

IN THE MATTER OF THE
ARBITRATION BETWEEN:

CITY OF MELVINDALE

and

MERC Case No. D 98 C-0516

POLICE OFFICERS ASSOCIATION OF MICHIGAN
_____ /

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION & AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Robert Cady
City Delegate

Gary Pushee
Union Delegate

Date: June 23, 1999

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
OFFICE OF THE
CLERK OF THE
SUPREME COURT
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INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, City Delegate Robert Cady, and Union Delegate Gary Pushee.

A pre-hearing by way of teleconference was held on September 1, 1998 and a hearing was held on March 1, 1999 at the Union Administrative Offices in Redford, Michigan. The City of Melvindale was represented by Attorney Richard James. The Union was represented by Bill Birdseye. The record consists of 188 pages of record testimony in one volume. Exhibits offered by the parties and accepted consisted of joint exhibits numbers 1 through 6, union exhibits 1 through 6 and employer exhibits 1 through 9. For purposes of this opinion and order exhibits will be referred to as J1-6, U1-6 and E1-9. Last offers of settlement were submitted by the Union and the City on March 26, 1999. Post hearing briefs were submitted by the parties on May 11, 1999. By written stipulation, which is contained in the case file, the parties waived all time limits applicable to these proceedings, both statutory and administrative. The parties agreed that all issues pending before the panel with the exception of the issue of residency for new employees are economic and that the duration of the contract, which is the subject of this proceeding, will be for a three-year period from January 1, 1998 through December 31, 2000. Applicability of retroactivity will be addressed on an issue by issues basis.

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. The section provides that "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 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 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 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 Melvindale is located in Southwest Wayne County, Michigan. It is bordered by the Cities of Allen Park, Detroit, Lincoln Park and Dearborn. It is one of several cities commonly referred to as the downriver area. (TR-9) Many of these cities range in size between 11,000 and 30,000 population. Melvindale's population in 1990 was 11,216. (E-6)

COMPARABLE COMMUNITIES

As noted earlier, Section 9(d) of Act 312 directs the panel to consider and compare the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of employees performing similar services in public and private employment and with other employees generally in comparable communities.

In this proceeding the Union and the City proposed the Cities of Woodhaven, Southgate, Allen Park, Riverview, Wyandotte, Ecorse and River Rouge as comparables. In addition, the Union proposed the Cities of Flat Rock, Gibraltar, Lincoln Park, Rockwood, Taylor and Trenton and Brownstown and Grosse Ile Townships.

Both parties also urged the panel to consider the internal comparables of the Melvindale Police Sergeants and Lieutenants (J-6) and the City urged consideration of other Melvindale municipal employees. (E-6) Both parties also referred to the internal comparables of the Melvindale Fire Fighters who recently negotiated a contract for the period January 1, 1997 through December 31, 2000.

The parties differ with respect to the external comparables. The Union points out in its brief in support of its final offer that reliance on the previous arbitration

panels' use of external comparables as addressed in J-4 and J-5 is inappropriate because neither previous panel gave great weight to external comparables. It is noted that both the panels in those proceedings gave substantial weight to the internal comparables, particularly in light of the then financial condition of the City. (J-4, page 4; J-5, pages 5-10) A thorough reading of exhibits J-4 and J-5 does indeed reveal that the City was experiencing severe financial constraints at that time that influenced that panel to place great weight on internal factors. While evidence in this case reveals the City continues to struggle to maintain a balanced budget (J-3) (E-1) and continues to levy a relatively high property tax (E-5), there was also evidence presented in this case to demonstrate that the City is not in as severe financial constraints as it was when the previous panels were considering comparables. In fact, evidence in this case indicates the City had a fund balance of \$109,411 as of the end of 1997 (E-2) (TR-85) and may end calendar year 1998 with \$30,000 revenue over expenses. (TR-93) Therefore, this panel is not as constrained as the previous panels in placing a higher degree of emphasis on internal financial factors. Additionally, as the Union points out in its brief, each panel should look at the merits of the external comparables offered in the proceeding at hand and not just arbitrarily adopt comparables offered from previous arbitration cases.

The panel has reviewed the external comparables in this case proposed by both parties. While the Union has offered eight jurisdictions as comparables in addition to the seven jointly agreed to by the parties, it has offered little evidence to justify the inclusion of those additional comparables, other than that they have had a mutual aid agreement since the late 1960s. (TR-9) The Union Exhibits U-2 and U-3 depict only wages for those comparable units. Neither party has provided evidence

upon which the panel can consider comparables for these communities for such factors as population, SEV, tax effort, treatment of court time, vacation days or pension benefits. The City has provided information on these factors for the comparable communities jointly agreed upon.

Because of the absence of this evidence the panel finds it difficult, if not impossible, to compare the City of Melvindale's treatment of factors at issue in this case with those of the additional units offered as comparables by the Union. Therefore, the panel chooses the following communities as comparable to the City of Melvindale for this proceeding: the Cities of Allen Park, Ecorse, River Rouge, Riverview, Southgate, Woodhaven and Wyandotte.

ISSUES

There are five unresolved issues pending before the panel in this matter. The Union has advanced the issues of wages, the minimum number of hours paid for court time and the number of vacation days based on seniority of service. The City has proposed changes to the contribution new employees would pay to the Michigan Employment Retirement System (MERS) Pension Plan and proposes a residency requirement for newly hired employees. The parties have agreed that all of the issues, with exception of the residency requirement, are economic in nature. The panel will address each of these issues separately.

ISSUE 1

Wages

The Union's last offer of settlement requested wage rate increases for the year's 1998 through 2000 of a 2% increase in each of those years for police officers with less than one year experience, a 2.5% increase for police officers with more than one year, but less than two years experience and a 3% increase for each of those years for police officers with two or more years of service. The City's last offer of settlement requested an across the board increase of 2% beginning with the first pay period of the 1998 year and a 2% increase beginning with the first pay period of the year for each subsequent year of the contract period.

The Union points to recent contract agreements between the City and the police command officers, (sergeants and lieutenants) (J-6) and argues that the percentage increase proposed in the Union's last offer of settlement should be the same as that contained in the command officers contract. It argues that that has been the pattern in previous contracts and should be continued in this contract. The Union also argues that a comparison of external comparables for similar positions reveals that the wages for Melvindale police officers, even with the increase proposed by the Union, would continue to be below the average of that paid by the comparable communities. The Union further argues that its last offer of settlement should be adopted by the panel in recognition that, as displayed on U-5, the employees wage increases of 2% for the years 1995 through 1997 have actually been below the cost of living increases for that time period and it is reasonable to allow the employees to recoup that loss through future wage increases. The Union also

argues that the City has not made a case for an inability to pay the amount requested in the Union's last offer of settlement.

The City does not dispute the fact that the wages it proposes for police officers is below that of the average of the comparable cities in this case. (E-7) The City points out that this has historically been the case, at least in the recent past when the City was experiencing financial constraints. The City argues that this will be the case whether the panel accepts the City's or the Union's last offer of settlement on wages. The City notes that, as reflected in Joint Exhibits 4 and 5, it is not surprising that its wage structure is below the average given that it had wage freezes and other financial constraints imposed during the period of time those previous contracts were in effect. The City argues that the panel should accord more weight to the financial condition of the City and to the internal comparables than to the average of the external comparables.

With respect to internal comparables, the City points out that its recently negotiated contract with the command officers purposely developed a one-half percent step increase for each of the first two years for sergeants and for each of the first two years for lieutenants. (TR-170) Its witness, Chief John Difatta, testified that this provision was built into the command officers contract to attempt to address a perceived problem in getting more senior police officers to test for advancement to the sergeant and lieutenant ranks. (TR-172) He testified that without a greater differential in pay, police officers with extensive seniority are often reluctant to test and ultimately occupy sergeants' positions because as they advanced to sergeant they would basically lose their seniority in rank within the police officer unit. He testified that adding the step increases to the first and second year sergeants and the first and

second year lieutenants contract is intended to create more incentive for senior police officers to consider testing for and advancing to those positions.

The City also points out that while the Union argues that it wants the same pay increases that the command officers received in their recent contract, the City's position is that the police officers would get the same wage as the fire fighters recently received in their contract for the years 1997, 1998 and 1999 which is a 2% increase. The City points out this parity has also has been the pattern in past contracts. The Union points out that the fire fighters most recent contract will provide a 3% increase beginning January 1, 2000 whereas the City's last offer of settlement for the police officers calls for a 2% increase beginning 1/1/00.

The panel has considered several factors in reaching its conclusion. First, while the City's ability to pay has improved over the conditions it experienced during previous contract periods, it still is not awash in excess revenues. City witness Cady, testified that the City could close its fiscal year 1998 with a range from a \$92,000 deficit to a \$30,000 surplus. (TR-80) Considering that testimony was presented indicating 16 employees within the unit, and estimating all 16 had two years or more seniority, a calculation from Exhibit U-4 reveals that the difference in cost to the City if the Union's last offer of settlement was adopted rather than the City's for the duration of this contract would be approximately \$38,000.

Second, the City points out that provisions in its contract with the command officers, Section 30 of Joint Exhibit 6, would require the City to readjust the sergeant's pay to maintain the minimum percentage differential between those sergeants with more than two years of experience and those officers paid the highest amount of pay in the police officers unit. An increase in the police officers' pay at the top level to

3% would require an adjustment to the pay for the sergeants with two plus years experience resulting in additional cost to the City.

Third, the City, through the testimony of Chief Difatta, explained the rationale for seeking to establish this differential. (TR-172-175) While this approach has yet to be tested and proven, it does merit testing. If it proves to have no impact on the police officers interest and availability in advancing to the rank of sergeant and eventually lieutenant that issue can be addressed in future contracts.

Forth, the contract agreed to between the City and the fire fighters demonstrates that the non-command fire fighter position wage increases of 2% each year with the exception of the 3% increase beginning January 1, 2000, is more in line with the City's last offer of settlement in this proceeding than with the Union's last offer of settlement. Conducting a calculation from U-4 reveals that, beginning January 1, 2000 the difference between the wage for a fire fighter after two years and a police officer after two years if the Union's last offer of settlement were accepted would be \$813. The difference between the wages for those two positions beginning January 1, 2000 if the City's last offer of settlement is accepted would be \$402 dollars. It should also be noted that the fire fighters agreement was for a four (4) year period and arrived at as a result of a negotiated settlement. The contract in this proceeding is for a three (3) year period and the issue of wages will not be a result of a negotiated settlement.

Lastly, while it is recognized that the City of Melvindale's police officers with either of these last offers of settlement will continue to receive wages below those of the average comparable communities, it is also evident that the City is making efforts to improve its wages to its employees given its limited revenue resources. (E-

1) (E-4) (E-5) (E-6) The difference between the Union's last offer of settlement and the City's last offer of settlement in the context of the comparable units is not substantially different. The City's last offer of settlement on wages equals approximately 88.5% of the average wage paid to police officers in comparable communities and the Union's last offer of settlement results in approximately 89.3% of the average wage paid to police officers the comparable communities.

Taking all of these factors into consideration, the panel accepts the City's last offer of settlement on the issue of wages as more nearly complying with the applicable factors prescribed in Section 9. These wages will apply retroactively beginning 1/1/98 to all employees that are employed on the date this order and opinion is issued and who were employed during the applicable time period.

City: Agree Det. E. Cady
Union: Agree _____

Disagree _____
Disagree Det. J. P. Ash

ISSUE 2

Court Time

The current contract at Article 14 provides that employees ordered in outside of their regular scheduled shift hours shall receive a minimum call in pay of two hours pay at time and one-half. Those who voluntarily come in when called within four (4) hours before their shift shall work until their shift begins and receive pay at time and one-half or actual time worked. The Union's last offer of settlement proposed revising this article to provide that employees ordered in outside of their regularly scheduled shift hours receive a minimum call in pay of four (4) hours pay

at time and one-half and that any employees who voluntarily come in when called within two hours before their shift shall work until their shift begins and receive pay at time and one-half for actual time worked. The City's last offer of settlement proposes no change in the current contract.

The Union's position is that in the most recently negotiated contract for the command officers, this provision was changed to exactly what the Union is proposing for this contract. They point out that this provision would not apply to any other internal comparable.

The City argues that even though this was agreed to in the contract with the command officers the command officers do not experience as much required court time under this provision as the police officers do and, therefore, it would be a substantial additional cost to the City to implement this provision. The City points to E-9 as an identification of the hours of overtime applicable to time in court in calendar year 1998. The Union pointed out, however, that a calculation of the court time demonstrates that 38% of the cost of overtime paid for court time was attributable to the command officers in 1998 and not the police officers. City witness Difatta, also testified upon questioning by the independent arbitrator, that the City did not have data to be able to distinguish the instances of court time paid for less than two (2) hours versus two (2) to four (4) hours. Therefore, notwithstanding the City's argument that payment for court time costs would double, it is the panel's opinion that this would not be the case. The City also points to Exhibit E-7 for evidence of how external comparable units treat this issue. This Exhibit reveals that four of the seven comparable communities apply two hours court time, one

community applies three hours and one applies four hours and one unit did not have information available on this issue.

The panel believes the Union's last offer of settlement on this issue is the more reasonable. The City's argument that they can provide this provision for the command officers in the unit but not the police officers due to cost implications is not convincing. Evidence indicated that over one-third of the cost attributable to this provision is applicable to the appearance in court by command officers. Additionally, the City was not able to provide data demonstrating the experiences it had paying for two (2) to four (4) of overtime which would better demonstrate the additional cost to the City. Lastly, the panel believes that applying this provision uniformly across both the command officers and police officers units would be more administratively efficient for the City. Therefore, the Union's proposed change in Article 14 dealing with overtime and call-in time as offered in its last offer of settlement will be accepted by the panel to be effective on the date this arbitration award is issued.

City: Agree _____
Union: Agree _____

Disagree _____
Disagree _____

ISSUE 3

Vacation Days

The Union's last offer of settlement proposed a change in Article 18 relating to the number of days of vacation employees shall receive based on seniority of service. The Union proposes that the language be changed to provide that effective

on the date of the award employees shall receive twenty-six (26) days of vacation after fifteen (15) years of service and one additional day each year to a maximum of thirty (30) days. The Union bases this proposal on the fact that this is exactly the same provision contained in the police command officers contract and that if the goal is to retain qualified employees as stated by the city this provision should be the same as provided in the command officers' contract.

The City proposes no change from the present contract. It argues that there should be this differential between the police officer and the command officer vacation accrual days to provide incentive to move from patrol to command. The City also states that after fifteen (15) years of service a police officer should be able to upgrade into command and thereby take advantage of the more liberal vacation days.

Union Exhibit U-6 points out that the change in the provision for the command officers on this issue just recently took effect beginning January 1, 1997. Prior to that time the command officers and the police officers vacation days based on seniority were exactly the same. The City's argument that after fifteen (15) years a police officer should be able to upgrade into command is not convincing since there is fewer command officer positions available than there are police officers available to fill them. Further, a review of Employer Exhibit E-7 reveals that six of the seven comparable communities provide vacation days related to years of service very similar to that adopted by the command officers and proposed by the Union on this issue.

Based on a review of the comparables, both internal and external, the panel finds the Union's last offer of settlement on this issue more reasonable. Therefore

the Union's proposed change in vacation days within Article 18 will be accepted by the panel to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree _____ *Robert E. Cady*

Union: Agree _____ *Alfred L. Puskas*

Disagree _____

ISSUE 4

Pension Payment Contribution for New Employees

The current contract provides that the City pay 100% of the pension contribution for its employees to the Municipal Employees Retirement System (MERS) for members of the bargaining unit. The City's last offer of settlement proposes that newly employed employees pay 5% of their earnings into MERS. The Union position is to maintain the status quo.

The City points out that and there was evidence introduced to demonstrate that the City's other bargaining units, including the command officers and the fire fighters, have accepted the proposal the City advances on this issue. The City also points to Employer Exhibit E-7 noting that in five of the seven comparable communities members of the patrol bargaining unit pay at least 5%. The City also argues that this would assist in the City's ability to come closer to fully funding its pension obligations.

The Union acknowledges that the command officers and fire fighters have accepted this change. However, the Union points out that the fire fighters contract also contains a provision that will allow an increase in their multiplier. This increase is available provided that the employees pay the increased cost of the new

The panel finds the City's last offer of settlement on this issue the most reasonable. A review of both the internal and external comparables supports the City's position for this change. The Union's argument regarding the additional provision and flexibility in the fire fighters' contract does point out a difference, however, it should be recognized that the fire fighters contract was concluded upon agreement of the parties and did not go to arbitration. Clearly, the additional options similar to that provided fire fighters could become an issue of negotiation in future contracts. Therefore, on the issue of the employee pension contribution, the panel accepts the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree Robert E. Cady
Union: Agree _____

Disagree _____
Disagree My L. P. P.

Residency for New Employees

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thereafter live anywhere within a 20 miles radius of the City. The Union proposes no change to the current contract language or practice.

The City, in advancing this proposal, argues that the police officer is a very important member of the city staff and should be a city resident for the first few years of employment to get a feel for what is happening in the community. The City acknowledges there is no such requirement in the command contract, but argues that a provision is not needed in that contract because by the time the police officer gets to a command rank the officer in almost all instances has been a police officer in excess of five years. The Union argues that placing this additional requirement on new employees would make it more difficult to attract and keep employees in this bargaining unit. Further, the Union argues that the majority of arbitrators in Act 312 proceedings have not ruled on this issue believing that it is best negotiated by the parties.

The City, while advancing this proposal has provided no evidence of similar provisions in comparable communities nor in internal comparables. The panel recognizes the sensitivity of this issue and due to the lack of substantial evidence in the record on this matter believes it is best left to future negotiations between the parties and should not be decided by this panel in this arbitration proceeding. Therefore, the panel finds the Union's last offer of settlement to maintain the status quo on this issue the most reasonable. Therefore, on the issue of residency there shall be no change from the current contract.

City: Agree _____
Union: Agree _____

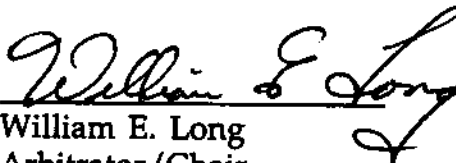
Disagree _____
Disagree _____

SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing. All agreements reached in negotiations as well as all mandatory subjects of bargaining contained in the prior contract will be carried forward into the collective bargaining agreement.

Re: City of Melvindale
Police Officers Association of Michigan
MERC Case No. D 98 C-0516

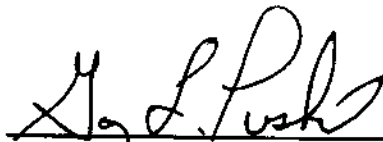
Date: 06-23-99


William E. Long
Arbitrator/Chair

Date: 06-17-99


Robert Cady
City Delegate

Date: 06-15-99


Gary Pushee
Union Delegate