

10/1/75

ARB 0.2

DEC 8 1975

Sturgis, City of

In the Matter of Arbitration between

CITY OF STURGIS, MICHIGAN
-and-
FRATERNAL ORDER OF POLICE
ALVIN DOBBERTEN LODGE NO. 114

10/1/75

Under Act No. 312
Michigan Public Acts of 1969 as amended

Arbitration Panel

John E. Oster, Delegate representing City of Sturgis
Larry Whitney, Delegate representing Fraternal Order of Police,
Lodge No. 114
Daniel H. Kruger, Chairman

Appearances

For the City:

John Brand, City Manager
Alden Peterson, Director, Industrial Development
William H. Miller, Chief of Police
William P. Marks, Attorney

For the Union:

Sgt. Clendenen Sites, member of Union
Riley Holland, President, Michigan Fraternal Order of Police
John F. Foley, Attorney

Hearings Reporter

Dorothy Turner

Opinion and Award of Arbitration Panel

Background

The Union, Lodge No. 114, Fraternal Order of Police, is the bargaining unit with 16 members. The parties have had a memorandum of understanding for twelve years, but did not have a collective bargaining agreement in the sense in which this term is normally used. The

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bargaining sessions did not result in agreement. When mediation failed to produce an agreement, Mr. John F. Foley, Attorney for Local 114, by letter dated May 8, 1975, requested arbitration under Act 312, the Police-Firefighters Arbitration Act. On June 3, 1975, Mr. Foley, by letter, asked the Chairman of the Michigan Employment Relations Commission to appoint a Chairman of the Arbitration Panel and he appointed Dr. Daniel H. Kruger on July 16, 1975. The City of Sturgis originally designated Mr. John Brand as its delegate to the panel, but at the outset of the hearing the City designated Mr. John E. Oster. Lodge No. 114 named Mr. Larry Whitney, President of Alvin Dobberteen Lodge No. 114, as its delegate.

The Arbitration Panel was initially scheduled to meet on August 19, 1975. The Panel convened on August 26, 1975 at 10:00 a.m. at the City Hall in Sturgis, Michigan.

Issues in Impasse

At the outset, Mr. John F. Foley, Attorney for Lodge No. 114, stated that the following issues were unresolved:

1. Length of Contract.

The Union seeks to have the agreement cover the period March 1, 1975 to October 1, 1976.

2. Wage Increases.

The Union's wage proposal is for a seventy cents (\$.70) an hour increase.

3. Cost of Living Allowances Clause.

The Union seeks a UAW-General Motors type of Cost of Living Adjustment Clause with a one cent an hour increase for every .4 point increase in the Consumer Price Index, as published by the Bureau of Labor Statistics, United States Department of Labor, using 1967 as the base year.

4. Health Insurance.

The Union seeks full paid health insurance for the officers and their dependents.

5. Compression of Salary Ranges.

Currently, it takes a police officer seven years to reach the maximum salary in his classification. The Union's proposal is to reduce the number of years to reach the maximum from seven to four.

6. Shift Differential.

The current practice of the City is to pay a shift differential to those officers who are permanently assigned to the first shift (12:00 M. to 8:00 a.m.) and the third shift (4:00 p.m. to Midnight). The Union seeks a ten cents (\$.10) differential for the first shift and a five cents (\$.05) for the third shift.

7. Vacation Days for Patrolmen and Sergeants.

The Union seeks to have vacations begin any day, and for sergeants and patrolmen to exchange days when applicable.

8. Retroactivity.

The memorandum of understanding between the parties had an effective date of March 1 to March 1 on an annual basis.

The Union wants retroactivity to March 1, 1975.

Mr. William P. Marks, Attorney for the City of Sturgis agreed that the issues noted by Mr. Foley were in impasse. He stated that the City's position on the issues were:

1. Length of Contract.

The City wants the contract to become effective from the date of this Award to October 1, 1976.

2. Wage Increase.

The City's proposal was a thirty-nine cents (\$.39) an hour increase contingent on the effective date of the contract being the date of the Award. This issue is further discussed below under the heading of Retroactivity.

3. Cost of Living Adjustment Clause.

The City made no final offer on a Cost of Living Allowance clause. Consequently, it does not want such a clause in the Agreement.

4. Health Insurance.

The City has proposed that it pay 70 percent of the premium for dependents, up to a maximum of \$25.00 per month. This is the same policy which the City has for all other employee groups and those employees not represented by an employee organization.

5. Compression of Salary Range from Seven to Four Years.

The City offered no position on this issue. It seeks to retain the seven year maximum.

6. Shift Differential.

The City offered no changes in the current practice of paying the shift differential only to those permanently assigned to the first and third shifts. It does not want to pay a shift differential to those officers who rotate shifts.

7. Vacation Days for Officers.

The City did not make an offer on this issue.

8. Retroactivity.

Mr. Marks, at the close of the hearing, stated that he would submit a letter on the issue of retroactivity within two weeks. By letter, dated September 10, 1975, to the Chairman of the Arbitration Panel, he stated:

"RETROACTIVITY"

Section 10 is a technical section referring to the question of retroactivity and the effect of the initiation of a new fiscal year. The writer has attempted to find throughout the State of Michigan a judicial determination of the question of retroactivity, but finds the question to be undetermined by any court. It is suggested that the absence of judicial determination stems from the clarity of the legislative language. Therefore, I merely reiterate the legislative language in its entire context rather than paraphrase the relevant portion. It might here be noted that the Sturgis municipal fiscal year is not involved in this particular question because the fiscal year does not fall between March 1, 1975, and the date of the hearing.

'Increases in rates of compensation awarded by the arbitration panel under Section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award.'

The commencement of the next fiscal year for the City of Sturgis is October 1, 1975.

Based upon the unequivocal language of the statute, the City of Sturgis has made a wage offer of \$.39 per hour across the board, or 8.4%. This offer was made with the intention that retroactivity would not be a factor. The last best offer of the City of Sturgis during the course of negotiations was \$.30 per hour. Upon arriving at arbitration and realizing the passage of time during which the police officers did not receive a pay raise, the City raised its last best offer to \$.39 per hour. However, if retroactivity is to be a factor to be considered by the panel, the City of Sturgis will make a last offer of \$.30 per hour across-the-board wage increase or 6.5% with retroactivity. Our last best offer is as follows:

- (a) \$.39 per hour across-the-board wage increase until October 1, 1976, effective with the date of the Order with no retroactivity.
- (b) A \$.30 across-the-board wage increase effective with the Order, with retroactivity to March 1, 1975."

Mr. Marks during the hearing introduced the last offer of settlement of the City of Sturgis (City Exhibit #1) which included the following:

- "(1) Recognition of Sturgis Fraternal Order of Police as a collective bargaining representative.
- (2) A maintenance of membership clause.
- (3) A grievance procedure ending in arbitration, the language of which has been agreed upon between the parties hereto.
- (4) A promotional procedure, the language of which has been agreed upon between the parties hereto.
- (5) Additional hours of work:
 - (a) One and one-half times regular pay for all work over 40 hours per week.
 - (b) Paid call-in time at one and one-half times regular hourly pay with a two-hour minimum payment.

- (c) Paid courtroom time at one and one-half times regular hourly rate of pay with a two-hour minimum payment (straight time if on regular duty).
- (6) The City of Sturgis will pay the difference between the military pay and the police salary for a military leave of two weeks or less.
- (7) The City of Sturgis and the Union Bargaining Committee agreed in substance to language prescribing additional training for police officers, the wording of which has not been agreed upon between the parties hereto.
- (8) The City of Sturgis shall pay the lesser of a sum equal to 70% or \$25.00 per month of the police officers dependents' Blue Cross-Blue Shield expenses.
- (9) A \$.39 per hour across-the-board wage increase for all employees of the Bargaining Unit."

Only items #8 and #9 deal with the issues in impasse, but the entire exhibit is reproduced here to indicate issues which have been negotiated and agreed upon.

Prior to adjourning the hearing the Chairman suggested to the parties that they meet to discuss the issue of vacation scheduling and try to resolve it. Subsequently, the Chairman received a letter dated August 31, 1975 from Mr. Larry Whitney, President, Lodge No. 114 which read:

"On the 29th of August 1975, I met with the Sturgis City Manager & the Chief of Police. The meeting was in regards to resolving the issue of what day an officer may begin his vacation.

Mr. John Brand, the city manager, & Chief William H. Miller both agreed that a police officer should be able to begin his vacation on the day of the officer's choice.

The city management also agreed to exchange days between the sergeants & patrolmen, when applicable.

This lodge now feels that the issue on vacation starting days & exchange days, has been resolved to the satisfaction of both parties. Your decision on this particular issue can now be terminated."

On the basis of this letter, the issue of vacation scheduling has been resolved.

Discussion of Issues in Impasse and Award

1. Length of Contract.

The Union seeks a nineteen month agreement from March 1, 1975 to October 1, 1976. The fiscal year of the City of Sturgis is from October 1 to September 30. The City has proposed that the contract become effective from the date of this Award to September 30, 1976.

Award

The Panel's Award is for the contract to be effective for the period March 1, 1975 to September 30, 1976. However, as noted below, other awards for the issues in impasse will have different effective dates.

Vote: For - Oster, Whitney, and Kruger

Against

2. Wage Increase

The Union's last best offer is a seventy cents (\$.70) an hour increase. Based on a work year of 2,080 hours, this would result in a salary increase of \$1,456.00 for each officer in

the first twelve months of the Agreement, and \$2,305 for the nineteen months. In support of its position, the Union cites the increases in the cost of living as reflected in the Consumer Price Index, published by the Bureau of Labor Statistics, U.S. Department of Labor. In addition, the Union cited salaries of police officers in Michigan cities of 10,000 to 25,000 which are contained in the 24th Edition, Fraternal Order of Police 1975 Salary Survey (Union Exhibit #7). The cities cited by the Union include Adrian, Albion, Alpena, Grand Haven, Mt. Pleasant, Owosso, and St. Joseph and Coldwater.

Also in support of its wage proposal, the Union introduced current agreements covering police officers in the following Michigan cities: Coldwater (Union Exhibit #1), Niles (Union Exhibit #2 and #2A), Albion (Union Exhibit #3), Three Rivers (Union Exhibit #4), and Kalamazoo (Union Exhibit #5).

Below is a table showing the current salaries of police officers in Sturgis and the Union's last best offer of seventy cents and the percent increase.

TABLE I

<u>Classification</u>	<u>Current Salary⁽¹⁾</u>		<u>Union's Proposal</u>		<u>Percent Increase</u>
	<u>Annual</u>	<u>Hourly</u>	<u>Annual</u>	<u>Hourly</u>	
Rookie	\$ 8,278	\$3.98	\$ 9,734	\$4.68	17.6
Patrolman (after 1 yr.)	8,798	4.23	10,254	4.93	16.5
Patrolman (after 2 yrs.)	9,214	4.43	10,670	5.13	15.8
Patrolman (after 3 yrs.)	9,672	4.65	11,128	5.35	15.1
Patrolman (after 7 yrs.)	10,026	4.82	11,482	5.52	14.5
Sergeant	10,587	5.09	12,043	5.79	13.8

Average salary increase: 15.6 percent

Source: Joint Exhibit #1, letter dated March 1, 1973 from John Brand, City Manager, to Douglas Wallman, President, Lodge No. 114.

The Union's last best offer provides a salary increase ranging from 17.6 percent for rookies to a 13.8 percent for sergeants. The average salary increase for all grades is 15.6 percent.

The City has proposed a thirty-nine (\$.39) cents an hour salary increase if the effective date is the date of this Award, or thirty (\$.30) cents if the effective date is March 1, 1975. The City's offer of thirty-nine cents represents an average salary increase of 8.7 percent and the offer of thirty cents represents an average increase of 6.7 percent.

Below is a table comparing the current salaries of police officers in Sturgis with the City's offer of thirty-nine cents which, when based

on a 2,080 hour year, results in an increase of \$811.20 for twelve months (rounded off to \$812.00)..

TABLE II

<u>Classification</u>	<u>Current Salary</u>		<u>City's Proposal</u>		<u>Percent Increase</u>
	<u>Annual</u>	<u>Hourly</u>	<u>Annual</u>	<u>Hourly</u>	
Rookie	\$ 8,278	\$3.98	\$ 9,090	\$4.37	9.8
Patrolman (after 1 yr.)	8,798	4.23	9,610	4.62	9.2
Patrolman (after 2 yrs.)	9,214	4.43	10,026	4.82	8.8
Patrolman (after 3 yrs.)	9,672	4.65	10,484	5.04	8.4
Patrolman (after 7 yrs.)	10,026	4.82	10,838	5.21	8.0
Sergeant	10,587	5.09	11,399	5.48	7.6

Average salary increase: 8.4 percent

In support of its wage increase of thirty-nine cents, the City noted that other employees employed by the City received the following wage adjustments for 1975:

Hospital Registered Nurses	7.5%
Hospital Licensed Practical Nurses	6.4%
Other City employees not organized	6.4%
Electric Union	6.4%
Firefighters	4 %

(City Exhibit #4)

The City, therefore, maintains that its increase of thirty-nine cents, or 8.4%, is higher than the salary and wage increases which the City has given to its other employee groups.

The City presented data on wages and fringe benefits for its police officers and on the following nearby cities: Buchanan, Dowagiac, Hillsdale, Marshall, and Three Rivers. It did not include Coldwater in its survey as did the Union because in its view wages and benefits in Coldwater are excessive. (City Exhibit #7).

Award

The Panel awards the Union an increase of thirty-nine cents effective the date the Chairman of the Arbitration Panel was appointed by the Chairman, Michigan Employment Relations Committee, which was July 16, 1975. The rationale for this effective date is that the Chairman of the Panel immediately upon being notified of his appointment sought to set a date for the convening of the Panel. Because of the schedule of the attorneys, it was not possible to set a date until August 19, 1975 and this date had to be shifted to August 26, 1975. The Union followed the provisions of Act 312 and the Panel does not believe that the Union members should be penalized for delays to which they were not a party.

Vote for wage increase of thirty-nine cents: For - Oster, Kruger
Against - Whitney

Vote for effective date of wage increase which is

July 16, 1975:

For - Oster, Kruger
Against - Whitney

Delegate Oster voted for the July 16, 1975 effective date, but he reserves full rights to appeal the question of retroactivity without prejudice to the City's ability to appeal a retroactive Award. Delegate Whitney took exception to the July 16, 1975 effective date on the grounds that the Lodge No. 114 petitioned for 312 Arbitration on May 8, 1975 and that should be the effective date of the Award. Mr. Foley, attorney for Lodge No. 114 had written to the Michigan Employment Relations Commission on May 8, 1975 requesting binding arbitration under Act 312. Since the parties could not agree on a chairman, Mr. Foley wrote, on May 28, 1975, to the Chairman, Michigan Employment Relations Commission requesting that he appoint the Chairman of the Arbitration Panel. The Chairman of this Panel was appointed on July 16, 1975. Mr. Whitney stated that the members of the bargaining unit should not be penalized for the failure of the Michigan Employment Relations Commission to appoint a Chairman shortly after the receipt of Mr. Foley's letter dated May 28, 1975. The Chairman of the Panel replied that he took jurisdiction of this case on July 16, 1975 and what transpired prior to that date is unknown to him. As Mr. Oster noted, there is some question as to the retroactive issue.

3. Cost of Living Allowance Clause

The Union seeks a Cost of Living Allowance (COLA) Clause similar to the UAW-General Motors clause which provides for a one cent increase in wages for every .4 point increase in the Consumer Price Index, based on the 1967 base year. The COLA provision would become effective March 1, 1976. The Union wants this clause to protect its members against further increases in the cost of living.

Only one of the exhibits introduced by the Union has a cost of living adjustment and this is a flat amount (Coldwater Union Exhibit #1). The Union, after the hearing, submitted a 312 arbitration case for the City of Portage, Michigan and the Portage Police Officers Association dated February, 1974, which contained a Cost of Living Allowance Adjustment Award. The City noted that this award covered a two-year agreement. The cities presented in City Exhibit #7 do not have a COLA clause. Moreover, none of the employee groups with which the City negotiates has such a provision.

Award

The Panel does not award a Cost of Living Allowance Adjustment Clause. The effective date of the wage increase is July 16, 1975 and the contract will continue until September 30, 1976, a period of fourteen and a half months. COLA clauses are associated with multi-year contracts.

Vote: For - Oster, Kruger

Against - Whitney

4. Health Insurance

The Union seeks full payment of health insurance for the police officers and their dependents. The current policy of the City is to pay full cost of the police officers who, in turn, pay for the coverage of their dependents. It is estimated that for the City to pay the full cost of coverage for both the officers and their dependents would represent an increase of 22.9 cents per hour, or \$476.32 for a year of 2,080 hours.

All of the Michigan cities noted in Union Exhibit #7 provide 100 percent payment of hospitalization by these cities.

The City's last offer is to pay the full cost of coverage for the police officers and the lesser of a sum equal to 70 percent, or \$25.00 per month, of the cost of coverage for dependents. This is the same policy which the City has for all its employees, those represented by employee organizations and those not represented. The City has estimated that the cost of its last offer would be sixteen cents an hour, or \$332.80 a year, based on 2,080 hours.

As noted, City Exhibit #7 provides data on five cities plus Sturgis. Of the five cities, four pay the full cost of group health.

Award

A. The Panel awards the full cost of health care for both police officers and their dependents.

Vote: For - Whitney, Kruger

Against - Oster

B. The effective date of the Award is July 16, 1975.

Vote: For - Whitney, Kruger

Against - Oster

Delegate Whitney reluctantly voted for the effective date of July 16, 1975. As noted previously, he stressed that the effective date of the Award should be May 8, 1975. Delegate Oster questioned how this Award on health insurance could become effective on July 16, 1975 since all members of the bargaining unit have not opted for coverage because their spouses are covered by other plans.

The City is directed to work out the details as to how to handle the payments for health insurance made by the members of the bargaining unit for the months commencing July 16, 1975.

5. Compression of Salary Range

Currently it takes seven years for a police officer to reach the maximum salary. The Union's last offer is to compress the number of years from seven to four. It is estimated that this compression would cost an additional one cent an hour.

The Union advanced the following reasons for the compression of the salary range:

- (a) It would enable the police officer to reach the maximum salary in a shorter time period.
- (b) Other jurisdictions provide police officers a shorter time period to go from the minimum to the maximum salary.

The City offered no counter offer which means that it seeks to retain the present range of seven years. Its position is that higher salaries are paid for experience. It presented evidence that other nearby cities have a maximum of seven years (City Exhibit #8).

Award

Although the cost of compressing the salary range from seven to four years is small, i.e., one cent an hour, the Panel does not award it. The Panel is reluctant to substitute its judgment for that of the City in evaluating the quality of the Sturgis Police Department.

Delegate Whitney stressed that there are extensive training programs required of beginning patrolmen and that police officers with three years of service often are responsible for protecting the community on certain shifts. Accordingly, he argued that if men with three and four years experience are in charge of police protection for a given shift, then they should be paid the maximum of the range. It is for this reason that he voted against this Award on compression of the salary range.

Vote: For - Oster and Kruger

Against - Whitney

6. Shift Differentials

The Union's last best offer is ten cents an hour additional pay for the first shift, 12:00 midnight to 8:00 a.m., and five cents an hour for the third shift, 4:00 p.m. to midnight. It is estimated that the shift differential would cost .0397 cents an hour based on a 2,000 hour work year.

The current policy of the City is to pay overtime only to those officers on permanent assignment. There are two officers on permanent assignment--the Detective Sergeant and the Day Desk Sergeant. All other officers are rotated on the three shifts with each officer taking his turn on the three shifts according to a schedule established by the Chief of Police.

Prior to March 1, 1973, all officers received a shift differential of ten cents an hour, while on the first shift, and five cents an hour for the third shift. The shift differentials were folded into the salary schedule on March 1, 1973 by joint agreement (Joint Exhibit #1).

The City's position is not to change the existing policy of paying shift differentials only to those on permanent assignments. It argued that all police officers take their turn on the three shifts on a rotating basis.

The City presented evidence that three of the five cities in its Exhibit #7 do not provide a shift differential, and two cities do pay such a shift differential. Dowagiac pays a lump sum of \$60.00 a year, and Marshall one percent and two percent; it is not clear for what shifts the one and two percents are paid in Marshall and against what salary figures they are applied.

In Lodge 114 Exhibit #7, there are listings of cities in Michigan to which reference was made by the Lodge in support of its position on wages, health insurance, salary compression and shift differentials. Of the cities noted, only one (Mt. Pleasant) has a shift differential. None of the contracts presented in evidence contain a shift differential.

Award

The Panel does not award the shift differential. According to the schedule, all police officers except those on permanent assignment, are rotated evenly in the three shifts. If there are inequities in scheduling of hours worked, with the result that some police officers work undesirable shifts, e.g., first and third back-to-back, there would be a compelling argument for shift differentials. Delegate Whitney, however, pointed out that there are occasions when police officers in a ten week period work shifts back-to-back. In view of his concern, it would seem that the City should carefully review its manning of the Police Department and its

scheduling procedures. From Delegate Whitney's comments, there appears to be a need for such careful review. The Panel must stress that if police officers are not rotating in such a manner that all are not treated equitably, the City should take the necessary steps to correct such inequities. Continuation of such inequities is not conducive to good employer-employee relations.

Vote: For - Oster, Kruger

Against - Whitney

7. Vacation Scheduling

As noted above, the parties have negotiated a resolution of this issue in impasse.

8. Retroactivity

The Panel has made the following awards relative to retroactivity:

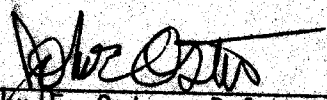
- (a) Length of Contract: March 1, 1975 to September 30, 1976.
- (b) Wage Increase: July 16, 1975.
- (c) Full Paid Group Health: July 16, 1975.


In summary, the Panel has awarded a total economic package of sixty-two cents (\$0.62) an hour. This represents an increase of 13.48 percent of the current average hourly rate of all police officers. The sixty-two cents is composed of a thirty-nine cents (\$0.39) an hour wage increase which is an 8.4 percent increase in wages, and a twenty-three (\$0.23) cents an hour increase in fringe benefits which is a 5 percent increase.

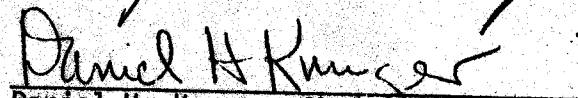
Over the length of the contract from the effective date of July 16, 1975 to September 30, 1976, each police officer will receive a total of \$1,562.00 new compensation (See Appendix A for calculations). Of this amount, \$982.00 will be in wages and \$580.00 will be for group health insurance (see Appendix A for calculations).

Moreover, as a result of the wage increase, additional income will be received through overtime, since the computation of overtime will be based on the new salary schedule (See Table II above).

The signatures affixed below indicate that the votes, as recorded for each issue in impasse, are correct. With the exception of the issue on length of contract, there was not unanimous agreement on the issues before this Panel.


John E. Oster, Delegate


Larry Whitney, Delegate


Daniel H. Kruger, Chairman

Dated: October 1, 1975

APPENDIX A. CALCULATIONS

1. Days from July 16, 1975 to September 30, 1976
July 16 - December 31, 1975 = 168 days
January 1 - September 30, 1976 = 273 days
441 days
2. Number of weeks from July 16, 1975 to September 30, 1976
 $441 \div 7 = 63$ weeks
3. Number of hours of work in 63 weeks
 63×40 hours = 2,520 hours
4. New wages per police officer as a result of the Wage Increase Award
 $2,520$ hours \times .39 cents = \$982.80
5. New money received per police officer as a result of the Group Health Insurance Award
 $2,520$ hours \times .23 cents = \$579.60
6. Total new compensation received by each police officer for the period July 16, 1975 to September 30, 1976
\$ 982.00 - new wage increase
580.00 - new compensation for Group Health Insurance
\$1,562.00 - Total compensation for each police officer.