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Sterling Heights, City of

Pursuant to Act No. 312, Public Acts of 1969, State of Michigan

12/12/71

Award of Panel of Arbitration

Opinion of Chairman

ARBITRATION

between

City of Sterling Heights
Michigan

- and -

Sterling Heights
Police Command Officers Association

Panel of Arbitration:

Robert A. Lothian
(appointed by Association)

Frank N. Blake
(appointed by City)

Mark L. Kahn
(Impartial Chairman)

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Michigan State University

JUL 27 1976

Hearings held October 22 and 28, 1971
Sterling Heights, Michigan

For the City

Appearance:

Paul J. O'Reilly, Attorney
O'Reilly and Cornell
Mount Clemens, Michigan

Witnesses:

Irvin Droste, Vice President
Local 1557, Sterling Heights
Fire Fighters Association
Michael Eisenhauer, Police Con-
sultant, Berkeley, Michigan
Leonard G. Hendricks, City Mana-
ger, Sterling Heights

For the Association

Appearance:

Michael D. Schwartz, Attorney
Schwartz and Juneau
Sterling Heights, Michigan

Witnesses:

Charles L. Groesbeck, Senior
Inspector, Police Department
Warren, Michigan
Thaddeus F. Hamera, Chief Ap-
pellate Lawyer, Macomb County
Prosecutor's Office
Maurice D. Foltz, Chief of
Police, Sterling Heights

Kahn, Mark L.

Arbitration between

City of Sterling Heights,
Michigan

and

Sterling Heights Police Command
Officers Association

AWARD OF PANEL OF ARBITRATORS

I. Issue # 1 (salary) and Issue # 2 (rank differentials). The salary schedule effective 1/1/71 in Section 7 of Schedule A of the prior (1970-1971) Agreement between the parties shall be increased by five (5) percent effective August 1, 1971. This salary schedule, effective August 1, 1971, through December 31, 1971, shall be increased by five (5) percent effective January 1, 1972. One-half of the increase effective January 1, 1972, constitutes an increase in the percentage pay differential between Sergeants and Patrolmen and a retention of the present percentage pay differential between Lieutenants and Sergeants. These salary schedules, calculated as prescribed above, will therefore be as follows:

Effective August 1, 1971

	<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>
Sergeant	\$ 13145.	13474.	13811.
Lieutenant	\$ 14510.	14872.	15244.

Effective January 1, 1972

	<u>Start</u>	<u>6 Mos.</u>	<u>12 Mos.</u>
Sergeant	\$ 13802.	14148.	14502.
Lieutenant	\$ 15236	15616.	16006.

II. Issue # 3 (education allowance). Article 6, Education, of the prior (1970-1971) Agreement is hereby replaced by the following provision effective as of August 1, 1971:

ARTICLE 6

EDUCATION

The successful completion by a Sergeant or Lieutenant of a job related educational program approved in advance by the Chief of Police equivalent to sixty (60) semester hours (ninety (90) quarter hours), such as an Associate of Science in Law Enforcement, entitles him to base pay at an annual rate that is two hundred and fifty dollars (\$250.) above the rate specified for him in Section 7 of Schedule A of the Agreement.

The successful completion by a Sergeant or Lieutenant of a job related educational program approved in advance by the Chief of Police for which the Sergeant or Lieutenant earns a Bachelor's degree in Police Administration or a related field entitles him to base pay at an annual rate that is four hundred and fifty dollars (\$450.) above the rate specified for him in Section 7 of Schedule A of the Agreement.

The prior (1970-1971) Article 6 shall nevertheless remain effective for employees who have taken approved courses prior to December 31, 1971.

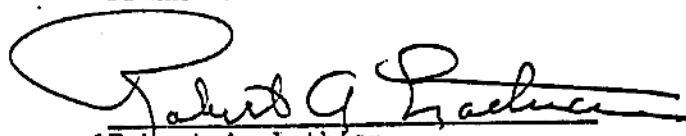
III. Issue # 4 (vacations), Issue # 5 (holidays), Issue # 6 (gun allowance) and Issue # 7 (payment for court time on off-duty hours).

These proposals are rejected in their entirety. Accordingly, all of the terms of the 1970-1971 Agreement between the parties are hereby retained in full force and effect through June 30, 1972, except as amended by Part I and Part II of this Award.

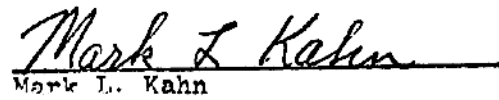
PANEL OF ARBITRATION:



Frank N. Blake



*Robert A. Lothian



Mark L. Kahn

DATED: December 12, 1971

- * Concurring on Issues No. 1, 4, 5, 6 and 7.
Dissenting on Issues No. 2 and 3.

OPINION OF CHAIRMAN

This arbitration is between the City of Sterling Heights, Michigan, and the Sterling Heights Police Command Officers Association. It takes place pursuant to Act No. 312, Public Acts of 1969, State of Michigan, and involves seven issues relating to the amendment of the prior (1970-1971) Agreement between the parties.

The undersigned, under date of August 21, 1971, was appointed to serve as impartial member and chairman of the Panel of Arbitration by the Chairman of the Michigan Employment Relations Commission. The City named Frank N. Blake, its Director of Administration, as the City's delegate to the Panel. The Association named as its delegate Robert A. Lothian, Director of Wayne State University's Police Administration program.

On September 9, 1971, the Panel met with the parties' attorneys to establish a mutually acceptable procedure. In accordance with the understanding established at this procedural meeting, the parties submitted to the Panel a joint stipulation of the seven issues in dispute, noting that "all other portions of the Collective Bargaining Agreement existing between the parties hereto for the year 1970-71 will be continued in full force and effect under the terms and conditions therein contained." Each party, complying with a deadline of September 30, 1971, submitted a brief (with exhibits) on behalf of its position on the issues, and reply briefs were sent to the Panel on October 11, 1971.

Hearings were conducted by the Panel on October 22 and October 28, 1971, in the Conference Room of the City's Municipal Building. A verbatim record of the hearings was prepared by a Court Reporter furnished by the Employment Relations Commission. Each party had a full opportunity, during these hearings, to present evidence and argument on behalf of its position. Neither party desired to present a post-hearing brief.

The Panel of Arbitration met in executive session on December 2, 1971, to review the entire record and to formulate its position on the issues. A second executive session of the Panel took place on December 12, 1971, where a draft of the Chairman's Opinion was reviewed and the foregoing Award was signed.

Background

Sterling Township became the City of Sterling Heights on July 1, 1968. This rapidly growing area of thirty-six square miles is therefore in its fourth fiscal year of city government. Its 1970 census population was 61,365, more than four times as large as its 1960 population of 14,622. The growth in population from 1967 to 1970 is estimated at approximately 20,000.

The Police Department was originally established by Sterling Township in 1966 with a complement of nineteen men. It has since grown substantially: to 66 as of early 1969; and to 84 as of September 1971. The 64 patrolmen are represented by the Sterling Heights Patrolmen's Bargaining Association. The eleven sergeants and eight lieutenants are represented by the Sterling Heights Police Command Officers Association, one of the parties to this proceeding, and hereinafter referred to as the Association.

The first collective bargaining agreement between the Association and the City was effective for the 1970-1971 fiscal year (July 1, 1970, through June 30, 1971), although the agreement was not reached and executed until sometime after January 26, 1971. The prior agreement between the Patrolmen's Association and the City was also effective for the 1970-1971 fiscal year. On August 31, 1971, the Patrolmen's Association and the City agreed to extend their prior agreement through June 30, 1972, without change except for an increase in the pay schedule of five percent effective August 1, 1971, and a further increase of two and one-half percent on January 1, 1972.

This Opinion will now consider, in turn, the seven issues in dispute. Issue No. 1 (salary) and Issue No. 2 (rank differentials) will be considered together. Issue No. 3 involves an Association proposal for a changed type of education allowance. The next three issues, all involving Association proposals, will be considered as a group: No. 4 (vacations), No. 5 (holidays) and No. 6 (gun allowance). The last issue, No. 7, involves a City proposal relating to payment for court time on off-duty hours.

The parties should understand that the judgment on each issue and on the "package" as a whole is based on the entire substantial record of this

case, including the 329-page hearing transcript, 151 pages of briefs, and the various exhibits submitted by the parties. No attempt is made in this Opinion to recapitulate all of the evidence and argument related to each issue. The Chairman, although acknowledging the helpfulness of his colleagues on the Panel of Arbitration, retains sole responsibility for the content of this Opinion.

No. 1 and No. 2. Salary and Rank Differentials

The City offers the same general increases to its sergeants and lieutenants as were obtained by its patrolmen during 1971-1972: a five percent increase, plus an additional increase of two and one-half percent effective January 1, 1972. The City proposes that the initial five percent increase should be effective as of the date of the Award.

The Association subsumes its general pay increase request by a proposal that sergeants be awarded a pay differential above patrolmen of twenty percent (i.e., that the maximum sergeant rate be twenty percent above the maximum patrolman rate, based on the patrolman's rate that will be in effect on and after January 1, 1972). The Association also asks for a maximum lieutenant rate that is fifteen percent above the maximum sergeant rate. These rate increases, says the Association, should be made effective as of July 1, 1971 (the start of the current fiscal year).

The City objects to the concept of any "permanent" percentage differential between ranks. The City also opposes any widening at this time of the existing percentage differentials between ranks. These differentials during the period of January 1, 1971, through July 30, 1971, which would be retained under the City's salary increase proposal, were 13.2 percent between patrolman and sergeant and 10.4 percent between sergeant and lieutenant.

During 1970-1971, the patrolmen were on the same salary schedule for the entire fiscal year (13.2 percent above their prior fiscal year salary). The lieutenants and sergeants also obtained a general increase of 13.2 percent effective July 1, 1970, but were granted an additional 2.5 percent increase effective January 1, 1971. This 2.5 percent increase therefore constituted a widening of the pre-existing differential between patrolmen and sergeants and a retention of the 10.4 percent differential between sergeants and lieutenants.

In regard to Issue No. 1 -- the general salary adjustment -- it is my judgment that the sergeants and lieutenants should be awarded the same percentage increases, effective as of the same respective effective dates, that were obtained by the patrolmen during 1971-1972. The inevitable delays associated with a resort to arbitration under Act 312 should not serve to penalize the members of the bargaining unit by delaying the effective date of an otherwise appropriate pay adjustment. Neither, in my view, should the Award provide greater retroactivity than the patrolmen were able to obtain by way of the agreement they reached in direct collective bargaining. There is an obvious close relationship between the personnel in the two bargaining units. All command officers are promoted from the ranks of the patrolmen. All ranks work in close proximity. Many provisions of their 1970-71 agreements are identical. The two units received identical general increases in 1969 and in 1970 (exclusive of the 2.5 percent extra adjustment given to the command officers effective January 1, 1971).

As to Issue No. 2 -- the differential between ranks -- I am persuaded by the evidence that the differential between the patrolman maximum rate and the sergeant maximum rate should be greater than 13.2 percent. Prior to January 1, 1971, this differential was a clearly inadequate 10.4 percent. The negotiated increase for the command officers of 2.5 percent effective January 1, 1971, was a step in the right direction, and I have concluded that a similar step should be taken during this fiscal year in the form of an additional 2.5 percent increase for command officers effective January 1, 1972. This adjustment will make the differential between the top patrolman and the top sergeant rate 15.9 percent, which is a substantial improvement. There is no implication intended in this conclusion that 15.9 percent is the proper ultimate patrolman-sergeant differential. In fact, it is the Chairman's view that the appropriate percentage may well vary over time in accordance with changes in job content, the establishment of other classifications above the patrolman level (e.g., corporal, detective or inspector), and general labor market considerations. The establishment of higher educational requirements for the sergeant job could be another pertinent consideration.

The lieutenants will also receive the additional 2.5 percent increase, thus leaving their differential in relation to top sergeant pay unchanged

at 10.4 percent. I have not overlooked the argument of the Association that the absence of officers at the rank of inspector between the lieutenants and the Chief of Police increases the burden of responsibility that rests upon the lieutenants in Sterling Heights. I am not convinced that this is a substantial factor at the present stage of development of this Police Department. In any event, the proper solution will be for the Department to add inspectors when appropriate, not to create an abnormally large differential between sergeants and lieutenants that would be difficult to cut back at a later date.

Accordingly, combining the appropriate "general" increases with the "differential" adjustment, the foregoing Award grants the command officers an increase of five percent effective August 1, 1971, and an additional increase of five percent effective January 1, 1972.

Issue No. 3. Education Allowance

Article 6 of the 1970-1971 agreement between the City and the Association, which is identical to the previous and current Article 6 in the agreement between the City and the Patrolmen's Association, is entitled "Education" and reads as follows:

Upon completion with a passing grade of job related educational courses, which have been approved in advance of the taking by the Chief of Police, the employee will be reimbursed for all required textbooks and will also be reimbursed for 1/2 of his tuition fees.

The Association proposes that this provision be replaced by a different type of support for educational achievement, namely, a percentage increase in base pay for specific levels of pertinent educational attainment:

- 2 % . . . "for one year college certificate in law enforcement or related subjects in law enforcement."
- 4 % . . . "for an associate's degree, that is, two year college degree, in Associate of Science in Law Enforcement."
- 6 % . . . "for a Bachelor's Degree in Police Administration or a related field."
- 8 % . . . "for a Master's Degree in Police Administration or a related field."

The Association points out that although this kind of approach to recognizing the value of higher education for policemen is relatively novel,

the nearby communities of Troy and Fraser, Michigan, have adopted this method, while Southfield and Roseville, Michigan, have similar plans that increase base pay but by specified dollar amounts instead of percentages.

The Association endorses the position taken by the President's Commission on Law Enforcement and Administration of Justice in its Task Force Report: The Police (p. 136) wherein it stated: "The quality of police service will not significantly improve until higher educational requirements are established for its personnel." The Association notes that the City would actually save money this year were this proposal adopted, since only one member of the bargaining unit has an Associate degree and only three members have a one-year certificate. On the other hand, says the Association, this formula will create a great deal of educational incentive and thus contribute to the qualitative improvement of the force.

The City favors no change in Article 6. The City observes: "Without a requirement of education for promotions, it is hard to envision how the City or the public is served by granting a demand such as this." The City points out that its Police Department operates under Civil Service in accordance with Act No. 78 of 1935, as amended; that the only educational requirement for hiring or promotion under this Act and the accompanying regulations is a high school degree (or equivalent); that the City must promote based upon the top score in Civil Service examinations which give no discretion to the employer. The City submits that until the Association is prepared to accept higher educational attainment as a requirement for eligibility for promotions, it should not be required to incur this kind of additional cost.

I strongly endorse the objective of higher educational standards for police service at all levels. To the extent that Act No. 78 as implemented blocks this objective, the Act or its implementation should be modified. In the meanwhile, a change in approach may provide a constructive incentive. Accordingly, I am prepared to support at this time the type of approach advocated by the Association, but with two modifications: first, that the benefit should take the form of a flat amount for a given level of achievement instead of a percentage; and second, that (for the present) the benefit start at the two-year "Associate" level with an additional amount for earn-

ing the Bachelor's degree. Since only one member of the bargaining unit has reached the Associate level, it would be "academic" at this time to decree a still higher benefit for the acquisition of a Master's degree.

The "flat" benefit approach will provide each officer with the same dollar addition to his income for a given level of education, and on the basis of the testimony and argument presented to the Panel I am persuaded that this is a more equitable formula. The smaller benefits (compared to the proposal of the Association) will not preclude the parties from subsequent modifications based on experience and perhaps related to a greater role for educational achievement in the process whereby personnel are selected for promotion.

Issues No. 4, No. 5 and No. 6: Vacations, Holidays and Gun Allowance

Section 6 of Schedule A of the 1970-71 agreement provides, in Paragraph A, that all regular full-time employees are entitled to "Two 10 working days vacation periods." (The patrolmen's agreement provides two vacation periods of seven working days each "After each full year after 1st year. . .") The Association now proposes that the vacation benefit for command officers be increased to two 12-working-day vacations after five years of service, and to two fifteen-working-day vacations after seven years of service.

Section 6-D of Schedule A now provides: "Employees will be paid their current rate based on a normal eight (8) hour day for said holidays. Number of paid holidays are ten." The holiday pay provision in the patrolmen's agreement is identical. The Association proposes twelve holidays at time and one-half, whether worked or not worked.

There is no gun allowance under either the command officers' agreement or the patrolmen's agreement. Each patrolman and command officer is furnished a gun and ammunition by the Department at no cost to him. They are required to "carry gun, badge and official department identification card with them at all times." The Association states that its members have had to purchase smaller guns than those issued by the Department for use while off duty at their own expense. The Association proposes a gun allowance of \$1.00 per day, or \$365.00 per year.

The City's position is that all three of these proposals should be

rejected by the Panel. Apart from its various arguments on the substance of these proposals, the City points out that these three items were never presented by the Association prior to the arbitration. They were never discussed in mediation, the City asserts, nor had they been part of the Association's original contract demands. The City therefore takes the position that the Panel is without jurisdiction to consider these proposals and that the 1970-1971 agreement must be retained unchanged in regard to these subjects.

In my judgment, the failure of the Association to have presented contract demands in regard to vacations, holidays and gun allowance prior to the referral of this contract dispute to arbitration affects the weight that should be assigned to these proposals but does not serve to deprive the Panel of jurisdiction over these proposals. Perhaps, realistically, this is a distinction without a difference. In any event, the evidence of record on these three proposals of the Association has failed to persuade me that they should be granted. In regard to vacations, the Association's 1970-1971 agreement provides for a substantially higher benefit than does the patrolmen's agreement and the information on vacation provisions at other police departments does not support the Association's proposal. As to holidays, I see no reason to provide more generous holiday pay for command officers than for patrolmen, especially in the face of a history of identical treatment, and the information on practices at other police departments indicates that the Sterling Heights holiday pay arrangement is appropriate in its present form. Finally, the requirement that command officers (and all patrolmen) carry a gun when off duty has always been in effect. Consequently, this requirement has always been an implicit factor in salary determination. I find no valid basis, therefore, for adding a gun allowance at this time, a conclusion that is reinforced by the fact that the patrolmen do not have one.

Issue No. 7: Payment for Court Time on Off-Duty Hours

Section 4 of Schedule A of the 1970-1971 agreement states: "Court time will be 1 1/2 time payment with a minimum of two hours." In the patrolmen's agreement, however, Section 4 of Schedule A provides (in part): "All overtime will be compensated at the rate of 1 1/2 times basic

rate except that time spent on court time will be straight time payment with a minimum of two hours." Command officers, it should be noted, do not obtain overtime pay as such (except when in court). Section 3 of Schedule A of the Command Officers' agreement reads: "In lieu of overtime pay, each employee will receive ten (10) compensatory (work) days off."

The City maintains that the intent of the parties to the 1970-71 Command Officers agreement was that court time be paid for at straight time and that the language calling for time and one-half was a typographical error that should now be corrected. The City observes that this error has not involved much of a financial burden, but that it has created pressure in the patrolmen's group for similar compensation. Accordingly, the City now proposes that court time by command officers be paid for at straight time.

The Association rejects the City's "typographical error" claim and contends that this topic was discussed carefully in negotiations which established that the rate would be at time and one-half. The Association points out that most of the other communities surveyed pay for court time at time and one-half, and asks that this provision of the 1970-1971 agreement be retained unchanged.

The pertinent evidence (Hendricks testimony, Tr. 284-86) fails to support the claim of the City that the provision for payment at time and one-half resulted from a typographical error. Since overtime arrangements for command officers are distinctly different from those established for patrolmen, the argument that payment for court time should be at the same rate is not compelling. My conclusion, on the basis of the record as a whole, is that the present provision should not be changed by this Panel.

Postscript on "Phase II"

I have deliberately avoided any consideration of the restraints placed upon improvements in employee compensation under the federal "freeze" imposed in mid-August 1971 and at present under the so-called "Phase II". The Panel is not qualified to interpret these federal policies, and it is up to the parties to determine whether the Award may be fully implemented. It is the informal judgment of the Chairman, however, that nothing in the Award is inconsistent with the spirit and intent of the federal policies.

December 12, 1971

Mark L. Kahn