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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF WYOMING

-AND-

MERC CASE #G93 C-4015

POLICE OFFICERS LABOR COUNCIL,
WYOMING COMMAND OFFICERS

PANEL DELEGATES:

EMPLOYER: MICHAEL A. SNAPPER,
ATTORNEY

UNION: JAMES QUINN,
FIELD REPRESENTATIVE

APPEARANCES:

UNION: KENNETH W. ZATKOFF, ATTORNEY
EMPLOYER: MICHAEL A. SNAPPER, ATTORNEY

ISSUES:

UNION:

CONTRACT DURATION (ECONOMIC)
WAGE AND PAY POLICY (ECONOMIC)
PENSION (ECONOMIC)
SENIORITY AND LAYOFF (NON-ECONOMIC)
WAGES (ECONOMIC)

EMPLOYER:

DRUG AND ALCOHOL TESTING (NON-ECONOMIC)
FAMILY MEDICAL LEAVE ACT (NON-ECONOMIC)
HEALTH INSURANCE (ECONOMIC)
HOLIDAYS (ECONOMIC)

CASE DATA:

PETITION FILED: NOVEMBER 4, 1993
CASE HEARD: DECEMBER 5, 1994
AWARD ISSUED: JUNE 16, 1995

Wyoming City

Joseph P. Girolamo

STATE OF MICHIGAN
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POLICE OFFICERS LABOR COUNCIL,
WYOMING COMMAND OFFICERS

ACT 312 PANEL OPINION & AWARD

BACKGROUND

The Police Officers Labor Council by Petition dated November 3, 1993, filed for Arbitration pursuant to P.A. 312 of 1969 as amended.

The Undersigned was appointed as impartial Chairperson in this case.

A Hearing was held on December 5, 1994.

The Parties identified several issues in dispute.

The Union presented demands on the following:

Contract Duration;

Wage and Policy - Overtime;

Pension:

Final Average Compensation;

Pension Multiplier;

Seniority and Layoff - Probationary Period; and

Wages.

The City presented demands on the following:

- Drug and Alcohol Testing;
- Family Medical Leave Act;
- Health Insurance; and
- Holidays.

Pursuant to Section 8 of Act 312 (MCL 423.238), the Panel identifies the following issues as economic:

- Contract Duration;
- Wage and Pay Policy - Overtime;
- Pension;
- Wages;
- Health Insurance; and
- Holidays.

The following issues are non-economic:

- Seniority and Layoff - Probationary Period;
- Drug and Alcohol Testing; and
- Family Medical Leave Act.

Section 9 of Act 312 specifies the criteria which an Arbitration Panel is to apply in making its Award. Section 9 is displayed as follows:

"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 interest 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 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 dependency of the arbitration proceeding.
- (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."

The Parties are not in agreement on the matter of comparable communities. The Union maintains the following are comparable communities: Grand Rapids; Grandville; Holland; Kentwood and Walker. The City agrees with the above comparable communities, but

it also proposes to include the following: Muskegon; Muskegon Heights and Norton Shores. While the City acknowledges that the communities selected by the Union are comparable, it further points out:

"...a number of those communities do not include certain of the ranks which are part of the Wyoming Police Command Bargaining Unit."

The City notes:

"Because four of the Union's five comparables do not include lieutenants or captains in the bargaining unit, adoption of the Union's list of comparables will mean that the Arbitration Panel will, in fact, be considering only a single comparable community with respect to most issues!"

The Union disagrees with the inclusion of the latter communities on the basis of a lack of information "which would support the City's contention that these three additional communities are somehow comparable to the City of Wyoming."

James Kohmescher, City Director of Human Relations, explained that the above additional communities are of comparable size and have closer proximity - approximately forty-five (45) minutes driving distance of greater Grand Rapids. He also noted:

"Both Muskegon and Muskegon Heights both have lieutenants included in their bargaining agreements so they were included for that reason."

The Panel will pay particular attention to the five (5) communities on which both Parties agree. In the event the five (5) communities provide inadequate information, the three (3)

communities suggested by the City may provide information which will be of assistance to the Panel.

DISCUSSION AND FINDINGS

Seniority and Layoff - Probationary Period:

The Parties have reached an agreement on the matter of Probationary Period which is displayed as follows:

"ARTICLE VII - SENIORITY AND LAYOFF

Section 2. Probationary Period. The probationary period for each new member in the bargaining unit shall be twelve (12) months. There shall be no extension of the probationary period, unless the same is agreed to by the City and the employee. Written notice shall be given to the employee and the Union informing them of any extension of the probationary period. Any extension of the probationary period shall be for four (4) months or less. Each probationary employee shall be entitled to all economic benefits as specified in the Contract. If the employee, who is a new hire, quits or is discharged during said probationary period the following benefits shall not be received: unused floating holidays, accumulated sick days and compensatory time. The City shall not be bound by the provisions of this Contract for newly hired employees during their probationary periods, except on economic matters. The Union will not be bound to provide representation to newly hired probationary employees disciplined or discharged during the probationary period. Newly hired probationary employees may be terminated by the City for any reasons, which terminations shall not be grievable. Promoted employees who do not successfully complete the probationary period shall have the right to be placed back into the position the employee held in the City prior to becoming a member of the bargaining unit, subject to the ability of the employee to perform the duties of the prior position."

Family Medical Leave Act:

The City contends "such language is required by the Federal Family and Medical Leave Act." It is further stressed:

"...this precise language has previously been agreed to by all of the other five bargaining units of City of Wyoming employees. Only the Police Command Officers are a hold out."

The Union points out:

"...with the exception of the City of Holland and the Wyoming Patrol Officers Association, nobody else has this language in their contract."

Certainly, the City has a legitimate interest in having one overall policy applicable to all of its employees. Mr. Kohmescher stated that all other Bargaining Units in the City have such language. The Panel is persuaded that the City proposal should be adopted.

Drug and Alcohol Testing:

Once again the City emphasizes:

"...the City's proposal regarding alcohol and drug abuse is identical to the language which has already been agreed upon, and included in the contracts with the other five City Bargaining Units."

The Union notes:

"...that four of the five agreed upon comparable communities do not have drug and alcohol testing policies in their collective bargaining agreements. Furthermore, an examination of the contracts for the three additional City proposed comparables indicate that none of those communities have contractual language on drug and alcohol testing either. Absent some legitimate basis for incorporating this language into the collective bargaining agreement, the status quo should be maintained."

The Panel is persuaded that one overall policy is of legitimate interest. Given that the internal comparables support the City's position, the City proposal is adopted.

The Panel will now address the various economic issues.

Wages:

The Union's Last Best Offer on Wages is the following:

"Effective 7/1/93:	5% across the board
Effective 7/1/94:	3% across the board
Effective 7/1/95:	3% across the board."

The Union says "it has accepted the City's wage proposal for 7/1/94 (3% across the board); 6/30/95 (\$1,200 increase for Captains); and 7/1/95 (3% across the board). It therefore asserts - "the only wage issue remaining deals with the first year of the Collective Bargaining Agreement commencing 7/1/93." With reference to the first year, the Union notes:

"...the total difference in wage increases for the first year of the collective bargaining agreement is \$415.00 for sergeant, \$457.00 for lieutenant and \$489.00 for captains. Assuming these officers work 2,080 hours per year, this amounts to 19¢ per hour for sergeants, 21¢ per hour for lieutenants, and 23¢ an hour for captains. Clearly, the City can afford to accommodate such a modest increase."

The Union stresses that "patrol officers and the fire fighters both received a 5% wage increase effective 7/1/93." It is the Union's view that:

"...the additional one percent sought by the Union will have little, if any, financial impact upon the City. The City has the financial ability to pay the demands, and the demand is consistent with the standard of comparability."

The City stresses that "the issue of wages is a single issue in this proceeding." The City's Final Offer is the following:

"Two year agreement:

7/1/93	4% across the board
7/1/94	3% across the board
6/30/95	\$1,200 increase for Captains

Three year agreement:

7/1/93	4% across the board
7/1/94	3% across the board
6/30/95	\$1,200 increase for Captains
7/1/95	3% across the board."

The City contends its proposal for July 1, 1993 compares favorably with the increase in the cost of living - "the CPI-U and CPI-W for the twelve months preceding July 1, 1993 was 2.7% excluding the cost of health insurance." In the same vein, it is stated - "the CPI-U and CPI-W rates an increase for the twelve months preceding July 1, 1994, were 2.4/2.3%, compared to the City's offer of 3% across the board (plus \$1,200 additional for Captains on the last day of the fiscal year)." With reference to the comparable communities, the City points out - "the only community which generally pays a slightly higher base rate is the City of Grand Rapids, which is much larger than Wyoming." If overall compensation is considered, it is urged "adoption of the City's proposals will certainly maintain the very high relative status of

the Wyoming Command Officers." A historical differential within the Department "is maintained or even slightly improved for Sergeants, based upon acceptance of the City's Final Offer on the issue of wages." The City acknowledges that the non-Supervisory Police Unit in 1993/94 and the fire fighters in 1994/95 each received a 5% increase. In the former, the raise was a "makeup" related to a 1992 wage freeze and the in latter, an Act 312 Panel concluded the increase was justified because of their relative low ranking with other communities.

The Panel, after careful consideration, concludes the City Wage proposal is reasonable and justified under the facts of this case. The Panel appreciates that the amount in dispute for the first year is not extreme. It remains a fact that the increase will carry forward in subsequent years. The annual increase recited by the Union is not entirely accurate because it does not take into account overtime hours worked by members of the Bargaining Unit. The City has provided adequate justification for its proposal and the Panel does not perceive that it is an attempt to short-change this Unit. The Panel adopts the City proposal on the issue of Wages.

Overtime:

The Union proposes to provide Overtime for Lieutenants and Captains. The Union points out that among the agreed comparables, only Grand Rapids has the rank of Captain and they receive Overtime. It is further noted:

"The City of Wyoming has two captains. The financial impact at best can be characterized as non-existent."

The City agrees to add Lieutenants to the contractual Overtime provision and therefore:

"The only issue to be decided by the panel are whether or not captains are to be included in the overtime provision, and the effective date of the change."

The City maintains that Captains are Managerial employees and further:

"They work Monday through Friday, 40 hour work week, and they do not work overtime. Captain Lind acknowledged that the only basis for including them in this proposal is the speculative concern that a new police chief may assign a 'sixty hour' work week."

The City reminds that its wage offer includes a \$1,200 "kicker" for Captains:

"This represents an equity adjustment, in light of the fact that sergeants and lieutenants will receive overtime and captains will not."

On the issue of retroactivity the City advises:

"The City has not maintained the kind of record customarily maintained under Fair Labor Standards for determination of overtime, with respect to these higher ranks."

The main argument advanced by the City with reference to Overtime for Captains is that they do not work overtime and therefore the demand is unjustified. If the Captains do not work overtime, no additional cost will be incurred. In the event they

are required to work extra hours, it appears to the Panel that they should be compensated at the premium rate for the extra hours worked in the same manner as all other members of the Bargaining Unit.

The Panel declines to award retroactivity on the matter of Overtime.

Pensions:

The Union has presented two (2) demands:

- (1) Include sick leave pay off in final average compensation - lieutenants and captains only;
- (2) Increase pension multiplier from 2.20 to 2.5.

With reference to the first item the Union points out that "a majority of the agreed upon comparable communities currently provide the same benefits sought by the lieutenants and captains." Insofar as the Multiplier is concerned, the Union contends its demand is supported by comparison with comparable communities and by the fact that the Patrol Unit has an annuity factor of 2.25%.

The City has raised a procedural objection on the basis that only final average compensation was included in the Union's Petition. Beyond the above, the City asserts:

"Wyoming Police Command Officers presently have an extraordinarily generous pension package."

The City explains:

"This incredible advantage enjoyed by Wyoming Command Officers is attributable largely to the automatic escalator built into the pension plan. It is also

enhanced by the low age service requirement, (50/10) the generous final average compensation formula (3 years, rather than the 5 years used in most comparables), and by the fact that Wyoming also fully pays for social security, a benefit which a majority of comparables do not provide."

The fact that the non-Supervisory Police and Fire Fighters have a 2.25 Multiplier is not dispositive according to the City because they "do not have the CPI escalator."

The Panel is not persuaded that the Union demand relative to the Pension issue has merit. Although some of the comparable communities have a higher Multiplier, all of them have an employee contribution component. Moreover, as the City has stressed, this is the only Unit which has a CPI escalator. The Panel does not discern that the members of this Unit suffer a Pension shortcoming and therefore the Employer proposal is adopted.

Holidays:

The City notes that "the current Contract provides for fifteen holidays for Police Command Officers including three floating holidays." The City proposes to eliminate one (1) floating holiday "thereby reducing the total number of paid holidays from fifteen to fourteen." The City acknowledges that "take-aways" are not favored and "will occur only where the moving party sustains a heavy burden of proof." Here, the City argues the burden is satisfied:

- (1) "Command Officers in all of the comparables have 12 such days, with the exception of Holland, where the officers have 13; and"
- (2) "The other five bargaining units of City of Wyoming

employees all have fourteen paid holidays per year."

Beyond the above, the City maintains that "Total Hours of Paid Time Off" support its proposal.

The Union is bitterly opposed to this proposal:

"Unrefuted testimony of Captain John Lind indicated that the current language granting three personal days has been in the contract for the past 22 years. Given this fact, as well as the fact that there is absolutely no economic reason for this proposal, the Union can only characterize the City's attempts to reduce this benefit as nothing more than an attempt to punish the command officers for exercising their rights under Act 312."

The Panel is not persuaded that the City proposal has merit. While the Unit may enjoy a particular advantage on this specific item, it is not indicated that a benefit reduction is warranted. The City proposal is rejected.

Health Insurance:

The City proposes the following changes relative to the Health Insurance. The first proposal is to increase the drug co-payment from \$2.00 to \$5.00. The second proposal is to change the language relative to its right to change to another insurance carrier. The current language reads:

"The City shall have the right to change to another insurance carrier, provided the coverage shall be the same or better as listed above."

The proposed change would replace "the same or better" with the words "generally equivalent." With regard to the latter, the City

says "the Police Command, is the very last hold out." The City explains the need as follows:

"The City, like almost all employers everywhere, has a pressing need to improve and change the insurance plan to maintain effective coverage while managing and controlling its costs. In order to accomplish these goals, the City needs a degree of latitude in 'shopping around' in the insurance and health plan market."

Insofar as the prescription co-pay is concerned, it is noted "all other City Units have gone to the \$5.00 co-pay" and "the City's proposal is 'in the ball park' with respect to comparables."

While the Union argues that the Patrol Officers agreed to generally equivalent language, it is also emphasized that "they also received a 5% wage increase effective 7/1/93." The Union further argues:

"If the City is suggesting that because the patrol offices (sic) have this language the command officers should have this language as well, then the same logic should apply for wages."

With reference to the co-pay increase, the Union points out:

"...only one external comparable requires the \$5.00 co-pay."

The Panel is persuaded that the "generally equivalent" language is warranted. In the Fire Fighters Act 312 Award it was noted:

"The panel agrees that the present language locks the City in to the present health insurance coverage. There are few, if any, companies that provide exactly the same coverage. In most cases where companies are competitive

as to pricing, provisions vary giving more or less benefits. But in such case where premiums might be lower, the City is precluded from changing carriers by the present contract language. Therefore, the Panel is persuaded to the City's position."

The above reasoning is also applicable here.

With reference to the \$5.00 co-pay, the Panel notes that the first year wage increase for this Unit is below that which the other Units received. The Union's point that the rationale in support of a uniform co-pay should also be applicable to wages has some merit. In any event, the external comparables do not suggest the increase is warranted. The Panel rejects the City proposal relative to increasing the Prescription Co-Pay to \$5.00.

Contract Duration:

The Union requests a three (3) year agreement effective July 1, 1993 through June 30, 1996. The Union contends that its proposal is justified:

"It is the Union's contention that a three year contract is consistent with the comparables, and it is in the best interest of the parties and the welfare of the public in general."

The City candidly explains the basis for its proposal of a two (2) year agreement:

"A common expiration date for all City Contracts is extremely important because it enables the City to place the issue of health insurance in negotiations with all units at the same time. The City has a single health plan which covers all employees in all six bargaining units. This means that changes in that plan, and negotiations in connection with such changes, must occur

simultaneously. A different Contract expiration for the Police Command Unit will throw a wrench into the gears of that process."

Given the Panel's adoption of the Employer proposal in regard to the "generally equivalent" language on the matter of Health Insurance, it is concluded that the Employer's concerns are adequately addressed. The Award of a two (2) year agreement would place the Parties in the position of again facing an immediately expired Contract. The Panel adopts the Union's proposal and awards a three (3) year contract.

A W A R D

The following is Awarded as to each Issue:

Seniority and Layoff - Probationary Period: The agreed language is Awarded.

Family Medical Leave Act: The Employer proposed language is Awarded.

Drug and Alcohol Testing: The Employer proposed language is Awarded.

Wages: The Employer's Last Best Offer is Awarded.


Wage and Pay Policy - Overtime: The Union's Last Best Offer is Awarded without Retroactivity.

Pensions: The Employer's Last Best Offer is Awarded.

Holidays: The Employer's demand to reduce the number of Holidays is Rejected.

Health Insurance: the Employer's Proposal that "the same or better" be replaced with "generally equivalent" is Awarded. The Employer's request to increase the Prescription Co-Pay is Rejected.

Contract Duration: The Union's Last Best Offer for a three
(3) year Agreement is Awarded.



JOSEPH P. GIROLAMO,
Chairperson

-- see below
MICHAEL A. SNAPPER,
City Delegate


JAMES QUINN,
Union Delegate

DATED: JUNE 16, 1995.

By my signature below, I concur with the award as to the following issues: Seniority and Layoff - Probationary Period; Family and Medical Leave Act; Drug and Alcohol Testing; Wages; Pension; Health Insurance (replace "the same or better" with "generally equivalent"); Contract Duration. I dissent as to the following issues: Overtime; Holidays; Health Insurance (Prescription Co-Pay).


Michael A. Snapper
City Delegate