

IN THE MATTER OF:

City of Wakefield, Michigan  
and  
Wakefield City Police Employees  
Local 992 AFSCME

State of Michigan  
Arbitration Case G82 C88  
Under Act #312 Public Act of 1969

ARBITRATION OPINION AND AWARD

Panel of Arbitration: Dale Soumis, City Manager  
City of Wakefield, MI, The Employer

Robert J. Raffaelli, Staff Representative  
Michigan Council 25 AFSCME, The Union

Fred E. Nelson, Chairman

INTRODUCTION

Pursuant to the provisions of Act 312, Public Acts of 1969, the Chairman of the Arbitration Panel was appointed by the Michigan Employment Relations Commission to serve as Chairman of the Panel of Arbitrators in the dispute involving contract negotiations in the above matter by letter dated October 26, 1982.

The petition for arbitration was made September 10, 1982 by Robert J. Raffaelli, Staff Representative for Michigan Council 25, AFSCME representing the employees.

Pursuant to notice duly given, hearings were held in the City Hall, City of Wakefield, December 2, 1982.

In a petition filed June 18, 1982 for arbitration the Union cited Articles 3, 8, 11, 12, 13, 18, 22, 25, 26, 27, 31, 36, 39, 47, 48 Appendix A, C, and D that were in dispute between the parties.

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*Wakefield City of*

On November 22, 1982 when the scheduled date of December 2, 1982 was determined, the arbitrator (Chairman) requested a copy of the contract for review purposes. The contract was received November 29, 1982 but had no Article 48 or Appendix C or D. The arbitrator called each of the parties noting this discrepancy and was informed this was a "Proposed Contract" and had been formally dropped. The possible need for a pre-hearing meeting was then discussed and both the City and the Union indicated this probably unnecessary since the issues were now reduced to the following four (4) items as noted by Mr. Raffaelli for the Union:

1. A retroactive wage increase of Thirty-five (35) Cents per hour back to April 1, 1982.

2. The contract expiration date remain on March 31st, not changed to June 30th as requested by the City.

3. ARTICLE 26 OVERTIME PAY

(c) The relief shift (21st shift) will be worked on an over-time basis and will not be covered by on-call time. Any change in this shift must be by mutual agreement.

4. ARTICLE 27 STAND-BY DUTY

In case of a vacancy during a shift due to sickness, vacation or other short term cause:

(a) The shift will be covered by an officer on stand-by call.

Mr. Soumis, for the City of Wakefield, listed six (6) items but in essential agreement with Mr. Raffaelli describing the City of Wakefield's final position as follows:

1. The City of Wakefield will not make any issue retroactive except for hourly pay.

2. The City will allow a fifteen (.15) cents per hour across the

board increase for all regular officers, retroactive to April 1, 1982 plus another ten (.10) cents per hour increase beginning January 1, 1983.

3. Contract ending date to be changed from March 31, 1983 to June 30, 1983. (This is to have both the Street Department and Police Department contracts expire at the same time.)
4. ARTICLE 26 OVERTIME PAY The City wishes to eliminate Section (c) entirely.
5. ARTICLE 27 STAND-BY DUTY The City wishes to change the word "will" to "may".
6. The City of Wakefield wishes to leave the rest of the contract unchanged.

ON THE MATTER OF RETROACTIVE AND OTHER WAGE INCREASES THE POSITION OF THE UNION IS:

The Union has agreed that retroactivity is on pay only, retroactive to April 1, 1982. They request a wage increase of Thirty-five (35) cents per hour. Mr. Raffaelli continued that "This is less than the cost of living on a national average." This is "four and one-half to five percent."

Mr. Raffaelli pointed out living costs are going up for everyone and the Wakefield wage scale is below national average, "it is well below, a dollar and a half or so, both the City of Ironwood and the Gogebic Sheriff Department."

If the City can purchase new equipment such as a grader and/or backhoe they can obviously afford what is necessary and certainly labor costs are as necessary and as real as equipment costs.

THE CITY OF WAKEFIELD'S POSITION ON THE MATTER OF RETROACTIVITY AND  
OTHER WAGE INCREASES IS:

The City offers an increase of fifteen (.15) cents per hour retroactive to April 1, 1982 and an additional ten (.10) cents per hour beginning January 1, 1983.

This ten (.10) cents per hour has been accepted by the DPW and is a fair offer to the Police Department. The Police Department must also remember when they talk of cost of living that C.O.L. increases are already included in the contract and they are the highest paid employees on the city's payroll.

Salary increases are limited because the budget is limited. State-share revenues dropped by twenty-four percent fiscal year 1981-82 and another additional cut is due shortly. Street and Highway funds are also being cut by this amount. Over this time period permitted millage allocation has been increased to its maximum which is only a seven percent (7%) increase, expenses have also increased, for example insurance costs have doubled in the last four years.

Because of its financial problems, the city has reduced its employees by nine persons in the last four years. Only the Police Department gets non-emergency overtime.

With regard to capital investment, the 1947 and 1950 equipment is antiquated and replacement parts are not available. The "new" grader is a 1969 model and the City cannot operate without a usable backhoe and grader.

ON THE MATTER OF THE CONTRACT EXPIRATION DATE THE POSITION OF THE UNION

IS:

The contract is and should remain a one-year document expiring on March 31, 1983 and there is no need or reason to be in step with the D.P.W.

THE CITY'S POSITION ON THE MATTER OF THE CONTRACT EXPIRATION DATE IS:

The Department of Public Works' contract expires on June 30, 1983. It is fair and realistic to negotiate these contracts with equated information and in the same fiscal period.

ON THE MATTER OF OVERTIME PAY ARTICLE 26 (c) THE POSITION OF THE UNION

IS:

Section (c) the relief shift (21st shift) will be worked on an overtime basis and will not be covered by on-call time. Any change in this shift must be mutual agreement.

The Union interprets the relief shift as the equivalent of a mandated overtime shift for each individual officer every fourth week (or shift rotation).

THE CITY'S POSITION ON THE MATTER OF OVERTIME PAY ARTICLE 26 (c) IS:

This was specified as the relief shift (21st shift) at a time when four (4) officers working five days (shifts) per week, a total of 20 shifts and twenty-one (21) shifts were required for coverage. (7 work days times 3 shifts per day equal 21 shifts.) Since that time the Police Department has been reduced to the Chief and two Officers so the

so-called 21st shift no longer exists or is definable. The Union insists that each officer get an overtime shift each third or fourth week. This is unnecessary and obviously not the purpose of the paragraph.

ON THE MATTER OF STAND-BY DUTY, ARTICLE 27 (a) THE POSITION OF THE UNION IS:

The contract will remain as it is currently written. "The shift will be covered by an officer on stand-by call." This was an agreed upon item in the event the city eliminated some police officer staff. The city saves money on salary and fringes, the overtime compensates for effort and inconvenience. The very nature of Police assignments - night, weekend and holiday work - some life threatening situations require compensatory reimbursement.

THE CITY'S POSITION ON THE MATTER OF STAND-BY DUTY, ARTICLE 27 (a) IS:

The Contract language should be changed from "will" to "may" so as to read "the shift may be covered by an officer on stand-by call."

The City cannot meet the costs of mandated overtime and on-call time. The City has restricted all overtime, except Police, to emergency conditions only. The current language is costly, discriminatory, unnecessary and should be changed.

ON THE MATTER OF OTHER CONTRACT CHANGES

The Union agreed with the City that this now presented no problem since the "proposed contract" had been formally dropped after the request for Arbitration was filed but before the hearing was held.

### CONCLUSIONS AND RECOMMENDATIONS

The parties were well prepared and knew their positions and goals. They were forthright in their efforts to explain their specific positions.

Negotiations on this one year contract are now in the tenth month. They progressed through mediation without agreement. Accordingly, the relative positions have been examined in detail recognizing that each of the parties is rather strongly solidified with regard to its position.

#### HOURLY WAGE RATE

The Union requests a thirty-five (.35) cent per hour increase retroactive to April 1, 1982.

The City offers fifteen (.15) cents per hour retroactive to April 1, 1982 and an additional ten (.10) cents from January 1, 1983.

The Union's arguments were that the City of Ironwood and County of Gogebic were on a substantially higher wage scale, that the City could afford road building equipment, therefore they could afford an increased labor rate.

The City of Wakefield did not question or disagree that other nearby police units were more highly paid, but it is the City's contention that:

Financially there is a problem. State revenues are down, the permitted millage is at a maximum, and the budget clearly indicates an increase of thirty-five (35) cents per hour retroactive to April 1, 1982 would be a hardship.

Exhibits verifying the City's income and expenses were provided and are attached.

The City noted the newly purchased power equipment was necessary because the existing equipment was built in 1947 and 1950. Replacement parts are no longer available. The "new" equipment referred to by Mr. Raffaelli is a 1969 grader purchased on a two year monthly contract. The backhoe was purchased on a five year program.

Mr. Soumis also provided the 1982 to date earnings records of the thirty-six (36) employees of the City (see City exhibit). The five (5) highest paid individuals for nine (9) months through September 30, 1982 are as follows:

City Manager	- Dale Soumis	\$18,151.00
Police Officer	- Grover White	13,854.00
Police Chief	- Harry Lepinski*	13,596.00
Supt. Street Dept.	- Nick Vidakovich	13,234.00
Police Officer	- Forrest Pikka	13,104.00

\*The Chief works as an officer but receives an extra \$50.00 per month for paperwork assignments.

Only two other employees had nine (9) month earnings in excess of \$12,000.00

There is no questioning the basic fact that the City of Wakefield is facing a serious financial situation. The population is declining and the tax base is being eroded. There is little or no industry in the area and little prospect of improvement.



In reviewing the arguments and evidence presented by both parties, it is the opinion of the Chairman that the employer's position pertaining to wage increases must be sustained.

While one must be sympathetic to the concerns of the Union, the City must apportion the payroll funds among all employees of the City. Within the framework of its payroll schedule, the evidence indicates the police officers are not being treated unfairly.

Further, Section 9 of the Act sets forth criteria to be applied to resolving disputes in terms of an agreement and directs that arbitration findings be based on these specific criteria. Among the criteria cited is "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

It is the opinion of the majority of the Panel that the position of the employer must be sustained. The demand for thirty-five (.35) cents per hour retroactive to April 1, 1982 is hereby denied. The employer's offer of fifteen (.15) cents per hour retroactive to April 1, 1982 and ten (.10) cents per hour effective January 1, 1983 is obviously sustained. The City delegate Mr. Soumis concurs. The Union delegate Mr. Raffaelli dissents.

#### CONTRACT ENDING DATE CHANGE

In reviewing the hearing minutes, it is noteworthy that the Union rejected the request for a contract ending date to be changed from March 31, 1983 to June 30, 1983 with no reason or explanation for its opposition to the change.

The City's reason for the requested change is to have the Department of Public Works (Street Dept.) and the Police Employees' contracts expire at the same time. The City indicates it would permit better financial planning and budgeting.

It is the opinion of a majority of the Panel that the City is probably correct in its position. However, it is also true that this is more properly a decision that should and can be made by the parties. The contract expires in less than three months. Article 47 TERMINATION & MODIFICATION reads "this Agreement, shall continue in full force and effect until March 31, 1981 (1982).

(a) If either party desires to amend and/or terminate this Agreement, it shall, sixty (60) days prior to the above termination date, give written notification of the same."

If the City wishes to extend the contract expiration date, it can more properly do so in its next contract negotiations.

It is the opinion of the majority of the Panel that since the contract can be opened by either of the parties at the end of this month (January 1983), the request by the City of Wakefield to change the termination date of the contract is denied. The Union delegate Mr. Raffaelli concurs, the City delegate Mr. Soumis dissents.

#### ARTICLE 26 OVERTIME PAY

Section (c) the relief shift (21st shift) will be worked on an overtime basis and will not be covered by on-call time. Any change in this shift must be by mutual agreement.

Definitions on this issue are clear. The 21st shift, or relief shift, occurs on around the clock coverage once a week. (Four officers working five shifts per week equals twenty work

shifts. A one week period is seven days time three shifts, or twenty-one shifts.) The language of the contract clearly states "The relief shift (21st shift) will be worked on an overtime basis". It also states, "Any changes must be by mutual agreement." The only comment from the City concerning this item was to refer to it as "mandated overtime". Mr. Raffaelli did not respond.

The employer concedes it would be better for all concerned if full police protection coverage could be maintained but points out that because of financial considerations the work force was reduced. When the 21st shift no longer exists, obviously there is no requirement for overtime. Mr. Raffaelli made no mention of mandated overtime but does not wish to modify Section (c). Neither the City nor the Union discussed its application except in one general reference to "mandated overtime".

In reviewing the contract language, it is the position of the Chairman that the employer's position pertaining to the agreement must be sustained. With less than four officers and around the clock coverage seven (7) days per week, the relief (21st shift) no longer exists. Furthermore, no mandated overtime is specified. The City's delegate Mr. Soumis concurs. The Union's delegate Mr. Raffaelli dissents.

#### ARTICLE 27 STAND-BY DUTY

The basis of disagreement is a request by the City to change one word. The contract reads "In case of a vacancy during a shift due to sickness, vacation or other short term cause:

(a) The shift will be covered by an officer on stand-by call."

The City has requested the word will be changed to may.

There is no disagreement concerning the amount of pay for stand-by duty, when called out or other components of stand-by operations.

Mr. Soumis for the City, requested the change for primarily economic reasons. The City cannot afford this mandated overtime. Because of the City's precarious financial position, all other departments of the City have had overtime assignments restricted to emergency situations.

The Union replies very specifically that the City asked for a reduction in the Police Department staff and an elimination of the Fire Department. The City has and is saving on salaries and fringes. Since 1979 the City has eliminated through lay off or by non-replacement nine (9) employees. Mr. Raffaelli contends the Police Department is still performing all the duties required. There is a very real inconvenience incurred when an officer is on stand-by duty and this overtime pay requirement was negotiated with this in mind. The Union argued that this agreement for stand-by protection was needed for the protection of the community and furthermore that stand-by duty is a job related activity as well as an inconvenience and thereby necessitates compensation.

The City said they had no immediate plans for further personnel reduction, they were making every effort to provide forty (40) hours of work per week per employee but the Police Department overtime was one of the City's major cost curtailment problems.

In reviewing the arguments and evidence presented by both the parties, it is the opinion of the Chairman that the Union's position

pertaining to the agreement on stand-by duty - and pay - must be sustained. While one must be empathetic to the concerns of the City, the clause was negotiated with full knowledge of the problems and costs involved.

The even more persuasive argument is concerning the ability and responsibility of staffing. Clearly the Union negotiated into the contract what they saw as protection concerning the Management Rights Clause. The Union's reasoning follows the pathway that:

1. the citizens of Wakefield require a certain minimum police coverage;
2. the City is responsible for staffing; and
3. the staffing whether covered by a forty (40) hour work week or by stand-by duty is a cost necessary for the security of the community.

It is the interpretation and position of the Chairman that the Union's position be sustained. Mr. Raffaelli concurs, Mr. Soumis dissents.

#### CONSENT AWARD AND ORDER

The following award and order encompasses those issues agreed to by the parties and the orders pertaining to those issues in dispute.

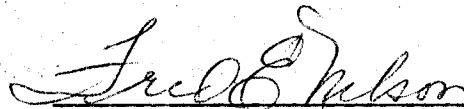
1. Effective retroactively to April 1, 1982 the salary schedule shall be increased fifteen (.15) cents per hour and an additional ten (.10) cents per hour added January 1, 1983.
2. The contract expiration date shall remain unchanged to March 31, 1983.

3. Article 26 (c). The relief or 21st shift as defined in the contract does not exist, therefore overtime is not required.

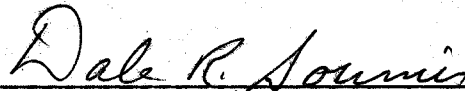
4. Article 27 (a). Stand-by duty is a clearly defined requirement of the contract and shall continue in force.

Concurring in the above findings, conclusions and award as ordered, except where dissents are noted in the text are: Mr. Raffaelli who dissents on items one (1) and three (3) above and Mr. Soumis who dissents on items two (2) and four (4).

The Panel was in unanimous agreement that the Proposed Contract was not a part of the proceedings, that the rest of the existing contract remain unchanged.



Fred E. Nelson, Arbitrator



Dale R. Soumis, Panel Member



Robert J. Raffaelli, Panel Member