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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION TRIBUNAL

Pursuant To ~~Act~~ 312 of PA of 1969, as amended

In Re the Arbitration Between:

CITY OF TROY

Employer

MERC Case No.: D95-B0232

and

TROY POLICE OFFICERS ASSOCIATION

Union

ACT 312 PANEL'S OPINION AND AWARD

Joseph P. Girolamo Esq.,
Panel Chairman

James Irvin,
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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

INTRODUCTION

This matter arises pursuant to a petition filed with the Michigan Employment Relations Commission on June 20, 1995 pursuant to 1969 PA 312, as amended MCL 423.231 et seq; MSA 17.455(31) et seq. The Petitioner is the Troy Police Officers Association (hereinafter "Union"), which is recognized as the exclusive representative of the patrol officers within the Troy Police Department (hereinafter "City").

1969 PA 312, as amended, requires that decisions concerning economic issues comport with certain criteria. Section 8 of the Act (MCL 423.238) provides, in pertinent part:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties January 11, 1996 to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer to settlement on each economic issue As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in Section 9. "

Section 9 delineates the factors which an arbitration panel must consider in making an award concerning an economic issue. Thus, pursuant to Section 9 of the Act (MCL 423.239) this panel must consider the following factors in making its award for economic issues:

"Section 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.**
- (b) Stipulations of the parties.**
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.**
- (d) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:**
 - (I) In public employment in comparable communities.**

- (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment."

This Panel has carefully considered each and every factor listed in Section 9 of the Act in making its award on each particular issue. It should be noted, however, that the while the Panel has considered each factor, it may not speak to each factor in rendering its award on any particular issue.

OPINION AND AWARD

1. Retirement and Pensions

A. Social Security Reduction to Annuity Factor

The Present Contractual Language:

Section 42.D of the current agreement addresses the issue of reduction in the pension annuity factor upon reaching retirement age. Article 42.D provides that:

"For those officers who retire after July 1, 1993, the following elements will be included in the pension benefits for police officers:

- 1. Eligibility for retirement shall be after 25 years of service regardless of age.**
- 2. The pension annuity factor paid prior to age 62 will be 2.5%.**
- 3. The pension annuity factor paid after age 62 will be 2.25%.**
- 4. Final average compensation shall be based upon the best three (3) of the last ten (10) years of credited service.**
- 5. Where applicable, a duty death benefit shall be provided to a surviving spouse which will equal no less than fifty (50%) percent of the deceased officer's FAC."**

City's Last Best Offer:

The City proposes to maintain the status quo under Section 42.D of the current Agreement. The pension annuity factor to be paid prior to age 62 is 2.5%. After age 62, the pension annuity factor would be 2.25%.

Union's Last Best Offer:

The Union proposes to add the following language to Section 42.D:

"The parties agree that if the eligibility age for the old age insurance benefits under the Social Security Act, 42 USC 401, is increased beyond the age of 62, the benefit computation shall continue at 2.50% annually and not be reduced to 2.25% until the retiree reaches the increased eligibility age for old age insurance benefits."

Award:

Upon consideration of all of the criteria of Section 9, the Panel has concluded that the Union's last best offer most nearly complies with all applicable factors. Therefore, the Union's proposed language is adopted. Article 42.D shall include the language:

"For employees retiring after the date of this Award, the parties agree that if the eligibility age for the old age insurance benefits under the Social Security Act, 42 USC 401, is increased beyond the age of 62, the benefit computation shall continue at 2.50% annually and not reduced to 2.25% until the retiree reaches the increased eligibility age for old age insurance benefits."

B. Medical Insurance for Retirees

The Present Contractual Language:

The current contractual language addressing the issue of medical insurance for retirees is found in Article 42.C. Article 42.C provides:

"Any employee who retires after July 1, 1990, and spouse will receive medical insurance after retirement, as provided in Article 36.A.1., excluding the PPO aspect of the hospitalization coverage and optical insurance, and including the DRI275/550 \$5.00 drug co-pay, and FAE-RC Riders. For

employees retiring after July 1, 1993, the retiree's contribution for said medical insurance shall not exceed two hundred (\$200.00) dollars per month. Said medical insurance shall be provided to the spouse of a deceased employee only while said spouse continues to receive pension checks."

City's Last Best Offer:

The City proposes to maintain status quo.

Union's Last Best Offer:

The Union proposes to maintain the status quo with regard to providing DRI275/550 Rider coverage to retirees. The Union also proposes to maintain the status quo by not providing dental coverage to retirees.

The Union proposes to change the City's obligation in providing retiree dependent care coverage. The Union proposes that the City provide medical insurance to the retiree and up to one other person in addition to the retiree. The coverage, however, would be limited to the retiree and a current spouse or a dependent child, except that a retiree could pay the difference between the two person and family rate. The Union also proposes to eliminate the employee contribution of an amount not to exceed \$200.00 per month to health care coverage for retirees after the date of this Award. Finally, the Union proposes the following language with regard to the vesting of retiree health insurance coverage:

"The City agrees to pay for medical and hospitalization coverage at the rate of 4% per complete year of retirement service as a police officer to the City of Troy for two (2) person coverage for retiree, current spouse or dependant child, provided that the retired employee or spouse is drawing benefits or a pension pursuant to the City of Troy Retirement Ordinance. A retiree may pay, at his/her own option and expense, the difference between a two person and family rate."

Award:

Upon consideration of all of the applicable criteria of Section 9 the Panel has determined that the Union's proposal most nearly complies with all applicable factors. Therefore, this Panel adopts the Union's proposal.

After the date of this Award, retirees shall continue to receive DRI 275/250 Rider coverage and shall not receive dental coverage. Additionally, the employee contribution to health care coverage shall be eliminated for employees retiring after the date of the Award and such future retirees may have either a dependant child or spouse covered at the City's expense. Finally, the Union's proposed language with regard to vesting of retiree health insurance coverage is adopted.

C. Non-duty Disability

The Present Contractual Language:

The contract does not contain language addressing this issue. This issue is addressed by Chapter 10 of the Employee Retirement System of the City of Troy Code. Chapter 10, §7.1B provides:

"Upon the application of an AFSCME, TPOA, or TCOA member, or his department head, who is below age 60 or who does not otherwise qualify for retirement, who (1) is in the employ of the City, (2) has 5 or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of the City, by reason of a personal injury or disease, may be retired by the Board of Trustees; provided, that after a medical examination of the member made by or under the direction of a Medical Committee consisting of 2 physicians, 1 of whom shall be named by the Board, and 1 by the member, the said Medical Committee reports to the Board, in writing, (1) that the member is mentally or physically totally incapacitated for duty in the employ of the City, (2) that his incapacity will probably be permanent, and (3) that the member should be retired. In the event that the 2 physicians constituting the Medical Committee do not agree in their findings, then the Board may, in its discretion, appoint a third physician to examine the member and based upon the report, in writing, of

the third physician, the Board may retire the member. The 5 years credited service requirement continued in this section shall be waived in the case of a member whom the Board finds (1) to be totally and permanently incapacitated for duty in the employ of the City as a natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City and (2) to be in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment."

City's Last Best Offer:

The City proposes to modify the conditions under which a TPOA member is eligible for non-duty disability pension benefits to provide that each employee hired after the date of this Award must have ten (10) or more years of credited service in addition to the other requirements of §7.1B of the Retirement Ordinance.

Union's Last Best Offer:

The Union proposes to maintain the status quo.

Award:

Upon consideration of all of the criteria of Section 9, the Panel has concluded that the City's last best offer most nearly complies with all of the applicable factors set forth in Section 9. Therefore, the City's proposal is adopted.

For each employee hired after the date of this Award, eligibility for a non-duty disability pension will require ten (10) or more years of credited service in addition to the other requirements of Chapter 10, §7.1B of the Troy City Code.

D. Employee Contributions

The Present Contract Language:

Article 42.B of the current agreement addresses employee contributions to the retirement system pension program. Article 42.B provides:

"The City will contribute payments on behalf of Association members into the Retirement System Pension Program, thereby eliminating all contributions by said members; except 0.01% (0.0001 x gross payroll) for record keeping purposes. Effective upon the date of the execution of this Award by the Panel, the Association members shall, notwithstanding the foregoing, begin contributing 1.5% of their gross payroll (0.015 x gross payroll) towards funding of a retirement under the Retirement System. Effective July 1, 1994 the member's contribution shall be increased to 2.0% of gross payroll (0.02 x gross payroll)."

City's Last Best Offer:

The City proposes that the employee contribution of 2.0% of gross payroll contained in Article 42.B be increased to 2.75% of gross payroll as of the date of this Award and 3.00% of gross payroll effective on January 1, 1997.

Union's Last Best Offer:

The Union proposes to maintain the status quo.

Award:

The Panel has considered all of the factors of Section 9 and has determined that the City's proposal most nearly complies with all of the applicable criteria. Therefore, the Panel adopts the City's proposal. On the date of this Award, Article 42.B shall be amended to read as follows:

"Effective July 1, 1994 the member's contribution to the Retirement System Pension Program shall be 2.0% of gross payroll (0.02 x gross payroll). Effective upon the date of the execution of this Award by the Panel, the Association members shall, notwithstanding the foregoing, begin contributing 2.75% of their gross payroll (0.0275 x gross payroll) towards funding of a retirement under the Retirement System. Effective January 1, 1997, the member's contribution shall be increased to 3.0% of gross payroll (0.03 x gross payroll)."

2. Wages

The Present Contract Language:

Section 43.A outlines the annual salaries for police officers according to the schedule contained in that section of the Agreement.

A. Wage Increases Effective July 1, 1995

City's Last Best Offer:

For the period of time commencing on July 1, 1995, and continuing until June 30, 1996, the City proposes an annual salary increase for each police officer of 3.0%.

Union's Last Best Offer:

For the period of time commencing on July 1, 1995, and continuing until June 30, 1996, the Union proposes an annual salary increase for all police officers of 3.5%.

Award:

Upon consideration of all of the criteria of Section 9, the Panel has concluded that the Union's last best offer most nearly complies with all of the applicable factors. The Union's last

best offer of an annual salary increase 3.5% for the period of time commencing on July 1, 1995 and ending on June 30, 1996 is adopted. The Award shall be retroactive to July 1, 1995.

B. Wage Increases Effective July 1, 1996

City's Last Best Offer:

The City proposes a salary increase of 3.5% for all police officers for the period of July 1, 1996 through June 30, 1997.

Union's Last Best Offer:

The Union proposes a salary increase of 3.5% for the period of time commencing on July 1, 1996 and continuing until June 30, 1997.

Award:

The Panel notes that the parties have submitted identical last best offers on this position. Therefore, this Panel awards an increase of 3.5% annually for each police officer for the period of time commencing on July 1, 1996 and continuing until June 30, 1997.

C. Wage Increases Effective July 1, 1997

City's Last Best Offer:

The City proposes a salary increase of 3.5% for all police officers for the period of July 1, 1997 through June 30, 1998.

Union's Last Best Offer:

The Union proposes a salary increase of 4.5% for the period of time commencing on July 1, 1997 and continuing until June 30, 1998.

Award:

The Panel has considered all of the criteria of Section 9 and has concluded that the City's last best offer most nearly complies with all of the factors of Section 9. Therefore, this Panel adopts the City's last best offer and awards an increase of 3.5% annually for each police officer for the period of time commencing on July 1, 1997 and continuing until June 30, 1998.

3. Selection of Arbitrators

The Present Contract Language:

Section 14.A prescribes the current procedure for selecting an arbitrator when a grievance is appealed to arbitration. Section 14.A provides:

"A. When a grievance is appealed to arbitration, an arbitrator shall be appointed from a rotating list of five (5) permanent arbitrators which the City and the Association shall establish through a Letter of Understanding. The Voluntary Labor Arbitration Rules of the American Arbitration Association shall prevail."

City's Last Best Offer:

The City proposes to replace the current contractual language in Section 14.A with the following:

"When a grievance is appealed to arbitration, the parties involved may select an arbitrator by mutual agreement. In the event that the parties cannot

mutually agree to select an arbitrator, the parties may request the Federal Mediation and Conciliation Service to submit a list of nine (9) arbitrators to the Association and the City. Each party may then strike the name of any unacceptable arbitrator and number each remaining name on the Panel. The numbered list shall thereafter be submitted in writing to the Service. If there is no mutually acceptable arbitrator listed on the first list of arbitrators presented to the parties for selection of arbitrator, then a second and final list of nine (9) shall be submitted to the parties.

The above procedure shall again be utilized, if necessary, for the second list in order to determine a mutually acceptable arbitrator.

From either the first or second list for selection of arbitrator, the Federal Mediation and Conciliation Service shall determine the most mutually acceptable arbitrator based upon the name on the Panel that has the lowest accumulated number. If no mutually acceptable arbitrator can be selected after submission of the second and final list, the arbitrator shall be appointed by the Federal Mediation and Conciliation Service, but, in no event shall the Service appoint any arbitrator whose name has been stricken from either of the two lists.

Any grievance subject to arbitration under the Contract shall utilize the Voluntary Labor Arbitration Rules of the American Arbitration Association."

Union's Last Best Offer:

The Union proposes to maintain the status quo.

Award:

The Panel has considered all of the criteria of Section 9 and has concluded that the City's last best offer most nearly complies with all applicable factors. Therefore, the contractual language proposed by the City is adopted.

4. Attendance (Leave Time) Accrual

The Present Contractual Language:

The present contract does not address this issue.

City's Last Best Offer

Add a new paragraph which reads as follows:

1. **Section 18.I Employees who are absent from work for reasons of non-duty disability shall continue to accrue benefits pursuant to rules governing leave accrual during the first full year of their disability. During the second and third years of the non-duty disability, sick leave only shall accrue; however, hospitalization insurance shall be continued even if the employee utilizes all accrued leave time during that period. After three years of non-duty disability, employees shall neither accrue additional leave time nor shall said employee receive hospitalization insurance paid for by the employer.**

Union's Last Best Offer:

Status Quo

Award:

Upon consideration of all of the applicable criteria of Section 9, the Panel has determined that the City's proposal most nearly complies with all applicable factors. Therefore, this Panel adopts the City's proposal.

5. Steward's Options for Discipline

The Present Contractual Language:

Section 15.E of the current contract describes the following disciplinary procedure:

"Should an officer be required to give a verbal or written account of his actions, which may result in the officer receiving disciplinary action, the officer shall have a steward present while making such a statement. In the event no Association Officer or on-duty Steward is available, any available member of the Association shall act as the Steward."

City's Last Best Offer:

The City proposes to modify Section 15.E to read:

"Should an officer be required to give a verbal or written account of his actions, which may result in the officer receiving disciplinary action, the officer may have a steward present while making such a statement. In the event no Association Officer or on-duty Steward is available, any available member of the Association shall act as the Steward."

Union's Last Best Offer:

The Union proposes to maintain the status quo.

Award:

The Panel has considered all of the applicable criteria of Section 9 and has concluded that the City's last best offer most nearly complies with all applicable factors of Section 9. Therefore, the City's proposed modifications to Section 15.D is adopted.

6. Shift Selections

The Present Contract Language:

Section 18.A of the Agreement prescribes the current shift selection procedure. Section 18.A provides:

"Work schedules for officers assigned to uniformed Patrol Division shift duty on a regular basis shall be four consecutive 10 hour days, commonly known as the 4/40 schedule. Selections of shifts and days off shall be chosen by officers according to seniority and eligibility to patrol alone, and within the guidelines of departmental orders. Such selections shall be made over eight (8) months with shift changes being on the start of the pay period nearest the middle of the months of January, May, and September.

1. **Bumps shall take place on time.**
2. **Court Officers shall choose their positions by seniority for eight (8) month periods.**
3. **Training assignments to the Detective Bureau shall be for two (2) year periods."**

City's Last Best Offer:

The City proposes the following modifications to Section 18.A:

- (1) **Replace last sentence in Section 18.A. with the following: "Selections shall be made twice per year for six month bumps which shall occur in September and March."**
- (2) **Modify Section 18.A.2. to read: "Court Officers shall choose their positions twice per year for six month bumps which shall occur in September and March."**
- (3) **Eliminate Section 18.A.3.**

Union's Last Best Offer:

The Union proposes to maintain the status quo except that it is willing to eliminate Section 18.A.3.

Award:

The Panel has considered all of the applicable criteria of Section 9 and has concluded that the City's last best offer most nearly complies with all applicable factors of Section 9. Therefore, the City's proposed modifications to Section 18.A(1)(2) is adopted. Section 18A(3) is adopted consistent with the parties' stipulation. After the date of this Award Section 18.A shall read:

"Work schedules for officers assigned to uniformed Patrol Division shift duty on a regular basis shall be four consecutive 10 hour days, commonly known as the 4/40 schedule. Selections of shifts and days off shall be chosen by officers according to seniority and eligibility to patrol alone, and within the guidelines of departmental orders. Selections shall be made twice per year for 6 month bumps which shall occur in September and March.

- 1. Bumps shall take place on time.**
- 2. Court Officers shall choose their positions twice per year for six month bumps which shall occur in September and March."**
- 7. Personal Business**

The Present Contractual Language:

Section 26.A of the Agreement addresses personal business time. Section 26.A provides:

- "A. An officer may be granted up to 30 hours of personal business time in any one calendar year with the prior approval of his Shift Commander. The request for the time off must be submitted at least 10 hours in advance. If the request is submitted less than 10 hours in advance, the Shift Commander shall have the option of approving or**

disapproving the request. Requests for a full day of personal business time shall be granted if submitted forty-eight (48) hours in advance.

- B. With the execution of the first 20 hours, personal business time shall be deducted from the employee's accumulated sick leave.**
- C. Personal business time may be taken in conjunction with holiday leave and/or vacation leave."**

City's Last Best Offer:

The City proposes to add the following language to Section 26.A:

"However, personal business time will not be granted on designated holidays if the granting of such request places the shift below minimum strength as determined by the Department."

Union's Last Best Offer:

The Union proposes to maintain the status quo.

Award:

Upon consideration of all of the criteria of Section 9, the Panel has concluded that the City's last best offer most nearly complies with all of the applicable factors. Therefore, the City's proposal is adopted. Article 26.A shall be amended to read:

- "A. An officer may be granted up to 30 hours of personal business time in any one calendar year with the prior approval of his Shift Commander. The request for the time off must be submitted at least 10 hours in advance. If the request is submitted less than 10 hours in advance, the Shift Commander shall have the option of approving or disapproving the request. Requests for a full day of personal business time shall be granted if submitted forty-eight (48) hours in advance. However, personal business time will not be granted on designated holidays if the granting of such request places the shift below minimum strength as determined by the Department.**

- B. With the execution of the first 20 hours, personal business time shall be deducted from the employee's accumulated sick leave.
- C. Personal business time may be taken in conjunction with holiday leave and/or vacation leave."

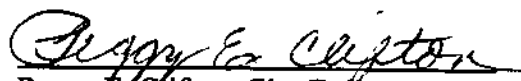
8. Incorporation of Tentative Agreements

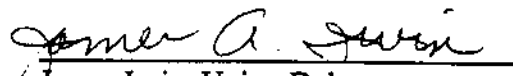
In addition to the Awards set forth above, the Panel incorporates all of the tentative agreements (as set forth on pp 1-4) of the City's Exhibit Book (City Exhibit 1) and directs the remainder of the provisions of the expired contract be continued in the new collective bargaining agreement due to expire June 30, 1998.

Panel Delegates

FEB. 20, 1996


Joseph G. Girolamo, Chairman


Peggy E. Clifton, City Delegate
Dissenting on Issues 1A, 1B and 2A


James Irvin, Union Delegate
Dissenting on Issues 1C, 1D, 2C, 3, 4, 5, 6, 7

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