

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION
ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of:

CAPITOL CITY LODGE NO. 141 OF THE
FRATERNAL ORDER OF POLICE AND
GRAND LEDGE POLICE DEPARTMENT
SUPERVISORY AND NON-SUPERVISORY
DIVISIONS

Union,

-and-

Case Numbers: L03 I-1002
LO3 I-1003

CITY OF GRAND LEDGE

Employer

_____ /

OPINION AND AWARD – COMPARABLE COMMUNITIES

For the Lodge:

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For the City:

Michael R. Kluck, Esq.
Michael R. Kluck & Assoc.

Panel:

Martin L. Kotch, Panel Chair
Jon Bayless, Employer Delegate
Thomas Krug, Union Delegate

BACKGROUND

The parties sought a hearing on the issue of comparability alone, having been able to agree only on the City of Charlotte as a comparable community. The hearing on that issue was held on September 1, 2004.

PROPOSED COMMUNITIES

The parties were able to reach agreement on one comparable community: Charlotte. In addition to Charlotte, the Lodge has proposed the following five cities be included:

Lowell
Swartz Creek
Frankenmuth
DeWitt
Eaton Rapids

In addition to Charlotte, the City is proposing three additional cities:

Mason
St. John's
Hastings

Section 9 of Act 312, MCLA §423.239, provides in pertinent part:

- (D) Comparison of the 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 with other employees generally:
 - (I) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.

The standards upon which the panel will determine which communities are comparable to Grand Ledge are to be derived from those utilized by the parties at hearing, supported

by testimony and exhibits. The following were proposed for use in the panel's exploration of comparability:

STANDARDS EMPLOYED BY BOTH PARTIES

Population: Both parties have used population statistics to assist the panel in identifying comparable communities. (City Exhibits 1, 3, and 8, and Lodge Exhibits 6 and 7).

Taxable Value: Both parties have introduced evidence of taxable value. (City Exhibits 2, 3, and 9, and Lodge Exhibits 12 and 13). Both parties acknowledge that the revenue municipalities receive is based upon taxable value. (Transcript, p.38, 52).

Department Size: Both parties have introduced evidence of the size of the departments to assist the panel in identifying comparable contracts. (City Exhibits 7 and 13, and Lodge Exhibits 20 and 21).

Geographic Location: Both parties introduced evidence showing the geographic location of their proposed comparable communities. (City Exhibit 14, and Lodge Exhibits 3 and 4).

STANDARDS PROPOSED BY ONE PARTY ALONE

Taxable Valuation Per Capita: The City proposed this standard. (City Exhibits 10, 11 and 12).

State Equalized Value (SEV): The Lodge proposed this standard (Lodge Exhibits 9 and 10).

Crime Offenses: The Lodge proposed this standard (Lodge Exhibits 15, 16, 17 and 18)

Calls for Service: The Lodge proposed this standard (Lodge Exhibits 23 and 24).

CONTENTIONS OF THE PARTIES

A. The Lodge

The population comparables proposed by the City all fall within the thirty percent (30%) category of comparable population. The Lodge claims that its proposed cities have two (2) falling within the thirty percent (30%), three (3) in the forty percent (40%) and one (1) in the fifty percent (50%) category. The Lodge contends that taking a "wider view" than the thirty percent (30%) category used by the City results in a better overall comparable view. The City's perspective, it argues, is unduly narrow.

The Lodge has presented evidence in the form of Lodge Exhibit 9, showing the SEV comparison from 2003. The City did not present evidence on SEV, but relied on taxable value only, which the Lodge also used. The Lodge points to Exhibit 9, noting that the SEV of Grand Ledge falls in the middle of the SEV of its proposed comparable cities, with Frankenmuth having the highest SEV of \$252,595,850 and Lowell having the smallest SEV of \$116,819,100. The 2003 taxable valuations for real and personal property (Lodge Exhibit 12) show that Grand Ledge falls in the middle of its proposed comparable cities, ranging again from a high in Frankenmuth of \$225,782,365 to a low in Lowell of \$91,418,330. The Lodge asserts that when comparing the SEV of Grand Ledge to the City's proposed comparable communities, Grand Ledge is fourth out of the five cities and in taxable valuation is again fourth out of the five cities.

It is the Lodge's position with these two categories of SEV and taxable value that the Lodge's proposed comparables provide a more representative cross section of the communities than do the City's.

Lodge Exhibit 16 is a comparison of crime statistics with the comparable cities the Lodge is proposing. It is the position of the Lodge that the panel should look at the crimes which take place in the comparable cities since that is a major factor in the working conditions of the employees and, in fact, is the major working condition of Police Officers, i.e. fighting crime. Once again, it argues, a comparison of Lodge Exhibit 16 and Lodge Exhibit 17 will show that the comparable cities which the Lodge has proposed is representative, in that Grand Ledge falls in the middle of the pack, whereas in comparison

with the City's proposed comparables, Grand Ledge is at the bottom of the list.

In addition to the crime statistics, the Lodge has also surveyed the comparable cities asking for calls for service and that is set forth in Lodge Exhibit 23. While the calls for service can vary from department to department, it does give some indication of the level of activity in the particular comparable city contrasted to Grand Ledge. This Exhibit would be some indication of each time an Officer responded to a call and went out on the call. As stated in Executive Director Thomas L. Krug's testimony there is a little more play in this number in the fact that it is somewhat less defined, but does give some flavor of the activity of each department (See Transcript, pp. 33-34). The City does not have comparable exhibits in this regard, but, in Lodge Exhibit 24, the Lodge has compared the City's comparables with Grand Ledge. That places Grand Ledge in the middle of the City's comparables, as well as placing Grand Ledge in the middle of the Lodge's comparables.

Both the Lodge and the City presented exhibits showing the staffing of officers in the comparable cities. There are some differences between the numbers on the Lodge's exhibits and the City's exhibits, which appear to be primarily an interpretation of part-time versus full-time officers. However, the differences appear to be minor, and Grand Ledge falls in the middle of the pack in both the Lodge's comparables and the City's comparables.

The Lodge asserts that its underlying position in presentation of its comparables is to provide the panel with a broader range of comparables in order to give a more holistic view of cities to compare with Grand Ledge. It contends that the City's underlying position is to find the absolute closest in population, taxable value, etc., giving a much more narrow scope for the panel to utilize. Finally, it argues, the City does not take into account crime statistics, which the Lodge feels is of significant importance in choosing comparables.

B. The City

The City maintains that Taxable Value, proposed by both parties, is of far greater significance than SEV, proposed only by the Lodge, in measuring the financial capacity of a community, and in comparing that community to others. It notes that both parties acknowledge that the revenue municipalities receive is based upon taxable value.

The City urges the use of Taxable Valuation Per Capita. As indicated by its witness, Taxable Valuation per Capita is used as a further indication that two communities which seem to be fairly close in population and taxable value are, in reality, similar. (Transcript, pp. 65-65). Taxable valuation per capita shows the proportion of taxable valuation and population to one another.

The City contends that as to calls for service, even the Lodge's witness testified that what one department might count as a call for service, another might treat completely differently. Therefore, it argues, there is more "play in this number," and, given this disparity, the City believes there is not much significance in reviewing calls for service in a community in terms of determining comparability.

The City has engaged in a community by community exposition. Its argument as to each, follows (in abbreviated form):

Hastings

The parties are in agreement that population and taxable value are relevant factors in determining comparability. Hastings is closer to Grand Ledge both in population and taxable value *than any of the Lodge's proposed comparables*. Moreover, Hastings is in Barry County, which is contiguous to Eaton County. As to department size, the number of full-time officers in Hastings and Grand Ledge is identical.

While the City rejects the utility of Calls for Service and Index Crimes, it notes that Hastings had only had 4.6% fewer calls for service in 2003 than Grand Ledge. (Lodge's Exhibit 24). Moreover, the number of index crimes in Hastings is almost identical to Grand Ledge.

Mason

Mason's population is only 14% less than Grand Ledge, (6,713 – 7,813) while its taxable valuation is 3% higher, \$167,289,039 – \$162,794,600. It is located in Ingham County. Both Mason and Grand Ledge are located in the greater Lansing area, and therefore, subject to essentially the same labor and economic market. Grand Ledge has been deemed a comparable community in previous Act 312 proceedings involving Mason.

Mason's number of full-time officers is two less than Grand Ledge. Its number of crime offenses is somewhat higher than Grand Ledge. The rate of crime and calls for service is certainly no higher in Mason than it is in Charlotte, which the Lodge has agreed is comparable.

St. John's

St. John's, argues the City, is close in population, taxable valuation, and geographic proximity to Grand Ledge. Its population is only 4% less than Grand Ledge (7,485 – 7,813. Its taxable value is 4% higher than Grand Ledge \$168,827,041 – \$162,794,600). It is located in Clinton County, contiguous to Eaton County. It also falls within the greater Lansing area. It is closer to Grand Ledge in population and taxable valuation than any of the Lodge's proposed comparables. The number of full-time officers in St. John's is 11, compared to Grand Ledge's 15. Its total crimes in 2002 were 499, compared to Grand Ledge's 416.

The City asserts that none of the Lodge's proposed communities approach the closeness to Grand Ledge which its proposed communities demonstrate.

DeWitt

The City contends the objective criteria and reasonable standards necessary for determining comparability with the City of Grand Ledge refute the Lodge's offer of Dewitt as comparable to Grand Ledge. The population of Dewitt, is only 60% that of the City of Grand Ledge. Likewise, its taxable valuation is 26% less than Grand Ledge. It only has 6 full-time officers, less than half the number working for Grand Ledge. Although it has 9 part-time officers, the Lodge's witness conceded that he could not establish any full-time equivalency of these officers. Further, he indicated they are not represented by a labor organization and typically do not receive any type of fringe benefits. As to crime rate and Calls for Service, Dewitt is significantly lower in each category than Grand Ledge.

Eaton Rapids

The City notes that Eaton Rapids' population is 32% less than Grand Ledge. Its taxable valuation is 34% lower than Grand Ledge. The City argues this disparity in

population and taxable value, factors which both parties agree are very important in determining comparability, preclude a finding by this panel that Eaton Rapids is comparable to Grand Ledge.

Frankenmuth

The City points to its witness's comment that both Frankenmuth and Swartz Creek stand out like "sore thumbs." Frankenmuth's population is 38% less than Grand Ledge. Meanwhile, its taxable valuation is much higher than Grand Ledge, 39% more. All of this produces a taxable valuation per capita which is 124% more than the City of Grand Ledge. Its department size is about half that of Grand Ledge. Its calls for service and crime rate are also much lower than Grand Ledge.

The City argues that no evidence exists in the record to support the comparability of the City of Frankenmuth to the City of Grand Ledge. They are not even within close geographic proximity of one another, Frankenmuth being in Saginaw County and economically removed from the greater Lansing area.

Lowell

The City argues that If the determination of comparable communities is to be accomplished according to recognizable standards, then Lowell cannot be found by the panel to be comparable to Grand Ledge. Its population is slightly more than half that of Grand Ledge. Its taxable valuation is 44% less than that of Grand Ledge. It is located in Kent County, in the greater Grand Rapids area.

Lowell only has seven full-time officers, less than half those of Grand Ledge. Its calls for service and crime rate are significantly lower than Grand Ledge. There is no evidence in the record, argues the City, to establish that Lowell is comparable to Grand Ledge.

Swartz Creek

As with Frankenmuth, the City's witness noted that Swartz Creek stood out like a "sore thumb." The population of Swartz Creek is 35% less than that of Grand Ledge. Its taxable valuation is 13% higher than Grand Ledge. Together, these numbers result in a taxable valuation per capita which is 73% greater than Grand Ledge.

Swartz Creek is located in Genesee County, in the greater Flint area. Therefore, it is both geographically and economically removed from Grand Ledge. Its department size is only half the size of Grand Ledge. For all these reasons, argues the City, Swartz Creek is not comparable to Grand Ledge.

Finally, as to methodology, the City argues that the Lodge appears to have "hand-picked" comparables which are to its liking, without any reasonable basis for doing so. The Lodge's witness described the Lodge's methodology as "attempt[ing] to go three above and three below as far as state equalized value, taxable value, and department size," but acknowledged that they are not necessarily the closest three above or three below.

DISCUSSION

The parties have agreed upon the City of Charlotte as a comparable. Beyond that, there is no agreement on cities, nor, to a great extent, on methodology. The City rejects the use of SEV - the Lodge employs it. The City has introduced a per capita measure - the Lodge does not. The City likewise sees little or no utility in an index of crimes, nor in service calls, since they are not amenable to reasonably accurate definitions which can then be used for comparative purposes.

As for calls for service, the City has rejected the use of crime rate and service calls, but notes that calls for service are much more closely grouped on its list than on the Lodge's. The Lodge's witness testified that what one department might count as a call for service, another might treat completely differently. (Transcript, pp. 35-36). Therefore, there is more "play in this number." (Transcript, p. 34). Given this disparity, there would appear to be limited significance in reviewing calls for service in terms of determining comparability. It seems clear that service calls are far too variably defined to be used as an accurate measure.

On crimes, the Lodge argues that Grand Ledge is in the middle of its proposed list, and at the bottom of the City's. An examination of *index* crimes alone, agreed as more

reliable than non-index crimes, shows that the spread in the Lodge's list is from 328 to 49, with Grand Ledge as the second highest. On the City's list, the spread is from 328 to 189, with Grand Ledge the lowest. (See Lodge Exhibits 16 and 17). These differences cannot carry much weight in the assessment of comparability; if anything, they tend to buttress the City's position.

A major difference between the parties, perhaps the most significant one, is the approach taken with respect to what kind of array of communities would be most representative, i.e., most comparable. The Lodge has proposed communities from a broad range of population, taxable value, and SEV. Using these factors alone, the City's proposed communities are demonstrably more like Grand Ledge, and more like Charlotte, than *any* of the communities proposed by the Lodge.

The attached chart presents the figures deemed most useful to the panel. (In light of the weight of the "major" factors, i.e., Population, Taxable Valuation, SEV, and to a lesser extent, Department Size and Location, it does not include Crimes, Service Calls, or Taxable Valuation Per Capita. The Lodge, the proponent of Crimes and Service Calls, admits to the difficulty of drawing comparisons, given differences in terminology and the like. Indeed, as noted above, (index) crime figures and service call figures appear to be, at best, neutral, if not more supportive of the City's approach. Likewise, the City's Per Capita figures add little to what the standards listed on the chart provide).

However, no one measure stands alone. It is necessary to look at proposed communities, not in a vacuum, or compared with others in the same list, but with the communities proposed by the other side, in order to make any choice of one against another. Thus, e.g., of the Lodge's proposed list, the statistically closest community to Grand Ledge, over-all, is Eaton Rapids. Its population relative to Grand Ledge is 68%, *and is the closest of the Lodge's proposed communities*. In Taxable Valuation, Eaton Rapids is 66%. In SEV, a measure rejected by the City but proposed by the Lodge, the number drops to 57%. Department size is 73%.

By contrast, the City's Population numbers for its proposed communities are: 85% (Hastings), 80% (Mason), and 89% (St. John's). Taxable valuation percentages for the

three City communities are, respectively: 98%, 103%, 104%. Swartz Creek is 113%, and is *the closest of the Lodge's proposed communities*. The same picture emerges for each of the Lodge's proposed communities. They are almost uniformly more distant from Grand Ledge on the most quantifiable measures than are the City's, and where one approaches Grand Ledge in one area, it is at far remove in others.

The Lodge has proposed communities which enable it to place Grand Ledge in the middle of that array. It then argues that these are comparable communities *because* Grand Ledge falls in the middle. This is essentially bootstrapping. It is not placement in the middle which establishes comparability; it is similarity of communities using accepted standards which does so. The Lodge's is comparing itself with itself, i.e., its proposed cities. However, a look at the SEV figures for the City's comparables shows that Grand Ledge is in the middle of its list as well (Grand Ledge and St. John's are virtually identical). The spread within the comparables from high to low is *10 percentage points*. In the Lodge's proposed list, the spread is *56 percentage points*. As to Taxable Valuation, a standard agreed upon by both parties, the spread in the City's list from high to low is *9 percentage points*. The spread in the Lodge's proposed list is *77 percentage points*.

Finally, as the City argues, the Lodge appears to have "hand-picked" comparables which are to its liking, without any reasonable basis for doing so. The Lodge's witness described the Lodge's methodology as "attempt[ing] to go three above and three below as far as state equalized value, taxable value, and department size," but acknowledged that they are not necessarily the closest three above or three below.

Thus, the question arises: even if a Lodge-proposed community is reasonably "close" to Grand Ledge, what would be the justification for using that community *instead of* one proposed by the City, *which is closer*? What is gained by using a city less like Grand Ledge instead of one more like it? The Lodge's answer seems to be that a "wider" view of communities is more beneficial than a "narrower" view. But there is little support for this proposition presented by the Lodge. It is difficult to discern why it is more beneficial.

The remaining consideration then is whether *any* community proposed by the Lodge should be added to the final selection of comparable communities. Even the likeliest addition, Eaton Rapids, is statistically at some significant remove from Grand Ledge, but

closer than the Lodge's other four. Eaton Rapids is 18 percentage points below the *lowest* number of the City's comparables in population. It is 32 percentage points below the City's *lowest* number in taxable valuation. It is 38 percentage points below the City's *lowest* number in SEV. It is identical with the City's *lowest* in terms of department size.

What is to be gained by adding Eaton Rapids, the Lodge's community closest statistically to Grand Ledge? Other than some vague sense of fairness or equity, i.e., choosing at least one city from each side, which is neither called for nor contemplated by the statute, the answer appears to be – nothing. The object of seeking comparable communities is to provide a base from which statutorily mandated comparisons can be drawn. Charlotte and the three communities proposed by the City present a more than adequate base for the purpose at hand.

AWARD

The decision of the Panel is adopt the proposed list of communities offered by the City.

	<u>Agree</u>	<u>Dissent</u>
Martin L. Kotch, Panel Chair	_____	_____
Jon Bayless, City Delegate	_____	_____
Thomas Krug, Lodge Delegate	_____	_____

December 13, 2004