


In the Matter of Statutory Act 312 Arbitration between:

CITY OF ROYAL OAK,
Employer

-and-

POLICE OFFICERS LABOR COUNCIL,
Union.

MERC Case No. D04 A-0008 (Command Officers)

Appearances:

For the City: Brian James
Assistant City Attorney

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

Also present: Tim Barrington, Nancy Ciccone, Gary O'Donohue, John Vivano.

DECISION ON COMPARABLES

Before a Panel Consisting of:

Benjamin A. Kerner, Neutral Chair
C. Brian James, City Delegate
John A. Viviano, Union Delegate

Dated: April 13, 2005



At a hearing held in the City of Royal Oak on March 28, 2005, the parties had a full opportunity to acquaint the Arbitration Panel with the facts pertaining to the issue of which communities should be considered comparable for the purpose of comparing wages, hours, and conditions of work of the Royal Oak command officers, specifically which communities should be deemed comparable under MCL 423.239(d). The City requested an opportunity to file a short brief in this matter, and has done so; the Union reserved the right to file a response brief, and has done so. This matter is ripe for decision.

As an initial observation, both parties used a listing of communities which included Tri-County communities within 50% (higher or lower) than Royal Oak in population; and which were also within 50% (higher or lower) in Taxable Valuation. This yielded a listing as follows:

Commerce Township
Independence Township
Dearborn Heights
Macomb Township
Madison Heights
Novi
Orion Township
Pontiac
Redford Township
Roseville
St. Clair Shores
Shelby Township
Taylor
Waterford Township
Westland.

From this list the City would excise those communities which are townships, on the basis that they have a different taxing structure. (Commerce Township, Independence Township, Macomb Township, Orion Township, Redford Township, Shelby Township, and

Waterford Township). In addition, the City would excise from this list those jurisdictions that rely on Act 345 [MCL 38.551] for a retirement system for their police / fire personnel. (Taylor, St. Clair Shores, Dearborn Heights, and Westland). That would leave a list composed of Madison Heights, Novi, Pontiac, and Roseville.

The Union points out that in previous Act 312 proceedings, the City did not object to including as comparables either communities that were townships or communities that had Act 345 boards. For instance, in Arbitrator Girolamo's 2002 proceedings involving the Royal Oak police, the parties stipulated that Waterford Township should be utilized. Similarly, regarding Act 345 communities, the parties to the 1991 Jason Police Command Officers Act 312 proceeding stipulated that Taylor and St. Clair Shores should be considered comparable communities.

Thus, says the Union, the beacon of "no townships" and "no Act 345 communities" is a weak one, at best, a non-existent beacon, at worst. Over the years, the parties have relied on including communities that are townships, and that utilize Act 345 boards for handling police/ fire retirement.

In my view the parties have touched upon but have not enunciated one of the primary factors which must be utilized in viewing potential comparables communities: The history of the use of those communities in the parties' relationship. Here, we have a particularly rich record in that regard. One or both parties have referred to four preceding Act 312 awards: Arbitrator Jason's 1991 award in the Police Command Officers unit, Arbitrator Wolkinson's 1993 award in the Firefighters unit; Arbitrator Roumell's 1997 award in the Firefighters unit; and Arbitrator Girolamo's 2001 award in the Police Officers unit. In all four of these proceedings, Dearborn Heights was considered a comparable. No new evidence



was offered at this hearing as to why Dearborn Heights would not now be an acceptable comparable (except that it has an Act 345 Board, as it did then). Similarly, St. Clair Shores was considered a comparable in all four of the cited arbitration proceedings. No new evidence was offered here as to why St. Clair Shores would not now be considered a comparable community (except that it has an Act 345 Board, as it did then).

At bottom, the picking of comparables is an exercise in affording some degree of predictability to the parties in their labor relations. In anticipating an Act 312 hearing—even before preparing for one—the parties' representatives should be able to predict that an arbitration panel is likely to include certain communities, and is likely to exclude others, based on past presentations to their arbitrators, and barring dramatic shifts in population, taxable resources, or other significant socio-economic variables. Thus, one criteria which I will apply is the traditional factor, MCL 423. 239(h), reflecting the historical inclusion or exclusion of various communities from these parties' presentations to Act 312 arbitrators. In short, I will include those communities that the parties have demonstrated, over the years, have been acceptable to them in setting and comparing wages, hours, and conditions of employment. Even where the same union is not involved in the proceeding, there is a high degree of similarity of interest between the union in the earlier proceeding and the Union in the present proceeding. This generalization is subject, of course, to proof to the contrary; but none was offered here. A chart showing the comparables accepted in prior proceedings will assist the process.



COMPARABLE COMMUNITIES
IN PRIOR ACT 312 AWARDS.

<u>Jason</u> (Command, 1991)	<u>Wolkinson</u> (Fire, 1993)	<u>Roumell</u> (Fire, 1997)	<u>Girolamo</u> (Police, 2002)
Roseville Dearborn Dearborn Hts.	Roseville Dearborn Dearborn Hts.	Roseville Dearborn Hts.	Roseville Dearborn Hts. Madison Hts.
St. Clair Shores	St. Clair Shores	St. Clair Shores	St. Clair Shores Waterford Twp. <u>consider:</u> Southfield
Southfield Taylor	Southfield Taylor	Taylor	Taylor Redford Twp.
Westland Troy Farmington Hills	Westland		

I have proceeded from the agreed list by excising all those communities which have not been selected as comparable communities in more than one setting. That simple exercise yields a list composed of the following:

Roseville
Dearborn Hts.
St. Clair Shores
Taylor
Westland.

Finally, there is the question of whether some of the larger communities—which exceed the screen of being 50% larger by population and by taxable value—should be added to the list of comparables. Chief among these, argues the Union, are Dearborn, Livonia, Southfield, Troy, and Warren. Having examined the demographics of these potential comparables, I note that they are all significantly larger, on one or both variables. The basis of inclusion is noted by Arbitrator Wolkinson in his 1993 Firefighter proceedings: “Additionally, although Dearborn and Southfield also have nearly twice the SEV of Royal Oak their use as comparables is apparently consistent with the parties’ previous practice.” [E’er. Exh. 7, p. 5-6]. What was true in 1993 is still true today. Dearborn was included in Arbitrator Jason’s statement of the comparable communities involving the Police Command Officers in 1991 (and by Arbitrator Wolkinson in his 1993 Firefighter proceeding).

Southfield was included by Arbitrator Jason in his 1991 arbitration involving the Police Command Officers. Southfield was included in Arbitrator Wolkinson’s 1993 Firefighters proceeding; and it was rated as a second tier [“would consider”] comparable by Arbitrator Girolamo in 2001. For the reason that stability in labor relations is promoted by utilizing comparable communities that the parties can anticipate from prior proceedings, I

will include both Southfield and Dearborn in our list of comparables for this proceeding, but not Livonia, Troy, or Warren.

Thus, the final list of comparable communities, with the excisions and add-ons will be composed of:-

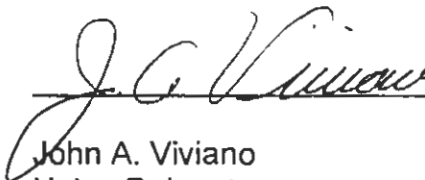
Roseville
Dearborn Hts.
St. Clair Shores
Taylor
Westland
Dearborn
Southfield.

Accordingly, the parties will utilize the above-itemized communities for their comparisons in regard to "wages, hours, conditions of employment of other employees performing similar services in public employment in comparable communities," per MCL 423.239(d). This determination does not foreclose the use of appropriate internal comparables ["employees performing similar services *and with other employees generally*" in the community of Royal Oak, per MCL 423.239(d)] as the parties deem fit.



Benjamin A. Kerner
Neutral Chair

C. Brian James
City Delegate



John A. Viviano
Union Delegate