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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

STATE OF MICHIGAN
ACT NO. 312 ARBITRATION
BEFORE PANEL CHAIRMAN
PATRICK A. McDONALD
DETROIT, MICHIGAN

In the Matter of:

CITY OF STERLING HEIGHTS,

Public Employer,

-and-

STERLING HEIGHTS COMMAND OFFICERS
ASSOCIATION,

Labor Organization,

-and-

STERLING HEIGHTS POLICE OFFICERS
ASSOCIATION and LOCAL NO. 1557,
STERLING HEIGHTS FIRE FIGHTERS
ASSOCIATION,

Intervenors.

M.E.R.C.

Case No. D-78-B275

STERLING HEIGHTS, CITY OF

DECISION AND AWARD

APPEARANCES

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MICHIGAN STATE UNIVERSITY
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McDonald, Patrick

INTRODUCTION

The parties to this proceeding were ably represented by experienced reputable legal counsel. At all times the representatives of all parties remained cooperative and congenial despite their sharp differences on the particular issues before this panel. The panel found no evidence indicating that the parties had not at all times negotiated in good faith and with a firm conviction concerning the fairness of their position. The panel takes this opportunity to commend the parties and their representatives for their assistance and cooperation. Both intervenors were permitted to intervene because of their interest in the pension improvement issues presented to the Panel.

FACTS AND DISCUSSION

The City of Sterling Heights, Michigan, is a municipality of approximately 90,000 residents contiguous to Shelby and Clinton Townships and the Cities of Utica, Troy, Madison Heights, Fraser and Warren. It is located in Macomb County in the southeastern industrialized area of Michigan and covers approximately thirty six square miles.

The Police Department consists of approximately 120 members, 35 of whom are sergeants or lieutenants represented by the Sterling Heights Command Officers Association (hereinafter referred to as the "Association"). The Department is organized into divisions in a basically traditional manner. They include narcotics, traffic, patrol, school resources, investigation, and communications (TR 17 and 18).

The contract in question between the parties would be effective as of July 1, 1978 and would run until June 30, 1980.

After giving both parties the full opportunity to submit evidence and testimony at hearing sessions, last best offers were requested from the parties. These last offers of settlement were submitted to the panel on November 8, 1979. These issues were as follows:

1. Retirement benefits.
2. Wages.
3. Cost of living allowance.
4. Gun allowance.
5. Shift differential.
6. Clothing allowance.
7. Longevity.
8. One week hold-back of pay.
9. Grievance procedure.

The first eight issues were identified as economic issues and the ninth issue, grievance procedure, was a non-economic issue. A discussion and decision pertaining to the issues follows the last offer of settlement by each party.

1. PENSION IMPROVEMENTS

Association's Last Offer

A. Benefit Level Factor - Contract year July 1, 1978 - June 30, 1979.

2.2% of FAC x first 25 years
1.0% of FAC x years in excess of 25

Contract year July 1, 1979 - June 30, 1980

Same

B. Average Final Compensation - Contract year July 1, 1978 -
June 30, 1979

Average Final Compensation shall mean the average of the highest annual compensation received by a member during a period of 3 consecutive years of service contained within his 10 years of service immediately preceding his retirement, or leaving service.

Contract year July 1, 1979 - June 30, 1980

Same

C. Eligibility for Voluntary Retirement - Contract year
July 1, 1978 - June 30, 1979

A member who has completed 25 or more years of service may leave the service and shall be awarded full retirement benefits payable throughout his life as provided in Public Act 345 of 1937, as amended.

Contract year July 1, 1979 - June 30, 1980

Same

D. Post Retirement Increases - Contract year July 1, 1978 -
June 30, 1979

Post retirement increase in pension payment commencing one year after the date of retirement in amount of 1% annually of the base pension amount at time of retirement provided that the Consumer Price Index, Detroit, Michigan increases by more than 1% in the year immediately preceding the member's retirement.

Contract year July 1, 1979 - June 30, 1980

Same

City's Last Offer

The City proposes no change in retirement benefits presently being paid.

In summary form the four benefits being sought for improvement in pensions concern a number of factors. The first benefit pertains to the benefit level factor. Basically the Association seeks to improve the present pension benefit level factor from 2% times the first 25 years of service to 2.2% times the first 25 years of service. Using 25 years for the purpose of calculation, the present 50% of final average compensation benefits would be increased to 55%.

The Association also seeks to improve the present average final compensation definition of highest consecutive five years of the last 10 years of service to the highest consecutive three years of the last 10 years of service.

The Association's third proposal for pension improvement is that of a provision whereby a member who has completed 25 or more years of service would be eligible for full retirement benefits regardless of age. Presently a member may retire after 25 years of service but must have attained the age 50. Alternatively, an employee at age 60 may retire regardless of the years of service.

As its final pension improvement, the Association seeks a 1% pension benefit escalator beginning with the second year of retirement. Such amount of 1% would not be cumulative as the annual amount would be

1% of the original base pension amount. This increased benefit would be applicable only in years when there was an increase in the cost of living. Presently there is no escalator provision for the command officers in Sterling Heights.

There were two major procedural issues dealing with the pension improvement increases sought by the Association. These included:

1. The applicability of any retirement increases to other police officers and firemen;
2. The power of this panel to award the retirement increases sought by the Association.

The first question concerning the applicability of the retirement increase to other police officers and firemen was submitted to the Circuit Court for the County of Macomb, for a declaratory judgment. That opinion which has been submitted in this hearing as Joint Exhibit 4 concluded that employee units under Act 345 (the applicable pension statute) must receive equal benefits. In other words any retirement benefits awarded by this panel would be applicable to all other police and fire personnel employed by the City of Sterling Heights. The Second issue, although submitted to the Court, was not decided inasmuch as it was deemed premature. However, the City argues that this panel has no legal authority to award the request of the Association. It does so by citing Act 345 of the Public Acts of 1937 as amended for policemen and firemen (MCLA 38.561 et al). Three of the four benefits sought by the Association fall within the provisions of Section 6(1)(a) or (e). Under those sections, a City such

as Sterling Heights may act "...upon the approval of the legislative body or the electors thereof". Inasmuch as this has not been accomplished, the City submits that this arbitration panel is without jurisdiction or authority to award the increased pension benefits sought by the Association.

The City also takes the position that although the Association identified the retirement benefit increase as a single issue, there are indeed four distinct parts to that request. However, it is the City's position that by submitting the request as a single economic issue and not four separate and distinct economic issues, in accordance with the compulsory arbitration statute, the panel must either award the total Association request or the total City offer. It may not award according to the City-Association requests one, two, three or four without giving all of the requests as a total offer.

A reading of Act 312 of the Public Acts of 1969 for the State of Michigan, however, leads to a different conclusion. That Act provides for compulsory arbitration on labor disputes in Municipal police and fire departments. This certainly is the case here. Section 1 of that Act indicates that the provisions of this act providing for compulsory arbitration "shall be liberally construed". Act 312 is a legislative attempt to resolve disputes that do arise between municipalities and certain public employees. By its very nature, it infringes upon the legislative control that municipal governments have over other aspects of City government. Any contract under most municipal charters must go before

the legislative body for approval before such contracts go into effect. This would include wages, hours and working conditions in this particular setting. If one were to carry the City argument to its ultimate, the panel would be totally without authority to decide any issue that ultimately must be submitted to the legislative body for approval or action. This obviously was not the legislative intent in adopting Act 312 approximately 30 years after Act 345 of the Public Acts of 1937. Your panel does therefore conclude that it has the authority and jurisdiction to determine the pension improvement issues on their merits.

The four requested improvements have considerable cost attached to them because of the Circuit Court determination that they would be applicable to all other police and fire personnel in the City of Sterling Heights. The Command Officers Association in this case forms but a small segment of the total fire and police employee population. The costs to the City are not entirely clear. The Association did not submit cost figures for its final offer. However, joint exhibit 3 does show the approximate cost for an earlier request by the Association to be \$594,000.00 dollars per year if projected for other employees. Since proposal 1 in that exhibit dealt with a 2.5% benefit rather than a 2.2% fringe benefit, the panel will assume that the costs are reduced. However, they are still significant in amount. If immediately instituted, we estimate the costs to the City over the next 27 years to be approximately \$14,000,000.

A review of the comparable communities indicates that the vast majority of them do not enjoy all of the pension benefit improvements requested by the Association. While some communities have certain items no community has all of the improvements requested.

The Police Department in Sterling Heights is a relatively recent development. The department was begun in 1967. Assuming that the first year that any of the members of this particular unit could retire would be after 25 years of service with the City, we reach the conclusion that the first member would retire in May of 1991. That conclusion is also based upon the testimony received in this matter. As such, this particular request would not benefit the members of the Association during the term of the contract being covered by the Award. Without going through each of the particular requests individually, the panel does conclude that the last offer of settlement by the City which was submitted in this case more nearly complies with the applicable factors described in Section 9 of Act 312. The financial costs to the City of Sterling Heights concerning these requests would be insurmountable. Much of this is due to the fact that the applicable Court interpreting the Statute has concluded that such benefits would also be available to the other police and fire personnel for the City.

Under these restraints, your panel has no alternative but to conclude that the City proposal which advocates a status quo approach is more nearly in compliance with those considerations set forth under

Section 9 of the Act which governs this panels determinations.

2. WAGES

Association's Last Offer

Contract year beginning July 1, 1978 and Ending June 30, 1979

Each member of the bargaining unit shall receive an eight and one-half (8-1/2%) percent pay increase retroactive to July 1, 1978. Such raise shall establish base pay as follows:

Effective 7/1/78	<u>Start</u>	<u>Six Months</u>	<u>Twelve Months</u>
Sergeants	\$20,554	\$23,118	\$23,696
Lieutenants	\$24,810	\$25,430	\$26,066

Contract year beginning July 1, 1979 and ending June 30, 1980 -

Each member of the bargaining unit shall receive an eight (8%) percent pay increase retroactive to July 1, 1979. Such raise shall establish base pay as follows:

Effective 7/1/79	<u>Start</u>	<u>Six Months</u>	<u>Twelve Months</u>
Sergeants	\$24,358	\$24,967	\$25,592
Lieutenants	\$26,795	\$27,465	\$28,151

City's Last Offer

	<u>Effective 7/1/78</u>	<u>Effective 7/1/79</u>	<u>Effective 1/1/80</u>
<u>SERGEANT</u>			
Start	22,138	23,300	23,757
After 6 months	22,692	23,883	24,351
After 12 months	23,261	24,480	24,960
<u>LIEUTENANT</u>			
Start	24,352	25,630	26,133
After 6 months	24,961	26,271	26,786
After 12 months	25,587	26,928	27,456

3. COST OF LIVING ALLOWANCE

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

All members of the bargaining unit shall receive a Cost of Living Allowance in accordance with the following plan:

Effective July 1, 1978, each employee covered by this Agreement shall receive a cost-of-living allowance in accordance with this section.

The cost-of-living allowance will be determined in accordance with changes in the City of Detroit Consumer Price Index (1967-100). The Consumer Price Index will be calculated by the parties using the Consumer Price Index for Urban Wage Earners and Clerical Workers (City of Detroit) published by the Bureau of Labor Statistics for the City of Detroit. The amount of the cost-of-living allowance shall be in accordance with the following formula:

The Consumer Price Index of May, 1978, as published in June of 1978, will establish the initial base of July 1, 1978. The first adjustment (lump sum) will become effective three (3) months later, with the first pay of October, 1978 based upon the Consumer Price Index of August, 1978, as published in September, 1978. The next adjustment will become effective three (3) months later with the lump sum payment for January, 1979 based upon the change in the C.P.I. between August, 1978 and November, 1978, as published in December, 1978. An adjustment of one (1) cent per hour for each .3 change in the C.P.I. for the appropriate three (3) months, as indicated in the preceding sentences shall be paid in a lump sum to each employee. The maximum the employer shall be required to pay will be 50 cents per hour.

The amount of cost-of-living allowance shall be calculated only upon the regular scheduled number of hours worked, vacation, compensatory time, and sick leave for the period affected. It shall not be calculated or included in the computation of overtime hours or any other benefits, such as, but not limited to, shift premium, holiday payments, call-in pay, or pension.

In the event the Bureau of Labor Statistics does not issue the appropriate C.P.I. on or before the beginning of one of the pay periods referred to in the previous paragraphs, any adjustments in the cost-of-living allowance shall be effective at the beginning of the first pay period after receipt of the Index. No adjustments, retroactive or otherwise, shall be made to any revision which may later be made in the published figures used in the calculation of the C.P.I. for any month(s) specified in this section.

The parties to this Agreement agree that the continuance of the cost-of-living allowance is dependent upon the availability of the monthly C.P.I. published by the Bureau of Labor Statistics in its present form and calculated on the same basis as the Index for July, 1978, unless otherwise agreed upon by the parties. If the Bureau of Labor Statistics changes the form or the basis of calculating the C.P.I., the parties agree to request the Bureau of Labor Statistics to make available, for the life of this Agreement, a monthly C.P.I. in its present form and calculated on the same basis as the index for July, 1978.

Contract year beginning July 1, 1979 and ending June 30, 1980 -

For the second year of this Agreement, the same cost of living formula would be used as outlined above (it is not retyped here for convenience purposes) except that the Consumer Price Index of May, 1979, as published in June, 1979 will establish the initial base of July, 1979.

The cost-of-living allowance shall be retroactive to July 1, 1979.

City's Last Offer

The City does not offer any cost-of-living allowance for the contract in issue in these proceedings.

The two issues of wages and cost-of-living improvements are, in the panel's eyes, intrinsically closely related. From a bottom line standpoint, both involve the amount of pay received by a police command officer in the City of Sterling Heights. Wage rates are set and guaranteed. The cost-of-living formula, because it is being imposed in a retroactive manner, is also definite in terms of cost and guarantees. It is not speculative

as it usually is. The parties are already well aware of the cost-of-living increases that have occurred during the years 1978 and 1979. In 1978 it amounted to almost a 10% increase, while in 1979 it was in the 13% bracket.

The City has laid great emphasis on the internal relationship between the patrolmen and the command officers. It cited a number of authorities and a number of arbitration decisions involving police and firemen in the State of Michigan. In this case, the City argues that there is an internal wage structure in the police department. That internal wage differential historically has been preserved between the patrolmen and the command officers. The City therefore submits that the rank differential which has existed for many years not only implicitly as before 1973, but explicitly since 1973 because of the written language of the contracts should continue to be preserved.

Professor Carl Austermiller, an expert in industrial relations who testified on behalf of the City, indicated that long standing relationships between the parties should be preserved if there is a validity to such relationships in the first place. The City also has relied upon recent arbitration cases involving the City of Detroit, the Detroit Police Officers Associations and the Detroit Firefighters Association. In those cases the arbitration panel, according to the City, laid great emphasis upon the internal relationships between the members of the police department and each other.

Finally, the City introduced into the record a copy of the Wage and Price Standards imposed by the Federal Government during 1979. It submits that the panel is bound by the Federal Wage and Price Standards and must apply these standards to the awards in this case.

On the other side of the coin, a study of 15 communities comparable to Sterling Heights indicates that from a wage standpoint if the City's wage proposal was granted by the panel, Sterling Heights would rank fifth of the communities. While placing them in the top third, it does not place them third in the rankings. If, however, the Association proposal for C.O.L.A. were granted in addition to their proposal on wages, that same comparison of communities indicates that they rank second among all communities compared.

In reviewing the contracts concerning the Command Officers Association and the Sterling Heights Police Officers Association, it is clear that there are a great number of similarities. It is also clear that the panel should take into account the historical progression of the collective bargaining in the City between itself and its police and fire associations. At the same time, to quote from an opinion cited by the City the panel would be remiss if it did not take into account the particular needs of each bargaining unit as well as the drastic increase in the cost of living during the past several years. For example, Arbitrator Bowles in speaking of his award concerning the City of Detroit and the Detroit Police Officers Association indicated:

"... the Chairman also has difficulty with the general proposition that the panel should in effect, hold that the settlements reached with other unions should be the settlement that it mandates here. Such an approach does not take into consideration, it is believed, the dynamics of the collective bargaining, the particular weaknesses and strengths of the unions and managements and more importantly the particular needs of those in a given bargaining unit. The variables are considerable. Each bargaining unit is different. Each bargaining agent is somewhat different, each union has a separate membership, officers and bargain separately. The whole notion of separate bargaining units is a community of interest among employees within a particular bargaining unit. There are sophisticated differences and subtle nuances of union size, strength, personalty and even public opinion toward that union. The differences go to the integrity of the identity of the particular union and the uniqueness of its people. Unions are probably no different from all the rest of us; they do not wish to be "lumped" all together if the process destroys individual identity and uniqueness". (Citing Bowles Arbitration Opinion on page 24 of the Employer's Brief).

The City cannot pick and choose from those particular awards. If they are to be cited, then certainly all of the language is applicable, including the above quoted message from the chairman of that panel. Indeed, in this particular case the same principles are true. The Command Officers Association is unique. The contract between the City and that Association and the contract between the City and the Police Officers Association have several differences. While a comparison between those contracts is called for under section 9 of Public Act 312, it is but one consideration. Other considerations include a comparison of wages in comparable communities and the average consumer prices for goods and services commonly known as the cost-of-living. The overall compensation of the employees involved and those other factors mentioned by Arbitrator Bowles which include those factors traditionally taken into consideration in determining wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties.

Looking at all of these factors, your panel is of the opinion that by adopting the last offer of settlement of the Association pertaining to wages and by adopting the last offer of settlement of the City concerning C.O.L.A. it will have achieved a result that more nearly complies with the applicable factors prescribed in section 9 of the act than any other result. The adoption of the Association wage proposal allows the members an eight and one-half (8-1/2) increase for 1978, and allows an eight (8%) percent increase for 1979. Such wage increases would allow it to continue its traditional ranking among comparable communities. At the same time, the allowance of cost-of-living would have exceeded such ranking and exceeded general wage pattern settlements. The definite wage increases allow the City of Sterling Heights to budget accurately the costs inherent in fulfilling this and future contracts. A cost-of-living formula would not only be inconsistent with the growing trend in the private sector as well as some public employees, but would mandate that the City begin estimating and setting aside amounts for possible cost-of-living increases.

As a result of these many reasons, your panel does adopt the last offer of settlement of the Police Command Officers Association pertaining to wages for the years commencing July 1, 1978 and ending June 30, 1980.*

*It appears that a correction should be made in the starting salary for Sergeants effective 7/1/78 in the offer of settlement made by the Association. This figure is printed at \$20,554. This would appear to be incorrect inasmuch as the Employer's proposal which is for a lesser amount calls for a \$22,138 as a beginning salary beginning 7/1/78.

The panel does further adopt the last offer of settlement of the City of Sterling Heights pertaining to the cost of living formula.

4. GUN ALLOWANCE

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

Each member of the bargaining unit shall receive a gun allowance in the amount of Three Hundred Sixty-Five (\$365.00) Dollars payable effective as of July 1, 1978. (Since this benefit would accrue effective July 1, 1978, it shall be paid upon the execution of the Agreement).

Contract year beginning July 1, 1979 and ending June 30, 1980 -

Each member of the bargaining unit shall receive a gun allowance in the amount of Three Hundred Sixty-Five (\$365.00) Dollars payable effective as of July 1, 1979. (Since this benefit would accrue effective July 1, 1979, it shall be paid upon the execution of the Agreement).

City's Last Offer

The City does not offer any gun allowance for the contract in issue in these proceedings.

As can be seen, the Association seeks a \$365.00 per year gun allowance for both years of the contract. The City maintains the status quo which does not pay a gun allowance.

Of the comparable communities cited by the parties a majority of them do not pay any gun allowance. Moreover, as the City exhibit demonstrates no City provides the gun allowance only for the command officers unless they also provide it for the patrolmen. The allowance at stake is a relatively modest one. It is equivalent to one dollar per day.

The City justifiably points out that the rule requiring the carrying of a gun while off duty is not a new one. This has been the rule ever since the Sterling Heights Police Department came into being. All of the members of the Association who are either Sergeants or Lieutenants accepted work in the City of Sterling Heights with the full knowledge that it would be mandatory to carry a gun off duty. In doing so, they also accepted the fact that they would not receive any additional compensation to comply with this rule.

Based upon a comparison of comparable communities as well as the history in this community, your panel is of the opinion that the last offer of settlement by the City is more nearly in compliance with the applicable factors prescribed in Section 9 of Act 312. For this reason it does adopt the City's offer of settlement.

5. SHIFT ALLOWANCE

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

All employees including those in plain clothes shall be paid a shift allowance on the basis of the following rates:

Afternoon Shift . . . 2-1/2% of base wage
Midnight Shift . . . 4% of base wage

The afternoon shift is defined as those hours normally construed to fall within the time frame from 4:00 p.m. to 12:00 midnight. However, the specific times covered by the above mentioned rate will be determined by the work schedule or assignment of the employees. Previous contract language to be utilized relative to examples.

Shift allowance to be paid retroactively to July 1, 1978.

Contract year beginning July 1, 1979 and ending June 30, 1980 -

All employees including those in plain clothes shall be paid a shift allowance on the basis of the following rates:

Afternoon shift . . . 2-1/2% of base wage
Midnight shift . . . 4% of base wage

The afternoon shift is defined as those hours normally construed to fall within the time frame from 4:00 p.m. to 12:00 midnight. However, the specific times covered by the above mentioned rate will be determined by the work schedule or assignment of the employees. Previous contract language to be utilized relative to examples.

Shift allowance to be paid retroactively to July 1, 1979.

City's Last Offer

The City proposes no change in the shift allowance presently being paid.

Basically the Association is requesting an increase in the shift allowance as well as a conversion from a cents per hour to a percentage of base wage. Present shift allowance calls for 20¢ for afternoon shifts and 30¢ for a midnight shift. The new differential, if the Association offer were granted, would call for two and one-half percent which is roughly 30¢ at present for afternoons and 4% or 49¢ for midnights. Of the comparable communities cited by the parties, a majority of the communities do pay a shift differential. However, a majority of such communities either pay less than Sterling Heights pays per hour or pays no differential at all. The basis for requesting an increase in the shift differential is that Association members find the afternoon shift undesirable and the midnight shift even more undesirable,

both in terms of safety and convenience. For this reason they request the differential be increased. At the same time the Association requests that the differential be calculated on the basis of percentages so that once this conversation takes place, this item need not be further negotiated with each contract as a wage increase automatically would increase the shift differential.

The panel is sympathetic to the idea of possibly increasing the shift differential. It is also sympathetic to the idea of converting from a cents per hour to a percentage so that this matter need not be continually negotiated in future contracts. At the same time, no rational basis has been demonstrated to support both an increase and a conversion of cents per hour to a percentage. Certainly the comparable communities cited by the parties do not support both an increase and a conversion to percentage. Had the Association's proposal restricted itself to either increasing the cents per hour or converting to a percentage its offer probably would have been accepted.

Under the circumstances, however, your panel does believe that the last offer of settlement proposed by the City which is the status quo being preserved more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The panel does therefore adopt the last offer of settlement by the City.

6. CLOTHING ALLOWANCE

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

Effective July 1, 1978, all employees shall receive a \$500 per fiscal year clothing allowance except those in "plain clothes" who shall receive a \$550 per annum clothing allowance for clothing and equipment. Payment (pro-rated if required bi-monthly because of assignment changes) shall be paid at the second pay date in June for said fiscal year ending June 30, 1979.

Contract year beginning July 1, 1979 and ending June 30, 1980 -

Effective July 1, 1979, all employees shall receive a \$500 per fiscal year clothing allowance except those in "plain clothes" who shall receive a \$550 per annum clothing allowance for clothing and equipment. Payment (pro-rated if required bi-monthly because of assignment changes) shall be paid at the second pay date in June for said fiscal year ending June 30, 1980.

City's Last Offer

The City proposes no change in the clothing allowance presently being paid.

The Association seeks an increase in the clothing allowance for uniform personnel from \$400 to \$500 dollars, and for plain clothes personnel from \$450 to \$550. It entered into evidence cost figures from two clothing stores used to demonstrate present costs for uniforms. At the same time while pointing out that such Exhibit did not demonstrate a great increase in cost, the City does not deny that there have been some price increases of both the purchasing and the cleaning of uniforms.

There has been no change in this particular clothing allowance for at least six years. The comparables cited by the parties indicate that every community does pay some type of clothing allowance. A substantial number also pay a cleaning allowance. The City of Sterling Heights does not pay a cleaning allowance but does pay a clothing allowance which is above average for other communities. The City indicates that there is no justification for the increase because the average payment for all comparable communities is \$371.00. However, averages cited can be quite deceiving. There is no question that the cost of both obtaining clothing and the cleaning of clothing has increased considerably. Furthermore, throughout the hearing your panel did observe the Departments strict adherence to uniforms being worn and the fine condition of such uniforms. It appears that the Sterling Heights Police Department has a uniform standard that is strictly adhered to throughout the department.

Under these conditions it would appear that the final offer of settlement by the Association more nearly complies with the applicable factors described in Section 9 of Act 312. For that reason, the Association offer of increasing the clothing allowance is adopted.

7. WEEK HOLD-BACK

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

As the members of this bargaining unit are the only employees within all comparable units who are not paid adequately for overtime, the Association offers to surrender one-half week's pay in exchange for 20 additional compensatory time off hours for fiscal year 1978-1979.

Contract year beginning July 1, 1979 and ending June 30, 1980 -

As the members of this bargaining unit are the only employees within all comparable units who are not paid adequately for overtime, the Association offers to surrender one-half week's pay in exchange for 20 additional compensatory time off hours for fiscal year 1979-1980.

Summary - Association Position - One Week Hold Back -

After expiration of this contract, the parties agree that the compensatory time arrangement would revert to the eighty hours of compensatory time per year, the compensatory time arrangement being offered here is offered as a one time arrangement only.

City's Last Offer

The City proposes that Section 3 of Article 14 of the proposed base contract read as follows:

Section 3. The employer shall provide pay periods every two weeks. Payment shall be made on Thursday for the period ending the previous Friday. Each employee shall be provided with an itemized statement of his earnings and of all deductions made for any purpose.

Further, the City offers to enter into a Memorandum of Understanding with the Association to minimize the burden to the employees of holding back one week of pay. The individual members of the Association would be able to utilize one of the following options:

1. The entire 40 hours would be withheld from the retroactive pay ordered by the arbitration panel.
2. The entire 40 hours would be withheld from the initial paycheck after the arbitration award.
3. Conversion of 40 hours of banked vacation time.
4. Conversion of 40 hours of banked compensatory time.
5. Withhold one day (8 hours) of pay for each pay period until the 40 hours are withheld.

The City indicates that it is economically and fiscally responsible to have a procedure whereby it can have a week's hold back in pay. Presently, the payment to the Command Officers on Thursday for the week ending on Saturday results in some members being paid in advance of the services being performed for the City. This according to the City is not only improper but illegal. Historically, all the employees of the City were paid in such a fashion. However, when the practice was discovered it was changed for all non-union employees and as each collective bargaining agreement was negotiated, all of the union employees with the exception of the command officers agreed to such a change.

The Association counters by indicating that the affect of withholding one week's pay from Association members is to reduce their annual income by approximately 2%. This, they believe, is hardly conscienable. The Association maintains that its proposal would provide compensatory time on a one time basis for each of the two years to allow the City to remedy its administrative error and yet at the same time, make it easier for Association members to work overtime at no pay.

The proposed change in payperiods appears to be a very reasonable and logical one. The fact that it was uncovered several years ago and is only now being put into effect, does not change the legitimacy of the City proposal. The offer of the Association to donate 20 hours per week in return for the granting of 20 hours of compensatory time does not amount to a donation at all. I believe the Association

understands that the withholding of a week's pay is not a contribution by Association members or a permanent reduction in their annual income. Such pay would continue to be due and owing to Associate members.

The City has proposed a number of alternatives that an individual Association member can choose in order to lessen the economic impact of this proposal. Once again, these alternatives appear to be quite reasonable and allow individual association members a wide choice in the matter.

Under these circumstances your panel does believe that the last offer of settlement of the City more nearly complies with the applicable factors prescribed in Section 9 of Act 312. For these reasons the panel does adopt the last offer of settlement of the City.

8. LONGEVITY

Association's Last Offer

Contract year beginning July 1, 1978 and ending June 30, 1979 -

Association offers to retain the current contract arrangement wherein longevity is paid on a sliding scale percentage basis.

Contract year beginning July 1, 1979 and ending June 30, 1980 -

Association offers to retain the current contract arrangement wherein longevity is paid on a sliding scale percentage basis.

City's Last Offer

The City proposes that Section 9 of Article XVIII of the proposed base contract read as follows:

Effective July 1, 1978, longevity pay shall be paid on the following basis:

<u>SGT.</u>	<u>LT.</u>	
465	511	After 5 years of continuous service
930	1,022	After 10 years of continuous service
1,395	1,535	After 15 years of continuous service
1,860	2,044	After 20 years of continuous service

Effective July 1, 1979, longevity pay shall be paid on the following basis:

<u>SGT.</u>	<u>LT.</u>	
500	550	After 5 years of continuous service
1,000	1,100	After 10 years of continuous service
1,500	1,650	After 15 years of continuous service
2,000	2,200	After 20 years of continuous service

Longevity pay shall be based upon the total number of continuous completed full years as of November 30th each year; said longevity pay to be paid on or before the 15th of December of each year.

The City proposes to change the longevity payment from a percentage to a flat dollar amount. During the contract presently being adopted, the actual dollars received would not be less but in most cases would be more than previously received. However, in future contracts unless the dollar amount negotiated was increased, it would be ultimately less than the former payment based upon percentages.

The City bases this request upon the rationale that the only other City employees who presently receive longevity are members of the police department and fire department, and in both cases the Fire Association and the Police Patrol Association receive flat dollar amounts that were negotiated.

The exhibits that were presented by the parties concerning comparable communities demonstrate that nine out of 15 communities pay longevity amounts on a percentage basis. While it is acknowledged that two such communities have caps on the maximum to be paid, the City has presented no real compelling reasons to change the present status quo language pertaining to longevity payments. For this reason as well as the substantial number of comparable communities paying on a percentage basis, your panel believes that the last offer of settlement proposed by the Association more nearly complies with the applicable factors prescribed in Section 9. For this reason it does adopt the offer of settlement proposed by the Association.

GRIEVANCE PROCEDURES

Both parties in this matter have submitted two separate proposed grievance procedures. A review of those procedures as the City points out, indicates that they are consistent in many respects. A review of the City's proposed grievance procedure with the grievance procedure utilized by other City unions again indicates that there are no substantial differences.

The proposed grievance procedure submitted by the Association is substantially modified from the one submitted during negotiations and to the panel earlier in the arbitration proceedings. Both the Association and the City urge the panel to reject the other parties proposed grievance procedures for a number of reasons. Your panel has reviewed both grievance procedures carefully. Having had the advantage of considerable experience in both negotiating grievance procedures and in arbitrating cases under various grievance procedures, your arbitration panel chairman has basically adopted the City grievance procedure. However, there are several important changes which the panel believes will provide both a fair and streamlined procedure. The Grievance Procedure with those changes is as follows:

GRIEVANCE PROCEDURE

Section 1. A grievance is defined as a difference, dispute, or complaint between the City and the Association as to the application or interpretation of this Agreement which includes all department rules and regulations, and it is mutually agreed that grievances shall only be allowed on items contained in this contract during the life of this Agreement and shall be settled in accordance with the procedure herein.

The parties agree there shall at no time be any strikes, intentional tie-ups of equipment, slow-downs, walkouts, or any other intentional cessation of work.

Section 2. Grievances must be taken up promptly, and no grievance shall be considered or discussed which is presented later than fifteen (15)

calendar days after grievant's knowledge of the alleged grievance. Should any grievance arise there shall be an earnest effort on the part of the parties to settle such grievance through the following steps:

Step 1. By informal conference between the aggrieved employee, an Association representative, or both, and the Police Chief or his representative. If not resolved, then it shall be the responsibility of the aggrieved to reduce any grievance to writing on the regular grievance form provided by the Association within fifteen (15) calendar days of the alleged grievance.

Step 2. Upon receipt of the written grievance, a conference between Association representatives and City representatives will be held within seven (7) calendar days, and a decision will be rendered within seven (7) calendar days after the conference.

Step 3. In the event of failure of the above steps in the Grievance Procedure to resolve a dispute, the matter shall be referred to the next meeting of a grievance panel consisting of not more than three (3) Association representatives, and not more than three (3) City representatives. This grievance panel will meet monthly to settle unresolved grievances, if any, except for discharges, suspensions, or reductions in rank or pay, the panel will convene within seven (7) calendar days and a decision will be rendered within 48 hours after the meeting.

The Step 3 Grievance Panel may be waived if mutually agreed in writing between the City and the Association. In the event Step 3 is waived, either party may still pursue Step 4 of the grievance procedure.

Step 4. In the event the grievance is not resolved in Step 3, the Association or the aggrieved may within 20 days of the decision in Step 3, appeal on cases over which it has jurisdiction to the Civil Service Commission to seek relief with the Civil Service Commission in accordance with the provisions of Act 78 and the Civil Service rules, or the Association may request that it be submitted to arbitration but the Association and/or the aggrieved may not invoke both the Civil Service procedure and arbitration. Arbitration shall be submitted as follows:

- A. The arbitrator shall be a person mutually agreed to by both the Employer and the Association. The moving party may request the American Arbitration Association to appoint an arbitrator who shall have authority to hear and decide the case.
- B. In the event of a refusal by either party to submit to or appear at the arbitration hearing, the arbitrator shall have jurisdiction to proceed ex parte and make an award. The fees and expenses of the arbitrator shall be borne by both parties equally. The decision of the arbitrator shall be rendered without undue delay, and

all subsequent settlements made in the Grievance Procedure, including the decision of the arbitrator shall be final and binding on all parties, including the employees involved.

- C. Grievances must be taken up promptly, and no grievance will be considered or discussed which is presented later than fifteen (15) calendar days after knowledge of the alleged grievance. No economic benefits will be paid seven (7) calendar days prior to the date of Step 1 of the alleged grievance.
- D. All claims for back wages shall be limited to the amount of wages which the employee would otherwise have earned less compensation, if any, earned elsewhere during the period in questions, which such compensation is attributable to the discharge, suspension or layoff period in issue, and which would not have been earned otherwise.
- E. The arbitrator's decision shall be final and binding on the Association, all employees covered by this Agreement and on the City, but the City or the Association may challenge the award if it was not made in accordance with the arbitrator's jurisdiction and authority under this Agreement.
- F. It shall be the function of the Arbitrator, and he shall be empowered except as his powers are limited below, after due investigation, to make a decision in cases of alleged violation of the specific terms and provisions of this Agreement.

- (a) All proceedings before the arbitrator shall be conducted in accordance with the voluntary labor regulations and rules of the American Arbitration Association.
 - (b) He shall have no authority to require the City to purchase buildings, equipment or material.
 - (c) He shall have no power to add to, or subtract from, alter or modify any of the terms of this Agreement.
 - (d) He shall have no power to establish wage scales.
 - (e) He shall have no power to substitute his discretion for the City's discretion in cases where the City is expressly given discretion by this Agreement.
 - (f) In those arbitrations involving discipline or discharge of employees, the arbitrator shall determine if the discharge or discipline is for just cause. He may review the penalty imposed and is empowered to determine if the penalty is appropriate or unduly severe and he may modify it accordingly.
- G. In the event that a case is appealed to an arbitrator on which he has not power to rule, it shall be referred back to the parties without decision or recommendation on its merits.
- H. The fees and expenses of an arbitrator shall be shared by the City and the Association. All other expenses shall be borne by the party incurring them, and neither

party shall be responsible for the expense of witnesses called by the other.

- I. No decision in any one case shall require a retroactive wage adjustment in any other case.
- J. Any grievance not advanced to the next step by the Association within the time limit in that step or if no time limit is specified, within seven (7) calendar days shall be deemed settled. Likewise, should the prescribed time limits for meetings not be met by the City, the grievance shall automatically proceed to the next level of the procedure. Time limits may be extended by the City and the Association in writing.
- K. All agreements between the Association and the City shall be in writing.

The changes between the City grievance procedure and the one adopted by the Panel are as follows:

Section 2 and Step 1 of the grievance procedure indicates a fifteen (15) calendar day limitation on the filing of grievances after knowledge of the alleged grievance. Such a period of time is more than the seven (7) days advocated by the City, but substantially less than the 30-day period as proposed by the Association. The fifteen (15) day period is a reasonable one and assures that grievances be settled as soon as possible to insure the continued harmonious relationship between the parties.

Step 4 is modified to allow a 20 day period for a decision to be made whether the Step 3 decision is to stand or whether it is to be appealed to either the Civil Service Commission or the American Arbitration Association for arbitration.

Section (f) of Step 4 indicates that proceedings before the arbitrator should be conducted in accordance with the rules of the American Arbitration Association.

Section "E" proposed by the City would have unduly limited the authority of the arbitrator beyond those limitations already set forth in other subsections of "F". The City, of course, would continue to have the ability to argue that its substantial management rights clause allows it considerable discretion in terms of decisions. In place thereof is language submitted by the Association pertaining to discipline or discharge cases which indicates the almost universally followed just cause standard for arbitrators would be followed.

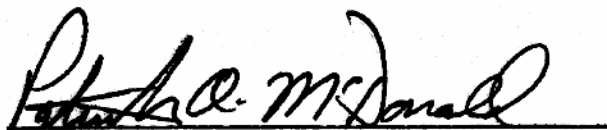
The former City paragraph "H" has been deleted inasmuch as the discussion pertaining to appeals from an arbitrators decision is earlier covered by Section "E". Moreover, language mandating that the Association not cooperate with any of its members should that member decide to appeal a particular decision would probably lead to unfair representation allegations against the Association. This in turn would ultimately cause difficulties for the City both directly in the litigation and indirectly in terms of employee moral.

Finally a phrase has been inserted in paragraph "J" which offers the City some incentive to follow the time limits specified in the grievance procedure as has been allowed the Association in the immediately preceding sentence in paragraph J. It should lead to a carefully following of the prescribed time limitations by both parties and an expeditious handling of all grievances.

Your panel only too obviously acknowledges the complexity of the issues that have appeared before it as well as the cooperative efforts of both the City of Sterling Heights and the Police Command Officers Association. All of the officials both for the Association and the City, as well as legal counsel for both parties are to be commended for the cooperation they demonstrated throughout these proceedings. Certainly the time necessary for such proceedings was held to a minimum because of this cooperative spirit.

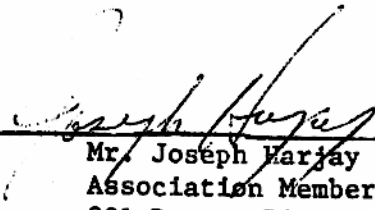
In particular both legal counsel are to be congratulated for the expertise they demonstrated as well as the self control continuously demonstrated in holding their remarks to only those absolutely necessary to effectively represent their clients. Congratulations on a job well done.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Patrick A. McDonald", written over a horizontal line.

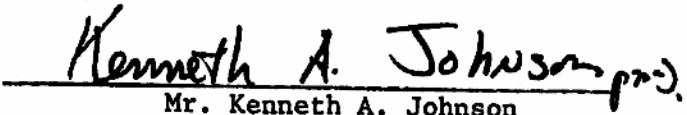
Patrick A. McDonald
Panel Chairman
1700 North Woodward Avenue
Bloomfield Hills, Michigan 48013

I concur in the foregoing opinion on issues 2,6,7 and 9.



Mr. Joseph Harjay
Association Member
831 Dumont Place
Rochester, Michigan 48063

I concur in the foregoing opinion on issues 1,3,4,5,8 and 9.



Mr. Kenneth A. Johnson
Employer Member
P. O. Box 10
400 Sixth Street
Rochester, Michigan 48063

DATED:
February 14, 1980