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STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION UNDER  
ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

CASE NO. L04 L-7002

BETWEEN  
THE CITY OF MUSKEGON HEIGHTS  
- and -  
THE POLICE OFFICERS ASSOCIATION OF  
MICHIGAN

OPINION AND AWARD

DATE OF ACT 312 PETITION:	September 27, 2005
DATE PANEL CHAIR APPOINTED:	November 30, 2005
DATE OF PRE-HEARING CONFERENCE:	January 27, 2006
DATE OF HEARING:	July 31, 2006
DATE LAST BEST OFFERS EXCHANGED:	August 21, 2006
DATE BRIEFS FILED:	October 23, 2006
DATE RECORD CLOSED:	October 27, 2006

ARBITRATION PANEL:

Richard N. Block, Neutral Chair  
Robert Jackson, Jr., City Delegate  
James DeVries, Union Delegate

APPEARANCES:

For the Police Officers Association of Michigan  
James DeVries, Business Agent  
John Barr  
Theodore N. Williams, Jr.  
Eugene Anderson  
For the City of Muskegon Heights  
Theodore N. Williams, Jr., Esq.  
Reatha Anderson  
Loriann Doody

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## **BACKGROUND**

The most recent collective bargaining agreement between the City of Muskegon Heights, Police Department, Patrol Unit [City] and the Police Officers Association of Michigan [Union] covering the full time non-supervisory police officers in the City expired on December 31, 2004. Bargaining on a new collective agreement commenced, but the parties were unable to reach an agreement on all issues before them. Thus, the Union, on September 27, 2005 filed a petition with the Michigan Employment Relations Commission pursuant to Act 312, Public Acts of 1969, as amended requesting arbitration under that law. On November 30, 2005, the Commission appointed Richard N. Block as the Neutral Chair of the Arbitration Panel. A pre-hearing conference was held on January 27, 2006. After the conference, the parties identified the following issues to be in dispute and also agreed that these issues were economic:

- A. Wages (joint issue)
- B. Part-time employees (Union issue)
- C. Pension Multiplier (Union issue)
- D. Paid time off (City issue)

The Union and the City agreed the resulting collective bargaining agreement would be for four (4) years, commencing on January 1, 2005 and expiring on December 31, 2008. All issues except for wages would be prospective from the date of the award, with wages retroactive to January 1, 2005.

## **STATUTORY FACTORS**

With respect to the factors that must be considered by the panel, Section 9, Act 312, Public Acts of 1969, as amended, provides in relevant part:

the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the City.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Neither party has contended that factors a, b, or g are relevant to these proceedings.

Accordingly, in the circumstances of this case, the applicable factors to be considered by the panel, depending on the issue, are c, d, e, f, and h.

### COMPARABLES

The parties agreed at the pre-hearing conference that the following communities are comparable to the City of Muskegon Heights, within the meaning of Act 312, for the purposes of this case: Big Rapids, Cadillac, Grandville, Niles, St. Joseph and Sturgis (Arbitrator's Letter Dated January 30, 2006).

## **JOINT ISSUE: WAGES**

### **LAST BEST OFFERS (LBO's) ON WAGES**

#### **Last Best Offer of the Union**

##### **Effective January 1, 2005**

Effective the first full pay period following January 1, 2005 - 2% to 2.75% based on the Consumer Price Index (CPI).

##### **Effective January 1, 2006:**

Effective the first full pay period following January 1, 2006 - 2% to 2.75% based on the Consumer Price Index.

##### **Effective January 1, 2007:**

Effective the first full pay period following January 1, 2007 - 2% to 3.5% based on the Consumer Price Index.

##### **Effective January 1, 2008**

Effective the first full pay period following January 1, 2008 - 2% to 3.5% based on the Consumer Price Index.

The CPI used to determine wage increases is the CPI in the collective bargaining agreement covering the command officers between the City and the Command Officers Association of Michigan. The index used in the command officers agreement is the CPI for Urban Wage Earners and Clerical Workers, United States City Average, all items, the CPI-U (City Ex. 4, Tab 2B, p. 29).

#### **Last Best Offer of the City**

Effective the first full pay period following January 1, 2005 --1.5%

Effective the first full pay period following January 1, 2006 -- 1.5%

Effective the first full pay period following January 1, 2007 -- 2.0%

Effective the first full pay period following January 1, 2008 -- 2.0%.

## **POSITIONS OF THE PARTIES ON WAGES**

### **Position of the Union**

The Union argues that its members received no increase in wages in 2002 and 2003 and in 2002 the top step wage in the City was \$38,172 while the comparable communities' average at that time was \$40,264. Only in 2004 did the Union's members receive a wage increase of 3% putting them at \$39,317 on January 1, 2004, while the comparable communities police officer average wage increased to \$43,221. In order for the Union's members to maintain a relatively similar position to what they had in 2002, a wage increase of at least 7.22% would be required. But the Union has not requested such an increase. Moreover, the Union points out that officers in the comparable communities received on average approximately 10.44% in wage increases for the three-year period between 2002 and 2005.

The Union says its LBO on wages is based on the CPI, which is the same index used for the command officers of the City in their settlement for years 2005 and 2006. Additionally, the Union points out that even if the panel were to adopt its LBO on wages, this would still place the City of Muskegon Heights police officers last among the comparable communities and would certainly not provide any windfall for the officers in merely making a small catch up on wages lost when they had no increases for two years.

The Union addresses the concern of the City regarding its ability to pay, *i.e.*, its financial condition. Here the Union directs attention to the prior award and the neutral arbitrator's comments regarding the City's financial condition. Overall, the Union states that the arbitrator in the prior award concluded that the City was on its way to a faster financial recovery than anticipated and awarded the Union a 3% increase in the final year of the now-expired contract. Consequently, the Union argues that a 2% to an overall 3.5% increase is in keeping with the

financial ability of the City as demonstrated in other collective bargaining agreements entered into by the City.

Lastly, the Union says that the panel should not make an award based on each contract year as urged by the City. They say that to do so "low balls" the first two years and then comes in closer to the Union's proposal in the last two. The Union believes this is unreasonable and less than the wage improvements given to every other bargaining unit in the City.

### **Position of the City**

The City's principal argument is that it is financially unable to bear the overall wage increase burden proposed in the Union's last best offer. In short, it does not have the "ability to pay" the requested wage increases sought by the Union.

The City also refers us to the prior award and in particular the discussion regarding the City's ability to pay. But, contrary to the predictions in that prior award, the City is facing a financial deficit in 2006 since it currently only has on hand enough funds, or a positive fund balance, to pay one quarter of one month's expenses, of approximately \$129,000.00.

Moreover, the City tells us that its revenue stream is downward and does not look to turn upward in any time in the future. This downward trend is reflected specifically in revenue sharing from the State of Michigan and the City's income tax and property tax revenues. This downward trend in revenues is reflected in the fact the City is losing population and taxpayers, with 51% of the population consisting of children less than 18 years and elderly over age 60.

## DISCUSSION ON WAGES

The Union argues that the wages should be one issue, while the City contends that each year should be separate issue. In order to retain maximum flexibility, a majority of the panel rules that each year shall be a separate issue.

The wage increases in the Union's LBO are linked to an external factor, the CPI- U. Because the Union's wage LBO incorporates retroactivity, it is necessary to present the CPI in question. Table 1 presents the relevant CPI-U data and the related wage increase in the Union LBO for each year.

TABLE 1  
CONSUMER PRICE INDEX, URBAN WAGE  
EARNERS AND CLERICAL WORKERS (CPI-U),  
SEPTEMBER ONLY, 2001-07 AND RESULTING INCREASE BASED  
ON UNION WAGE LBO

Year	September CPI -U	Sept. to Sept. Pct. Change	Pct. Increase in Union LBO Effective the Following January 1
2001	174.8		
2002	177.0	1.3%	
2003	181.0	2.3%	
2004	185.4	2.4%	2.40% (eff. January 1, 2005)
2005	195.0	5.2%	2.75% (eff. January 1, 2006)
2006	198.4	1.7%	2.00% (eff. January 1, 2007)
2007	unknown	unknown	unknown

SOURCE FOR CPI-U: United States Department of Labor

Based on the foregoing, the comparison between the two LBO's is shown in Table 2.

TABLE 2  
COMPARISON OF CITY AND UNION LBO'S BASED ON ACTUAL PERCENTAGE  
CHANGES IN SEPTEMBER-SEPTEMBER CPI-U , 2004-07

	January 1, 2005	January 1, 2006	January 1, 2007	January 1, 2008
CITY LBO	1.5%	1.5%	2.0%	2.0%
UNION LBO	2.4%	2.75%	2.0%	unknown

As can be seen, the Union's LBO would increase wages by 2.4% on January 1, 2005 and 2.75% on January 1, 2006, compared to 1.5% for the City in each of the first two years. Both LBO's would increase wages by 2% on January 1, 2007, due to the 1.7% increase in the CPI-U between September 2005 and September 2006; therefore there is no dispute regarding the wage increase for January 1, 2007, Year 3. The effect of the Union's LBO on the January 1, 2008 cannot be known with certainty at this time. Thus, based on the foregoing, the parties differ in their wage LBO's for Year 1, January 1, 2005, Year 2, January 1, 2006, and, most likely, Year 4, January 1, 2008.

Although the police in Muskegon Heights are on 12-hour shifts (Tr. 10), the panel will use a 40-hour per week as the basis for determining the wage increase, as 40 hours is the average workweek in collective bargaining agreement (City Ex. 4, Tab. 2B, p. 28). In addition, because two of the comparables on 12-hour shifts, Cadillac and Grandville, use compensatory time-off in lieu of overtime, and one, Big Rapids, gives employees the option of compensatory time (Tr. 10), only the 40-hour base provides a uniform set of working hours.

This issue implicates several of the statutory factors. Therefore, each of the statutory factors will be discussed separately.



### **Statutory Factor: Comparability**

Turning to the comparable municipalities, the Union's LBO for years 1 and 2 is more consistent with statutory factor of comparability than the City's LBO for years 1 and 2. Even with the Union's LBO for years 1 and 2, the police in Muskegon Heights will be paid less than the police in all of the comparable cities based on a 40-hour week. With a 2.4% increase for January 1, 2005, the base 40-hour per week salary for an officer at the top step in the City will be \$40,261. The next lowest city among the comparables, Cadillac, provides a top-step salary of \$41,035. A 2.75% increase effective January 1, 2006 will provide a top step 40-hour per week salary for a police officer in Muskegon Heights of \$41,368. Of the five other comparables for which data are available, the next lowest salary, in Cadillac, is \$42,061. (Un. Ex. 2, Tab 3)

With respect to Year 4, the wage rate associated with the Union's LBO is unknown. Therefore, it is impossible to determine the relationship between the wage rate under the Union's LBO and the comparables, five of which had not yet been determined on the day of the hearing.

Table 3, on page 10, below, compares the percentage difference between the top-step police officer 40-hour wage in Muskegon Heights and the mean of the top-step police officer 40-hour wage for the comparables for the period January 1, 2006 through January 1, 2006. (January 1, 2007 is excluded because the wage LBO's for that date are identical. January 1, 2008 is excluded because wages for that date have been determined for only two of the comparables, Cadillac and Sturgis (Un. Ex. 2, Tab 3).) As can be seen, on January 1, 2002, the Muskegon top-step police officer 40-hour wage was 94.8% of the mean top-step police officer 40-hour wage of the comparables. This percentage had dropped to 91.2% by January 1, 2004. Even under the Union's LBO for Year 1, this percentage would continue to decline, as it would

be only 90.5% on January 1, 2005. Under the Union's LBO for Year 2, this percentage would increase to 92.7% on January 1, 2006, but it would still be below the percentage on January 1, 2002.

Based on the foregoing, a majority of the panel finds that the statutory factor of comparability supports the Union's LBO for Years 1 and 2. On the other hand, because the wage rate associated with the Union's LBO for Year 4 is unknown, a majority of panel does not find that the Union's LBO for Year 4 is more consistent with the statutory factors than the City's LBO for Year 4.

TABLE 3  
MUSKEGON HEIGHTS  
TOP-STEP POLICE OFFICER 40-HOUR WAGE AND MEAN OF COMPARABLES,  
ACTUAL AMOUNTS AND RATIO OF MUSKEGON HEIGHTS TO COMPARABLES  
MEAN  
JANUARY 1 OF EACH YEAR, BASED ON UNION 2005-06 WAGE LBO, 2002-2006

	1/1/2002	1/1/2003	1/1/2004	1/1/2005	1/1/2006
MUSKEGON HEIGHTS UNION LBO	\$38172	\$38172	39317	\$40261	\$41368
COMPARABLES MEAN	\$40264	\$41566	\$43112	\$44468	\$44602 (excludes Grandville)
PERCENTAGE, MUSK. HGTS. TO COMPARABLES	94.8%	91.8%	91.2%	90.5%	92.7%

**Statutory Factor: Ability of the Unit of Government To meet the Costs Involved**

Considerable time and effort has been expended by the City of Muskegon Heights to demonstrate that it is unable to meet the substantial costs they claim they will likely incur with

the proposals of the police officers. Indeed, the City urges the panel to give the greatest weight to this factor, i.e., the "ability to pay".

The City has provided the budgets and some of the collective bargaining agreements between comparable municipalities and their police unions. The City has also provided other budgetary documentation an effort to show that the city's finances are weak.

The City has had a negative fund balance for many years, including the time covered by the Act 312 Award in 2003. The City has acknowledged that its previous deficit position has been removed but nonetheless it continues to confront a substantial likelihood of another deficit for the coming term of this contract. The City acknowledges a small current surplus that the finance director contends will not likely last since the collection of revenue from real property taxes and the State of Michigan's revenue sharing has declined (Tr. 56-63). Thus, the panel finds that the City is not in financial health by any means.

Despite, this, a majority of the panel is persuaded that the City is able to absorb the wage increases in Years 1 and 2 of the Union's LBO. In this respect the previous award provides some guidance. In the third year of the previous contract, the prior panel awarded the Union a 3% wage increase (City Ex. 4, Tab 2A). This is especially significant since the City was still in its financial recovery phase, having issued budget stabilization bonds (Tr. 57-58). Since then the City has not seen bankruptcy and has managed to do well enough to achieve a small surplus. Given those circumstances it appears to us that the City has done well in its financial planning and maintained financial discipline to come out of a deficit. Thus, it cannot be said that the record establishes that the City cannot afford to pay the Union-proposed wage increases of 2.4% effective January 1, 2005 and 2.75% effective January 1, 2006.

On the other hand, the Union's Year 4 proposal, to be effective January 1, 2008, could result in a 3.5% increase for that year if the percentage increase in the CPI-U from September, 2006 to September 2007 is 3.5% or greater. Given the somewhat difficult financial situation of the City, it is unfair to require the City to accept an unknown increase for January 1, 2008 for which it cannot budget. In addition, a 3.5% increase would be greater than the City has paid in any year starting with 2002 (City Ex. 4, Tab 2A). Thus, the City's wage LBO for Year 4, January 1, 2008, is more consistent with the factor of ability to pay than the Union's wage LBO for Year 4.

#### **Statutory Factor: Public Interest**

The public has an interest in the economical, efficient and honest provision of police services a police force that is well motivated because it is properly paid in compensation with comparable communities police forces in order to maintain morale. A police force is then well motivated because it is properly paid in comparison with like police forces in comparable communities. The officers need compensation that engenders their undivided loyalty and devotion to duty and not to encourage the diminution of their duties. Consequently, the public interest requires that a police officer's income be equitable vis-à-vis the officers in the comparable cities. Therefore, this factor somewhat supports the Union's LBO on wages.

#### **CONCLUSION ON WAGES**

Based on the foregoing, a majority of the panel finds that the LBO's of the Union on wages for Years 1 and 2 are more consistent with the statutory factors than the City's LBO on wages for Years 1 and 2. As noted, the panel finds that LBO's of the Union and City are identical for Year 3. A majority of the panel finds that the LBO of the City on wages for Year 4

is more consistent with the statutory factors than the Union's LBO for Year 4, as the panel majority does not wish to impose an unknown wage liability on the City.

### **AWARD ON WAGES**

#### **Year 1, Effective January 1, 2005**

The LBO of the Union for Year 1, effective January 1, 2005, an increase of 2.4%, is accepted. The LBO of the City for Year 1, effective January 1, 2005, an increase of 1.5% is not accepted.

#### **Year 2, Effective January 1, 2006**

The LBO of the Union for Year 2, effective January 1, 2006, an increase of 2.75%, is accepted. The LBO of the City for Year 2, effective January 1, 2006, an increase of 1.5% is not accepted.

#### **Year 3, Effective January 1, 2007**

The LBO's of the Union and the City for Year 3, effective January 1, 2007, are identical, an increase of 2%. Thus, the panel rules that the parties agree that the wage increase for Year 3 shall be 2%.

#### **Year 4, Effective January 1, 2008**

The LBO of the City for Year 4, effective January 1, 2008, an increase of 2%, is accepted. The LBO of the Union for Year 4, effective January 1, 2005, an increase of 2% to 3.5%, is not accepted.

## **UNION ISSUE -PAID TIME OFF**

### **LAST BEST OFFERS ON PAID TIME-OFF**

#### **Last Best Offer of the Union**

The Union proposes the following language:

Section 19.1. . . . Employees shall be entitled to one (1) personal day which will be taken at a time mutually agreed upon by the Chief of Police and the Employee. Such personal day may be used in two (2) hour increments. The taking of a personal day may not result in the necessity of calling an additional officer in on overtime.

Effective January 1, 2007, employees shall be entitled to twenty-four (24) hours of personal time.

Effective January 1, 2008, employees shall be entitled to thirty-six (36) hours of personal time.

#### **Last Best Offer of the City**

The City proposes that the status quo be maintained with the current language of Section

19.1.

### **POSITIONS OF THE PARTIES ON PAID TIME-OFF**

#### **Position of the Union**

The Union contends that a 25-year police officer hired after July 1, 1991 has less vacation than his/her counterparts in the comparable cities. The Union observes that this officer in Muskegon Heights would have received 3200 hours of vacation during his/her time with the City, while the next fewest number of hours is 3376, in Grandville. Thus, the Union contends, providing additional personal leave to the employees would move the officers in Muskegon Heights to a position roughly equal to the comparables in terms of total paid time off. The Union points out that, if the paid time off proposal were to be granted, 688 hours would be added to the total time off of a 25-year officer hired after July 1, 1992, which would leave it below Big

Rapids, and still below the number of hours provided to Muskegon Heights officers hired before July 1, 1992.

The Union points out that this is a no-cost item to the City, as the provision for which a change is being proposed cannot result in overtime. The Union points out this is simply a scheduling issue.

The Union points out that the City's proposal for increased use of non-bargaining unit part-time officers is relevant. These part-time officers could be used to replace the personal leave hours used by the regular officers.

#### **Position of the City**

The City contends that the record provides no justification for this Union proposal. The City observes that the testimony at the hearing addressed sick leave and holidays in addition to personal leave. The City contends that the Union's proposal is essentially asking for three (3) additional work days off added to the holidays they already receive in 2007; in 2008 the number of personal days would increase to four and one half (4 ½) days. The City also points out that the City, along with three other comparable cities, provides the greatest number of holidays (Tr. 35-36; City's Post Hearing Brief at p. 21-22). Thus, the City says the Union has failed to show any justification for these extra paid days off.

#### **DISCUSSION ON PAID TIME-OFF**

The Union's LBO proposes that effective January 1, 2007, bargaining unit members be entitled to 24 hours of personal time and effective January 1, 2008 they be entitled to 36 hours of personal time. The Union did provide data on comparables. The record establishes that a Muskegon Heights police officer who has worked 25 years receives in his 25<sup>th</sup> year a total of 200

paid vacation time which does not include paid holidays. That is consistent with the municipalities of Big Rapids, Niles and Sturgis, while officers in Cadillac, Grandville, and St. Joseph receive fewer than 200 hours. (Un. Ex. 2, Tab 7).

The record also demonstrates that a Muskegon Heights police officer receives one unrestricted or unconditional personal day off along with 12 days of sick leave, three days of funeral leave, and 12 holidays. The only municipalities with unrestricted or unconditional paid personal days off are Sturgis with two personal days and Grandville with 1¼ days for a 12-hour shift and 2 days for an 8-hour shift. The other municipalities have restricted or conditional varying personal days, such as the City of Cadillac with four days deducted from an employee's sick leave time. (Un. Ex. 2, Tab 8).

The Union argues that its members receive the lowest number of hours off which time includes both vacation and personal days. This argument appears to be bottomed on the view that the overall number of hours accumulated or obtained in the 25-year career of the officer (*e.g.*, 3200 hours) are lower than those of the comparable municipalities. The reason for this appears to be centered on the fact that the other municipalities reach the maximum number of hours sooner in their careers than the officers in Muskegon Heights.

A well-established principle under "other factors" provides that in order for the panel to change a term or condition of employment, the record must establish a reason to do so. The record in this case does not establish any problem that has arisen in this bargaining unit under the existing language in Section 19.1. Thus, the statutory factor of "other factors" favors the City's proposal.

In addition, based on the foregoing discussion, the record does not demonstrate the bargaining unit members receive substantially less personal time or substantially less paid time-



off from all sources, than police officers in the comparable jurisdictions. Thus, the statutory factor of comparability does not favor the Union's proposal.

### **CONCLUSION ON PAID-TIME OFF**

Based on the foregoing, a majority of the panel finds that City's LBO on paid-time off is more consistent with the statutory factors than the Union's LBO on paid time off.

### **AWARD ON PAID TIME-OFF**

The LBO of the City on paid time-off is accepted. The LBO of the Union on paid time-off is not accepted.

### **UNION ISSUE - PENSION MULTIPLIER**

#### **LAST, BEST OFFERS**

##### **Last, Best Offer of the Union**

"During the term of this agreement, members of this bargaining unit shall have the right to purchase an increase in the pension multiplier. If elected Employees shall pay the full cost of the increase multiplier, as determined by actuarial evaluation, through payroll deduction. The Union shall pay the cost of the actuarial evaluation."

##### **Last, Best Offer of the City**

The City proposes the status quo, Section 26 .1 of the 2002-04 collective bargaining agreement (City Ex. 4, Tab 2A, p. 22).

### **POSITIONS OF THE PARTIES ON PENSION MULTIPLIER**

#### **Position of the Union**

The Union points out this LBO, if adopted, by permitting employees to purchase a higher multiplier than the 2.5% in the agreement, would result in employees reaching the 80% cap earlier than under the status quo. The Union points out that, under the current language, employees must work 32 years to reach the 80% cap. Increasing the multiplier would permit

employees to reach the 80% cap sometime between service years 25 and 32. Thus, an employee could retire earlier than 32 years if he or so chose.

The Union notes that this LBO imposes no additional costs on the City. As such, the Union sees no reason why the panel should not accept this LBO.

### **Position of the City**

The City notes that the officers in Muskegon Heights are already eligible for pension coverage under the Michigan Municipal Retirement System Plan E-2 and also Plan B-4 which has age 50 and 25-year retirement scheme. The City argues that the record does not demonstrate that the officers in Muskegon Heights are below the comparables on this matter; indeed, the City contends the evidence on comparables indicates no pattern at all. The City also notes that the Union presented no testimony to support its proposal.

### **DISCUSSION ON PENSION MULTIPLIER**

The record establishes that the current pension plan for the bargaining unit members permits retirement at 50 with 25 years of service with a pension of with 2.5% per year of service up to 80% of FAC for the highest five years. The Union is requesting that the bargaining unit members be permitted to purchase an increased multiplier. This could permit an employee to reach the 80% maximum with fewer years of service than it currently takes to reach the 80% maximum. Under the Union's proposal, the Union would pay the cost of an actuarial valuation to determine the cost of the increased multiplier. The Union argues that its proposal is simply an opportunity for its members to purchase a higher multiplier so that they can reach the 80% wage cap sooner than they would have with the 2.5% multiplier under the current retirement plan. Otherwise, in order to reach the 80% cap, the Union's members have to serve for 32 years.

The Union claims the cost to the City of this provision is zero, as the employees will be purchasing the increased multiplier (above 2.5%) and the Union will pay the cost of the actuarial valuation. The record establishes that the Union is correct – there is no additional pension cost to the City beyond what it would pay under the current language in Section 26.1

As the City has not demonstrated that there is a legal impediment to the Union's proposal, and given that there is no additional cost to the City, this LBO is consistent with the factor of “ability to pay.” This LBO could actually result in modest savings for the City in longer term if it encourages the two officers hired before July 1, 1992 (Tr. 84) to retire sooner than they otherwise might. Replacement officers, if any, would be entitled to less vacation than the officers hired before July 1, 1992 (Un. Ex. 2, Tab 7). Consequently, a majority of the panel adopts the Union's LBO regarding the Pension Multiplier. This LBO would also enhance the welfare of the public by improving officer morale – the officers would be receiving a benefit at no cost to the City.

#### **CONCLUSION ON PENSION MULTIPLIER**

The Union's LBO on pension multiplier is more consistent with the statutory factors than the City's LBO.

#### **AWARD ON PENSION MULTIPLIER**

The Union's LBO on pension multiplier is accepted. The City's LBO on pension multiplier is not accepted.

## **CITY ISSUE - PART TIME EMPLOYEES**

### **LAST, BEST OFFERS**

#### **Last, Best Offer of the City**

Change the first paragraph in Section 36.1 to read as follows:

"The City shall be entitled to hire part-time officers as permitted in this section. A part-time officer is defined as a police officer who works a maximum of seventy-two hours per pay period for the City.

"Part-time employees shall supplement the work force and shall not be used to replace any current full-time position (which is fourteen (14) full-time positions) for greater than (60) days nor to deny an bargaining unit members their rights under the contractual agreement.

"Part time employees may be used to replace full-time employees who are absent from work due to vacations, personal leave, sick leave, bereavement leave, leave due to work related injuries, training, or any other approved leave of absence. Part time employees may also be used to supplement full-time officers on scheduled road patrols.

"Part time employees shall not be used for overtime details or events (i.e., sporting events, security details, etc.) or in a situation where additional officers are needed because of some unforeseen situation or special detail unless all available full time officers have rejected the overtime detail or event."

#### **Last, Best Offer of the Union**

The Union proposes the status quo, Section 36 .1 of the 2002-04 collective bargaining agreement.

## **POSITIONS OF THE PARTIES ON PART-TIME EMPLOYEES**

### **Position of the City**

The City points out that this proposal is part of the need to maintain police services in a period of declining revenues. The City points out that the agreements of two the comparables, Sturgis and St. Joseph, place no limits on the use of part-time employees. Big Rapids limits the number of part-time employees but not the number of part-time hours. Grandville has a very high limit, 30 hours per week/60 hours per pay period for nine months of the year. Thus the

City's proposal would place greater limits on the City than are placed on three of the comparables and would be within 12 hours per pay period of Niles and Cadillac.

#### **Position of the Union**

The Union points that if the City's offer were accepted, the opportunities of the bargaining unit members to earn overtime pay would be adversely affected. The Union points out that the City of Muskegon Heights prohibits all secondary employment for officers, which means that the only opportunity for officers to earn income over and above their base pay is through overtime. Thus, reducing overtime opportunities could have a severe impact on the earnings of bargaining unit members.

#### **DISCUSSION ON PART-TIME EMPLOYEES**

The City's LBO proposes that it be permitted to hire part-time officers for a greater number of hours than it may hire them under the current collective bargaining agreement. The current agreement limits a part-time officer to 20 hours per week (40 hours per two-week pay period). The City's LBO would permit the City to hire a part-time officer for up to 72 hours per pay period, or an average of 36 hours per week.

At the same time, the City's LBO places some constraints on the circumstances under which it would be allowed to hire part time officers. Specifically, it could not hire them for special overtime details. It could, however, use part-time officers to replace the hours of full-time officers on leave. As in the current agreement, these part-time officers would supplement the current work force and would not replace any current full time police positions, which is said to be fourteen (14) full time positions for greater than sixty (60) days nor to deny any bargaining unit members their rights under the contractual agreement.

The City's savings would result from the fact that part-time officers are not members of the bargaining unit (City Ex. 4, Tab 2A, p. 1). Even assuming that the City pays part-time officers the same straight-time hourly wage it pays full-time officers, the City would save on overtime expenses. Given the difficult financial circumstances of the City and the fact that the panel is providing a wage increase to the bargaining unit of 9.15%, excluding compounding, over the life of the agreement, the statutory factor of ability to pay supports the City's LBO.

The statutory factor of comparability is inconclusive with respect to this issue. The Big Rapids agreement places no limits on the number of hours a part-time employee may work, limits the number of active of part-time employees to four, and limits their use to circumstances that will result in shortages for seven calendar days (Un. Ex. 8). The agreement for the Niles limits part-time employees to thirty hours work but places not limitation on the circumstances under which part-time employees can be used (Un. Ex. 9). The agreement for Cadillac limits part-time police officers to seasonal use and for downtown and park patrolling (Un. Ex. 10). Thus, there is no pattern that can be discerned. None of the other statutory factors are applicable.

The Union has also raised a concern about income opportunities for the officers. Officers who earn a sufficient income are more likely than otherwise to be motivated and provide high quality service. The panel also notes that the City has denied officers' requests for outside employment for no discernible reason (Un. Ex. 11, Tr. 81-84). Thus, the panel urges the City to be more flexible than it has been in permitting officers to earn outside income and recommends that the parties take into account in the next negotiations the City responses to such requests.

Based on the foregoing, however, the only statutory factor that is relevant is ability to pay, and that factor tends to favor the City. A reduction in overtime opportunities is not a factor that the panel is empowered to consider.

## **CONCLUSION ON PART-TIME EMPLOYEES**

The City's LBO on part-time employees is more consistent with the statutory factors than the Union's LBO.

## **AWARD ON PART-TIME EMPLOYEES**

The City's LBO on part-time employees is accepted. The Union's LBO on part-time employees is not accepted.

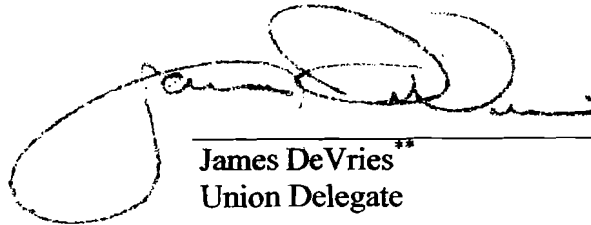
January 12, 2007



Richard N. Block  
Panel Chair



Robert Jackson, Jr.\*  
City Delegate



James DeVries\*\*  
Union Delegate

\* Concurs on all awards for City LBO and dissents on all awards for Union LBO.

\*\* Concurs on all awards for Union LBO and dissents on all awards for City LBO.