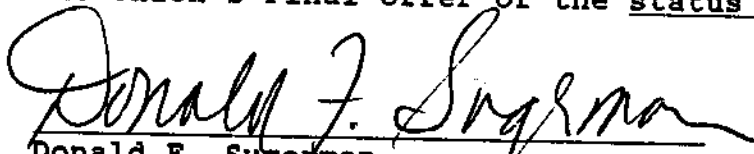

Donald F. Sugerman


Dennis B. DuBay

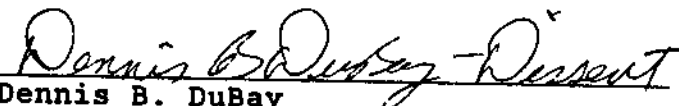

Stanley R. Steinke

City Issue No. 1: Predetermination Rider (Economic)

The Union's Final Offer of the status quo is accepted.


Donald F. Sugerman



Stanley R. Steinke

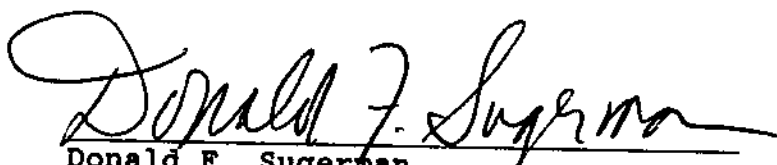

Dennis B. DuBay

City Issue No. 2: Police Chief Promotion (Non-Economic)

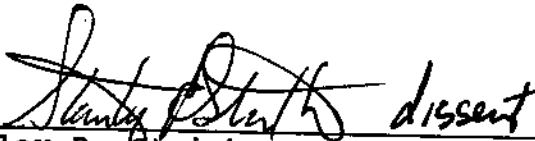
The City's Final Offer, as modified, is accepted. The Agreement shall read as follows:

11.4 Nothing contained in Article XI, Section 1, shall apply to the filling of the Police Chief position; the City shall have the right to fill the position from within or without the bargaining unit.

(Including Act 78) 

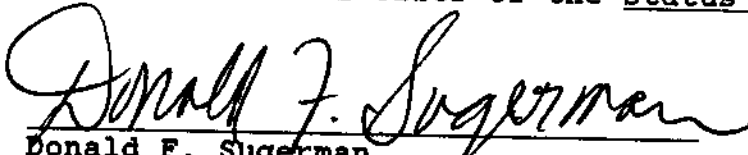

Donald F. Sugerman

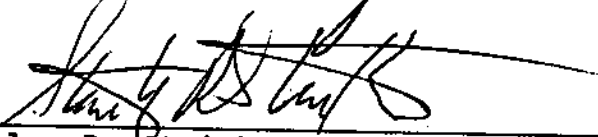

Dennis B. DuBay

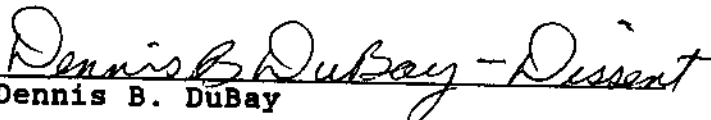

Stanley R. Steinke *dissent* *DFS 12/21/88*

City Issue No. 3: Retiree Health Insurance (Economic).

The Union's Final Offer of the status quo is accepted.

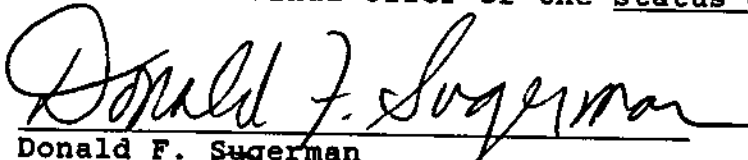

Donald F. Sugerman

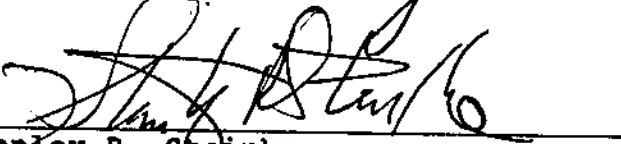

Stanley R. Steinke


Dennis B. DuBay

City Issue No. 4: Contract Reopener (Economic)

The Union's Final Offer of the status quo is accepted.


Donald F. Sugerman


Stanley R. Steinke

Dennis B. DuBay - Detroit
Dennis B. DuBay

Signed at Southfield, Michigan
December 16, 1988

Partial Stipulated Act 312 Award

It is hereby agreed by and between the City of Southfield (hereinafter referred to as the "City") and the Southfield Police Command Officers' Association (hereinafter referred to as the "Association") that the following partial settlement shall constitute, and shall be adopted as, a partial stipulated Act 312 Award, in MERC Act 312 Case No. D 87 G-1840 between the City and the Association. The parties hereby agree that the partial settlement set forth herein shall be stipulated to by the parties in the Act 312 arbitration proceeding and shall be adopted by the parties' delegates to the Act 312 arbitration panel. The parties hereby agree as follows:

1. The parties agree that the new collective bargaining agreement shall consist of the parties prior contract (Interim Operating Agreement) in effect from July 1, 1984 to and including June 30, 1986, as amended by this settlement and the Arbitration Panel's Award on the agreed upon issues (as set forth in Paragraph 11 below) presented to the Arbitration Panel for decision and award.
2. The parties new contract shall be in effect from July 1, 1986 to and including June 30, 1988.
3. The parties previous tentative agreements initiated by the parties and/or attached hereto (with respect to citizen complaints, daylight savings time and compensatory time) shall be included in the parties new contract.

4. Revise Article XLIV - Annual Wages, Rates and Increment Steps as follows:
Effective July 1, 1986 - five (5%) percent across the board
Effective July 1, 1987 - three and one-half (3.5%) percent across the board
5. Revise Article XXXIV - Hospitalization Insurance -
Add the Mandatory Second Surgical Opinion effective immediately - as soon as the carrier can provide.
6. Effective January 1, 1987, revise Article XXXII Holidays by 1. Adding one (1) additional holiday - employee's anniversary date of hire.
(All employees will receive, under this provision one (1) additional holiday for calendar year 1987.)
2. Effective date of this settlement, delete section 32.3 (Good Friday Premium) from the contract.
7. Revise Article XIX Trading of Days by providing that in the event of holiday trades, the employee who works the holiday will receive compensatory time and the employee who does not work the holiday does not receive the compensatory time.
8. Revise Article XXXVII Dental Insurance by eliminating employee contributions for dependent coverage.
(Effective start of first payroll period in March, 1988).

9. Revise Article XXXVII Dental Insurance as follows:

DENTAL: Modify to permit coverage of students between ages of 19 and 25 as soon after ratification as carrier can effect (same as ACS employees).

10. Revise Article XXXV Optical Insurance as follows:

OPTICAL: Replace current dollar ceilings by "usual and customary" standard. Contacts and eyeglasses may be replaced once annually with examination and with prescription change, effective as soon after ratification as carrier can effect (same as ACS employees).

11. The parties hereby stipulate and agree that only the following issues remain unresolved and may be presented to the Act 312 Arbitration Panel for decision and award:

Association Issues

1. Seniority to be used for shift puts in the Patrol Division.
2. Union time - patrol provision
3. Retroactive payment applied to retiree's last day and appropriate calculation in retirement benefits made.
4. Duty Disability - as set forth in the Association's Act 312 Petition.

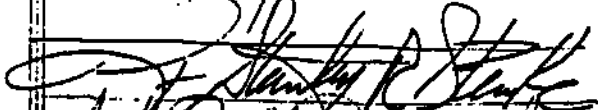
City Issues

1. Predetermination Rider to be added to health insurance
2. Police Chief out of Act 78 (City issue 10 on Answer to Petition for Act 312 Arbitration).
3. Minimum 800 hours accumulation (City issue 1 on Answer to Petition for Act 312 Arbitration).
4. Re-opener in the event of duplicate benefits provided by law (City issue 8 on Answer to Petition for Act 312 Arbitration).

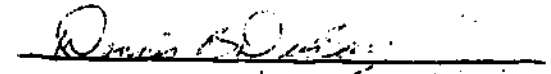
12. The Association withdraws all other proposals.
13. The City withdraws all other proposals.

This Agreement is signed and effective this
13th day of February, 1988 by the parties'
duly authorized representatives.

Southfield Police
Command Officers Association


J. Stanley R. Stuck
Capt. Ronald G. Gumpert

City of Southfield


Dennis B. DeLeon
James A. DeLeon
Ronald G. Gumpert

	BIRMINGHAM	BLOOMFELD TWP.	LIVONIA	MADISON HTS.	STERLING HTS.	TAYLOR	WATERFORD	W. BLOOMFELD	WESTLAND
I Community Characteristics									
Population						x	x		x
Square Mi.		x				x		x	x
Density	x		x	x	x	x	x		x
No. Homes						x	x		x
Med. Val.	x		x	x	x	x	x		x
II Financial									
Tot. SEV		x	x		x		x	x	
Res.	x	x			x	x	x	x	x
Comm.	x	x	x		x	x	x	x	x
Indust.			x	x	x	x	x		
Per. Cap. Inc.			x	x	x	x	x		x
Med. H/H Inc.	x	x	x	x	x	x	x		x
III Department									
Dept. Comp.			x		x	x			x
Tot. Off.			x		x	x			x