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STATE OF MICHIGAN

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

In the matter of:

MERC Act 312
Case No. L00 H-9010

The Act 312 Arbitration Between

POLICE OFFICERS LABOR COUNCIL

Union

and

CITY OF MUSKEGON

Employer

ARBITRATION PANEL

Edward Rosenbaum, Chairperson

Fred LaMaire, Union Delegate

John C.Schrier, Employer Delegate

PARTY ADVOCATES

John C. Schrier, Employer Advocate

Mark P. Douma, Union Advocate

BACKGROUND

The Pre-Hearing Conference took place on August 1, 2001. Only one day of Hearings were necessary, and that took place on December 3, 2001. There was a post-Hearing Executive Session on March 21, 2002.

The parties agreed that each year's wage increase should be treated as a separate issue.

The parties agreed the outstanding issues are:

1. Whether voluntary quits are included in the Award for the purpose of wage retroactivity?

2. The size of the wage increase for 2001.

3. The size of the wage increase for 2002.

4. The size of the wage increase for 2003.
(2-4 above are Section 26 and Appendix A)

5. Whether or not there will be an Employee Health Insurance Premium Co-pay of up to ten dollars per pay period. (Section 23)

6. Whether or not the pension multiplier will be raised from 2.5 percent to 2.7 percent. (Section 34)

Last Best Offers were submitted by the City and the Union on December 17, 2001, and January 7, 2002, respectively. Post-hearing briefs were sent by the Union and the City on January 30, 2002, and February 21, 2002, respectively.

STIPULATED COMPARABLES

The parties agreed to the following stipulated comparables

City of Bay City
City of Holland
City of Jackson
City of Kentwood
City of Muskegon Heights
City of Norton Shores
City of Saginaw
County of Muskegon

Union's Final Offer of Settlement	City's Final Offer of Settlement
1. Voluntary quits should be included in the Award for the purpose of retroactivity.	1. Voluntary quits should not be included in the Award for the purpose of retroactivity.
2. Wages should be increased in 2001 by 4 percent.	2. Wages should be increased in 2001 by 3 percent.
3. Wages should be increased in 2002 by 4 percent.	3. Wages should be increased in 2002 by 3 percent.
4. Wages should be increased in 2003 by 4 percent.	4. Wages should be increased in 2003 by 3 percent.
5. There should not be any co-pay for employee health insurance premiums, *i.e.* maintain the status quo.	5. Effective January 1, 2002, the employer shall pay the full cost of health insurance, as long as the premiums do not exceed $400 per month. To the extent the premiums exceed $400 per month, the balance of the premium is to be paid by the employee to a maximum of $10 bi-weekly.
6. The Union proposes that the pension multiplier be raised from 2.5 percent per year to 2.7 percent per year.	6. The City proposes to keep the status quo of the pension multiplier at 2.5 percent per year.

THE FACTORS TO BE CONSIDERED

Section 9 of ¶ 423.239 of Act 312 lists the factors to be considered by the arbitration panel in reaching its findings, opinions and orders. That Section reads as follows:

> **423.239 Findings and orders; factors considered.**
> Sec. 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 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.

History: New 1969, p. 604, Act 312, Eff. Oct. 1.

(The Chairperson of this panel could note that subparagraph (h) is an all-encompassing subparagraph)

TENTATIVE AGREEMENTS

The parties had agreed that all tentative agreements will be included in this Award.

RETROACTIVITY OF THE WAGE AWARDS

The first joint issue is retroactivity of the wage increase for people who voluntarily terminated their employment prior to the effective date of this Award. In all, five people are involved.

The Union requests that the following language be included in the Award:

> "Bargaining unit members who voluntarily terminate their employment on or after January 1, 2001, but prior to the effective date of this award, are included in this award for the purpose of retroactive wage payments only."

The City's final offer is not to have this paragraph in the new contract.

The parties had agreed that wages will not be retroactive for employees terminated for cause.

The City makes the following points against this proposal

1. "The increase will be retroactive for the following:
   - Present members of the bargaining unit;
   - Members that have retired since January 1, 2001
   - Members that have been promoted into the command unit since January 1, 2001
   - Members that have died since January 1, 2001."[1]

2. "For Individual's who have voluntarily separated from service, however, the City contends that these individuals are not represented by the Union in these proceedings, are not a party to this arbitration, and should not receive the benefits of this award."[2]

3. There is no reason to impose this expense on the employer "...the Union's proposal regards individuals who have abandoned the Union and the City. They have made a career choice to leave the City."[3]

4. Reactivating payroll activity for these five people is an administrative expense and bother "with no corresponding benefit to either the City, its citizens, the Union or its current members."[4]

The Union's position is

"The Union is requesting that those former bargaining unit members who worked during the term of the collective bargaining agreement which will result from this proceeding but who voluntarily terminated their employment prior to the date the award will be issued in this matter receive retroactive wage payments. The Union simply considers this is a fairness issue. Simply put, if one has worked, one should be entitled to the wage which is ultimately determined to be appropriate for one's labor."[5]

As good as the City's arguments are on this issue – and they are pretty good – the panel agrees with the Union's position.

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[1] City Post-Hearing brief, page 3.

[2] *Ibid*, page 4

[3] *Ibid*

[4] *Ibid*

[5] Union's Post-Hearing brief, page 5

Furthermore, there is another argument to support what the Union is proposing. People in America basically join unions for two reasons. They are to get greater economic benefits and/or to curtail arbitrary action by one's employer and/or supervisor. The first reason is exemplified by Samuel Gompers's remark that unions want "more, more, and more." Members pay union dues in order to satisfy the twin objectives of why people join unions. The dues may be looked upon as a tax to get the services of the union. This concept is memorialized in Section 5 of the contract between this Union and the City. That section refers to the Agency Shop. Those who were members of the Union and voluntarily quit their jobs had paid union dues for the services of the Union until they quit working. They are entitled to whatever benefits the Union was able to obtain for its membership for the time period until they quit their jobs. If you view the union dues as a form of tax, then those five individuals are entitled to the services their Union form of government was able to get covering its taxpayers for the period of time they were paying their taxes.

For the two or three reasons enumerated above, this panel grants the Union position on this issue, and the contract language should be stated accordingly.

Accepted:

Edward Rosenbaum

Edward Rosenbaum

Fred LaMaire

Fred LaMaire

Rejected:

John C. Schrier

John C. Schrier

PERCENTAGE WAGE INCREASE FOR 2001

The Union's final offer is four percent, and the City's final offer is three percent.

The Union's basic position is that its members have fallen below the average of the comparables and that a four percent wage increase is necessary to bring its membership up to the average.

Although there is a reference in the previous arbitration (Union Exhibit 1, Tab 3, p. 12) that Muskegon ranked 4th among the comparables in 1997, as all panel members agreed at the Executive Session on March 21 Muskegon's Base Wage actually ranks sixth for each of the years 1997-2000.

As indicated in Table I, the Consumer Price Index advanced only 1.55% for the year ended December 31, 2001. In an article appearing in the *New York Times*, April 13, 2002, "Faculty Pay is up 3.8%, the Most in 11 Years," page A12, the *New York Times* reported the rate at 1.6% for the year 2000. (However, the difference between 1.55% and 1.6% may have simply been rounding.)

Table I

CONSUMER PRICE INDEX PERCENTAGE INCREASE FOR THE PERIOD ENDING DECEMBER 31, 2001, COMPARED WITH THE PERFORMANCE OF THE STANDARD & POOR'S 500 INDEX, THE NICHOLAS FUND, INC. AND ENDING VALUE OF $10,000 INVESTED IN THE NICHOLAS FUND

"Returns for Nicholas Fund, Inc. and selected indices are provided in the chart below for the periods ended December 31, 2001.

	Average Annual Total Return[6]				
					July 14, 1969[7]
	1 Year	5 Year	10 Year	15 Year	32.5 Year
Nicholas Fund, Inc.	(10.98)%	6.69%	10.02%	11.50%	12.50%
Standard & Poor's 500 Index..........	(11.88)%	10.70%	12.93%	13.73%	11.70%
(Consumer Price Index....................	1.55%	2.18%	2.52%	3.18%	4.97%)
Ending value of $10,000 invested in Nicholas Fund, Inc. (Distributions Reinvested)............	$8,902	$13,826	425,982	$51,210	$457,762"

Source: Nicholas Fund, Inc. Report to Shareholders, February 12, 2002

Using factor "(e) The average consumer prices for goods and services, commonly known as the cost of living," with a cost of living percentage increase of 1.55% as the criterion could not justify the 4% increase asked by the Union for 2001. Using that factor only, even 3% could be interpreted as a little high. However, the panel must accept one of the two best offers on each economic issue.

How does the 3% offer compare with both the internal and external comparables? Table II shows the external comparables for 2001.

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6 "Total returns are historical and include change in share price and reinvestment of dividend and capital gain distributions. Past performance is no guarantee of future results. Principal value and return will fluctuate so an investment, when redeemed, may be worth more or less than original cost.

7 Date of initial public offering. Starting time period for the Standard & Poor's 500 Index and the Consumer Price Index was June 30, 1969."
(The source for these two footnotes are the same source as Table I.)

Table II

PERCENTAGE INCREASE FOR
EXTERNAL COMPARABLES FOR 2001

Comparable	Percentage Increase
Bay City	3.00
Holland	3.20
Jackson	3.00
Kentwood	2.50
Muskegon County	3.50
Muskegon Heights	2.25
Norton Shores	2.50
Saginaw	3.25

Source: Employer Exhibit 1, Tab D, p. 4 and Employer brief, p. 5.

Only three of the external comparables were over 3.00%, and none were over 3.50%. The externals averaged 2.9%.

The City's internal comparables are as shown in Table III.

Table III

CITY'S INTERNAL COMPARABLES FOR 2001

Comparable	Contract Year	Percentage Increase
Clerical	1/1/01	3.50%
Command	1/1/01	3.00
DPW	1/1/01 to 12/31/01 current contract end	3.25%
Firefighters	1/1/01 to 12/31/01 current contract end	3.25%
Non-Union	1/1/01	3.25%

Source: Employer Exhibit 1, Tab D, P. 4 and Employer brief, p. 6

Again, only one comparable got an increase of as high as 3.50%.

The Command received only a 3% raise in 2001. While the non-command police would most likely compare themselves with the Command on wages this might not be too appropriate because the Command received a $450,000 buyout package. As that's lots of money the Command knew it would have to make some kind of trade-off for the buyout package and may have taken the trade-off in the form of lower wages than would have been the case absent the buyout package.

When we combine the cost of living percentage increase of only 1.55% for the year with the comparables (both external and internal) a wage increase for 2001 of four percent is not justified. Therefore, the Panel grants the City's position on this issue, and there shall be a wage increase for 2001 of only three percent.

Accepted:

Edward Rosenbaum

John C. Schrier

Rejected:

Fred LaMaire

PERCENTAGE WAGE INCREASE FOR 2002

As we obviously do not have the cost of living increase for the whole year, the year 2002 is not nearly as simple as 2001.

What we do know is that the cost of living index increased .2 of 1% in January, .2 of 1% in February and .3 of 1% in March. March's rise was primarily due to the rise in the energy segment of the index. Energy prices have come down a little since March. Overall inflation seems to be under control. The Dow Jones–AIG Commodity Futures Index closed at 96.377 on April 16, 2002, compared to 109.381 one year earlier.[8] Even if the CPI (Consumer Price Index), *i.e.* cost of living index, increased by as much as .3 of 1% for the rest of the year, the total rise for 2002 would be (.2 + .2 + .3 + .3 + .3 + .3 + .3 + .3 + .3 + .3 + .3 + .3 = 3.4)[9] for 2002. That figure of 3.4 percent is slightly closer to 3% than it is to 4%. If we add the spread between the 3 percent granted above for 2001 and the 1.45 percent difference between the Consumer Price Index for 2001 and the actual rise of that Index in 2001 we get 4.45% as the amount the Consumer Price Index must rise in 2002 for the patrolmen to just break even over the two-year

8 *Wall Street Journal*, April 17, 2002, p. C1.

9 Actually slightly more due to intra year compounding.

period 2001 and 2002 with a raise in 2002 of only three percent as far as his or her cost of living is concerned. While predictions can be hazardous to one's health, the likelihood of the Consumer Price Index rising as much as 4.45 percent for 2002 is highly improbable.

The external comparables are very skimpy in numbers for 2002. They are shown in Table IV. These have an average increase of 3.17 percent.

Table IV

PERCENTAGE INCREASE OF AVAILABLE
EXTERNAL COMPARABLES FOR 2002

Comparable	Percentage Increase for the year
Bay City	3.00 TA
Jackson	2.75 TA
Muskegon County	3.00 to 4.00% /CPI
Norton Shores	2.50

Source: Employer Exhibit 1, Tab D, p. 5 and Employer brief, p. 5

The average wage increase for the externals shown is 2.94 percent.

The available internal comparables for 2002 are shown in Table V. These have an average increase of 3.17 percent.

Table V

PERCENTAGE INCREASE OF AVAILABLE
INTERNAL COMPARABLES FOR 2000

Comparable	Percentage Increase
Clerical	3.50
Command	3.00
Non-Union	3.00

Source: Employer Exhibit 1, Tab D, p. 5 and Employer brief, p. 6

Both the limited number of internal and external comparables in terms of a wage increase do not support a wage increase of four percent. They could be interpreted as supporting a wage increase of three percent. The panel does realize that the number of comparables is limited.

Because the cost of living index would have to rise about 4.45 percent for 2002 when considering the three percent increase for 2001 and an increase of three percent for 2002, before the patrol officers would suffer a decrease in the real cost of living and the comparables do not support a four percent rise for 2002, the panel accepts the City's position on a wage increase of three percent for 2002.

Accepted:

Edward Rosenbaum

John C. Schrier

Rejected:

Fred LaMaire

PERCENTAGE WAGE INCREASE FOR 2003

There are only three external comparisons and one internal comparison for 2003. These are shown in Table VI.

Table VI

PERCENTAGE INCREASE OF AVAILABLE COMPARABLES FOR 2003

Comparable	Percentage Increase for the year
Bay City	3.00
Jackson	3.25
Muskegon County	3.00 to 4.00% /CPI
Command	3.00

Source: Employer Exhibit 1, Tab D, p. 6 and Employer brief, p. 6.

As far as the CPI for 2003 is concerned, there is no good way to attempt to predict what it will be as of April 2002. Anything could happen. There are both inflationary and deflationary pressures at work even now. What they will be in 2003 only God knows, and he is not telling us.

As far as the external comparisons are concerned, we only have three out of eight. That is not enough to be very useful.

We only have the Command among the internal comparisons. As indicated earlier, the Command may have had to settle for three percent each year in order to get the $450,000 buyout as a tradeoff.

Without being able to use any reliable figure for the cost of living in 2003 and the inadequacy of the number of external and internal comparables for percentage wage increases, we probably should look elsewhere for our basis of our decision.

As usually used, comparables in Act 312 are usually looked at in percentage wage increases. Thus, if the comparables got a percentage wage increase of "x," then this bargaining unit should get a percentage increase of "x" or a little more or a little less.

However, there is another way of looking at comparables – especially external comparables. This other way says this bargaining unit should end up with wages that are comparable to the other comparables. In its most simplistic form, this bargaining unit should be the median unit as far as wages go. If it is below the median, it should be brought up to the median of the external comparables. As there are eight external comparables, this unit should be in fifth place.

We have already noted that in terms of percentage increase in wages, the Muskegon patrol officers have come in sixth in each of the years 1997 – 2000.

Using the base wages of 2001 for each of the comparables who as shown in Union Exhibit 1, Tab 6, p. 3 plus the wage increases in 2001 per Employer Exhibit 1, Tab D, plus this panel's award for Muskegon for 2001, we get the figures in Table VII for the Base Wage of a Patrolman in some of the comparables.

Table VII
BASE WAGE IN 2001 FOR THE
EXTERNAL COMPARABLES

	Base wage in 2000	Wage Increase in 2001 per Employer Exhibit 1, Tab D	Multiplying Factor	2001 Base Wages	Rank
Bay City	43,306	3.00%	1.03	44,605	4th
Holland				49,083	1st
Jackson	42,925	3.00%	1.03	44,213	6th
Kentwood				48,767	2nd
Muskegon Heights				38,172	9th
Muskegon County				43,826	8th
Norton Shores				44,184	7th
Saginaw				45,148	3rd
Muskegon	43,178	3.00%	1.03	44,473	5th

For 2001 the Muskegon patrol officers ended up at the median in fifth place, which is further support for the three percent wage increase this panel granted for 2001.

The Union post-hearing brief calls our attention to the Economic Compensation, which is Union Exhibit 1, Tab 6, p. 5. That covers Base Wage, Educational Incentive, Longevity, Shift Premium, Uniform Cleaning, and Gun Allowance. The problem with that table is that in some cases "Uniform/Cleaning" is provided and in some cases there is a dollar figure which goes into the total. Where it is provided, as in the case of Muskegon, nothing goes into the total. Also in the case of Jackson and Saginaw a "Gun Allowance" is provided, which goes into the total.

Table VIII below shows that Table without either a cash allowance for "Uniform/Cleaning" or a "Gun Allowance".

Table VIII

ECONOMIC COMPENSATION (2001) WITHOUT
UNIFORM/CLEANING ALLOWANCE OR
GUN ALLOWANCE AND RANKING

Comparable	Economic Compensation	Ranking
Bay City	44,818	8th
Holland	47,561	4th
Jackson	46,221	5th
Kentwood	50,178	2nd
Muskegon Heights	41,065	9th
Muskegon County	45,907	6th
Norton Shores	48,910	3rd
Saginaw	52,162	1^{st}
Muskegon	45,428	7^{th}

Looking at the Total Economic Compensation, Muskegon ranks 7^{th} out of nine.

The Union brief also asks us to look at Net Wages which is determined as Base Wage minus Employee Pension Contribution. One could argue that what the employee kicks in toward a pension should bear some general relationship to the pension benefits s/he is entitled to and thus, to the extent that's the case, the Net Wages table is not very useful. However, to the extent there may not be such a general direct connection – and in some cases there may not – this Table would have some usefulness. Table IX shows the "Net Wages" of the comparables and the rankings thereof.

Table IX

"NET WAGES", I.E. BASE WAGE MINUS
EMPLOYEE PENSION CONTRIBUTION,
AND RANKINGS THEREOF FOR 2000

Comparable	Net Wage	Ranking
Bay City	39,842	7th
Holland	46,039	1st
Jackson	39,706	8th
Kentwood	45,437	2nd
Muskegon Heights	35,392	9th
Muskegon County	41,041	4th
Norton Shores	43,106	3rd
Saginaw	40,228	6^{th}
Muskegon	40,587	5^{th}

On the bases of "Net Wages", Muskegon ranks 5th, exactly in the middle of the comparables, or the median comparable.

The price of gold and that of oil are often indicators of the levels of future inflation. As both have recently risen, this is an indication of potential inflation in the air at this point in time.

Because of the uncertainty of the Consumer Price Index for 2003, which could be as high as four percent or even higher, that is one reason for granting the Union's proposal of a four percent wage increase. The second reason is that on the basis of the total economic package without a clothing or gun allowance, the Union's members ranked 7th in 2000. They should be brought up to the median or fifth place in their total economic package. A four percent wage boost for 2003 will move them in that direction. They should not be allowed to fall further than 7th place in total economic package and without a four percent wage increase, depending on what the other comparables receive in total benefits, that could happen.

Accepted:	Rejected:
Edward Rosenbaum	John C. Schrier
Fred LaMaire	

EMPLOYEE HEALTH INSURANCE CO-PAY

The City's final offer proposes the following contract language.

> "Effective January 1, 2002, the Employer shall pay the full cost of health insurance, as long as the premiums do not exceed $400 per month. To the extent that the premiums exceed $400 per month, the balance of the premium is to be paid by the employee to a maximum of $10 bi-weekly."

Tim Paul, the City of Muskegon's finance director for the past sixteen years, testified as follows.

> "Basically the City is as with all employers, seeing sky-rocketing health insurance costs. In the last three years our costs have increased; 12 percent, 15 percent last year, and we're antici-pating an increase of 20 percent in the coming year in terms of our

> HMO coverage, which is the primary benefit that is utilized by City employees. Benefits that only a few years ago cost under $4,000, we anticipate next year will cost almost $7,000 per employee.
>
> ....
>
> ... I think the driving force is just, obviously, medical inflation. And, you know like I say, we have traditionally provided a very generous benefit. The City has paid the full cost. In the private sector, it's not uncommon for the employee to pick up a large share. And given the cost, I can't see the City continuing to be able to provide benefits without having some participation from its employees."[10]

The Union takes the position that the employees are already helping out the City by having "agreed to a prescription co-pay increase from the current $5.00 to $10.00 for generic drugs and $20.00 for brand name drugs (Joint Ex. 1, paragraph 14)"[11] The Union also points out "Among the comparable communities, seven of the eight provide fully paid health care for the employee, spouse and dependents (Union Exhibit1, Tab 9, p. 3)."[12]

The following other bargaining units and the non-union employees have co-pays toward the health insurance premium as

Clerical	$20/month
DPW	$20/month
Command	$10/pay period
Non-union	$20/month

Thus, it can be said that four out of the five internal comparables support a $10 per pay period co-pay for health insurance.

The $10 per pay period that the employer wants can be paid under a Section 125 plan so that it is with pre-tax dollars resulting in a net cost to an employee in a 28 percent marginal tax bracket of $7.20 per pay period. Transcript, page 16. "That is equivalent to just fifty (50) cents per day, certainly not an unreasonable amount to pay for health insurance," according to the City's brief, page 7.

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10 Transcript, pages 15 and 16. Under cross-examination from Mark P. Douma, the attorney for the Union, Mr. Paul was asked, when compared to the external comparables, "So your answer at this point is, you don't know if Muskegon is more or less generous than these other communities. "A. 'No that's correct.'" Transcript, page 18.

11 Union brief, p. 8. However, footnote #1 to Union Exhibit 1, Tab 9, p. 3, when referring to Bay City says "If employee was member of Blue Care Network (HMO) as of 1/1/98 they must contribute 25% of total monthly premium."

12 *Ibid.*

> ...Of the eight external comparables, five communities (Holland, Jackson, Muskegon Heights, Norton Shores, and Saginaw) do not require an employee contribution. Union Exhibit 1, Tab 9. Of the remaining three, the employer pays for a less expensive plan, and allows the employees to opt for, and pay for, an alternative plan. Muskegon's traditional plan costs $380 per month, and the HMO charges $481.63 per month. Transcript page 17. Most or all employees covered by this contract have selected the HMO.[13]

Everyone knows that health care costs are skyrocketing and will continue to zoom up. That's a fact of life. By agreeing to hike the co-pay from five dollars for generic drugs to ten dollars and from ten dollars for brand name drugs to twenty dollars, the Union is recognizing the tremendous rise in health care costs and making a contribution towards the City's increased health care expenses.

Four of the five internal comparables favor the Union making a contribution toward the health care premiums.

Factor (c) of Section 9 of Act 312 says "The interests and welfare of the public and the financial ability of the unit of government to meet those costs." The second part of Factor "(c)" must be given its full weight. With rapidly rising health care costs, a fifty-cents-per-day contribution to the health insurance premium by each member does not appear to this panel as an unreasonable request.

Those employees who do not even want to pay the extra $7.20 after taxes per pay period can, at least for the very short-term, switch from the HMO to the traditional plan.

The employer's last best offer on the co-pay for the health insurance premiums is awarded. The contract (Section 23) will be changed accordingly.

Accepted:

Edward Rosenbaum

Edward Rosenbaum

John C. Schrier

Rejected:

Fred LaMaire

Fred LaMaire

13 City brief, page 8.

THE PENSION MULTIPLIER[1]

The Union is requesting that Section 34 of the collective bargaining agreement and the applicable portion of the City Pension Ordinance be amended to reflect the following change.

> A member who retires on or after (effective date of award) shall be entitled to a level straight life pension equal to two and seven tenths percent (2.7%) of the member's final average compensation multiplied by the member's credited service, not to exceed seventy-five percent (75%) of the member's final average compensation.

The City proposes no change in the multiplier.

The Union argues "the pension plan is well funded and the City's contribution is very low, 1.49% in 2001 and 4.3% in 2002 (Tr. pp. 24-26)".[14]

There are some problems with this statement by the Union. The pension plan had nine years of good earnings from 1991-1999 because the stock market had its best years then. The years 2000 and 2001 were lousy years for the stock market. As indicated in Table I, the Standard & Poor's 500 Index's total return dropped 11.88 percent in 2001.[15] The year 2000 wasn't much better giving stockholders two negative years in a row. So far in 2002, the stock market has performed poorly with the S&P 500 down 4.10 percent, the NASDAQ Composite down 11.29 percent, and the Dow Jones Industrial Average up only 0.68 percent.[16] Table I shows that the Standard & Poor's 500 had a total annual return of 12.93% for the ten years ended December 31, 2001 (which includes the very bad year of January 1 - December 31, 2001).

Predictions of what the stock market will do in the future are hazardous to your financial health. As John Maynard Keynes said, "The stock market can remain irrational longer than you can stay solvent."

To expect the next ten years to be like the 1991 - 1999 period or even the 1992-2001 period would in itself be irrational. Thus, future stock market returns should be significantly lower than the 1991-1999 period. How much lower, nobody knows. The "oracle of Omaha" Warren E. Buffet predicted stock market total returns for the foreseeable future will average only

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14 Union brief, page 9.

15 The Standard & Poor's 500 Index is the usual benchmark used for stock market performance. It contains the 500 largest stocks.

16 *Wall Street Journal*, April 24, 2002, p. C1.

seven percent. Mr Buffet, according to *Forbes* is the second richest person in America. With stock market returns dropping from 12.93 percent to the neighborhood of seven percent, the future contributions to the pension plan will have to escalate substantially.

The second point the Union makes is that six of the eight comparable communities have a higher maximum pension than does this bargaining unit and references us to Union Ex 1, Tab 5, p. 2. The maximum was and is not an issue in these negotiations or this arbitration. The size of the multiplier is. When compared to non-governmental employment, a maximum pension of 75 percent of final average salary is pretty high.

The Union points out that employees in four of the eight comparable communities are eligible for Social Security, but those in this bargaining unit are not. Social Security is a mixed blessing. The employees in those other comparable units kicked in 6.20 percent of their salaries to be eligible for Social Security while those in this bargaining unit did not.

The cost of increasing the multiplier is only "1.2% of Patrol payroll ($37,636.00) if amortized over ten years and 0.9% of Patrol payroll ($28,237.00 per year) if amortized over 25 years. (Employer Ex. 1, Tab B, p. 2)."[17] However, that neglects the fact that overtime, for the first time will be included in compensation. The cost of "including overtime in 'compensation' is 0.8% of Patrol payroll for ten years and 0.3% of Patrol payroll thereafter."[18]

The City and the Union negotiated the inclusion of overtime prior to the commencement of the Hearing of this arbitration panel.

In the previous arbitration, the Union proposed the inclusion of overtime in the final average compensation. That panel rejected the proposal. Among the panel's comments on the subject were:

> The City opposes the inclusion of overtime in final average compensation, arguing that the cost would be extremely [emphasis in the original] expensive, that the support among the comparable communities for including overtime is only with cities or units with fairly small overtime expenses.
>
> This panel is convinced by the City's argument relating to the cost of this proposal. While the City is capable of paying, the cost of this provision when added to the costs of other

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17 Union brief, page 9.

18 Employer brief, p. 10.

> provisions awarded (and to be awarded) by this panel is excessive. In combination with other benefits and pay awarded by this panel, it would cause the economic package to far exceed the consumer price index [Section 9(e) of Act 312]. ...[19]

The final Union argument deals with the $490,000 buy-out offer given to the Command. The Patrol officers naturally like to compare themselves to the Command. The Union brief puts its position as follows.

> In addition to the above rationale, the Employer has set an internal precedent by giving the Command bargaining unit a significant pension benefit. (Union Ex. 2, paragraph 9). This early retirement option for the Command bargaining unit cost the City approximately $490,000 or $49,000 amortized over ten years (Tr. pp. 27-28). This amounts to 5 to 5½% of the Command Payroll (Tr at pp. 28-29). Obviously, the Union believes that the modest cost of its pension proposal is certainly worthy of consideration since the Employer has freely given the Command bargaining unit a relatively more expensive pension benefit. The Command bargaining unit members as a whole benefitted from this early retirement option. Obviously, those who took the early retirement benefitted directly while those left behind benefitted via openings for promotion and by moving up in seniority.[20]

Due to bad stock market performance and possibly the inclusion of overtime, "The budgeted amount for pension for 2002 is 4.3% of payroll, up from 1.49% of payroll in fiscal year 2001."[21] While the spread between 4.3 percent and 1.49 percent is only 2.81 percent, in percentage increase terms that's an increase of 189 percent.

The Union's brief does not take into consideration that in addition to the amount required for the pension, the City of Muskegon contributes 8.9 percent of payroll for retiree health care.[22]

The market value of the pension assets dropped between January 1, 2001 to September 30, 2001, from $48.1 million to $44.2 million,[23] or 8.1 percent.

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19 Union Exhibit 1, Tab 3, page 11.

20 Union brief, pages 9-10.

21 Employer brief, p. 9.

22 Transcript, p. 25 and Employer brief p. 9.

23 Transcript, p. 29.

The City recently hired a new Chief of the Muskegon Police Department from outside its Department. Whenever a new head of a department or agency is hired from the outside, this is bound to cause some problems especially for a semi-military organization as a police department's Command structure. The Muskegon Police Department's Command unit was no exception. Some of the members were tense.[24] Others feared that changes were coming.[25] Thus, when the Command unit brought an early out package to the bargaining table, the Chief was very supportive of it. That's the origin of the $450,000 buy-out package. Seven Command members took the package. This allowed the Chief to have an administrative unit more to his liking.

As the City's brief put it,

> 2) For a variety management reasons, the early out program allowed the Chief to put together a management team that was better for the organization. Transcript, pages 36-37.
>
> 3) The eight members of the Patrol Unit benefited by way of promotion to the Command Unit. Many of the remaining members will have better selections of patrol assignments, work hours, district selection, and vacation draws. Transcript, page 37.[26]

As alluded to earlier, the early out package was expensive, and knowing that, the Command unit may have traded off possibly higher percentage wage increases than they otherwise could get for the three-year period in order to get the early out plan.

If we look at the external comparables, five are at a flat 2.50% multiplier just like Muskegon.

> ...While the multiplier for Bay City increases during a window period, it reverts to a 2.5% multiplier, and requires employees to contribute 8% of compensation.[27] Union Exhibit 1, Tab 5, page 2. While Saginaw seems to support the Union's proposal, that appearance needs to be tempered by the fact that Saginaw offers a 2.6% multiplier for the first twenty-five (25) years, requires a greater employee contribution than Muskegon [8.00

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24 Transcript, page 36.

25 *Ibid.*

26 City brief, page 10.

27 In comparison to six percent for Muskegon.

percent versus 6.00 percent], and the entire retirement plan is being replaced by a defined contribution plan. Union Exhibit 1, Tab 5, pages 2 and 3.[28]

Jackson's multiplier is even less generous than Muskegon's. Jackson's is 2.5 percent for the first twenty-five years and then drops to one percent for the remaining years.

"The internal comparables to not support the Union's proposal. All City retirement plans have a multiplier of 2.5% or less. Both police command and fire have the exact same benefit as police patrol have now."[29]

For all the reasons given above, the Panel rejects the Union's proposal to raise the multiplier form 2.5 percent to 2.7 percent.

<u>The multiplier will remain at 2.5 percent</u>.

Accepted:	Rejected:
Edward Rosenbaum	Fred LaMaire
John C. Schrier	

This award is dated May 17, 2002

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[28] Employer brief, page 9.

[29] Employer brief, page 9. See also Employer Exhibit 1, Tab B, page 5.