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IN THE MATTER OF THE ARBITRATION BETWEEN:

CITY OF WIXON

-and-

MERC CASE NO. D82 F-3034

MICHIGAN AFSCME,
COUNCIL 25

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RELATIONS LIBRARY
Michigan State University

COMPULSORY ARBITRATION

MAY 11 1984

Pursuant to Act 312, Michigan Public
ACT of 1969, as amended.

OPINION AND AWARD

Arbitration Panel

Peter D. Jason
Arbitrator/Chairman

John P. Lee
City Delegate

Robert C. Wines
Union Delegate

DATE: March 23, 1984

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BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

Wixom, City of

INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chairman, Peter D. Jason; City Delegate, John P. Lee and Union Delegate, Robert C. Wines.

A Prehearing was held on January 20, 1983 and a hearing was held on October 3, 1983. The City of Wixom was represented by Mr. Dennis B. DuBay of the firm of Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C. of Detroit, Michigan. Michigan AFSCME Council 25 - Local 3075 was represented by Theodore H. Stringer, Staff Representative of Michigan AFSCME Council 25. The record consists of 129 pages of recorded testimony and a total of 76 exhibits. After submission of last best offers on October 17, 1983, the parties forwarded written briefs on December 12, 1983. On December 16, 1983 the City filed a formal motion to strike portions of the post-hearing brief filed by the Union for the reason that it introduced new factual material attached as exhibits to the Union's Brief and contains factual assertions not contained in the record. After consultation with the other panel members, the Chairman hereby grants the motion and all unsupported factual representations are hereby stricken. The panel met in executive session on February 1, 1984. The duration of the contract, between the parties is the three (3) year period from July 1, 1982 to June 30, 1985.

The parties stipulated that the outstanding issues in this matter were both economic and noneconomic so the panel was guided by Section 8 of Act 312. This section provides that each economic issue must be decided by the panel selecting the last best offer which more nearly complies with the applicable factors in Section 9 and that the noneconomic issues be resolved using the applicable factors prescribed in Section 9.

The applicable factors to be considered as set forth in Section 9 are as follows:

- (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 the wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 and compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuing 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 service or in private employment.

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

BACKGROUND

The City of Wixom is located in southeast Michigan off the I-96 expressway, midway between Farmington Hills and Brighton. It has a total land area of 9.5 square miles and a population of approximately 6,700. 4.6 square miles of the city is still vacant land and the one major industry located within the city is the Ford assembly plant on Wixom Road. For the years 1980 through 1982, the Wixom Police Department averaged 233 arrests for all crimes during those years.

Michigan AFSCME Council 25, Local 3075 is the recognized exclusive bargaining representative of the eight (8) city patrol officers. The Department consists of the Chief, three sergeants, eight patrol officers and four non-sworn staff members.

COMPARABLE COMMUNITIES

As noted earlier Act 312 directs the panel to consider economic benefits paid in comparable communities when deciding economic issues. In this matter the parties did not agree which communities were comparable. The City urged that the following communities were comparable: Brighton, Franklin, Keego Harbor, Milford, Northville, Plymouth, South Lyon, Walled Lake, Wolverine Lake. The Union urged that the following communities were comparable: Novi, Milford, South Lyon, Walled Lake, Wolverine Lake, and Oakland County. It should be noted that four of these cities are the same as

the ones suggested by the City, and in addition, the Union has suggested Novi and Oakland County as comparable communities. After a complete review of all the data, the Chairman was convinced that the City's argument on the comparables was the more reasonable. The City's argument was convincing because it included all cities with an active police force within fifteen miles from Wixom, having a population of plus or minus 4,000 of that of Wixom. In doing so, it included all the cities close to Wixom of similar size. The Union, on the other hand, in submitting Novi as comparable, has selected a city of 22,500 people which is more than three times the size of Wixom. In addition, Oakland County has nothing in common with the City of Wixom except for a similar geographic location. All things considered, the Chairman considered the City's comparables pertinent for comparison and not the addition of Novi and Oakland County submitted by the Union.

ISSUES

The parties have agreed on all outstanding issues for the period of July 1, 1982 until June 30, 1985 except those that were the subject of these proceedings. The remaining issues that are to be decided by this award are as follows:

ISSUE #1 Wages.

ISSUE #2 Sick leave.

ISSUE #3 Personal leave.

ISSUE #4 Educational benefits.

ISSUE #5 Management rights clause.

ISSUE #6 Part-time officers.

ISSUE #7 Residency.

During the executive sessions with the panel, the Chairman indicated that he favored retroactivity for economic benefits. Since this is an ongoing relationship it was important to the Chairman that the panel not be put into a position where it would assess the blame for the length of the negotiations between the parties and then exact a penalty on the guilty party. It is the Chairman's firm belief that exacting penalties is counter productive and should be avoided. In addition, it was apparent from examining the data submitted by the parties that economic improvements were appropriate in light of the criteria established in Section 9 of Act 312. Once this was agreed the panel was able to reach agreement on the resolution of these issues. The Union Delegate, had as his priority, the Union wage package and given retroactivity, the City Delegate was interested in restructuring certain fringe benefits. With these two principles in mind, the panel resolved the outstanding issues as follows:

ISSUE #1 - WAGES

POSITION OF THE PARTIES

City Position.

As set forth in the City's final offer, the City's

position is that the improved wage rates would be placed in effect on the date of Arbitration Award. It is also the City's position that, if there is retroactivity then the rates to be paid should be:

<u>TOP PATROLMAN RATE</u>	<u>ANNUAL SALARY</u>	<u>HOURLY RATE</u>
July 1, 1982	\$23,503.00	\$11.256
July 1, 1983	\$24,737.00	\$11.847
July 1, 1984	\$26,097.000	\$12.499

WAGE RATE SCHEDULE FOR NEW HIRE

<u>Step</u>	<u>Salary Effective 7/1/82</u>	<u>Hourly Effective 7/1/82</u>	<u>Salary Effective 7/1/83</u>	<u>Hourly Effective 7/1/83</u>	<u>Salary Effective 7/1/84</u>	<u>Hourly Effective 7/1/84</u>
Start	\$14,500	6.944	\$15,000	7.184	\$15,500	7.423
After 1 yr	16,500	7.902	17,500	8.381	18,500	8.860
After 2 yr	18,500	8.860	19,500	9.339	21,500	10.297
After 3 yr	20,500	9.818	21,500	10.297	23,500	11.255
After 4 yr	23,503	11.256	24,737	11.847	26,097	12.499

The level of entry for a new officer to be based on previous sworn police experience: If the new hire has 5 years or more of experience, entry will be at the 2nd step of a 5-step process. Experience of less than 5 years will require new hire to start at Step 1.

Union Position.

The Union's position is that the rates of pay should be improved or increased by 6% each year and that the adjustments be made retroactive to 7/1/82.

Once the principle of retroactivity was established it became apparent that the last best offers of the parties on this issue were both reasonable and similar. The City argued persuasively that it should not have to pay the more generous wage as demanded by the Union when certain of its

fringe costs were considerably higher than the comparable communities. The Union on the other hand argued persuasively that existing fringe benefits should not be reduced or frozen without some consideration in the wage rate. The Chairman was persuaded by both arguments and the first component of a process is to award the Union's last best offer on wages. It is the panel's firm conviction that this award is appropriate under all the criteria listed in Section 9 of Act 312.

The other three economic issues are decided for the City and bring into line City fringes that were unreasonable in light of the comparisons.

ISSUE #2 - SICK LEAVE

POSITION OF THE PARTIES

City Position.

The City is proposing the gradual reduction in the accrual rate from the current 18 days per year down to 12 days per year effective July 1, 1984. The City also proposes to revise Section K, subsection 7 to provide that sick leave may be used to attend a funeral of immediate family as defined in Section L in the event that all funeral leave and all personal leave have already been used.

Union Position.

The Union's position is to continue the current sick leave accumulation rate at 18 days per year. The Union also wants to maintain the current Section 7 of the contract

which allows the use of sick leave for attendance at a funeral in the event that all funeral leave and at least five days of personal leave have been used.

The panel decides this issue in favor of the City for the reason that the data from the comparable communities suggests that this benefit was excessive and also because the City offer is fair in the context of the whole package. It is understood that if a bargaining unit employee used sick leave in any period since April 1, 1982 through the date of the arbitration award in excess of the above schedule, such employee would be considered "grandfathered" at the former sick leave accrual rate for such period. The following language is awarded:

SICK LEAVE

ARTICLE VIII - BENEFITS

K. SICK LEAVE

1. Effective during the fiscal year beginning July 1, 1982, employees are entitled to 1.33 eight (8) hour days per month of sick leave up to a maximum accrual of sixteen (16) days per year. Effective during the fiscal year beginning July 1, 1983, the accrual amount will be reduced to 1.17 eight (8) hour days per month of sick leave up to a maximum of fourteen (14) days per year. Effective during the fiscal year beginning July 1, 1984 the accrual amount will be reduced to one (1) eight (8) hour day per month of sick leave up to a maximum accrual of twelve (12) days per year.
7. Sick leave may be used to attend a funeral of immediate family as defined in item L in the event that all funeral leave and all personal leave have already been used.

ISSUE #3 - PERSONAL LEAVE

POSITION OF THE PARTIES

City Position.

The City's proposal calls for a reduction in the award of personal leave each year from 6 days each year down to 3 days each year. In addition, the City proposes that there will not be any pay out for unused personal days at the end of each fiscal year. The current contract, Article 11, Personal Leave, provides that employees are to be paid at straight time for 50% of unused personal days at the start of the next fiscal year. The City proposes deletion of this pay-out provision. In other words, the days will either be used or not compensated. Naturally, the employee would receive an award on the following July 1st each year of an additional 3 days.

Union Position.

The Union's position is to continue to award of personal leave days each July 1st in the amount of 6 days per employee. In addition, if the days are not taken, the employee would be paid 50% of the straight time value of those days at the start of the following fiscal year.

This issue is decided for the City. This was another fringe benefit that was excessive in light of the data from the comparable communities.

The new Article 11 reads as follows:

ARTICLE XI - PERSONAL LEAVE

A. Employees are to receive excused time, at full pay, not to exceed (3) days a year which is to include:

immediate family illness, necessary doctors appointments, and personal business, with the approval of the Chief of Police or Supervisor. In the event of immediate family illness under this Section, the employee will give 2-hour notice to the Chief of Police, Duty Officer, or a Police Supervisor. Documentation shall be provided by the Member upon request by the Chief of Police.

ISSUE #4 - EDUCATIONAL BENEFITS

POSITION OF THE PARTIES

City Position. The City proposes, to modify the current Educational Benefit Program by terminating future liabilities under this program. The City's proposal is to "grandfather" or "red circle" all current employees at the existing benefit-payment level they currently enjoy as of July 1, 1983; but to not extend this program either to new hires or existing officers who have not received any Educational Benefit payments as of July 1, 1983.

Union Position. The Union's position is to continue the current educational benefit program for all employees.

The panel decides this issue for the City. This was another fringe benefit that was excessive in light of the data from the comparable communities.

The Chairman wishes to note at this point that he is normally reluctant to restructure existing fringe benefits in the Act 312 process. However, in this instance, it

appears that this is the fairest way to resolve this dispute and it further appears that this resolution has the endorsement of all the panel members.

The panel was able to agree on the following language to resolve the non-economic issues:

ISSUE #5 - MANAGEMENT RIGHTS

ARTICLE IV - MANAGEMENT RIGHTS

- A. (Same as the old contract - Article IV, page 3).
- B. It is further recognized that the responsibilities of the management of the City for the selection and direction of the working forces, including the right to hire, discipline, suspend or discharge employees for the just cause, assign, promote or transfer, to determine the amount of overtime to be worked, to establish, change, combine, or discontinue job classifications, and to establish and change work schedules, work standards, and the methods, processes, and procedures by which such work is to be performed, to establish training requirements to maintain or improve professional skills of the employees, to relieve employees from duty because of lack of work or for other legitimate reasons as set forth herein is vested exclusively in the City.

ISSUE # 6 - PART-TIME PATROL OFFICERS

The City of Wixom must provide for the safety and welfare of both Wixom citizens and officers serving the City. The present staff of eight patrol officers and three sergeants is not adequate to provide the optimum of patrol service during vacation periods and other times when there is an unavoidable shortage of patrol personnel. It is therefore mutually beneficial that "part-time officers" be utilized to add additional strength to the patrol force

within the discretion of the Police Chief.

The City will not use the part-time patrol officer program to reduce the existing staff levels of full-time patrol officers. In the event the City reduces the number of authorized positions in the Department below those in existence on July 1, 1982, the part-time police officer program will be discontinued and only reinstituted at the time the number of authorized positions return or exceed those in existence on July 1, 1982.

Part-time officers will be used for some of the following purposes:

1. Part-time officers may be ordered to work whenever the Department has only one full-time officer or sergeant on patrol, and when no full time officers are available.
2. Part-time officers may be scheduled during vacation periods for any length of time, that full time officers are unwilling to cover.
3. Part-time officers may be required to work alone if a full time officer is required to leave the work place during any shift, until an additional full time officer can be called in.
4. Part-time officers may be used for any function when the need for manpower is evident, and no full time officers are available for duty.

Part-time police officers will not be used for the following, except when all full-time officers eligible to be called in on overtime have been requested to work and have requested that they be passed over to a person with less seniority. Part-time police officers will be requested to work prior to ordering a full time officer from the bottom

of the list in to work against his will.

1. A part-time officer will not be scheduled to work alone on any shift, unless a full-time officer or supervisor is ON DUTY.
2. To replace a full-time officer who has been separated from the department for more than 90 days or the period required to test and hire a replacement officer.
3. When an officer is on duty and his shift must be extended for cogent reasons.
4. To handle follow up of cases or perform court work normally scheduled as overtime to regular personnel.
5. Part-time police officers shall be subject to the same orders, rules, and regulation as full-time officers. Seniority will not apply to part-time police officers. The fact that an individual has worked as a part-time officer for this department does not assure the person hired as a part-time employee that he will be considered for full-time employment with this police department.

Procedure

Part-time officers may be ordered to work as early as possible after a member of the Department has been notified of a pending absence of personnel scheduled to work. Orders regarding notification of supervision will be followed as a guide to officers on duty when no supervisor is present. A special book or daily diary will be kept at the Duty Desk for the purpose of recording efforts to notify part-time officers to report for Duty. The diary will include the date, time, and list efforts made to notify each part-time officer, as well as the reason the part-time officer was not contacted. The name of the part-time officer contacted as

well as the officer making the contact will also be recorded the reason or need for call-in or part-time officers will also be included in the diary entry.

As the use of part-time officers continues, problems will arise that are not covered by instruction. It will be necessary that supervisors and police officers use good judgment when situations are not covered by written instructions. The Chief's Office shall be notified of any problems immediately in order to develop department policy regarding each situation.

All orders or instruction in conflict with this order are hereby rescinded.

The City will continue to have the right to suspend and/or terminate the part-time police officers program.

ISSUE #7 - RESIDENCY

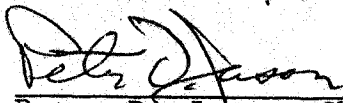
ARTICLE VII - GENERAL PROVISIONS

C. RESIDENCY:

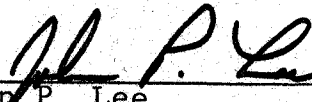
All police personnel, as a condition of continued employment, must reside within one of the communities of Novi, Commerce Township, Walled Lake, Milford Village, Milford Township, South Lyon, Lyon Township and Wixom.

The City may, in its sole discretion, employ new employees without regard to the requirements of this section, provided that such new employees (as a condition of continued employment) become residents and reside within the communities listed above, within ninety (90) days after successfully completing the probationary period of employment.

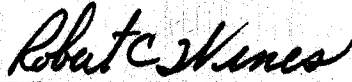
Employees who on July 1, 1982, were not residents and did not reside within that area set forth in this section will be exempt from the provisions of this section, providing that said employees shall (at such time as they change their place of residence from the one held as shown by the City records, on March 23, 1984) reside within fifteen miles of City Hall.



Peter D. Jason, Chairman
Act 312



John P. Lee
City Delegate



Robert C. Wines
Union Delegate