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**STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION**

In the matter of:

CITY OF FARMINGTON,

Employer,

MERC Act 312

and

Case No. D99 D-0770

**COMMAND OFFICERS ASSOCIATION
OF MICHIGAN**

Union.

Michael P. Long, Chairperson
Dennis B. DuBay, Employer Delegate
Maria A. Putt, Union Delegate

ACT 312 ARBITRATION DECISION

The Petition for Arbitration in this case was filed on April 14, 2000 after the parties reached an impasse in their negotiations for a new contract. A pre-arbitration hearing conference was held on October 3, 2000. At the pre-hearing conference, the parties stipulated to a three (3) year contract from July 1, 1999 through June 29, 2002 therefore excluding Duration as an open issue. Subsequently, arbitration hearings were held pursuant to Act 312 on March 16, 2001 and March 22, 2001 at the Farmington City offices in Farmington, Michigan. The City was represented by Dennis B. DuBay and the Union was represented by William Birdseye. The parties submitted their Final Offers of Settlement on or about April 14, 2001 and Post-Hearing Briefs were submitted by June 18, 2001. A meeting of the panel delegates was held on January 10, 2002.

The following are the open issues of the parties that are set forth for determination by the arbitration panel:

UNION ISSUES

- | | |
|--|--|
| <input type="checkbox"/> WAGES
Article LXVII
Section 67.1 | <input type="checkbox"/> RETIREMENT-
PENSION
Article LXVI
Sections 66.2 & 66.4 |
| <input type="checkbox"/> NEW PROVISION
Use of compensatory
time for vacation | <input type="checkbox"/> VACATION SCHEDULING/
BIDDING PROCEDURE
Article LI
Section 51.5 |

The contract will be effective from July 1, 1999 through June 30, 2002.

COMPARABLES

The Union offered the following as comparable communities:

- | | | |
|---|---|--|
| <input type="checkbox"/> Farmington City
(Commander) | <input type="checkbox"/> Berkley
(Lieutenant) | <input type="checkbox"/> Beverly Hills
(Lieutenant) |
| <input type="checkbox"/> Bloomfield Hills
(Sergeant) | <input type="checkbox"/> Huntington Woods
(Lieutenant) | <input type="checkbox"/> Oak Park
(Lieutenant) |

The City offered the following as comparable communities:

- | | | |
|---|---|--|
| <input type="checkbox"/> Beverly Hills | <input type="checkbox"/> Center Line | <input type="checkbox"/> Clawson |
| <input type="checkbox"/> Fraser | <input type="checkbox"/> Grosse Pointe | <input type="checkbox"/> Grosse Pointe Farms |
| <input type="checkbox"/> Grosse Pointe Park | <input type="checkbox"/> Huntington Woods | <input type="checkbox"/> Rochester |
| <input type="checkbox"/> South Lyon | <input type="checkbox"/> Walled Lake | <input type="checkbox"/> Wixom |

STATUTORY AUTHORITY

Public Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments. Section 8 of the Act provides that the

arbitration panel shall adopt the last offer of settlement on each economic issue, which most nearly complies with the factors prescribed in Section 9 of the Act.

Section 9 of the Act reads as follows:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of 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 as 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." [MCLA 423.239]

GENERAL FINDINGS

The City of Farmington is located within Oakland County and consists of an area of 2.6 square miles. The estimated population as of 1990 was 10,132 residents. Per the 1990 Census, the City's per capita income was \$21,549.00, and the taxable value per capita in 1999 was 31, 309.61. The City of Farmington's taxable value per public safety officer in 1999 was \$14,419,500. Housing units in the City in 1990 totaled 4,890 with an average housing value of \$106,800.

DECISIONS ON ISSUES PRESENTED

Issue 1: WAGES, Article LXVII, Section 67.1.

The Union's last offer proposed a 3.5% across-the-board increase for the three (3) year collective bargaining agreement. The City's last offer proposed 3% across-the-board increases for the first year of the contract and 3.5% for the next two years.

UNION RATIONALE AND ARGUMENT

The Union proposes to increase wages 3.5% across-the-board for the three-year collective bargaining agreement. The Union argues that its offer is more than equitable. It points to arbitration exhibits that indicate that there are comparable wage increases for other City employee groups. For example, Public Safety Shift

commanders in comparable communities receive larger salaries for the same work performed by Commanders in the City of Farmington. The Union argues that the City's Commanders' salaries are not even at the industry average. Furthermore, the Commanders do not receive any other benefits to balance the lower wages.

The Union argues that antiquated contract provisions exist regarding the comparison of Farmington Commander wages only to Sergeants' wages in other communities, additional communities should be considered as a fair basis of wage comparisons. The Union indicates that it has offered credible evidence that similarities exist between the Farmington Command Officers and four out of the five comparable communities. Therefore, the Union proposes the following be adopted:

The proposed salary increases would allow for: a) effective 1/1/00: 3.5%, b) effective 1/1/01: 3.5%, and c) effective 1/1/02: 3.5% and be retroactive to January 1, 2000 for all hours compensated.

PROPOSED UNION WAGE SCHEDULE

PUBLIC SAFETY COMMANDER

EFFECTIVE DATE	START	6 MONTHS	AFTER 1 YEAR
January 1, 2000	\$52,041	\$53,702	\$56,316
January 1, 2001	\$53,862	\$55,582	\$58,287
January 1, 2002	\$55,747	\$57,527	\$60,328

EMPLOYER RATIONALE AND ARGUMENT

The City proposes to increase wages by 3% across-the-board for the first year and 3.5% for the next two years retroactive to the effective dates. The City indicates that its offer is more than fair and currently exceeds those in place for other City employees. In fact, the recent negotiated settlement regarding the Public Safety

Officers provides 3% across-the-board increases through December 30, 2003.

Furthermore, the average of comparables provides additional credence that the City already pays a substantial salary that is approximately \$4,000 higher than other communities.

Conversely, the Union's salary increase demand for 2000 exceeds their proposed comparables. Union exhibit evidence suggests that comparisons omit critical community information and include non-comparable data in addition to some that are in violation of the parties' stipulation. Furthermore, the Union has claimed that unit members encompass "unique" qualifications when in fact said educational requirements are a job stipulation. In conjunction, although emergency licensing for Commanders in Farmington is mandated, this is at the lowest licensing level permitted.

The City indicates that it has granted past wage increases without reluctance. Taking the current financial state of Farmington into consideration, the City feels the current wage increase offer is equitable. Therefore, the City proposes the following be adopted:

The proposed salary increases would allow for: a) effective 1/1/00: 3%,
b) effective 1/1/01: 3.5%, and c) effective 1/1/02: 3.5% with an effective date of July 1, 1999.

PROPOSED EMPLOYER WAGE SCHEDULE

PUBLIC SAFETY COMMANDER

EFFECTIVE DATE	START	6 MONTHS	AFTER 1 YEAR
January 1, 2000	\$51,789	\$53,443	\$56,044
January 1, 2001	\$53,602	\$55,314	\$58,006
January 1, 2002	\$55,478	\$57,250	\$60,036

Award: The Union's proposal is adopted.

Reason:

I agree with the Union's analysis establishing "similar work" comparability between the various duties, responsibilities, formal training and authority of public safety command officers in the City of Farmington, and other jurisdictions in and around Oakland County. The study established that three of the Farmington commanders are watch commanders or shift commanders in charge of the three patrol shifts in the City of Farmington, and the fourth commander performs administrative and supervisory tasks related to bureau and business activities. In addition to the shift supervisor duties, the three patrol shift commanders also have additional specific administrative tasks they must perform on behalf of the department on a regular basis. The list includes mandated training and duties that are exclusive to the firefighting mission, duties not performed by commanders in communities that, although they have public safety departments, separate fire and police duties.

The duties of commanders in Farmington compare favorably to shift commanders in Oakland County public safety departments where all officers and supervisors are fully cross-trained, namely Huntington Woods, Berkley, Bloomfield Hills, Oak Park and Beverly Hills.

It is noted that none of these five departments had shift commanders named "commander". Pursuant to the evidence presented, the title commander is a term peculiar to the Farmington Public Safety Department. When the tasks of a shift commander in the City of Farmington are compared to corresponding shift commanders in the five Oakland County public safety departments, shift commanders in Berkley, Beverly Hills, Huntington Woods and Oak Park are called lieutenants; and in Bloomfield Hills they are called sergeants. The evidence reveals

that no shift commanders in the comparable departments performed any significant tasks nor had any special training that is not a requirement of the classification of public safety commander in the City of Farmington.

The tasks of the five Oakland County public safety department shift commanders are substantially similar in job duties and training, and when combined with their geographic proximity to the City of Farmington, make these communities the most comparable for command officers in Farmington.

The proofs demonstrate that public safety shift commanders in the five most comparable communities receive greater salaries than the command officers in the City of Farmington. In view of the above, the Union's final offer of settlement is adopted.

Union Issue 2A and 2B: RETIREMENT-PENSION, Article LXVI, Sections 66.2 & 66.4 (Pension Multiplier and Social Security Offset).

The union proposes to add the following language regarding the Pension Multiplier to the contract:

Effective [date of award], the Employer shall improve the pension multiplier from 2.25% of FAS to 2.4% of FAS for all future retirees.
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The union proposes to add the following language regarding the Social Security Offset to the contract:

Effective [date of award], there shall be no reduction of the pension benefit amount for reason of Social Security eligibility.

The union also proposes to eliminate Section 66.4

The employer proposes that Article LXVI, Sections 66.2 and 66.4 shall be combined

as follows:

Retirement Benefit. Effective 01/01/2001 the percentage multiplier will increase from two and one-quarter (2.25%) of final average salary to two and one-half (2.5%) percent. Said benefit of two and one half (2.5%) percent of final average salary shall continue until the earliest age that the retiree can qualify for early retirement benefits under the Federal Social Security System. At that time, the multiplier of two and one-half (2.5%) percent of final average salary shall be reduced to two and one-quarter (2.25%) percent of final average salary. For this increased benefit the command officer group shall contribute to the retirement system an amount of three (3%) percent of salary. The contribution shall begin 01/01/2001. The City will apply to obtain Internal Revenue System approval to qualify employee contributions to the City Employee Retirement System on a pre-tax basis, as soon as practicable.

CURRENT CONTRACT LANGUAGE

66.2: Retirement Benefit. Shall be based on 2.25% of final average salary times years of service.

66.4: Said benefit shall continue until the earliest age that the retiree can qualify for early retirement benefits from the Federal Social Security System. At that time the multiplier of 2.25% of final average salary times years of service shall be reduced to 1.7% of final average salary times years of service.

UNION RATIONALE AND ARGUMENT

The City's final offer combines the Pension Multiplier and Social Security offset issues without providing credible evidence to substantiate this position and therefore should be rejected. The Union asserts that the Pension Multiplier and Social Security setoff issues are two distinct economic concerns and should be regarded as such. The Union proposes an improvement of the Pension Multiplier from 2.25% / 1.7% (after Social Security) to a flat rate of 2.4% before and after Social Security.

The Union asserts that current retirement plan is in excellent financial condition, has excess assets, and provides for minimal employer contribution. Additional employee contributions will result in excessive over-funding with no beneficial outcomes. Furthermore, comparable communities reveal that the Union's offer falls within the parameters of the industry standards. In conjunction, no other Public Safety Officer Supervisor has experienced any reduction in pension upon receiving Social Security.

The Union proposes to eliminate the Social Security set-off at no additional cost to the employee. Conversely, the City's offer will cost the employees 3% of their salary. The Union states that there is no economic justification that warrants additional costs for participation in the retirement plan. It argues that the City's proposal is unreasonable and will place undue hardship upon the Command Officers.

EMPLOYER RATIONALE AND ARGUMENT

The employer proposes that Sections 66.2 and 66.4 be combined to reflect an increase in the Pension Multiplier from 2.25% to 2.5%. In addition, when the employee reaches eligibility age for retirement, under the Federal Social Security System, an increase is proposed in the pension multiplier from 1.7% to 2.25%. In return for the increased benefit, employees would contribute 3% of their salary to the retirement system effective January 1, 2001.

The Employer argues that the City's proposed Pension and Social Security changes would provide its unit members with an outstanding retirement package in comparison to comparable communities. The 3% employee pension contribution falls well below the comparables and will ultimately yield a higher retirement benefit.

Award: The City's proposal is adopted.

Reason: A close look at the proofs indicate that the pension program with its increases as proposed by the City is not only in line with the pension system of the other Public Safety Officers, but represents a pension system in line with comparable communities.

- ☐ The average multiplier among all comparables is 2.395%.
- ☐ The eligibility requirement of 25 years of service and no minimum retirement eligibility age is more favorable than all but one of the comparables.
- ☐ The City's formula is three years for computation of 'Final Average Compensation,' while only one comparable uses fewer and five comparables use five years.
- ☐ The City's offer represents a significant increase in pension benefits
- ☐ The valuation shows that the cost of the City's final offer is 6.01% of payroll if amortized over 30 years and 7.04% if amortized over 20 years.
- ☐ The cost of union's offer of 2.5% is 7.70% if amortized over 30 years and 9.02% if amortized over 20 years
- ☐ In the city's comparables, only two have no employee contribution
- ☐ Unit members on average have only nine years until they are eligible to retire, therefore, contributions will only be made for nine years.
- ☐ Police Officers who have the same multiplier as offered by the City are contributing 3.25%
- ☐ Department Heads who have 2.5% multiplier cannot retire until 60, and contribute 3%.

<p style="text-align: center;">Issue 3: NEW PROVISION Use of Compensatory Time for Vacation.</p>
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The Union proposes the following inclusion of contract language:

<p>Effective [date of award], employees shall be granted the use of up to forty (40) hours annually from their compensatory bank for one (1) leave block per year.</p>
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The employer proposes to maintain the status quo.

UNION RATIONALE AND ARGUMENT

The Union argues that its members should be able to use earned compensatory time in blocks so as to allow them to use it in a manner similar to vacation time.

EMPLOYER RATIONALE AND ARGUMENT

Command Officers currently "bank" their compensatory time but may not use it in blocks for vacations. To allow its use in blocks would present a scheduling problem for the City.

Award: The City's proposal is adopted.

Reason:

The Command Officers' unit contains only four members. The Union has not offered satisfactory supporting evidence for the addition of a new contractual provision regarding use of compensatory time for vacation. Therefore, the status quo should be maintained.

<p>Issue 4: VACATION SCHEDULING/BIDDING PROCEDURE Article LI, Section 51.5.</p>

The union proposes to delete the second sentence and replace it with the following:

<p>Commanders will be given preference over PSO's and PSO I's when selecting first vacation. Commanders will pick vacation based on seniority in rank. <i>*Vacation Picks will be effective date of award.</i></p>
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The employer proposes to maintain the status quo.

CURRENT CONTRACT LANGUAGE

51.5: VACATION SCHEDULING/BIDDING PROCEDURE.

Vacation schedules shall be set up by the Director to permit the continuing operation of all department functions without interference.

Employees will be given preference according to city-wide seniority in selecting one vacation.

All requests for a second vacation shall be assigned according to city-wide seniority only after all departmental employees have been given preference for their first vacation selection.

Any employees requesting a third vacation shall receive preference according to city-wide seniority only after all departmental personnel have received preference in their second vacation selection.

Vacation "Blocks", as provided, shall be administered as follows for employees assigned to the twenty-eight (28) day work period.

- A. No less than one (1) block per bid period shall be taken.
- B. No employee shall be allowed to schedule more than two (2) vacation "Blocks" in any bid period until all other employees have been afforded the opportunity to schedule a vacation of one (1) or two (2) "Blocks".

Five (5) day, forty (40) hour employees, insofar as they are frequently reassigned to patrol duties, shall be included in the patrol shift vacation schedule as determined by the Deputy Director.

UNION RATIONALE AND ARGUMENT

The Command Officers should have vacation selection privileges over PSO's and PSO I's based on their rank.

EMPLOYER RATIONALE AND ARGUMENT

Since 1985, vacation time has been selected by employees according to a seniority system. The Union's proposal to allow Command Officers to change this system and have priority over other Department employees for vacation selection is unfeasible. The Union's proposal contradicts the Public Safety Officers' contract, and would

create vacation scheduling conflicts. Therefore, the City's offer to maintain the status quo should be adopted.

Award: The City's proposal is adopted.


Reason:

The City's position is that it is interested in continuity between contracts. Should the Union's proposal be adopted, the Command Officers' contract would be in direct conflict with the Public Safety officers' contract. The Union has provided inadequate proof to justify overturning the system that has been in place between the command officers, non-command officers and the City for over 23 years.


CONCLUSION

Each and every proposal of both of the parties has been evaluated in relation to each of the statutory criteria. The decisions concerning the individual proposals take into account all the evidence presented as it applies to such criteria.

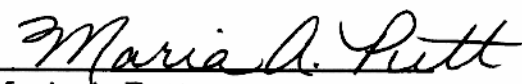
The specific language from the parties' proposals has not been quoted in this decision, in the interest of saving space. However, in adopting the proposal of one party or the other, it is intended that the exact language proposed by that party in its last offer is adopted.

DATED: 2-27, 2002 
Michael P. Long, Chairperson

I concur with the issues awarded in favor of the Employer, and dissent on those issues awarded in favor of the Union.

DATED: 1-28-02, 2002 
Dennis B. DuBay
Employer Delegate

I concur on the issues awarded in favor of the Union, and dissent on those issues awarded in favor of the Employer.

DATED: 2/5/02, 2002 
Maria A. Putt
Union Delegate