

2250
City of Southfield
POAM
MERC Case No. D05 L-0643

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION**

**Police Officers Association of Michigan,
Petitioner
and
City of Southfield, MI,
Respondent**

Case No.: D05 E-0643

STIPULATED AWARD

APPEARANCES

**For Petitioner: William Birdseye, Business Agent
POAM
27056 Joy Road
Redford, MI 48239-1949
(313) 937-9000**

**For Respondent: Dennis Dubay, Esq.
KELLER THOMA, P.C.
440 East Congress, 5th Floor
Detroit, MI 48226
(313) 965-7610**

**Impartial Arbitrator: Steven B. Stratton
Ferris State University
McKessy House
120 Cedar Street
Big Rapids, MI 49307-2202
(231) 591-3894**

Date of Stipulated Award: February 2, 2009

Background

The City of Southfield, MI (Employer) and the Police Officers Association of Michigan (Union) are parties to a collective bargaining agreement dated July 1, 2003 through June 30, 2005. The Union represents full-time public safety dispatchers and public safety technicians. The parties engaged in collective bargaining pursuant to Michigan's Public Employment Relations Act (PERA); including two sessions with a state appointed mediator. However, the parties were unable to reach a tentative agreement on all issues. On January 17, 2006, the Union filed a petition with the Michigan Employment Relations Commission (MERC) for arbitration pursuant to Act 312 of PERA. By letter dated June 16, 2006, Steven B. Stratton was appointed as the impartial arbitrator and chairperson of the arbitration panel.

A pre-hearing conference was held on August 9, 2006, wherein issues were identified and procedural matters were determined. At the suggestion of the impartial chairperson, the parties agreed to an additional session with the state mediator. Unfortunately, the additional session did not produce a tentative agreement on all issues so the hearing process continued.

A hearing on the issue of comparable communities was held on December 4, 2006, at the city of Southfield offices. Representing the Union was Bill Birdseye and representing the Employer was Dennis DuBay. A transcript of the hearing was prepared and provided to the parties. Written post-hearing briefs were exchanged on or about January 15, 2007, followed by a written decision of the impartial chairperson dated February 27, 2007; which interim decision is attached.

Subsequent to the issuance of the interim decision, the parties jointly requested that no hearing dates be set on the remaining issues so as to afford them the opportunity to reach a resolution through collective bargaining. This too proved unsuccessful so three days for evidentiary hearings were scheduled: January 16, 2009; February 2, 2009; and March 3, 2009. Representing the Union was Bill Birdseye and representing the Employer was Dennis DuBay. Each also served as a member of the arbitration panel.

On day one, testimony and evidence were taken into the record including 82 separate exhibits. On day two, the parties jointly requested some time to explore a settlement. An

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agreement was reached which the parties requested be adopted as a stipulated Act 312 Award. The impartial chairperson reviewed the stipulations and afforded all persons in attendance at the hearing the opportunity to ask questions regarding the terms. Absent any questions or objections, the Stipulated Award, as written by the parties, was adopted and signed by all three arbitration panel members and is attached hereto. Given the Stipulated Award, there is no need to include herein, a recounting of the testimony and evidence that was received prior to the parties reaching agreement.

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ACT 312

Department of Consumer and Industry Services

Employment Relations Commission (MERC)

City of Southfield

and

MERC Case No. DO5 E-0643

Police Officers Association of Michigan
(Public Safety Technicians)

Stipulated
ACT 312 AWARD

Before: Arbitrator Steven B. Stratton, Chairperson
Dennis B. DuBay, Employer Delegate
William Birdseye, Union Delegate

February 2, 2009

1. The term of the agreement shall be July 1, 2005 through June 30, 2009
2. Wages:
 - 2.0% across-the-board increase to base wages effective July 1, 2005
 - 2.0% across-the-board increase to base wages effective July 1, 2006
 - 2.0% across-the-board increase to base wages effective July 1, 2007
 - 1.0 % RHC (VEBA) post-tax employee contribution effective July 1, 2007
 - 1.0% across-the-board increase to base wages effective July 1, 2008
 - Additional 1.0 % RHC (VEBA) post-tax employee contribution effective July 1, 2008
3. The Prescription Drug Co-Pay for all plans for active employees and individuals who retire after 6/30/05 shall be \$10 generic and \$20 brand (whether or not there is a generic equivalent) For participants in an HMO, where there is a generic equivalent, and the employee instead takes the brand drug, the employee may be required according to HMO rules to pay the difference between the brand drug and the generic equivalent, in addition to the \$20 charge for the brand drug.
4. For active employees and future retirees, in the case of married couples where both spouses work for the City, or both spouses are retired from the City, or one spouse works for the City and one spouse is retired from the City, only one spouse will be eligible for a health insurance policy, dental policy and optical policy and may include the other spouse and dependents if eligible. A spouse who is an employee and who is covered under his or her spouse's policy will be eligible for an annual payment equal to \$1300 for employees with 2 person coverage and \$1600 for employees with family coverage, payable on a biweekly basis. This payment is not available to retirees.
5. Medical Opt-Out program as attached
6. Effective July 1, 2005, the Dispatch Premium set forth in Appendix A shall be increased by \$ 0.25 per hour
7. The City has given notice that as alternatives to the health insurance specified in the contract it will offer only Community Blue PPO, and an HMO

Provisions applicable to employees hired after the date of this award:

1. The City gives notice that as alternatives to the health insurance specified in the contract it will offer only Community Blue PPO and Section 35.6 shall not apply.
2. Employees shall pay the following percent of base pay for medical, dental and optical coverage: 1 person, 2.0%; 2 person, 4.0%; family, 5.0%. If the employee opts out of medical insurance, but desires to have dental and/or optical insurance, the employee shall pay a prorated percent of base pay calculated by dividing the dental and/or optical insurance premium by the Traditional Blue Cross medical insurance premium and rounding to the tenth of a percent.
3. Employees hired after the date of this award shall be subject to the following pension plan modifications:

Regular retirement eligibility: age 65 with 10 years of service, age 62 with 20 years of service, age 57 with 25 years of service

Benefit multiplier: 2.0%

FAC: highest 5 consecutive years of last 10 years, include a maximum of 100 hours of vacation paid at retirement

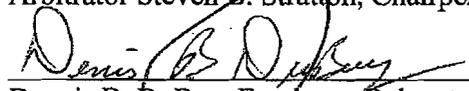
Benefit cap: 70% of FAC

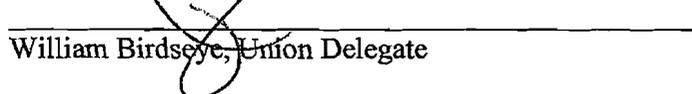
Employee contribution: 3% of pensionable wages, payable as a salary reduction on a pretax basis under IRS Section 414 (h). These contributions will not be refunded at retirement
4. Employees hired after the date of this award shall be subject to the following eligibility requirements and premium co-pays for retiree health insurance:
0-14 years of service: No insurance offered
15-24 years of service: retiree pays 50% of premium; City pays 50% of premium
25 or more years: retiree pays 20% of premium; City pays 80% of premium

Dated: February 2, 2009

Signed by the Parties' Authorized Delegates:


Arbitrator Steven B. Stratton, Chairperson


Dennis B. DuBay, Employer Delegate


William Birdseye, Union Delegate

New Article

CITY OF SOUTHFIELD
MEDICAL OPT-OUT PROGRAM

Eligibility:

Employees can waive coverage for employer provided medical benefits and receive an incentive bonus **in lieu of coverage** if covered under:

- a spouse's employer provided, non-City of Southfield group health plan.
- a group health plan available through another employer
- any other qualifying plan

Exclusions:

You are ineligible to receive the Opt-Out payment if you are:

- retired from the City of Southfield.
- covered by Medicaid
- absent due to a Worker's Compensation injury in excess of three (3) months; opt-out benefits will be suspended.
- on a leave of absence during which City paid medical benefits are not provided.

Incentive Benefit Period:

The incentive benefit will be spread equally over bi-weekly pay periods on a calendar year basis. Enrollment will take place during the City's annual open enrollment period. Payments will commence in January of the following year. Benefit will be pro-rated for participation of less than a full calendar year.

Incentive (Opt-Out) Payment:

- \$1,600.00 to employees with family coverage who waive City health benefits
- \$1,300.00 to employees with two person coverage who waive City health benefits
- \$1,000.00 to employees with individual coverage who waive City health benefits.
- Part-time employees will receive a 50% or 75% payment depending on their part-time status.

These payments will be taxable to the recipient.

Enrollment:

- (a) New Employees will have 30 days after becoming eligible for City health benefits to complete an application for waiver (opt-out) and submit documentation of other coverage. Applicants who miss the deadline will again be eligible at open enrollment.
- (b) Employees, other than new hires, must complete the application and documentation process during the annual Open Enrollment period in September of each year. You will be notified if your application is approved. Annual re-enrollment will not be required. You will automatically be re-enrolled until such time as you reinstate your City of Southfield health benefits. If you are terminated from the program, you will receive a termination letter.

Qualifying Events for Changes:

Your participation in the Opt-Out Waiver Program will remain in effect unless you file a form provided by the Human Resources Department indicating a Qualifying Event to withdraw from the program or to enroll in the program outside of the Open Enrollment period.

Qualifying Events include:

- A change in family status such as marriage, divorce, annulment, legal separation.
- The death of a participant, spouse or dependent.
- The birth or adoption of an eligible dependent child
- Meeting the terms of a Medical Support Order of the court.
- Termination of employment, including retirement.
- A change in spouse's coverage which is significant and outside the control of the spouse.
- The participant's spouse has a change in employment status, which results in a change of health insurance coverage.
- The taking of, or returning from, an approved unpaid leave of absence (LOA) by the participant. Upon returning, employees may apply for reinstatement within 30 days of returning to work.

Reinstatement of City Health Benefits:

- To reinstate health benefits for the following year, employee must submit application to reinstate to Human Resources during Open Enrollment period.
- To reinstate health benefits due to a qualifying event, the employee must provide proof of the event. Documentation and request for reinstatement must be received within 30 days of the qualifying event. If approved, reinstatement may be made retroactive to the date of the qualifying event. The IRS does not permit retroactive participation to a prior plan year.

Pension:

Opt Out payments will not be included in Final Average Compensation .

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INTERIM AWARD

Comparable Communities

APPEARANCES

For Petitioner:

**William Birdseye, Business Agent
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27056 Joy Road
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Impartial Arbitrator:

**Steven B. Stratton
Ferris State University
McKessy House
120 Cedar Street
Big Rapids, MI 49307-2202
(231) 591-3894**

Date of Award:

February 27, 2007

Background- Comparable Communities

A hearing on the issue of comparable communities was held on December 4, 2006, at the city of Southfield offices. Representing the Union was Bill Birdseye and representing the Employer was Dennis DuBay. A transcript of the hearing was prepared and provided to the parties.

The Union proposed the following four (4) communities to be used as comparables: Redford, Farmington Hills, Livonia and Royal Oak. The Employer proposed the following nineteen (19) communities: Birmingham, Canton Township, Clinton Township, Dearborn, Dearborn Heights, Farmington Hills, Ferndale, Hazel Park, Livonia, Madison Heights, Pontiac, Redford, Royal Oak, Shelby Township, St. Clair Shores, Troy, West Bloomfield Township, Waterford Township and Westland.

Twenty-nine (29) exhibits were entered into the record and one witness was called; Employer witness Thomas Marsh. Marsh has been employed as the labor relations director for the city of Southfield since 1986. He is the spokesperson for the city in labor negotiations, handles some arbitrations and board proceedings and advises on grievance matters. Prior to being employed by the city, since 1972, he was employed with the Service Employees International Union, Local 79. In his concluding years with Local 79, he was a research assistant who assisted business representatives with negotiations and represented the Union in arbitration cases.

On or about December 8, 2006, the Employer provided the arbitrator with copies of three previous Act 312 arbitration awards between the parties: MERC Case No. D84 F-2123 (Canham); MERC Case No. D93 C-0403 (Potter); and MERC Case No. D96 A-0130 (Jacobs). These cases were referenced by both parties during the hearing.

Comprehensive post hearing briefs were filed by the parties and exchanged simultaneously by the arbitrator. The dispute is now ready for an interim decision of the arbitration panel on the issue of comparable communities.

Statutory Authority

The Act 312 panel must base its decision upon Section 9 of Act 312, 1969, which states as follows:

Sec. 9. 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:*
 - (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.*

Employer's Position- Comparable Communities

The Employer argues that the statute clearly emphasizes the comparability of the community itself, to those communities with employees performing similar services to those of the petitioning unit. The Employer defines the term "comparable" as follows: "capable of being compared; worth of comparison; being of equal regard." (The New Webster Encyclopedia Dictionary of the English Language). Similarly, the Employer argues, that the term "comparable" has been found to mean sufficiently similar to be regarded as substantially equal. The definition of comparable, although not of conclusive assistance, does show that comparability denotes a strong degree of commonality. (Employer brief, p. 4).

The Employer opines that arbitration panels have in the past considered a number of possible criteria. The traditional criteria include the historical perspective, the community's population and the community's property tax base, i.e., taxable value ("TV"). In this regard, panels require that the proposed community fall within some uniform range to be considered as comparable. In addition, other factors such as location within the same county may be utilized. (Citations omitted). It is the city's position that it has developed a set of proposed comparables based upon the traditional criteria. Employer Exhibit 3 sets forth this proposed standard as:

"All communities in Oakland County held comparable since 1986 in a Southfield Act 312 arbitration proceeding who employ full-time, unionized civilian police and fire dispatchers. In addition, all communities who employ full-time, unionized civilian police and fire dispatchers within Wayne, Oakland and Macomb counties with a 2000 population within 25,000 of the 2000 population of [S]outhfield (i.e., a range of 53,296 to 103,296[])."

The Employer believes that the city of Southfield falls within all of its offered communities when considering the applicable criteria. Further, the city has consistently applied these criteria in previous Act 312 arbitration cases as well as in this case.

Counsel for the Employer points out that the Union has elected to submit no evidence for the panel to consider. Conversely, the Employer argues that it has presented rational and uniformly applied criteria to support the adoption of its proposed comparables and that such evidence was un rebutted.

Regarding the number of communities that should be considered, the Employer maintains that the larger the number of legitimate comparables, the more accurate and complete the record will be before the panel. Limiting the number of comparables to four as the Union suggests, causes the averages and rankings of the communities to become artificially skewed because each community accounts for 25% of the average. Finally, the Employer points out that in the prior Act 312 cases between the parties, the panels have adopted, on average, a universe of nine (9) communities against which Southfield was compared. (Employer brief, p. 10).

Union's Position- Comparable Communities

The Union points out that this particular bargaining unit has never participated in Act 312 arbitration. The threshold test of identifying comparables begins with the selection of "employees performing similar work." The Union maintains that the relevance of mining statistical data from the Census Bureau as a starting point of comparability before establishing that the work performed by the employees being compared to sufficiently similar employees of other jurisdictions is a meaningless effort. It is the "proverbial cart before the horse."

The Union argues that, while some of the criteria presented by the Employer have been given weight by arbitration panels in these types of proceedings in the past, the relevance of the data only emerges once the similar work component of the Act is satisfied. (Union brief, pp. 3 and 4). Since the Employer failed to identify any of the work or duties of the dispatchers in the city of Southfield there is no evidence to compare their work with the dispatchers of other communities as proposed by the Employer.

The Union points out that the scope of duties of dispatchers varies greatly from community to community. For example, some communities have separate police and fire dispatch operations; some communities have medical dispatch capabilities; some communities handle dispatch calls from multiple jurisdictions; some communities augment their dispatchers with police officers; some communities require dispatchers to perform ancillary duties such as record-keeping, fingerprinting, gun permits and monitoring prisoners in the lockup; and, the work schedules may be different in different communities.

Finally, the Union points to the testimony of Marsh when, in answering a question regarding the similarity of work between a dispatcher in Hazel Park and a dispatcher in Southfield, he stated that the city did not examine those job functions. (Transcript p. 43). The Union opines that Marsh's admission that job functions of dispatchers in the different communities were not examined forecloses from consideration any of the additional communities the Employer has proposed; because the record lacks competent and relevant evidence that the dispatchers in Southfield perform similar work to the work of the dispatch classifications found in the proposed communities.

Analysis and Decision- Comparable Communities

Out of the total of nineteen communities proposed by the parties, four are common to each party; Farmington Hills, Livonia, Redford and Royal Oak. Therefore, these shall be considered comparable communities. Regarding the remaining fifteen communities proposed by the Employer, the threshold argument of the Union must first be granted consideration because if the Union's argument is adopted, there is no need to analyze the data provided with respect to the other communities.

Neither party has offered into evidence exactly what is the scope of the duties of dispatchers in the city of Southfield; nor of the employees of the proposed communities. Yet, both point the finger at each other for failing to do so. The statute however does not provide a "threshold test" as argued by the Union. Paragraph (d) of Section 9 includes the phrase "*and with other employees generally*". If the arbitration panel were to adopt the Union's argument it would be effectively ignoring that phrase which, of course, the panel cannot do. Notwithstanding that phrase, there are a host of other criteria set forth within Section 9 that the arbitration panel is obligated to examine.

The impartial chairperson agrees that the *best and most applicable* external comparisons would be employees performing similar services in public employment in comparable communities. Conceivably, greater weight will be provided to external comparisons that have employees performing similar services than will be provided to other employees generally; assuming such testimony is forthcoming at a future hearing date. Based on the foregoing, the data relative to the fifteen proposed communities must be analyzed.

There is some merit to the Employer's argument that the larger the number of legitimate comparables, the more accurate and complete the record will be before the panel. However, there is no magic number of how many communities should be utilized. Including too many can make the process unwieldy; using too few may tend to skew the numbers. The panel must look to the evidence and attempt to determine a reasonably sound basis for inclusion or exclusion of proposed communities.

Employer Exhibit 10 lists the populations of the proposed communities. The smallest population of the four common proposed communities is Redford at 51,622. The impartial chairperson believes it would be unreasonable to include communities that have a smaller population than Redford. The proposed communities of Hazel Park (18,963), Birmingham (19,291), Ferndale (22,105) and Madison Heights (31,101) all have at least 60% less residents than the city of Southfield. Additionally, these communities do not fall within 25,000 of the city of Southfield population which was a criterion that Marsh testified has been utilized by the city in previous 312 arbitration proceedings¹. Hazel Park, Ferndale and Madison Heights also rank as the three lowest communities in terms of state equalized value (SEV) and taxable value (TV). (Employer Exhibits 15 and 19). Birmingham ranks as the eighth lowest on both exhibits. Therefore, based upon the population, SEV and TV differences, these communities will be eliminated from consideration.

Of the four common communities, Livonia has the highest SEV (5.98 billion) and TV (4.71 billion). Only the city of Troy ranks higher in both SEV (6.61 billion) and TV (5.26 billion). These figures for Troy are both approximately 35% higher than the city of Southfield. The residents of Troy also appear to be more affluent than the residents of Southfield. Only 1.7% of families in Troy are below the poverty level versus 5.8% of families in Southfield, a difference of almost 70% (Employer Exhibit 26). The median value of single-family owner occupied homes in Troy is \$219,800 versus \$155,400 in Southfield or 29% higher (Employer Exhibit 28). The median family income for Troy is \$92,058 versus \$64,543 in Southfield or 30% higher (Employer Exhibit 27). And finally, there appears to be considerably more disposable income for the residents of Troy as their total tax rates are 35.3% versus 48.3% in

¹ Redford also falls outside of the 25,000 criterion however it is a community that is proposed by both parties and is therefore included.

Southfield (Employer Exhibit 25). Therefore, based upon the differences in SEV and TV and taking into account the apparent affluence of its residents versus the residents of Southfield, the city of Troy will be eliminated from consideration.

On the other end of the spectrum is the city of Pontiac. Its population base has decreased 6.8% versus Southfield's increase of 3.4% during the period of 1990 - 2000 (Employer Exhibit 12). Pontiac's SEV is 55% lower than Southfield's; 1.93 billion versus 4.31 billion. The TV is 62% lower; 1.33 billion versus 3.47 billion. 18% of families in Pontiac are below the poverty level versus 5.8% of families in Southfield, a difference of 68% (Employer Exhibit 26). The median value of single-family owner occupied homes in Pontiac is \$74,300 versus \$155,400 in Southfield or 52% lower (Employer Exhibit 28). The median family income for Pontiac is \$36,391 versus \$64,543 in Southfield or 44% lower (Employer Exhibit 27). Therefore, based upon the differences in SEV and TV and taking into account the considerably lower incomes and home values of its residents versus Southfield, the city of Pontiac will be eliminated from consideration.

The Employer has proposed three communities within Macomb County (Clinton Township, Shelby Township and St. Clair Shores). All other proposed communities are within either Oakland or Wayne Counties. One could argue that communities within Macomb County should be rejected. However, the United States Census Bureau defines the Detroit metropolitan area as the "*Detroit-Warren-Livonia Metropolitan Statistical Area*". The area includes Wayne, Oakland and Macomb counties as well as Lapeer, Livingston and St. Clair counties². Additionally, employees of the city of Southfield are recruited on a wide area basis and some reside in counties outside of Oakland and Wayne, including in Macomb (Employer Exhibits 7, 8 and 9). Therefore, given the facts that these three communities fall within a range of reason of Southfield in location, population, SEV and TV, there is no discernible reason to exclude them from consideration.

The impartial chairperson can find no clear basis for excluding any of the remaining proposed communities. They all fall within a reasonable range of the appropriate criteria to be considered comparable to the city of Southfield for this Act 312 proceeding.

² Source: Population Division, U.S. Census Bureau. Internet Release Date: 1/19/2006

Interim Award- Comparable Communities

After consideration of the arguments of the parties and the applicable provisions of Act 312, the impartial arbitrator directs that the following communities shall be utilized as comparable communities in this Act 312 proceeding:

Canton Township
Clinton Township
Dearborn
Dearborn Heights
Farmington Hills
Livonia
Redford Township
Royal Oak
Shelby Township
St. Clair Shores
West Bloomfield Township
Waterford Township
Westland


Steven B. Stratton
Steven B. Stratton

Dated: February 27, 2007