

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION**

CITY OF DEARBORN HEIGHTS,

Employer,

- and -

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN,

Union.

Arising pursuant to Act 312, Public Acts  
of 1969, as amended

Case No. D01 B-0277

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**ARBITRATOR'S OPINION AND AWARD**

**Arbitrator Thomas J. Barnes  
March 20, 2003**

**APPEARANCES**

**For the Employer:**

Kurt Heise  
Thomas Laginess, Esq.

**For the Union:**

William Birdseye  
Marv Dudzinski

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**OPINION ON ISSUES INTRODUCED DURING HEARING**

After reviewing the transcript, stipulations of the parties, the impartial arbitrator's letters, and the parties' briefs, I have concluded the City has raised during the pendency of these Act 312 proceedings the issue of its ability to pay, at least for the second year of the proposed contract. For that reason, I cannot foreclose the Union from amending/altering its position regarding the reduction of an employee's Act 345 pension contribution.

While I do not agree with some of the reasoning set out in the Union's brief, the statute does require that I take into account "changed circumstances." The statute also enumerates the financial ability of the unit of government as a factor to be considered (MCLA 423.239(c)). Had the Union objected to the City's introduction of the "ability to pay" issue, I would have overruled the objection because the statute overrides the previous stipulations made at a time when ability to pay wasn't an issue. There must be sound evidence, however, to support a finding of changed circumstances; one party or the other simply desiring to change its position isn't enough after stipulations have been entered into.


It is not totally clear how strongly the City is asserting its ability to pay argument. I say this because it appears on the current record to be aimed at year 2 only of an agreement. Therefore, if the City withdraws this issue the Union will be foreclosed from further pursuing the pension contribution because it is the subject of an earlier stipulation. If the City continues its pursuit of the ability to pay issue, the Union will be permitted to advance the Act 345 pension contribution but only for those proposed contract years where the ability to pay issue is advanced.

I am authoring this abbreviated opinion in the interest of time. If either party desires a more complete opinion, I will provide it.

In view of the timing of this decision and the City's request for an adjournment of next Monday's hearing due to witness unavailability, the request for another date is granted.

Date:

3/20/2003

  
Thomas J. Barnes, Act 312 Arbitrator