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**Arbitrator's Report**

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<p><b>City of Lathrup Village and Police Officers Labor Council</b></p>
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**Case No. DO2 B-0224**

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1 **312 Arbitration**

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3 *City of Lathrup Village*  
4 *and*  
5 *Police Officers Labor Council*  
6

7 **Case No. DO2 B-0224**  
8

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9  
10 ***Appearances***

11  
12 **Police Officers Labor Council**

**City of Lathrup Village**

13  
14 Peter Sudnick, Attorney  
15 Lloyd Whetstone, Labor Rep  
16 Scott McKee, Patrolman  
17 Nancy Ciccone, Researcher  
18 John Trupiano, BCBS  
19

Steve Schwartz, Attorney  
Jeff Bremer, City Administrator  
Amy Sullivan, Contractor

20 *Panel Delegates:* J. Edward Simpkins, Chair; Lloyd Whetstone for the Union and Steve  
21 Schwartz for the Employer  
22

23 *Standard of Proof:* Comparability  
24

25 *Comparable Communities:* Franklin, Holly, Northville, Pleasant Ridge, Utica and  
26 Wolverine Lake  
27

28 **History**  
29

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30 The petition for 312 Arbitration was filed on January 26, 2002. The Arbitrator was  
31 appointed March 7, 2003. The hearing proceeded over the course of four sessions that  
32 occurred on October 15, 2003; November 12, 2003, March 9, 2004 and April 13, 2004.  
33

34 On October 15, 2003 Nancy Ciccone appeared and testified on the base wage history. She  
35 was a credible witness.  
36

37 Lloyd Whetstone and Scott McKee appeared on November 11, 2003. No testimony was  
38 taken. The Arbitrator reviewed exhibits for the record and adjourned the proceedings  
39 when it was learned that Mr. Sudnick would not be able to appear because of illness.  
40

41 On March 9, 2004 Frank Audia appeared and testified on the effects of the Headlee  
42 Amendment and Proposal A on the current revenue picture. He was a credible witness.  
43

44 Amy Sullivan testified on wage and health care comparables. She, too, was a credible  
45 witness.  
46

1 On April 13, 2004 Jeffrey Bremer testified on factors constraining millage rates  
2 particularly, the Headlee Amendment and Proposal A. He testified further on a grievance  
3 filed by the Union regarding sixteen hour shifts. He was a credible witness.  
4

5 The hearing was closed following the testimony by Bremer. On May 11, 2004, the parties  
6 were to submit their last best offers and on June 21, 2004 briefs were to be submitted.  
7 Both parties were in approximate compliance with these agreed upon dates.  
8

9 August 20, 2004 was selected as the date for the panel to meet and vote on the proposals  
10 submitted as last best offers. The Arbitrator's award was to issue on or prior to  
11 August 25, 2004.  
12

13 The Arbitrator's vote is recorded as presented below.  
14  
15

16 **Issue 1: Wages**  
17

18 The Employer proposes no increase in wages for the year 2002. For 2003 the Employer  
19 proposes a two per cent (2%) increase in base pay effective July 1, 2003. It further  
20 proposes off-setting the cost of the increase by dividing the difference in the cost of the  
21 prescription drug rider on June 30, 2002 and the cost of the prescription drug rider on the  
22 date of the arbitration panel's award, divided by the number of bargaining unit employees.  
23

24 The Employer points out that it pays patrol officers more than such employees are paid in  
25 comparable communities. The Employer is able to show that even with no increase in the  
26 base rate for 2002-2003, Lathrup Village patrol officers remain competitive with Franklin  
27 and exceed wages paid to officers in Utica, Northville, Pleasant Ridge and Holly. Its  
28 officers are paid virtually the same as those in Wolverine Lake. Patrol officers in Lathrup  
29 Village exceed the average pay of patrol officers in comparable communities by six and a  
30 half per cent (6.5%).<sup>1</sup>  
31

32 The Employer's offer for the second year would maintain Lathrup Village as the third  
33 highest paid police force among the comparable communities and within one per cent  
34 (1%) of the two highest paid communities.<sup>2</sup>  
35

36 Lathrup Village believes that its officers should be compensated in the middle rather than  
37 at the top of the comparable communities. This is because its tax base ranks midway  
38 between the highest and lowest tax bases of the comparable communities.<sup>3</sup>  
39

40 The Employer points out that its Department of Public Works employees are paid below  
41 the average for the comparable communities. They received a two per cent (2%) increase

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<sup>1</sup> See Employer Brief, p. 12.

<sup>2</sup> See Employer Brief, p. 13

<sup>3</sup> Tax Bases: Northville, \$293,578,430; Franklin, \$229,353,010; Utica, \$170,408,855; Wolverine Lake, \$130,550,070; Holly, \$113,074,910 and Pleasant Ridge, \$100,191,890. Lathrup Village's Tax Base is \$155,517,895.

1 that was, nevertheless, below what the comparable communities are paying their Public  
2 Works employees.<sup>4</sup> As of July, 2002, the Employer notes, even given a base wage freeze,  
3 Lathrup Village ranks near the top in wages paid to patrol officers and continues to rank  
4 near the top through 2003.<sup>5</sup>

5  
6  
7 **Rebuttal on Wage Proposal**  
8

9 The Union proposes a three per cent (3%) across-the-board increase effective July 1, 2002  
10 that is retroactive to that date. It proposes a three per cent (3%) increase at all steps  
11 beginning July 1, 2002 through June 30, 2003 fully retroactive to July 1, 2002. In year  
12 two, July 1, 2003 through June 30, 2004, the Union proposes a three per cent (3%)  
13 increase at all steps fully retroactive to July 1, 2003. It notes that Lathrup Village officers  
14 have been the highest paid of the aforementioned comparable communities, a fact that has  
15 allowed the City to attract and retain qualified personnel. The Union seeks to retain its  
16 position among the comparable communities. The Union notes that three per cent (3%) is  
17 the average wage increase that the comparable communities have paid their patrol officers  
18 from 1999 through 2005.<sup>6</sup>

19  
20 The Union notes further that the Employer's situation with respect to declining tax base is  
21 no different from the situation that the aforementioned comparable communities face.  
22 They are all operating under the constraints of Proposal A and the Headlee Amendment.  
23 Despite these constraints, the Union notes, the comparable communities have afforded  
24 their employees salary increases commensurate with the rise in the cost of living.<sup>7</sup> To do  
25 less than what comparable communities have done, the Union states, would amount to a  
26 significant reduction in the compensation of Lathrup Village Patrol Officers.

27  
28 **Vote on Issue 1**  
29

30 Should the Panel adopt the Employer's proposal that awards employees no increase in  
31 year one of the contract and a two per cent (2%) increase in year two of the contract?  
32 Should the panel award the Employer the right to offset the two per cent (2%) increase in  
33 year two of the contract by dividing the difference in the cost of the prescription drug rider  
34 on June 30, 2002 and the cost of the prescription drug rider on the date of the arbitration  
35 panel's award, divided by the number of bargaining unit employees? Or should the panel  
36 adopt the Union's proposal that awards employees an increase of three per cent (3%)  
37 including retroactivity in each of the two contract years?

38  
39 The Arbitrator votes to adopt the Union's proposal and notes that the impact of failing to  
40 enable unit members to maintain the cost of living affects both the past two years as well  
41 as the next two years as the Union has argued. The arbitrator is also persuaded that the  
42 constraints imposed by Proposal A and by the Headlee Amendment are real and of great

<sup>4</sup> See Employer Exhibit 48 and Transcript III, p. 119). Also see Employer Brief, p. 13.

<sup>5</sup> See Employer Brief, p. 14; Employer Exhibit 60 and Transcript III, pp. 122-131.

<sup>6</sup> See Union Exhibits 1-4, p. 3 and Union Brief, p. 8.

<sup>7</sup> Ibid.

1 concern. But the concern is not limited to a single community. It is shared by all  
2 communities including those listed as comparable to Lathrup Village. The Union was  
3 able to show that the comparability standard favors its proposal. The Arbitrator is  
4 persuaded that the Employer faces diminishing fiscal capacity but that it has time to make  
5 appropriate adjustments that cushion the impact for current employees. What has been  
6 proposed fails to address legitimate employee needs to maintain their standard of living.

7  
8  
9  
10 **Issue 2: Prescription Drug Rider**

11  
12 The Employer proposes an amendment to Article 17, Section 1. That Article reads:

13  
14 Section 1. The City will provide Blue Care Network coverage  
15 (BCN5 Certificate) with Program A Riders and a \$3.00 co-  
16 pay on prescription drugs as offered by the Blue Care  
17 Network of Southeast Michigan, a Blue Cross and Blue  
18 Shield of Michigan Affiliate.

19  
20 A. As soon as possible after the date of this Agreement, each  
21 employee presently covered under the Blue Cross Preferred  
22 Plan shall change to Blue Care Network Plan<sup>8</sup>

23  
24 The Employer proposal reads:

25  
26 Effective six weeks after the Act 312 arbitration panel issues its  
27 award or as soon thereafter as practicable, the City will  
28 provide Blue Care Network coverage (BCN% Certificate)  
29 with Program A Riders and a \$10.00 co-pay on generic  
30 prescription drugs and \$20.00 on brand name prescription  
31 drugs as offered by the Blue Care Network of Michigan  
32 Affiliate. Prior to that time, the City will provide health  
33 care coverage as described in the 1999-2002 collective  
34 bargaining agreement.

35  
36  
37 The Employer points out that all other City employees have switched to a co-payment of  
38 ten dollars (\$10.00) for generic drugs and twenty dollars (\$20.00) for brand name drugs.<sup>9</sup>  
39 The Employer is also able to show that its costs have increased significantly, rising over  
40 twenty-three per cent (23.23%) in 2000-2001 and more than forty-eight per cent (48%)  
41 since that time.<sup>10</sup> The City also notes that no comparable community has a three dollar  
42 (\$3.00) or three dollar fifty (\$3.50) drug rider.<sup>11</sup>

<sup>8</sup> Union Exhibit 1. p. 12

<sup>9</sup> See City Exhibit 44.

<sup>10</sup> See Employer Exhibits 34 and 36.

<sup>11</sup> See Employer Exhibit 37 and Employer Brief, p. 16.

**Rebuttal on Prescription Drug Rider**

Presently active and retired employees co-pay three dollars (\$3.00) per prescription. The Union proposes to continue this practice. It notes that the savings to the Employer are negligible with respect to this unit.<sup>12</sup> It argues that under the proposed 10/20 co-pay, the Employer's savings for a single-person contract is less than thirty dollars (\$30.00) a month and for a two-person contract, the difference is less than seventy-dollars (\$70.00) a month. Family contracts, the Union notes, yield savings of eighty-dollars a month (\$80.00).<sup>13</sup> The Union estimates the total monthly savings for the Employer to stand at approximately three hundred fifty dollars a month while increasing out-of-pocket costs for employees significantly.

The Union's estimates of the Employer's costs appear to be reasonable. However, the Union has no reliable estimates of how these savings for the Employer impact upon members of the unit. Primarily the Union offers hypothetical examples. It notes that an employee who fills two prescriptions per month will have an increased cost of fourteen dollars (\$14.00) a month if generic drugs are used and an increased cost of thirty-four (\$34.00) dollars a month if non-generic drugs are used.<sup>14</sup> The Arbitrator suspects that Lathrup Village employs a reasonably fit and healthy police force and although the claim that some unit members and retirees may require two or more prescriptions per month is a painful reality, it is a reality that is shared by similarly situated employees in the comparable communities.

**Vote on Issue 2**

Should the panel accept the Employer's proposal to alter Article 17, Section 1 and increase the Program A Riders co-pay from \$3.00 to a 10/20 co-pay or should the language remain unchanged leaving a \$3.00 co-pay in effect?

The Employer's proposal is supported by the comparability standard and is a reasonable response to managing the risk of rising prescription drug costs.

The Arbitrator accepts Employer's internal comparability standard as reasonable and consistent with the external comparability standard.

The Arbitrator agrees with the Union that the negative impact on unit members in managing the change in the prescription drug co-pay is potentially greater than any immediate cost savings that will accrue to the Employer. The Arbitrator notes, however, that the Employer reduces its risk in a manner that appears consistent with what comparable communities are doing. The Employer was able to show that its costs are steadily increasing even as its capacity to generate more revenue is constrained. Having maintained its standing as the highest paid police force among the comparable

<sup>12</sup> See Union Brief, pp. 14-15.

<sup>13</sup> See Union Brief, pp. 13-14.

<sup>14</sup> See Union Brief, p. 14.

1 communities, the Lathrup Village patrol officers are able to pay what lesser paid patrol  
2 officers pay for prescription drugs in the comparable communities. The Employer  
3 proposes that the City will provide Blue Care Network coverage with Program A Riders  
4 and a \$10.00 co-pay on generic prescription drugs and a \$20.00 co-pay on brand name  
5 prescription drugs as offered by the Blue Care Network of Michigan Affiliate. The  
6 Employer notes that no comparable community has a \$3.00 or \$3.50 drug rider. The  
7 Employer notes further that it cannot capture the monies already paid out over the past two  
8 years under the \$3.00/\$3.50 co-pay except by denying an increase in year one of the  
9 contract or by denying retroactivity.

10  
11 The Arbitrator agrees that we cannot un-ring the bell. Those monies lost to the Employer  
12 cannot be recaptured; but, going forward the Employer is relieved of the burden of  
13 sustaining both current employee and retiree co-pays at the \$3.00/\$3.50 rate. Both current  
14 employees as well as retirees carry the burden of tripling the cost of their co-pay rates in  
15 perpetuity.

16  
17 The Arbitrator notes that the comparability standard favors the Employer's proposal and  
18 votes for the Employer's proposal as being consistent with prevailing practice in the  
19 comparable communities.

### 20 21 **Issue 3: Health Insurance—Plan Selection**

22  
23 The Union is the moving party on the matter of Plan Selection. It proposes a modification  
24 of Article 17, Section 7. That provision presently reads:

25  
26 Employees will have the option of enrolling in the City offered  
27 P.P.O. or Bankers Life, provided the employee pays the  
28 additional cost over the Blue Care Network coverage.

29  
30 The Union notes that the City of Lathrup Village currently pays for a hundred per cent  
31 (100%) of the premium cost for employees enrolled in the BCN health care plan. The  
32 Union notes further that two employees elect single-person coverage with Bankers Life at  
33 an annual cost per individual of seven hundred eighty-five dollars (\$785.00). These are  
34 out-of-pocket costs, the Union notes. One employee has two-person coverage at a cost of  
35 fifteen hundred dollars (\$1500.00) a year. Three employees have Bankers Life family  
36 coverage at a cost of seven hundred thirty-five dollars (\$735.00) a year. The Union  
37 juxtaposes eliminating these costs against the possibility that the Employer's proposal of  
38 awarding no increase in year one and a two per cent (2%) increase in year two of the  
39 contract will prevail.<sup>15</sup>

### 40 41 **Rebuttal of Health Insurance-Selection Plan**

42  
43 The Employer proposes no change in Article 17, Section 7 and notes that eliminating the  
44 requirement that employees pay the difference between Blue Care Network and COPS  
45 Trust would aggravate an already worsening situation. The Employer points out that its

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<sup>15</sup> See Union Brief, pp. 15-16

1 cost of providing health insurance under Blue Care Network has increased an average of  
2 seventeen per cent (16.8%) a year since the year 2000.<sup>16</sup>

3  
4 **Vote on Issue 3**

5  
6 Should the panel vote to eliminate the voluntary employee contribution to the health  
7 insurance premium by changing the language in Section 7 of Article 17, or should the  
8 language be retained?

9  
10 The Union has made a conditional proposal. Essentially, it has proposed that if the  
11 Arbitrator votes in favor of the Employer's wage proposal, consideration should then be  
12 given to reducing certain other costs presently borne by unit members, specifically those  
13 costs arising under Article 17, Section 7. The Arbitrator found for the Union on the wage  
14 question. Furthermore the Union did not show that Article 17, Section 7 imposes a  
15 grievous condition and that such condition has aroused grievous responses. The Arbitrator  
16 also notes that the Employer has argued persuasively in showing that its health insurance  
17 costs have risen nearly seventeen per cent in the past four years.

18  
19 The Arbitrator votes with the Employer to retain Section 7 of Article 17 in the successor  
20 agreement.

21  
22  
23 **Issue 4: Personnel Manual (Maintenance of Conditions)**

24  
25 The Employer proposes removal of all references to the Personnel Manual from the  
26 Agreement. It would incorporate only non-economic items from the Personnel Manual  
27 into a successor agreement. These items would be incorporated under a new and separate  
28 article. The Employer notes that the Personnel Manual is a 1981 document that contains  
29 much out of date information.

30  
31 **Rebuttal of Proposal to Remove References to Personnel Manual**

32  
33 The Union notes that a number of economic items, such as expense reimbursement, are  
34 not addressed in the collective bargaining agreement but are provided for in the Personnel  
35 Manual. The Union further believes that the parties will disagree over what provisions of  
36 the manual are economic and what provisions are non-economic. The Union believes that  
37 this is a matter for negotiation between the parties.

38  
39 **Vote on Issue 4**

40  
41 Should the panel adopt the Employer's proposal to eliminate references in the contract to  
42 the Personnel Manual and to incorporate certain non-economic language into the  
43 successor agreement or should the panel adopt the Union's proposal to carry over such  
44 references into a successor agreement?<sup>17</sup>

<sup>16</sup> See Employer Brief, p. 19. Also see Employer Exhibits 34, 35.

<sup>17</sup> See Employer Exhibit 43 and Transcript 4, p. 10 and 101). Also see Transcript 1, p. 68, 97.



1 The Employer would like to clean up the contract language by removing references to the  
2 Personnel Manual, a document dating back to 1981. The Arbitrator believes that the  
3 manual may be both dated and redundant but notes no claims that it has lead to grievances  
4 or has otherwise signaled a need for clarification. It is in the contract because one side  
5 still wants it there. Contract language prevails absent evidence that it does not work.  
6 Such evidence generally arises out of grievances and appeals for redress.

7  
8 The Employer did not show any clear need to revise the contract language. The Union  
9 notes that it may not agree with the Employer's interpretation of what is economic in the  
10 Personnel Manual and what is non-economic. There must be an opportunity, the Union  
11 argues, to negotiate each provision found in the Manual before voiding the document by  
12 eliminating contractual references to it.

13  
14 The Arbitrator votes with the Union to retain contractual references to the Personnel  
15 Manual in the successor agreement.

16  
17  
18  
19 **Issue 5: Subcontracting (Management Rights)**  
20

21  
22 The Employer proposes a change in the contract that awards it the right to subcontract the  
23 midnight shift to another police department while guaranteeing that no unit member can  
24 be laid off but would be assigned to either the morning or afternoon shift. The Employer  
25 notes that the City of Southfield already provides firefighting, emergency medical services  
26 (EMS), emergency dispatching and library service to Lathrup Village. The City of  
27 Berkley provides animal control services. Lathrup Village also subcontracts its building  
28 inspection and its tax assessment services.<sup>18</sup>

29  
30 The City notes that Pleasant Ridge and Holly have the unlimited right to subcontract  
31 bargaining unit work. Wolverine Lake also has the right to subcontract. Northville may  
32 subcontract provided that bargaining employees are not laid off or suffer reduction in  
33 pay.<sup>19</sup>

34  
35 The Employer notes that the parties were unable to reach agreement on subcontracting  
36 although of six patrol officers, one has been called to military service in Iraq for eighteen  
37 months and a second officer, at one time, was on medical leave for six weeks. As a result  
38 of the manpower shortage, patrol officers had to work double shifts that resulted in several  
39 grievances that the higher work load was affecting the health and safety of unit  
40 members.<sup>20</sup>

41  
42 The Employer quoted from Grievance 03-314:<sup>21</sup>

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<sup>18</sup> See Employer Brief, p. 21, 22.

<sup>19</sup> See Employer Exhibit 31.

<sup>20</sup> See Employer Brief, p. 24 and Employer Exhibits 66-67.

<sup>21</sup> See Employer Brief, p. 24 and Employer Exhibit 67.

1 With the lack of manpower officers are working multiple 16  
2 hour shifts by themselves to cover the patrol duties for the  
3 City. The Union believes that having only four officers  
4 working patrol for all three shifts poses serious health and  
5 safety issues to these officers. Also, with no supervisors  
6 working the road it leaves these officers without the proper  
7 support they need to do the job.<sup>22</sup>

8  
9  
10 **Rebuttal of Proposal to Subcontract**

11  
12 The Union notes that Franklin and Utica do not have any contract language regarding  
13 subcontracting. In Pleasant Ridge, the Union notes, services are contracted while Pleasant  
14 Ridge does not specify whether subcontracted services can include bargaining unit work.<sup>23</sup>  
15 Wolverine Lake's authority to subcontract, the Union adds, is limited to the purchase,  
16 construction, and improvement of facilities. Holly, likewise, permits subcontracting of  
17 certain processes, facility maintenance or location of service work, the Union notes  
18 further.

19  
20 The Union acknowledges that the Panel has the authority to make a determination  
21 regarding subcontracting but cautions that such subcontracting carries the potential for  
22 miscommunication, questions of authority, as well as differences in training and protocols.  
23 It cautions further that if subcontracted officers make better wages than unit members,  
24 morale issues will certainly arise.

25  
26 The Union asks that the Panel remand this issue to the parties for further negotiation and  
27 until such time as a change is negotiated that the language of Article 3, Section 1  
28 governing subcontracting remain as is.

29  
30 **Vote on Issue 5**

31  
32 Should the panel adopt the Employer's proposal to allow subcontracting midnight shift  
33 patrols to another police department? Or should the panel adopt the Union's proposal to  
34 remand this issue to the parties for subsequent negotiation?

35  
36 The issue of subcontracting is to be considered on the basis of the trend among the  
37 comparable communities as well as whether the subcontracting will lead to layoffs of the  
38 current work force. The issue is brought to life by the grievance that was filed.

39  
40 The Arbitrator notes that the Employer has shown that the present system of running three  
41 shifts is stretched to the point where the Union has sought relief through the grievance  
42 procedure. The Employer has argued forcefully that its ability to generate new revenue is  
43 increasingly constrained implying, of course, that it is unlikely that police numbers will  
44 increase. The Arbitrator notes, further, that it is in the public's interest for Lathrup Village

<sup>22</sup> Employer Brief, p. 24.

<sup>23</sup> See Union Brief, p. 19.

1 to have the capacity to police the City, including the capacity to provide midnight police  
2 coverage when regular staff cannot be expected to provide that coverage.

3  
4 The Arbitrator votes with the Employer on this matter noting that the Employer has shown  
5 that comparable communities allow subcontracting as an option when they lack the fiscal  
6 and/or personnel capacity that is required to provide a desired service in-house.

7  
8  
9  
10 8/26/01

11 Date



J. Edward Simpkins, Arbitrator