

In the Matter of Act 312 Statutory Arbitration between:

CITY OF TRAVERSE CITY
Employer

-and-

POLICE OFFICERS LABOR COUNCIL
Union.

MERC Case No. L01 J-3004

Appearances:

For the Employer: John P. Racine, Jr.
Sondee, Racine & Doren, PLC

For the Union: Mark P. Douma
Law Offices of John A. Lyons, P.C.

Also present for some or all of the proceedings: Nancy Ciccone, Rick Czapo, Paul Ellul, Scott Maxson, Paula Segala, William Twietmeyer, and Makayla Vitous.

I.

PANEL'S FINDINGS, CONCLUSIONS, AND AWARD

BEFORE AN ACT 312 PANEL CONSISTING OF:

Benjamin A. Kerner, Chair
Richard Lewis
Fred LaMaire

Dated: Jan. 21, 2004.

II. LEGAL AUTHORITY.

Pursuant to 1969 Public Act 312, as amended by 1972 Public Act 127, M.C.L.A. 423.231 et. seq., the arbitration panel on November 12, 2003, convened and conducted a hearing at the offices of the City of Traverse City, 400 Boardman Avenue, Traverse City, Michigan. The purpose of the hearing was to resolve a pending labor dispute between the parties. Each party was represented by its attorney. Adequate opportunity was afforded at the hearing for the presentation of all exhibit information and testimony. Each party had an opportunity to cross-examine the witnesses for the other side. Briefs were filed in this matter on January 9, 2004, and the record was declared closed on January 12, 2004. The case is now ready for decision.

III. ISSUES IN DISPUTE.

- A. Wages to be paid effective January 1, 2002
- B. Wages to be paid effective January 1, 2003
- C. Wages to be paid effective January 1, 2004
- D. Health insurance premiums to be paid by current employees.
- E. Health insurance premiums to be paid by retirees.

IV. PRE-HEARING ACTIVITIES.

The parties met for a pre-hearing conference in Traverse City, Michigan, on July 21, 2003, at which time a survey of the issues was made and the following determinations about the conduct of the case were made:

- Both parties to exchange exhibits on October 22, 2003, prior to the hearing in this matter.

- Any rebuttal exhibits to be exchanged by November 5, 2003.
- Hearing to be held on November 12, 2003.
- Date for filing of last best offers was set.
- Date for filing of post-hearing briefs was set.
- The order of proceeding at hearing was set.

The subject of comparable communities for economic comparisons was discussed. The parties were in substantial agreement about the appropriateness of including the following list of communities. The parties were in disagreement, however, about whether the City of Grand Haven should be considered comparable. The Neutral Arbitrator received briefs on this subject, and pursuant to the parties' stipulation, the matter was decided on the briefs. The Neutral Arbitrator decided on October 7, 2003, that, "The City of Grand Haven utilizes an integrated Fire plus Police (Public Safety) Department. The City of Traverse City, by contrast, maintains two separate departments. Therefore, the job duties of 'police officer' or 'public safety officer' in the two jurisdictions must necessarily be considerably different....Accordingly, it is my decision that the City of Grand Haven shall not be considered a comparable for the purposes of this hearing."

The jointly accepted comparable communities are:

City of Marquette
 City of Sault Ste. Marie
 City of Alpena
 City of Cadillac
 Grand Traverse County
 and internal comparables, including the other two police bargaining units, the general employees unit, and the light & power unit.

V. POSITIONS OF THE PARTIES. (LAST BEST OFFERS)

A. Wages to be paid effective January 1, 2002.

Employer offers 3.75 % across-the-board.

Union demands 4.0% across-the-board.

B. Wages to be paid effective January 1, 2003

Employer offers 3.5% across-the-board.

Union demands 4.0% across-the-board.

C. Wages to be paid effective January 1, 2004.

Employer offers 3.0% across-the-board.

Union demands 3.25% across-the-board.

D. Health insurance premiums to be paid by current employees.

Employer offers the status quo, as found in Section 13.2 of the expired collective bargaining agreement and as modified by the July 1, 2003, Letter of Understanding of the parties [Employer Exhibit 6].

The Union would replace Section 13.2 of the expired collective bargaining agreement with the following language:

As soon as administratively possible after (date of Award) all bargaining unit members who elect to receive hospitalization and medical insurance coverage through the City shall select one of the Priority Health options. The same Priority Health options which were available on July 1, 2003, shall continue to be offered by the City. Except as provided below, the City shall pay the full premium cost for up to family coverage for each bargaining unit member.

Bargaining unit members shall contribute the following amounts towards the cost of hospitalization and medical insurance premiums.

Single person coverage:	\$25.00 per month
Double person coverage:	\$50.00 per month
Family coverage:	\$75.00 per month

For bargaining unit members who have other health coverage and who do not elect to receive hospitalization and medical insurance through the City, the City agrees to compensate two thousand four hundred (\$2400.00) dollars per year pro-rated at two hundred (\$200.00) dollars per month for opting out of the City's health insurance coverage. Opt out compensation shall be available at the end of the health insurance year for eligible bargaining unit members including those who terminate during the year. Eligible bargaining unit members will be required to sign a payment in lieu of insurance waiver and release form annually.

E. Health insurance premium to be paid by retirees.

Employer offers to maintain current contract language, as found in Section 13.3 of the expired collective bargaining agreement.

The Union withdraws its demand on this issue.

VI. DISCUSSION AND ANALYSIS.

WAGES.

The factors affecting all three wage issues will be discussed together, even though the parties authorized the panel to make a separate award for each year of the contract (2002, 2003, and 2004). The Union makes the essential point that, "since at least 1999 the wages of bargaining unit members have lagged behind the average wages of the comparable communities." [U. Br. p. 5] With the remedy proposed in the Union's last best offer, "The Union's proposed wages will only allow the bargaining unit to move back up from the lowest paid among the comparable communities to the 2nd lowest paid amount the comparable communities." [U. Br. p. 5-6]

The Employer responds that the low wage increases granted in 1999, 2000, and 2001 were the result of bargaining in which the Union opted for an expensive new benefit, a pension cost-of-living adjustment. The cost of that pension item in 1999 was 6.84% of payroll for the unit. Says the Employer, "[T]he wage could have been higher in that contract period except for the request made by the employees themselves to instead allocate available resources in a different manner." [E'er. Br. p. 14] This colloquy suggests that the most important factor to be considered when reviewing the applicability of wages paid in comparable communities is the overall compensation paid in other comparable communities, not the base payroll wages.

Using this concept to compare Traverse City patrol officers with the compensation paid to other patrol officers in comparable communities, we find the following. As of January 1, 2001 (one year before the contract period), the average total compensation paid to comparables was \$35,032. The total compensation paid to Traverse City patrol officers was \$37,299. [E'er. Exh. 35] Traverse City compensation was higher than any of the comparables, and was 6.5% higher than the average of the comparables.

Utilizing the same basic data [E'er. Exh. 35], but updating to the date of July 1, 2003 [E'er. Exh. 35A], the average total compensation paid to comparables was \$37,185. The total compensation paid to Traverse City patrol officers was \$38,879 (inclusive of Employer-proposed wage increases). Traverse City compensation to its patrol officers under this scenario would be uniformly higher

than that paid to any of the comparables, and would be 4.6% higher than the average of the comparables.

Utilizing the same basic data [E'er. Exh. 35 A] but updating to the date of January 1, 2004, the average total compensation paid to comparables was \$37,447. The total compensation paid to Traverse City patrol officers would be \$40,080 (inclusive of Employer proposed wage increases). Traverse City compensation to its patrol officers under this scenario would be higher than any of the comparables and would be 7.0% higher than the average of the comparables.

It is apparent that the factor of compensation paid to similar employees in comparable communities, when viewed through the prism of total compensation paid to patrol officers, and not base wages, favors the view that the Employer-offered wage increases for all three years is sufficient to keep Traverse City patrol officers in the upper tier of total compensation paid to such employees.

Other factors which the Employer cites in favor of its last best offers are (i) the further comparisons between relevant items of total compensation (vacation days and sick leave); (ii) wages and total compensation paid to other employee groups of this Employer, and (iii) cost of living.

On the comparison of vacation days, the Employer points out that the Union exhibit on this subject [U. Tab. 5, p. 7] shows the maximum available vacation days for any members of the bargaining unit, being 30 days. The Employer says this amount of vacation is available only to the most senior member of the unit, but that 10-year officers generally receive 15 days of vacation; and the median Traverse City officer (with 4-1/2 years of seniority) would receive

10 days' vacation. Both of these figures compare favorably with the comparables, leaving aside the City of Alpena which has a higher amount of vacation for both the 4-1/2 year officer, the 10-year officer, as well as the most senior officer.

In regard to sick leave, Traverse City has 7 days available [U. Tab. 5, p.7]. Comparable communities have 12 days available, by and large. But the comparison needs to be tempered by the fact that Traverse City officers have an Employer-paid sickness and accident insurance plan, a benefit not available to any of the comparable communities' employees, except Grand Traverse County sheriff's deputies. The City concludes that the apparent disparities in vacation days and sick days are just that—apparent; and that they "should not mislead the Panel into thinking that the number of paid days off actually received by the Traverse City officers is at all out-of-line with the comparables." [E'er. Br. p. 17]

The Panel concludes that to the extent there are significant differences in sick leave and vacation days, Traverse City patrol officers are not at any sizeable effective disadvantage with the comparables.

Section 9 of Act 312, M.C.L. 423.239(d), allows the Panel to consider a, "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 employees performing similar services and with other employees generally (i) in public employment in comparable communities." Pursuant to this section, the Panel has above considered the comparison of wages and total compensation of police patrol officers in a comparable group [external comparables] comprised of City of Alpena, City of Cadillac, City of Marquette, City of Sault

Ste. Marie, and Grand Traverse County. Also pursuant to this section of the statute, the parties stipulated in the pre-hearing phase of these proceedings that the Panel could consider the wages and other conditions of employment and total compensation paid to other employees of the City of Traverse City [internal comparables].

Although the Panel notes that none of these employees, strictly speaking, has duties similar to those of patrol officers or faces risks similar to patrol officers, there is a basis for comparability, first as specified in the statute ("other employees generally") and secondly, as a practical matter, because the increases granted to one bargaining unit in a municipality has reverberating effects on other units, and similarly, the wages paid to other units (both bargaining units and employee groups) are responsive to the concerns of the same governing body, the impact of the same overall employment policies, and the same overall limitations. Given this introduction, the Panel has considered the wages, the conditions of employment, and the wage increases granted to the following internal comparables: police captains bargaining unit; police sergeants bargaining unit; the municipal employees clerical bargaining unit; the general municipal employees (non-bargaining) group; the electric utility bargaining unit; the electric utility administrative (non-bargaining) group; and the City's administrative, confidential and technical employees (non-bargaining) group. The evidence shows in summary that when the cost of carrying forward wage increases already granted is subtracted from any new or fresh wage increases granted, the amount of the

average wage increase over the 3-year time period is 3.39% or less for every single bargaining unit or employee group.

With regard to the patrol officers here under consideration, the testimony of Finance Director and Treasurer Bill Twietmeyer and the exhibits prepared by his office indicate that the net average annual increase in the City's total compensation (assuming the City's wage offer is granted) would be 3.37%.

Increases of the amount specified by the Union in its last best offer (referring to the 3.25% last year wage demand of the Union), according to Mr. Twietmeyer, "would put us over our threshold." [Tr. p. 46] The threshold was a figure established by City Council for the years here under consideration.

In addition, the compensation package utilized by Mr. Twietmeyer in computing the patrol officers' increases (and the cost of carrying the contract) did not include certain economic items. For instance, the figures do not include increases in shift differential; changes in sick leave and accident caps; increases in pay for detectives and school liaison officers, and a few other items. [Tr. 47-48] Thus, to some modest, undetermined extent, the amount of net average annual increase in the City's total compensation offer to the bargaining unit is understated at 3.37%.

The Panel has determined that the internal comparables, although perhaps not as important as the external comparables, tend in the same direction to support the City's last best offers as to all three years, and specifically do not lend support to the Union's offers. The Union's last best offer for any one of the three years of this contract period would put the municipality over its threshold of

net average annual increases of 3.39%. To the extent that other co-employees of the City of Traverse City compose valid reference groups, the increases demanded by the Union would appear not to be justified.

The City's evidence on cost of living consisted of the Consumer Price Index (Urban Wage Earners) as computed by the Bureau of Labor Statistics for all U.S. Cities. The cost of living in 2002 rose 1.4%. The Employer compares its offer of 3.75% wage increase for that year. For the following year (2003) the cost of living rose 2.5% (first six months). The Employer compares its offer of 3.5% for that contract period. No figures were offered for the second half of 2003 and none are available for 2004. The Panel concludes that the evidence on cost of living supports the Employer's proposed wage increases for 2002 and 2003.

Thus, in sum, based on the factors of a comparison of the wages and conditions of employment and overall compensation of a well-formulated external group of police bargaining units; and on the comparison of wages and conditions of employment and total compensation of the internal municipal groups of employees (including comparisons with bargaining units and "with other employees"); and based on the overall compensation presently received by the employees, as well as on the factor of cost of living (for 2002 and 2003), the Panel awards the wage increases offered by the Employer for each of the three years here under consideration.

HEALTH INSURANCE PREMIUMS.

The status quo needs some explaining. The Employer currently offers 5 health care plans: one, Blue Cross--Blue Shield traditional, another, Blue Cross--Blue Shield H.M.O. and 3 Priority Health Care plans. All employees of the City administratively are in the same group health plan for purposes of bidding by the respective insurance organizations. Thus, all bargaining units receive the advantage of the bidding power of a group the size of the entire Traverse City complement of employees, in excess of 200 persons. According to Paula Segala, the City organized this risk pool in 1987, to attempt to deal with the already-rising health care costs experienced then.

According to the City's internal plan, a "cap" is established for each group. Naturally, the amount of the "cap" is an item for bargaining with the bargaining units. For premiums charged according to each employee's election of a specific plan, the City pays the amount of the "cap." Then, the difference between the cap and the premium for the plan selected by the employee is split: The employee pays 50% of the amount above the "cap," the Employer pays the other 50% of the amount above the "cap."

The current collectively bargained cap amount with the police patrol officers (Police Officers Labor Council) is as follows:

Single coverage cap:	\$266/month
Double coverage cap:	470/month
Family coverage cap	495/month
[E'er. Exh. 6]	

The City retains the right by contract to change health insurance providers and/or programs per Section 31.2 and has done so in the past. The City takes an

activist stance about reducing or containing health insurance premiums and seeks bids from each of the interested health care insurers, in which the size of the entire group health plan plays a significant part. The Employer has a Health Insurance Committee, on which representatives of each bargaining unit participate. The Committee assists in forming health insurance policy for the City, overall.

The individual plans of the health insurers are not commensurate: one provides for elective surgeries, for instance, while the others do not. There are other significant differences. The premiums charged for the various health insurance plans differ widely.

The Union proposes to require the City to pay all premiums, save a specified amount (\$25 for single coverage, \$50 for two-person coverage; and \$75 for family coverage). The concept of a "cap" as under the 1987-2001 group health plan and under the collective bargaining agreement, Section 13.2, would be scrapped. The concept of election by the employee of one of a number of health insurance options would be narrowly circumscribed in favor of continuing in force "all Priority Health options which were available on July 1, 2003."

The Employer responds with a variety of concerns. First, says the Employer, the Union proposal would "fundamentally alter the way health insurance products have been provided to all the City's employees for at least the last fifteen years." [E'er. Br. p. 21] The proposal would eliminate the interest of members of the bargaining unit in contributing to reduction in premiums and to competition among the health insurance organizations which service the Employer.

In addition, the Union's proposal would create a serious pressure on the City from other bargaining units (and employee groups) to create a similar bargain, i.e., a non-price sensitive, fixed maximum contribution by the employee. Further, according to the Employer, the Union proposal would ill-advisedly lock in the current members of the patrol officers unit to a contractually sanctioned health insurance plan, without flexibility to offer other plans, and without the ability by the Employer to guarantee that it can continue to meet the specific terms of the health insurance plan offered by a third party. Along these same lines, the Union's proposal would "eliminate the three Blue Cross products currently available as options for the members of this bargaining unit," without respect to future needs or future desires of bargaining unit members. [E'ler. Br. p. 21]

The Union offers in support of its proposal the observation that in every comparable community, employees' costs are capped. [U. Tab 6, p. 5] The Union observes further that the insurance premium cost for Traverse City is the lowest among all the comparable communities. The Union's members should be able to recoup these low costs, and avoid the unpredictability of health insurance premiums every year. "Under the Employer's proposal, only one thing is certain, bargaining unit members will be required to pay more for health insurance next year," says the Union. [U. Br. p.8]

The Panel has considered the merits of the arguments for the Union's proposal and against it. The factor of the comparison with external comparables that the Union offers is not persuasive. [U.Tab 6 , p. 5] As the Employer points out about the exhibit, all of the comparables (with the exception of Grand Trav-

erse County, which offers a Priority Health plan) offer Blue Cross products only. [Testimony of Human Resources Director Segala, Tr. p. 85-86.] The deduction that the reader should draw from this fact is that the premiums in the comparable communities tend to be higher than in a community such as Traverse City or Grand Traverse County, where alternative health payers are provided. In addition, and contributing to the relatively low premiums, testified Ms. Segala, the Priority Health plans are offered on a pool-rated premium. "So, they take within their region municipalities, counties, like units of government and take these enrollees in addition to our enrollees...." Blue Cross products, by contrast, are not pool-rated, although they are experience-rated for the group. [Tr. p.84-86]

The more nearly applicable comparison is between the employees of this bargaining unit and the employees of other bargaining units of this Employer. Health insurance is, presumably, a subject of bargaining with those other units, too. Yet, they have all settled on a methodology of cost-sharing which is similar to what is incorporated in Section 13.2 of these parties' current collective bargaining agreement. The parties recognize that there is some benefit to having employees cost-share the excess premium above the "cap" specified in their collective bargaining agreements. There is some general benefit to all the employees of Traverse City to having a group health plan as large as 203 members, consisting of all employees. There is some general benefit to allowing the City to have contractual authority to utilize its unitary bargaining strength in dealing with each health insurer--to obtain quotations, as well as to negotiate terms of coverage, and eligibility and exceptions and all the other items which go into

specific health insurance plans. There is some general benefit to having a variety of plans available, even if all the members of a particular sub-group (such as the police officers) currently utilize one option.

Incorporating and going beyond the obvious economic concerns that the Employer has with the Union's proposal, both Employer witnesses were of the opinion that the Union's proposal would have a chilling and perhaps fatal effect on the operation of the City-wide group health plan. The Panel observes that "Other factors ...that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment," M.C.L.423.239(h) come into play here. The traditional factor here may be described as tradition itself, or the concept of, "If it ain't broke, don't fix it." The Employer has voiced its concern that a well-formulated City-wide plan with a history of 16 years of stable, successful operation would be placed in jeopardy by the Union's proposal, if adopted. It is easy to see why that might be so. The Employer would be subject to unanswerable pressure to accept other employees' bids for maximum contributions to premiums. That likelihood, by itself, without reference to the other elements of the Union's proposal, would necessitate a drastic restructuring of the plan to accommodate the Employer's absorbing all the risk of premium increases.

The City of Traverse City's group health plan is an experiment that has—by and large—worked. There is no reason supported by the evidence in this case to undo the logic of that plan and substitute something more like what has been prevalent in other communities, but with the same drawbacks.

VII. DISPOSITION OF ECONOMIC ISSUES.

- A. Panel accepts the Employer's last best offer for Wages 2002.
- B. Panel accepts the Employer's last best offer for Wages 2003.
- C. Panel accepts the Employer's last best offer for Wages 2004.
- D. Panel accepts the Employer's last best offer on Health insurance premiums to be paid by current employees.
- E. Issue E, health insurance premium to be paid by retirees, was an issue in contention at the start of these proceedings, but it is no longer in contention.

AWARD

On issues A, B, C, and D the Panel adopts and incorporates the last best offers of the Employer as shown on p. 4 above as its Award.

Benjamin A. Kerner

Benjamin A. Kerner
Panel Chair

01/21/04

Richard Lewis

Richard Lewis
Panel Delegate

01/22/04

I dissent from the Award of the Panel in this case.

Fred LaMaire
Panel Delegate