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DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BUREAU OF EMPLOYMENT RELATIONS  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Act 312 Arbitration between:

CITY OF BATTLE CREEK,

Employer

-and-

Opinion and Award  
Of The Panel

In Case No. L97 C-4023

February 18, 1999

POLICE OFFICERS LABOR  
COUNCIL,

Union

APPEARANCES:

For the Employer: John Patrick White, Esq. of Varnum, Riddering, Schmidt &  
Howlett, L.L.P., Grand Rapids Michigan

For the Union: Barton J. Vincent, Esq. of Law Offices of John A. Lyons,  
P.C., Troy, Michigan

Panel Delegates:

Chair & Neutral Delegate: Donald F. Sugerman

Employer Delegate: John Patrick White (Replacing Wendall Harold  
Macon, Jr.)

Union Delegate: Fred LaMaire, Staff Representative

## O P I N I O N

### Statement of the Case

In this Act 312 case the only issue is the wages to be paid patrol officers for the agreed upon three year term of the parties latest collectively bargaining agreement ("CBA").<sup>1</sup> The CBA is from July 1, 1997, through June 30, 2000. **Police Officers Labor Council** ("Union" or "POLC") is the exclusive bargaining representative of all full-time sworn police personnel and correction officers of the Police Department ("Department") of the **City of Battle Creek** ("Employer" or "Battle Creek").<sup>2</sup>

### Criteria for Determination

Section 9 of Public Act 312 of 1969 sets forth the factors upon which this Panel is required (and has in fact) based its decision. They are:

- (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 wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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,

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<sup>1</sup>There have been successive contracts between the parties. The last one was for the period July 1, 1994 to June 30, 1997.

<sup>2</sup>Excluded from the unit are command officers and identification technicians.

- 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 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.

### Last Offer of Settlement

The Union's Last Offer of Settlement ("LOS") is five percent (5%) for each of the three years. The Employer's LOS is three and one-half percent (3½ %) for each year.<sup>3</sup>

### Comparability

Pursuant to Sections 9(b) and (d) above, the parties stipulated that, for the purpose of this proceeding, the cities of Bay City, Jackson and Saginaw are comparable to Battle Creek. The Union nominated three others cities: Lansing, Midland and Port Huron. The Employer proposes that Muskegon be used as a comparable community. The Union raised no objection to the Employer's nominee and the Employer accepted (albeit reluctantly), Midland and Port Huron.<sup>4</sup> However, it strenuously objects to Lansing being considered a comparable

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<sup>3</sup>A patrol officer at top of scale has been used as the representative classification for the purposes of discussion herein.

<sup>4</sup>This was with the condition that "due attention" be paid to certain differences in the two cities when compared to Battle Creek. While the population of the three cities is similar, the number of full time officers is approximately 30 times larger in Battle Creek than in the other two cities. This translates into greater officer to citizen ratios for Port Huron and Midland that ultimately means busier officers with a greater number of arrests per officer.

community.<sup>5</sup>

The Union claims that Lansing should be included because it is similar to Battle Creek in various ways: When Bedford and Pennfield Townships are included in the population per police officer statistics, the numbers are similar to Saginaw, Bay City and Lansing.<sup>6</sup> Moreover, the Union relies upon the close budget comparison between Battle Creek and Lansing.

In contrast the Employer points to the large discrepancies between the two cities with respect to population size, land area, population density, per capita income, department size, and state equalized value. All of the data, it says, establish that Lansing is considerably larger than Battle Creek. Further, the Employer notes that the number of arrests in Lansing is almost four times greater than in Battle Creek. According to the Employer, as Lansing has never before been used as a comparable community, this factor and the other data establish that it should not be used now.

I agree with the Employer. The differences pointed out above far outweigh any real similarities. Lansing and Battle Creek are not comparable communities. Accordingly, Lansing will not be used as such in this proceeding. Pursuant to the agreement of the parties, the following cities are comparable to Battle Creek:

Bay City, Jackson, Midland,  
Muskegon, Port Huron, and Saginaw.

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<sup>5</sup>East Lansing has been considered a comparable in the past, but it was replaced with Saginaw as being more closely comparable.

<sup>6</sup>Both Pennfield and Bedford Twps. are now patrolled by Battle Creek police officers and were not included in the Employer's statistical figures. As the officers are responsible for these two areas, I agree with the Union that the data for the townships should be considered in deciding this case.

## Discussion

The Panel has the option of adopting the LOS submitted by one party *in toto* or selecting from between the two offers on an annual basis. The Employer argues for the "bulk" offer approach. The Union does not specifically address this issue in its brief. However, it is my understanding from Union Counsel's remarks at the hearing, that it does not subscribe to the bulk offer concept advanced by Battle Creek. The Employer claims that accepting one of the competing LOS *in toto* is what the legislature intended when it cobbled together Act 312. I must respectfully disagree. The legislature left this matter vague. Perhaps purposefully. If it wanted only package offers to be accepted, it would have been a simple matter to have said so, with clarity and without ambiguity. That it did not is significant.

Adopting an LOS in bulk, however, is not always to be shunned or rejected. Where both parties stipulate to this arrangement it may be used. But experience with Act 312 since its creation suggests that the use of bulk offers is the exception, not the rule. It is the Chair's considered judgment that by using the LOS on an annual basis, especially in the instant case, the Panel has a greater chance of crafting a CBA that the parties themselves would have achieved if their negotiations had borne fruit—which, after all, is the ultimate goal of an Act 312 arbitration.

The LOS here are closer than when this procedure first began. This leads to the supposition that each party more realistically evaluated the Section 9 criteria as the case moved through the process. Unfortunately, common ground remains elusive and the parties

were still 4.5% apart over the term of the CBA.

The following factors have led the Panel to adopt a combination of both offers. In 1996 Battle Creek ranked fifth among the comparable cities. Indeed, it escaped being dead last by only \$250.00. For 1997, a raise of 3.5% will yield \$1337.00 and bring officers to an annual salary of \$39,538.00. This will leave them in the same relative position; just slightly ahead of their counterparts in Jackson. The Employer's offer for 1997 will therefore be accepted.

But the City has recognized the need to bring unit employees closer to the average of their peers in the comparable cities. This was at least part of the rationale for giving sergeants an increase that averaged five percent per year over the three years of the Command Officers CBA. They had "a significant wage deficiency relative to the comparables." (Brief at p. 7). A five percent increase in the second year will move Battle Creek patrol officers slightly closer to the average. This also comports with the higher increase in the second year given to sergeants and lieutenants.<sup>7</sup> Thus for the second year of the CBA, a majority of the Panel finds that an increase of five percent is appropriate and will award that amount.<sup>8</sup>

For 1999, only Bay City has settled. The rate there is 2.4%. This number, while not representative, suggests that the 3.5% offered by Battle Creek for the corresponding period

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<sup>7</sup>Lieutenants received 5% for each of the three years. Sergeants received 4% for 1997, 7% for 1998 and 4% for 1999. (Employer Ex. B-8)

<sup>8</sup>The City claims that patrol officers were given a large pension increase in the last round of negotiations. They took this instead of putting the money into wages. They should not now be heard to complain about any deficiencies in the wage rate. It is noted, however, that command officers received the same pension benefits as patrol officers. This benefit cannot therefore be used to deny officers appropriate compensation.

will be within the accepted range and therefore is appropriate. Midland at \$43,598 will still lead the pack and Port Huron, too, will likely be ahead as well once its contract is settled. The same may be true of one or more of the other comparable cities.

When the wages are compared with the other cities (once the other contracts are settled and that data is made available), it is anticipated that the increase will continue to keep Battle Creek around the average.<sup>9</sup> By adopting the above figures, a majority of the Panel believes that Battle Creek will be able to maintain its position among its counterparts in the comparable communities.

This overall increase of 12% for the unit also compares favorably with the historical wage increases for the internal units. For example, the Employer has proposed to increase wages for AFSCME represented employee by 11%.<sup>10</sup> It is below the 15% given to sergeants and lieutenants, but those amounts were tied in part to an increase in overall responsibilities

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<sup>9</sup>On the other hand, were the Union's LOS for 1997 and 1999 adopted, it would jump officers wages dramatically over their counterparts in the comparable communities. This is not something they would have achieved in negotiations and should not obtain in arbitration.

<sup>10</sup>The proposal was 5% for 1998, 3% for 1999, and 3% for 2000.

these command officers assumed as a result of the reorganization of operations.<sup>11</sup> And the 12% awarded here turns out to be the same increase granted by the City to its fire fighters, a unit often considered *pari passu* with police.<sup>12</sup>

As the function of this Panel is to award an amount the parties themselves would have settled on had their negotiations been successful (with the Section 9 criteria being used to set parameters and as guidelines), the overall increase of 12% fits closely with what the City has negotiated with other employees, those in the Department and those in its other departments.

Finally, upon review of the patrol officer's overall compensation, especially the much discussed 5.14% pension increase in 1996, the decision by the Panel is in line with the overall package. By removing the pension increase, the wage increase fell to 2.25%, the lowest of the 1996 increases for the comparable communities. Keeping in mind that this reduced increase was a trade-off for the pension increase, it was the negotiated decision of these parties for that year-1996. Simply because one party gives up one increase in favor of

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<sup>11</sup>The reorganization, referred to as "C.O.P.S." increased responsibilities and introduced an altogether different model for the assignment for these officers. Specifically, lieutenants now have the responsibility for one of three sectors of the city, 24 hours a day, 7 days a week. Previously he or she had command over only those officers assigned during his or her shift. Currently, and as a result of the change, the command officer not only has the responsibility, but the resources and assets to resolve problems that occur within the sector. As the lieutenants took on greater responsibilities, the sergeants took over some of the former duties of the lieutenants, such as the preparation of work and overtime schedules and special events coverage. In addition, these command officers have become the liaisons with the neighborhood groups involved with the C.O.P.S. programs. The Employer pointed out that while there had been a major increase in the types of duties performed by the command officers, the same was not true of the patrol officers. With the addition of Bedford and Pennfield Townships to the City's patrol coverage, the officers are now required to police an additional 18,000 people and twice the land mass. Although statistically true, the addition was mostly comprised of rural vs. the urban and suburban areas. Moreover, although the addition brought with it three more sets of local ordinances for the patrol officers to deal with, this change was lessened by virtue of the ordinances being standardized to those of Battle Creek, except for minor changes in parking citations. Finally, while the inclusion of the two Townships also resulted in an increase in the overall number of arrests for Battle Creek's officers, the panel's wage increase decision takes this into account, thus providing more than reasonable compensation for the work being performed.

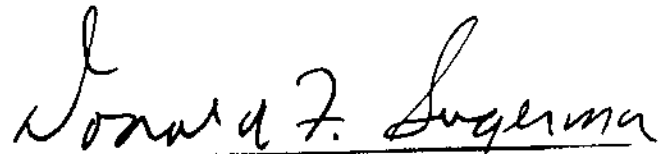
<sup>12</sup>Fire fighters also received 4% for the forth year. Fire Command received 5%, 5%, 4% for 1997-2000, and 4% for 2000-2001.

another does not mean it is thereafter foreclosed from securing increases in future years.<sup>13</sup>

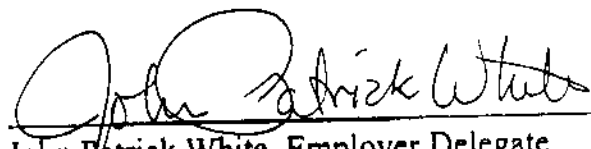
### A W A R D

The Panel adopts a combination of the LOS submitted by the parties. This combination satisfies the criteria of Section 9 of the Act. All other modifications of the prior contract agreed to by the parties are to be incorporated into their new CBA and items not amended are to be continued from the prior agreement unchanged.

A Panel majority awards all patrol officers increases of 3.5% effective July 1, 1997, and July 1, 1999.



Donald F. Sugerman, Chair & Neutral Delegate



John Patrick White, Employer Delegate



Fred LaMaire, Union Delegate

A Panel majority awards all patrol officers an increase of 5% effective July 1, 1998.

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<sup>13</sup>The Panel has also considered the Consumer Price Index ("CPI") for the past few years. While it is impossible to predict future increases, it is reasonable to anticipate that there will be no major changes of these rates in the immediate future. Thus, the Panel's decision to adopt wage increases of 3.5%, 5% and 3.5% preserves the wages well above the 1997 2.2% and 1998 1.3% increases in the CPI. In fact, all of the offered figures were quite generous when using this factor to assess a reasonable wage increase.

Donald F. Sugerman  
Donald F. Sugerman, Chair & Neutral Delegate

Fred LaMaire  
Fred LaMaire, Union Delegate

John Patrick White (dissent)  
John Patrick White, Employer Delegate