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ACT 312, PUBLIC ACTS OF 1969 AS AMENDED

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

*In the Matter of the Act 312  
Arbitration Between:*

CITY OF TAYLOR, MICHIGAN

Employer,

and

MERC Case No. D06C0326

THE COMMAND OFFICERS'  
ASSOCIATION OF MICHIGAN (COAM)

Union

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**ARBITRATION PANEL OPINION AND AWARDS**

**George T. Roumell, Jr., Chairman  
Donald Wood, City Delegate  
Gerald Radovic, COAM Delegate**

**APPEARANCES:**

FOR THE CITY OF TAYLOR:

FOR COAM:

John C. Clark, Attorney

Gerald Radovic

**Background**

The City of Taylor is a suburb of Detroit, Michigan located in Wayne County, Michigan. Taylor is a bedroom community with some industrial base as well as commercial activity along its primary thoroughfare, Telegraph Road.

The City has a police department whose officers are represented by a unit separate from its command officers. There are approximately 16 command officers represented by the

Command Officers' Association of Michigan.

The command officers consists of officers holding the rank of sergeant, lieutenant, and commander. Several years previously the command officers successfully negotiated a collective bargaining agreement that provided for a wage differential between the command officers and police officers based upon the wages in the collective bargaining agreement covering the police officers.

The command officers' most recent collective bargaining agreement was effective July 1, 2005 through June 30, 2006. In Article 22, "Salary Schedule," the differentials were set forth as follows:

The following rate differentials shall be effective beginning 07/01/05:

Sergeant - Corporal rate plus 18.51%  
Lieutenant - Sergeant rate plus 8.71%  
Commander - Lieutenant rate plus 13.25%

As the 2005-2006 contract was nearing termination, the parties commenced negotiating for a successor agreement. In the meantime, the contract for the police officers was continuing through June 30, 2007. During the COAM negotiations, the issue of continuing the differential became a major issue of disagreement between the parties. Unable to reach agreement, the parties engaged in mediation on three occasions, December 18, 2006, January 23, 2007, and March 30, 2007. Following these mediation sessions which did not result in agreement, the City filed a petition for Act 312 Arbitration.

The Petition was dated May 9, 2007 and was received by the Michigan Employment Relations Commission on May 11, 2007.

The issues stated in the Petition as being in dispute as of the date of the Petition were:

Wages, wage differentials, certain health care issues, certain retiree health care issues, certain pension issues, term, promotions and seniority (Employer reserves the right to add to, subtract from, or modify the referenced outstanding disputed matters.)

George T. Roumell, Jr. was appointed Chairman of the Act 312 Panel along with the City Delegate Donald Wood and COAM Delegate Gerald Radovic.

### **Issues to be Resolved**

By the time matters were presented to the Arbitration Panel and had been refined, the issues to be resolved were Article 12, Payroll Schedule; Article 13, Overtime and Call-in and retroactivity concerning same; Article 19, Insurance, concerns over health insurance including retiree health insurance; Article 22, Salary Schedule; Article 26C, incentives for degrees; Article 37, duration.

Other items that may have been on the table between the parties have either been settled or withdrawn from consideration.

### **The Criteria**

When the legislature enacted the provisions for binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 (MCLA 423.239) that Act 312 Panels are to consider the following criteria when fashioning opinions and awards:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.

- (a) The lawful authority of the employer.
- (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.
  - in public employment in comparable communities
  - in private employment in comparable communities.
- (e) The average consumer prices for good 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.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements which are not specifically enumerated in Section 9. This means that, in

addition to the enumerated Section 9 criteria, an Act 312 Arbitration Panel can utilize criteria used by fact finders.

It also should be recognized that the particular circumstances may dictate that certain criteria may be emphasized more than other criteria.

Among the criteria utilized by fact finders are the bargaining history of the parties, both past and current, as well as the “art of the possible,” namely, what is a possible settlement between the parties, recognizing the give-and-take of negotiations.

The Chairman described the “art of the possible” in a previous 312 Opinion that he issued in *County of Lake and Command Officers Association of Michigan*, MERC Case No. L02 H-9004 (2004), where he wrote at page 4:

The ‘art of the possible’ in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In an earlier 312 opinion, this Chairman articulated the concept of the “art of the possible” when he noted that the goal of an Act 312 Chairman is to effect the settlement the parties would have reached if negotiations had continued when the parties are confronted with the realities of the situation for, in *County of Ottawa Sheriff’s Department and Police Officers Association of Michigan*, MERC Case No. L96-H-6011 (1998), this Chairman observed:

A very distinguished arbitrator, Theodore St. Antoine of the University of Michigan Law School, in two recent Act 312 Arbitration proceedings, pointed out that as to an Act 312 panel, to best preserve health, voluntary collective bargaining, ‘the soundest approach for an outsider in resolving union-employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful.’

*See, e.g., County of Saginaw and Fraternal Order of Police, MERC Case No. 190 B-0797 (1992); Macomb County Professional Deputies Association and County of Macomb, MERC Case No. E91 I-1674 (1992).* This is, indeed, an appropriate consideration and falls within the concept of section 9(h).

In other words, the concept of the art of the possible is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

The criteria are there to be followed. In the view of the Chairman, the dominant consideration is the financial ability of the City of Taylor, recognizing the financial realities facing southeast Michigan and for that matter the entire State of Michigan. In addition, the bargaining history in terms of differentials cannot be overlooked, as well as the art of the possible, in these financially difficult times. When the criteria are considered along with the economic realities, then the path to the Awards becomes clear.

### **The City's Financial Situation**

No collective bargaining agreement can be reached in the City of Taylor without recognizing the City's financial condition which is one of the statutory criteria.

As compared to several years ago, the State of Michigan is presently facing an economic downturn which is now prevalent. As a result, the City of Taylor's financial situation has become unstable, through no fault of the administration. There are a number of factors that have destabilized the City's financial position. The financial structure established by the State of Michigan for local governments and Taylor is hurting the city and, in fact, is imposing hardships on the City's budget. These issues include:

- Constitutional and statutory property tax limitations with the Headlee Amendment, Proposal A and other statutory provisions.

- Added restrictions on other revenues such as fees and charges for services with the Bolt Case and the State Construction Act.
- The City's General Fund is in (and has been in) for the last several years a structural deficit. The City's recurring revenue sources in the General Fund do not provide enough resources to support recurring operating expenditures.
- The City has been dependent on one-time, non-recurring revenue (land sales) to balance the General Fund budget. The land sales are no longer sustainable and the development expected from these sales has not materialized (nor has the associated property tax revenue). If land sale revenue was removed for the 2003, 2004, 2005 and 2006 years, the City's structural deficit for those four years averaged over \$2.5 million per year.
- As a result of the State's budget condition, Taylor's state shared revenue is \$2.3 million less per year than in 2001. Since 2001, the city has lost over \$10 million cumulatively in state shared revenue.
- Labor related costs represent over 65% of recurring General Fund expenditures.
- Public Safety related labor costs for wages and fringe benefits have increased 68% from 2002 through budget year 2007. This represents an average increase of almost 14% per year.
- As a result of past contract negotiations and other factors, the City faces increased pension and health care costs. Police and Fire pension contributions and retiree health care insurance tripled from about \$1.6 million in 2002 to almost \$4.8 million in 2006. During the same time period, health insurance for all active employees grew by about 8% annually - increasing from \$2.7 million to \$3.6 million; retiree health care costs for non-police and fire grew by over 50% (from \$1 million to \$1.6 million); and the City pension system contribution for its General Employees group went from \$0 in 2002 to over \$1.1 million in 2006.
- The net impact of these developments is that the City's General Fund unreserved/undesignated fund balance has been reduced from \$5.9 million in 2002 to less than \$400,000 at June 30, 2007. This decrease has extinguished the City's reserve for contingencies and has made cash management very difficult. The City does not have adequate funds set aside for capital reserves and no money set aside to fund accumulated sick and vacation payouts for employees at separation of service. On a General Fund budget that exceeds \$60 million, an unreserved/undesignated General Fund fund balance is less than \$400,000 is inadequate.

- The City is levying all available millage capacity for operations. The interaction of the Headlee Amendment and Proposal A has also rolled the City's millage rate back with no statutory relief available for this situation.
- In accordance with Federal mandates and a court-ordered judgment levy, the City is levying almost 3 mills for sewer remediation debt with continuing capital and operating improvements and expenditures required.
- As a result of the increase in Public Safety retirement costs, the City's levy for Police and Fire retirement costs (pursuant to Public Act 345 of 1937 as amended) has increased substantially in recent years. In 2002, the City levied 1.5856 mills for this purpose. In 2006, the City levied 5.1913 mills for Act 345 retirement related costs - more than tripling in a four year period.
- Between levies for operations, sewer debt, police and fire pension costs and other purposes, the City's tax levy of 25 mills is a high burden for Taylor taxpayers, making requests for additional millage difficult and presenting challenges for attracting new tax base.
- New accounting standards require all local governments - including Taylor - to actuarially measure and record the liability for retiree health care if the City does not fund the annual liability calculated by the actuary. The City has no money set aside for the purpose (i.e., no accumulated assets to offset the liability) and the City does not have the ability in the budget to actuarially fund the annual liability calculated by the actuary.
- The City has deferred necessary capital outlay for the last several years to balance its budget. Spending in this area will have to increase to keep the City in working order.
- There is pending litigation and claims which may result in significant liabilities with no identified funding source.
- Between the City and its component units, the City already has \$198 million of long-term debt outstanding at June 30, 2007. As it relates to the City's General Fund, the annual debt service requirement is approximately \$3 million annually.
- Taylor's taxable value is being negatively impacted by decreases in residential home values, Michigan's economy, foreclosures and other market forces which could impact the City's General Fund structural deficit in coming years.

It is a fair conclusion that the above cited factors are exhausting the City's fund balance



reserves, supporting the argument that Taylor has an unbalanced structural budget deficit. For this reason, one must proceed with caution because it is in the interest of all of the City's employees that the financial health of the City be stabilized as much as possible, even though in these financially challenging times stabilization maybe difficult to do.

The above comments as to the City's financing situation are the observations of the Chairman.

### **Outstanding Issues**

#### **A. Introduction**

As already indicated, the City's financial situation casts a shadow over the economic issues and cannot be overlooked. This will be considered in the Awards that follow. The structure of the Opinion and Awards is that the Awards are based on last best offers made by one of the parties; each Award is supported by a majority of the Panel as will be noted by the Chairman. Furthermore, the Opinion and Awards will be signed by the Chairman as the Panel members have authorized him to do so, acknowledging that the Award is supported by a majority of the Panel. Panel members have waived their signatures; the dissents as to any particular Award has not been recorded in the interests of expediting this procedure. The majority consists of two so that, in each case, one or the other of the delegates may have dissented in Panel meetings and disagreed with the Chairman but, as to each award, the Chairman has been supported by at least one other member of the Panel.

#### **B. Article 22, Salary Schedule**

The comparables are both internal and external. In Taylor, there has been an internal comparable between the command officers and the police officers. Thus, the differential was

established as discussed previously in this Opinion. The bargaining history, at least for several years, has resulted in the establishment of a differential. There is no reason to deviate from this differential which has been established through bargaining. Furthermore, if the parties did not have the benefit of an Act 312 arbitration panel, the parties would not have reached an agreement unless the differential would continue. The City may have resisted but COAM would have insisted. Thus, based upon the comparables, the bargaining history and the art of the possible criteria, the Article 22, Salary Schedule, namely wage differentials, shall be continued. Likewise, since it took so long to resolve this dispute, though the wages will be retroactive to July 1, 2007, the retroactivity will be on base wages only. The Award will reflect this analysis and is supported by a majority of the Panel.

C. Article 12, Payroll Schedule

The City has sought the right to change payroll schedule from every week to either every other week or twice per month. If the parties are left to their own devices and all other issues had been resolved, this request by the City would not have been a so-called “deal breaker.” In other words, the art of the possible would suggest that the City’s position as to its right to change the payroll schedule would have been agreed to by the parties if all other matters had been resolved. For this reason, the majority of the Panel will adopt the city’s request as to the payroll schedule.

D. Article 13, Shift Differential

An issue arose between the parties as to increasing the shift differential. The 2005-2006 agreement did contain a shift differential in Article 13.7. There were negotiations to increase this differential. Given the bargaining history between the parties in the current negotiations and the fact that the parties have recognized that there should be a shift differential and the number of

command officers affected is limited, the Chairman, along with a majority of the Panel, would agree to increase the shift differential as set forth in the Award. Again, this is governed by the art of the possible and the bargaining history criteria. However, given the fact that there has been some time in negotiating this agreement, the retroactivity of the increase in the shift differentials shall be to January 1, 2008.

E. Article 26.6C, Educational Stipend

Article 26.6(C) of the July 1, 2005-June 30, 2006 agreement reads:

A yearly bonus shall be paid as an incentive to achieve higher education according to the following schedule:

Associate Degree	\$ 250.00
Bachelor Degree	500.00
Master's Degree	1,000.00
Double MA/MS	1,500.00
Pre Doctorate	2,000.00
Doctorate	2,500.00

This incentive bonus shall be paid in the first pay period of July each year.

This provision became a point of contention between the parties, with COAM seeking to increase the amounts and the City seeking to eliminate the double MA/MS, pre-doctorate and doctorate provisions. The City argues that its interest is to achieve higher education through a Master's degree; that such an approach accomplishes the City's purposes. COAM, on the other hand, wished to achieve additional compensation. Again, what is the art of the possible? It would seem that the art of the possible would be to delete the double MA/MS, pre-doctorate and doctorate, and to increase the stipend for the associate degree, bachelor degree and master's degree. A majority of the Panel agrees, and the Award will so reflect. This is consistent, as already noted, with the art of the possible, balancing the interests of both the City and COAM.

F. Health and retiree insurance is an important issue between the parties. The City has been experiencing substantial increases in health insurance that has impacted its finances. Premium increases have been 8% per year or more for the past several years. The Chairman is led to believe that the City has a health care plan that is considered one of the better plans offered by Blue Cross/Blue Shield, from the employee's viewpoint.

The Chairman takes notice that one of the areas of escalating health insurance costs is in the area of prescription drugs. It comes as no surprise that the City is seeking an increase in drug co-pays to offset this increase.

Because the City does have an excellent Blue Cross/Blue Shield plan for its employees, the City is also encouraging its employees to stay within the network of coverage. The fact is that most physicians in southeast Michigan participate in the Blue Cross/Blue Shield plan. Thus, when the City proposes a \$3,000 annual deductible for out-of-network coverage, it seems reasonable and is consistent with assisting in cost containment for health care without compromising what is an excellent health care program.

In Article 19 of the 2005-2006 contract, namely 19.2.A, there is an employee contribution toward premium co-pays. The City has proposed an increase in the premium co-pay based on the percentage of annual premiums for medical and prescription drug coverage. COAM has resisted but has stated that if there is a percentage there must be a cap. The Chairman agrees there should be a percentage based on the offer of the City and also agrees with COAM that there should be a cap. In coming to this realization, the Chairman notes that at least one other group in the City has a provision for a modified percentage increase as to health insurance.

The plan proposed is that future retirees be obligated to pay all deductibles, all co-pays and cost sharing in existence on the date of their retirement. In addition, the City has proposed that future retirees shall pay any increase in co-pays for prescription drugs and office visits, but not any future increases for premium costs. This seems reasonable. There is a reasonable pension in Taylor for command officers. Such an approach would be part of the give-and-take of bargaining and would be consistent with the art of the possible.

Therefore, the majority of the Panel will issue an Award as to Article 19, Insurance, that reflects the above comments.

G. Duration

Duration became an issue between the parties. The Chairman considered the arguments of both parties noting that COAM proposed, as its last best offer, that the duration be July 1, 2006 to June 30, 2011. The Chairman, recognizing that the present contract will start more than one year after the previous contract expired, believes the COAM proposed duration is reasonable and, for this reason, a majority of the Panel will opt for such a duration.

H. Miscellaneous

The Award will also provide that “all terms and conditions of the expired 2005-2006 agreement that are not modified by this Award shall remain in effect.”

**AWARDS**

The following Awards are entered by a majority of the Panel based upon the last best offers of one or the other party and, as already noted, the Panel members have waived their signatures and have agreed that the signature of the Chairman represents the majority as to each Award.

1. Article 12. Payroll Schedule:

The City, at its sole discretion, has the right to change the payroll schedule from every week to either every other week or twice per month.

2. Article 13. Overtime and Call-In:

13.7 Shift Differential shall be modified as follows:

- A. Shifts starting between 7:00 PM and 5:00 AM are midnight shifts and a premium of sixty five (\$.65) per hour shall be paid.
- B. Shifts starting between 10:30 AM and 7:00 PM are the afternoon shifts and a premium of forty five (\$.45) per hour shall be paid

The modifications in shift differential shall be retroactive to January 1, 2008.

3. Article 19. Insurance:

- A. Mandate use of generic drugs, including requirement to follow “step therapy”
- B. Drug co-pays increased to \$10 generic, \$20 brand name, \$40 non-formulary
- C. Employees to pay ten (10%) percent of annual premiums for medical and Rx coverage, with a cap at \$2,250
- D. \$3,000 annual deductible for out-of-network coverage

Article 19.8 Retiree Health Insurance:

Future retirees are obligated to pay all deductibles, co-pays and cost-sharing that are in existence as of the date of retirement. In addition, future retirees shall pay any increases in co-pays for prescriptions and office visits required of active employees (but no further increases for premium cost-sharing).

4. Article 22 Salary Schedule:

Reinstate wage differential set forth in the 2005-2006 agreement, retroactive to July 1, 2007 on base wages only.

5. Article 26. Safety, Health, Welfare and Education

26.6C shall be modified as follows:


Associate's degree	\$ 500
Bachelor degree	1,000
Master's degree	2,000

The provision for payment of MA/MS, pre-doctorate or doctorate educational stipends as set forth in the expired 2005-2006 agreement are deleted.

6. Article 37. Duration:  
7/1/06 through 6/30/2011.

7. Miscellaneous:

This Award will also provide that "all terms and conditions of the expired 2005-2006 agreement that are not modified by this Award shall remain in effect."

  
GEORGE T. ROUMELL, JR., Chairman  
Signing for a majority of the Panel as to each  
award set forth above.

Dated: January 30, 2008