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

ARBITRATOR'S OPINION AND AWARD

Arbitrator Thomas J. Barnes
July 18, 2003

CHRONOLOGY

Petition Filed: December 7, 2001
Prehearing: May 13, 2003

APPEARANCES

For the Employer:	**For the Union:**
Thomas J. Laginess	William Birdseye

WITNESSES

For the Employer:	**For the Union:**
Kurt Heise Donald Barrow Gordon Krater	Marvin Dudzinski

DELEGATES

For the Employer:	**For the Union:**
Donald Barrow	William Birdseye

Opinion

The parties have resolved a number of issues and those tentative agreements are reflected in a stipulation contained in Joint Exhibit 2 which is hereby incorporated herewith and made a part hereof. The issues remaining for Act 312 resolution are as follows:

1. Wages – year 2: July 1, 2002 – June 30, 2003
2. Wages – year 3: July 1, 2003 – June 30, 2004
3. Wages – year 4: July 1, 2004 – June 30, 2005
4. Inability to pay
5. Pension – amount of employee contribution for years 2, 3 and 4.

Inability to Pay

During the pendency of this hearing, the City raised its inability to pay at least with regard to the second year and third years of the proposed four year contract (July 1, 2002 - June 30, 2004). The City states that while the parties had previously reached a tentative agreement which was different from the present Employer final offer, its financial condition has severely weakened due to the general economy, the deficit with which the State government found itself, and the general problems that are beginning to accumulate for a bedroom community such as Dearborn with an aging population and weakened infrastructure system. Since the inability to pay issue overlaps all economic issues, it is considered first, followed by consideration of the wages and employee pension contribution issues. All of those matters are published in the record. (Transcript pages 26 - 78; Employer Exhibits 1 – 21).

The Union takes the view that the City was reckless in the recent times of prosperity adding excess employees and spending down its rainy day fund. The Union established in the record that taxable value of property rose 20% from 1997 to 2001, a significant increase for a rather mature city. The Union states and the record shows that the City increased the number of employees from 308 in 1998 to 323 by the end of fiscal 2002.

Of course it is a political question, that cannot be established on the record in this case with any degree of authenticity, as to whether the City was foolishly spending its money and gorging itself on excessive payroll while at the same time spending down its unreserved fund balance. The Union may be correct that the City has been careless in spending during a time of prosperity and now finds itself in financial straits due to its inability to foresee the inevitable downturn that oftentimes comes in the economy and in city finances. Raw numbers, however, cannot demonstrate carelessness or recklessness; there must be some testimony showing the excesses of the City. Having more people employed in times of prosperity could actually be a prudent decision on the part of the City to expand services when the budget allowed it so that citizens could be more properly served. In any event, whether the City was prudent or careless is largely irrelevant to whether the City has a financial problem for the fiscal years 2002 and 2003. As shown on the record, revenue sharing fell 1.2 million (Transcript pages 134-131), the City has a bill for its pension plan twice what it expected, the City is laying off employees and its administrative staff are taking no increases this year or next year (2003-2004). Budget cuts for 2002 total $1,867,000; for 2003 $2,563,000 (including sidewalk repair programs) (Employer Exhibit 21). All of these factors indicate the City has a moderate financial problem that translates into a need for lesser wage and benefit increases than normal. Therefore, the City has established a financial inability for the 2 and 3 years of the contract (July 1, 2002 – June 30,

2004.) The firefighter's union negotiated their contract back in 2001 when the financial situation looked much brighter. Similarly, the patrol officers negotiated their contract when the financial situation was brighter than at present. One of the risks in proceeding to arbitration is that circumstances can change, as the statute provides for and the panel is required to look at changed circumstances.

William Birdseye		Donald Barrow	
(Concurring)	(Dissenting)	(Concurring)	(Dissenting)

Wages

The Union has advanced the position that the Command Officers should progress at the same rate as the wage increases for the five comparable communities (Allen Park, Garden City, Inkster, Roseville, Westland). The Union presented such data (Union Exhibits 28 and 29 – revised for brief) for the Shift Commander (Lieutenant) and Shift Supervisor (Sergeant). The data showed the disparity for the Lieutenant at 6.58% (22.42% average for the comparables vs 15.84% for Dearborn Heights); for the Sergeant it was 6.43% (22.29% for the comparables vs 15.86% for Dearborn Heights). This approach to comparability has merit but there are two significant drawbacks to using it in this case. First, the analysis starts with July 1, 1997, and ends with July 1, 2002; our agreement starts July 1, 2001, and ends June 30, 2005. Thus, while the Union's analysis may have validity for July 2001 to July 2002, that year was stipulated to. The remaining three years remain to be seen. (Inkster expired June 30, 2001, Roseville is in 312 for July 1, 2001, and beyond; and Allen Park is 119% or 128% above an expired Patrolman's contract). For the last two years (July 1, 2003 – June 30, 2005) all the comparables are expired (save Roseville which is in 312 for those years). To impose the historical relationship, the Union

2004.) The firefighter's union negotiated their contract back in 2001 when the financial situation looked much brighter. Similarly, the patrol officers negotiated their contract when the financial situation was brighter than at present. One of the risks in proceeding to arbitration is that circumstances can change, as the statute provides for and the panel is required to look at changed circumstances.

William Birdseye (Concurring) (Dissenting) fln -

Donald Barrow (Concurring) (Dissenting)

Wages

The Union has advanced the position that the Command Officers should progress at the same rate as the wage increases for the five comparable communities (Allen Park, Garden City, Inkster, Roseville, Westland). The Union presented such data (Union Exhibits 28 and 29 – revised for brief) for the Shift Commander (Lieutenant) and Shift Supervisor (Sergeant). The data showed the disparity for the Lieutenant at 6.58% (22.42% average for the comparables vs 15.84% for Dearborn Heights); for the Sergeant it was 6.43% (22.29% for the comparables vs 15.86% for Dearborn Heights). This approach to comparability has merit but there are two significant drawbacks to using it in this case. First, the analysis starts with July 1, 1997, and ends with July 1, 2002; our agreement starts July 1, 2001, and ends June 30, 2005. Thus, while the Union's analysis may have validity for July 2001 to July 2002, that year was stipulated to. The remaining three years remain to be seen. (Inkster expired June 30, 2001, Roseville is in 312 for July 1, 2001, and beyond; and Allen Park is 119% or 128% above an expired Patrolman's contract). For the last two years (July 1, 2003 – June 30, 2005) all the comparables are expired (save Roseville which is in 312 for those years). To impose the historical relationship, the Union

2004.) The firefighter's union negotiated their contract back in 2001 when the financial situation looked much brighter. Similarly, the patrol officers negotiated their contract when the financial situation was brighter than at present. One of the risks in proceeding to arbitration is that circumstances can change, as the statute provides for and the panel is required to look at changed circumstances.

William Birdseye		Donald Barrow	
(Concurring)	(Dissenting)	(Concurring)	(Dissenting)

Donald S. Barrow

Wages

The Union has advanced the position that the Command Officers should progress at the same rate as the wage increases for the five comparable communities (Allen Park, Garden City, Inkster, Roseville, Westland). The Union presented such data (Union Exhibits 28 and 29 – revised for brief) for the Shift Commander (Lieutenant) and Shift Supervisor (Sergeant). The data showed the disparity for the Lieutenant at 6.58% (22.42% average for the comparables vs 15.84% for Dearborn Heights); for the Sergeant it was 6.43% (22.29% for the comparables vs 15.86% for Dearborn Heights). This approach to comparability has merit but there are two significant drawbacks to using it in this case. First, the analysis starts with July 1, 1997, and ends with July 1, 2002; our agreement starts July 1, 2001, and ends June 30, 2005. Thus, while the Union's analysis may have validity for July 2001 to July 2002, that year was stipulated to. The remaining three years remain to be seen. (Inkster expired June 30, 2001, Roseville is in 312 for July 1, 2001, and beyond; and Allen Park is 119% or 128% above an expired Patrolman's contract). For the last two years (July 1, 2003 – June 30, 2005) all the comparables are expired (save Roseville which is in 312 for those years). To impose the historical relationship, the Union

data suggests, would be doing so based on history and not on what will happen to these comparables in the years in question. At the very least, these Michigan municipalities comparables will experience many of the same financial strains now gripping Dearborn Heights.

Second, to impose the historical pattern urged by the Union would ignore the City's financial inability argument, which I cannot do in view of the previously cited record evidence. Finally, the statute requires me to consider overall compensation (MCLA 423.239 §9(f)) and in that connection, the City has pointed out that it leads the pack (Employer Exhibit 25) going into the second year of the contract. Under these circumstances, the comparable average progression concept for Command Officers cannot stand at this time.

Given the fact that the Union has proposed a 3% increase for the second year of the contract and the City's last best offer is 0%, and since I have found the City has an inability to pay during the second year of the contract, the City's offer is adopted. This finding is also consistent with the lack of any wage increase for administrative staff employees both in the second and third year of this contract. While I will acknowledge from the comparables in the Union's brief that a 3% increase is a fairly normal police contract increase, this does not happen to be a normal situation with the City's deteriorating financial condition. Moreover, I recognize the other elements of the package the parties have agreed to; in particular the 1% reduction in the contribution employees pay to the pension plan which is also retroactive to July 1, 2001, thus affording the Command Officers a 4% increase retroactively. For the third year of the contract, the City's offer of 2% is also more reasonable, again given the 0% adjustment for staff employees and given the fact that the cost of living is presently running at around 2.3%. Moreover, the City has shown that the likelihood for any improvement in its budget for the 2003-2004 year is remote, hence the obvious 0% adjustment for its own staff and administrators.

With respect to the fourth year of the contract, the Union's last best offer of 3% is adopted since that will give the City a year to plan for such an increase and such an increase will not allow the Command Officers to fall out of line with the five comparables. For the year 2002 the Shift Commander at the top step with the City's 0% would be at $65,103 which places him square in the middle of the five comparables, being below Roseville and Westland but ahead of Allen Park, Garden City, and Inkster. The Shift Supervisor at the top step would be similarly situated for the year commencing July 1, 2002, at $60,574 which places him ahead of Garden City and Inkster but behind Roseville, Westland, and Allen Park. It is not possible to make any meaningful comparisons for the year just commenced on July 1, 2003, since Allen Park, Garden City, Inkster, and Westland have not been renegotiated as of the date of the submission of the parties' data and briefs. Obviously the same comment applies to the fiscal year commencing July 1, 2004. Roseville, which has been close to Dearborn Heights solely on wages will clearly be ahead by the time this contract expires, but that is the substance of future bargaining.

William Birdseye		Donald Barrow	
(Concurring)	(Dissenting)	(Concurring)	(Dissenting)

Pensions

The Union has proposed a further reduction of 3% in the employee contribution commencing in the fiscal year beginning July 1, 2002 (sort of as a substitute for any wage increase in the event that the City's 0% last best offer is adopted). The City has proposed no change, other than the stipulated agreement to reduce the contribution by 1% commencing July 1, 2001. The City's position is adopted for the second year. The proposed Union reduction of 3% is substantial and when coupled with their proposed last best offer of a 3/4% reduction in

With respect to the fourth year of the contract, the Union's last best offer of 3% is adopted since that will give the City a year to plan for such an increase and such an increase will not allow the Command Officers to fall out of line with the five comparables. For the year 2002 the Shift Commander at the top step with the City's 0% would be at $65,103 which places him square in the middle of the five comparables, being below Roseville and Westland but ahead of Allen Park, Garden City, and Inkster. The Shift Supervisor at the top step would be similarly situated for the year commencing July 1, 2002, at $60,574 which places him ahead of Garden City and Inkster but behind Roseville, Westland, and Allen Park. It is not possible to make any meaningful comparisons for the year just commenced on July 1, 2003, since Allen Park, Garden City, Inkster, and Westland have not been renegotiated as of the date of the submission of the parties' data and briefs. Obviously the same comment applies to the fiscal year commencing July 1, 2004. Roseville, which has been close to Dearborn Heights solely on wages will clearly be ahead by the time this contract expires, but that is the substance of future bargaining.

William Birdseye (Concurring)	(Dissenting)	Donald Barrow (Concurring)	(Dissenting)

Pensions

The Union has proposed a further reduction of 3% in the employee contribution commencing in the fiscal year beginning July 1, 2002 (sort of as a substitute for any wage increase in the event that the City's 0% last best offer is adopted). The City has proposed no change, other than the stipulated agreement to reduce the contribution by 1% commencing July 1, 2001. The City's position is adopted for the second year. The proposed Union reduction of 3% is substantial and when coupled with their proposed last best offer of a 3/4% reduction in

With respect to the fourth year of the contract, the Union's last best offer of 3% is adopted since that will give the City a year to plan for such an increase and such an increase will not allow the Command Officers to fall out of line with the five comparables. For the year 2002 the Shift Commander at the top step with the City's 0% would be at $65,103 which places him square in the middle of the five comparables, being below Roseville and Westland but ahead of Allen Park, Garden City, and Inkster. The Shift Supervisor at the top step would be similarly situated for the year commencing July 1, 2002, at $60,574 which places him ahead of Garden City and Inkster but behind Roseville, Westland, and Allen Park. It is not possible to make any meaningful comparisons for the year just commenced on July 1, 2003, since Allen Park, Garden City, Inkster, and Westland have not been renegotiated as of the date of the submission of the parties' data and briefs. Obviously the same comment applies to the fiscal year commencing July 1, 2004. Roseville, which has been close to Dearborn Heights solely on wages will clearly be ahead by the time this contract expires, but that is the substance of future bargaining.

William Birdseye
(Concurring) (Dissenting)

Donald Barrow
(Concurring) (Dissenting)

Donald S Barrow

Pensions

The Union has proposed a further reduction of 3% in the employee contribution commencing in the fiscal year beginning July 1, 2002 (sort of as a substitute for any wage increase in the event that the City's 0% last best offer is adopted). The City has proposed no change, other than the stipulated agreement to reduce the contribution by 1% commencing July 1, 2001. The City's position is adopted for the second year. The proposed Union reduction of 3% is substantial and when coupled with their proposed last best offer of a 3/4% reduction in

each of the last two years, that would lead to a total wipe out of the employee contribution on the pensions, which I believe requires far more bargaining between the parties and should not be ordered here. While it is true that the 3% reduction proposed for the year 2002 would not come out of the general fund, it nevertheless places an increased burden on the pension fund, although at the present time the pension fund is adequately funded, the recommended contribution in the current year is more than double from last year ($617,806 to $1,354,713 and without which would, according to the actuary, would place the pension plan in unacceptable condition. Simply avoiding the cost in one pocket and pulling it out of another pocket of a taxpayer (in the long run) is not particularly a justifiable public position for the arbitrator to take.

However, with regard to years three and four, the Union's proposal of a 3/4% reduction in each of those two years is modest and may well be able to be absorbed without any significant millage adjustment at all. Moreover, this will reduce the percentage contributed by employees for an enhanced pension plan, from 5 1/2% to 3% - a significant adjustment in one contract negotiation and arbitration. Therefore, the Union's last best offer of a 3/4% reduction in years 3 and 4 is adopted.

While these increased amounts of remuneration for members of the bargaining unit are modest, there are a number of other items the parties have agreed to which result in financial gains for the employees, including use of banked sick days to pay off healthcare contribution, enhanced duty disability multiplier, same optical and dental plan for retirees, increases in the pension multiplier, best three out of ten years for determination of final average compensation, a thirteenth paycheck for pension, and a very modest increase in healthcare contribution in exchange for Article XXII Sick Day Payoff. I must consider those items as part of the overall package under the statute. Given those tentative agreements in addition to what I have here

found to be reasonable, the total settlement for the Union is beyond what is occurring in a number of other contexts – public and private – at this particular time. In addition, having such items as healthcare tied up for a total of four years – the two past and two in the future – provides in itself a significant economic comfort level for employees in these very uncertain and dramatically rising healthcare cost times. When balanced out, Command Officers are being treated fairly both internally and externally.

Last but not least I note that in the private sector, at least, we are again in an economic trough where sometimes concessionary wages are negotiated. This is unheard of for the most part in the public sector but with the financial ruin that has visited at least a couple of Michigan cities in recent years (Flint, Benton Harbor, Hamtramck, Ecorse) we may be facing some years in which simply keeping what employees have is an accomplishment let alone getting improvements in wages and the numerous other fringe benefits that exist. These are trying economic times for the country and for cities in Michigan (as well as a number of other states) and a contract such as this one which provides for four years of labor peace with modest increases in wages and benefits is not a bad deal, everything considered.

William Birdseye
(Concurring) (Dissenting)

Donald Barrow
(Concurring) (Dissenting)

Date: 7/21/03

Thomas J. Barnes, Act 312 Arbitrator

found to be reasonable, the total settlement for the Union is beyond what is occurring in a number of other contexts – public and private – at this particular time. In addition, having such items as healthcare tied up for a total of four years – the two past and two in the future – provides in itself a significant economic comfort level for employees in these very uncertain and dramatically rising healthcare cost times. When balanced out, Command Officers are being treated fairly both internally and externally.

Last but not least I note that in the private sector, at least, we are again in an economic trough where sometimes concessionary wages are negotiated. This is unheard of for the most part in the public sector but with the financial ruin that has visited at least a couple of Michigan cities in recent years (Flint, Benton Harbor, Hamtramck, Ecorse) we may be facing some years in which simply keeping what employees have is an accomplishment let alone getting improvements in wages and the numerous other fringe benefits that exist. These are trying economic times for the country and for cities in Michigan (as well as a number of other states) and a contract such as this one which provides for four years of labor peace with modest increases in wages and benefits is not a bad deal, everything considered.

William Birdseye
(Concurring) (Dissenting)
WM

Date: 7/21/03

Donald Barrow
(Concurring) (Dissenting)

Thomas J. Barnes, Act 312 Arbitrator

found to be reasonable, the total settlement for the Union is beyond what is occurring in a number of other contexts – public and private – at this particular time. In addition, having such items as healthcare tied up for a total of four years – the two past and two in the future – provides in itself a significant economic comfort level for employees in these very uncertain and dramatically rising healthcare cost times. When balanced out, Command Officers are being treated fairly both internally and externally.

Last but not least I note that in the private sector, at least, we are again in an economic trough where sometimes concessionary wages are negotiated. This is unheard of for the most part in the public sector but with the financial ruin that has visited at least a couple of Michigan cities in recent years (Flint, Benton Harbor, Hamtramck, Ecorse) we may be facing some years in which simply keeping what employees have is an accomplishment let alone getting improvements in wages and the numerous other fringe benefits that exist. These are trying economic times for the country and for cities in Michigan (as well as a number of other states) and a contract such as this one which provides for four years of labor peace with modest increases in wages and benefits is not a bad deal, everything considered.

William Birdseye
(Concurring) (Dissenting)

Date: 7/21/03

Donald Barrow
(Concurring) (Dissenting)
Donald S Barrow

Thomas J Barnes
Thomas J. Barnes, Act 312 Arbitrator