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City of Muskegon and Command Officers Association of Michigan
Act 312 Arbitration Award, MERC Case No. L09 G-4004
Arbitration Panel: Gregory M. Saltzman (chair), John C. Schrier (employer), James DeVries (Union)
January 10, 2011
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State of Michigan

Department of Labor & Economic Growth

Employment Relations Commission

Act 312, Public Acts of 1969, As Amended

ARBITRATION PANEL OPINIONS AND AWARDS

In the matter between

THE CITY OF MUSKEGON, Employer

and

COMMAND OFFICERS ASSOCIATION OF MICHIGAN, Union

Michigan Employment Relations Commission Case No. L09 G-4004

Muskegon City

DATE OF ACT 312 ARBITRATION PETITION: November 30, 2009

DATE OF PRE-HEARING CONFERENCE: March 4, 2010 (by telephone)

DATE OF HEARING: July 28, 2010

LOCATION OF HEARING: Muskegon, MI

EXCHANGE OF LAST BEST OFFERS: August 11, 2010

ARBITRATION PANEL: Gregory M. Saltzman (impartial chairman)
John C. Schrier (Employer delegate)
James DeVries (Union delegate)

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APPEARANCES:

For the City of Muskegon:

Mr. John C. Schrier, Esq., Parmenter O'Toole Attorneys at Law, outside counsel
Mr. Bryon Mazade, City of Muskegon, city manager
Mr. Tony Kleibecker, City of Muskegon, chief of police
Mr. Tim Paul, City of Muskegon, finance director
Ms. Michelle R. Heckman, Parmenter O'Toole Attorneys at Law

For Command Officers Association of Michigan (COAM):

Mr. James DeVries, COAM
Mr. Kevin Loftis, research analyst and business agent, Police Officers Association of Michigan
Mr. Jerry Ziegler, bargaining unit member and president, Muskegon City Command, COAM
Ms. Leah Fenwick, bargaining unit member and vice president, Muskegon City Command, COAM
Mr. Mike Haug, bargaining unit member and secretary-treasurer, Muskegon City Command, COAM
Mr. Dennis Lord, bargaining unit member, Muskegon City Command, COAM

COURT REPORTER: Ms. Mary J. Johnston, Network Reporting Corporation

I. General Background

Muskegon is a city in western Michigan with a population (as of 2000) of about 40,000. The collective bargaining agreement between the City of Muskegon (hereinafter the Employer) and Command Officers Association of Michigan (hereinafter the Union, or COAM) covered a bargaining unit of all command officers employed by the City of Muskegon Police Department. This unit consists of 15 employees: police sergeants, lieutenants, and captains. Negotiations for a new contract did not result in an agreement, despite the assistance of a MERC mediator. On November 30, 2009, the Union filed a petition for arbitration under Act 312 of Public Acts of 1969. The contract expired December 31, 2009.

The issues listed in the Act 312 petition as being in dispute were:

1. Duration
2. Wages
3. Sick time payout at retirement
4. Pension (age)
5. Retiree health care (major medical cap)
6. Retiree health care (annual physicals)

At the time of the hearing, the City of Muskegon was also in negotiations with bargaining units for clerical workers and the Department of Public Works (DPW), and the City had completed contract negotiations with bargaining units for police patrol officers and firefighters.

Gregory M. Saltzman was appointed impartial chairman of the Act 312 arbitration panel. John C. Schrier was appointed the Employer delegate, while James DeVries was appointed the Union delegate. Both the Employer and the Union waived statutory time limits and stipulated that the arbitration panel has jurisdiction in this matter.

On a personal note, the chairman of the arbitration panel apologizes to the parties for the delay in completing arbitration. He recognizes the importance to the parties of a prompt award. On September 6, however, shortly before he received the post-hearing briefs, the arbitration panel chairman's father died. The chairman had to put aside this fact finding report for about three months while arranging a burial, settling his late father's estate, and taking care of his elderly mother's finances.

II. Issues to Be Resolved

The issues to be resolved by the arbitration panel are:

- Wages
- Sick leave payout at retirement
- Change in the retirement age for the pension plan
- Whether the Employer will pay \$41 per month for Medicare Part D coverage for retirees

Other issues addressed in negotiations have either been settled or withdrawn from consideration.

The parties stipulated that all of the issues to be resolved by the arbitration panel are economic issues. Economic issues are subject to the final-offer arbitration provision of Act 312 that requires the arbitration panel to select, on an issue-by-issue basis, either the Employer's last best offer without modification or the Union's last best offer without modification.

III. The Last Best Offers of the Parties

The parties agreed to a three-year contract from January 1, 2010, through December 31, 2012. Their last best offers on the four issues in dispute as of the time of the arbitration hearing were as follows:

Wages

The parties appear to agree on wages for 2010: both have proposed a 1% increase effective January 1, 2010. The Union specified that this is retroactive and applies to all hours paid.

The parties also agree on wages for January through June 2011: both have proposed another 1% increase effective January 1, 2011.

The parties disagree, however, on wages for July through December 2011 and for all of 2012. The Employer proposes **only one** further wage increase after January 1, 2011, a 1% increase to occur on January 1, 2012. The Union proposes **three** further wages increases of 1% each after January 1, 2011: on July 1, 2011; January 1, 2012; and July 1, 2012.

Thus, effective July 1, 2012, the Employer proposes that salaries be approximately 103.03% of what they were in 2009: i.e., the 2009 salary $\times 1.01 \times 1.01 \times 1.01$, or the 2009 salary $\times (1.01)^3$. In contrast, the Union proposes that salaries effective July 1, 2012 be approximately 105.10% of what they were in 2009: i.e., the 2009 salary $\times 1.01 \times 1.01 \times 1.01 \times 1.01 \times 1.01$, or the 2009 salary $\times (1.01)^5$.

In dollar terms, the parties' last offers for the salary scale are shown in Tables 1, 2, and 3:

Table 1: Last Offers Regarding Sergeant Salary

Dates	Sergeant: starting salary		<i>Sergeant: one-year salary</i>	
	Employer offer	Union offer	<i>Employer offer</i>	<i>Union offer</i>
Jan-Dec 2009	\$59,238.00	\$59,238.00	\$60,299.00	\$60,299.00
Jan-Dec 2010	\$59,830.38	\$59,830.38	\$60,901.99	\$60,901.99
Jan-Jun 2011	\$60,428.68	\$60,428.68	\$61,511.01	\$61,511.01
Jul-Dec 2011	\$60,428.68	\$61,032.97	\$61,511.01	\$62,126.12
Jan-Jun 2012	\$61,032.97	\$61,643.30	\$62,126.12	\$62,747.38
Jul-Dec 2012	\$61,032.97	\$62,259.73	\$62,126.12	\$63,374.86
July 2012 pay as % of 2009 pay	103.03%	105.10%	103.03%	105.10%

Table 2: Last Offers Regarding Lieutenant Salary

Dates	Lieutenant: starting salary		<i>Lieutenant: one-year salary</i>	
	Employer offer	Union offer	<i>Employer offer</i>	<i>Union offer</i>
Jan-Dec 2009	\$64,530.00	\$64,530.00	\$65,586.00	\$65,586.00
Jan-Dec 2010	\$65,175.30	\$65,175.30	\$66,241.86	\$66,241.86
Jan-Jun 2011	\$65,827.05	\$65,827.05	\$66,904.28	\$66,904.28
Jul-Dec 2011	\$65,827.05	\$66,485.32	\$66,904.28	\$67,573.32
Jan-Jun 2012	\$66,485.32	\$67,150.18	\$67,573.32	\$68,249.05
Jul-Dec 2012	\$66,485.32	\$67,821.68	\$67,573.32	\$68,931.55
July 2012 pay as % of 2009 pay	103.03%	105.10%	103.03%	105.10%

Table 3: Last Offers Regarding Captain Salary

Dates	Captain: starting salary		Captain: one-year salary	
	Employer offer	Union offer	Employer offer	Union offer
Jan-Dec 2009	\$69,818.00	\$69,818.00	\$70,879.00	\$70,879.00
Jan-Dec 2010	\$70,516.18	\$70,516.18	\$71,587.79	\$71,587.79
Jan-Jun 2011	\$71,221.34	\$71,221.34	\$72,303.67	\$72,303.67
Jul-Dec 2011	\$71,221.34	\$71,933.56	\$72,303.67	\$73,026.70
Jan-Jun 2012	\$71,933.56	\$72,652.89	\$73,026.70	\$73,756.97
Jul-Dec 2012	\$71,933.56	\$73,379.42	\$73,026.70	\$74,494.54
July 2012 pay as % of 2009 pay	103.03%	105.10%	103.03%	105.10%

The parties stipulated that wages constitute one issue for all three years of the contract, so that the arbitration panel could choose either the Employer wage offer for all three years, or the Union wage offer for all three years.

Sick Leave Payout at Retirement

The Employer proposes no change in the existing contract language regarding sick leave payout at retirement. This language is as follows:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.9 OUTSTANDING SICK LEAVE. Accumulated sick leave hours paid out at retirement at one-half rate under Section 19.2 will be re-classified as vacation time for purposes of computing the final average compensation reported to MERS. The maximum number of reclassified sick leave hours included in the Employee's FAC computation will be 144 hours.

The Union proposes changing Section 35.9, effective January 1, 2011, by increasing the maximum number of hours included in the FAC computation from 144 to 288 and by adding a second paragraph, so that this Section reads as follows:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.9 OUTSTANDING SICK LEAVE. Accumulated sick leave hours paid out at retirement at one-half rate under Section 19.2 will be re-classified as vacation time for purposes of computing the final average compensation reported to MERS. The maximum number of reclassified sick leave hours included in the Employee's FAC computation will be 288.

All remaining hours can be cashed out at 75% if placed in a Deferred Compensation Plan, a MI Education Plan, the MERS HEALTH Care Savings Plan, or combination of those plans. Any balance converted to cash, shall be at 50%, in accordance with Section 19.10.

Change in Retirement Age for the Pension Plan

The Employer proposes no change in the existing contract language regarding retirement age for the pension plan. This language is as follows:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.7 RETIREMENT ELIGIBILITY. Employees are eligible to retire at age fifty-three (53) with twenty-five (25) years of service (MERS F53/25) or at age fifty-five (55) with ten (10) years of service (MERS F55/10).

The Union proposes reducing the retirement age to 50, so that Section 35.7 reads as follows:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.7 RETIREMENT ELIGIBILITY. Effective December 1, 2010, the employer shall reduce the normal age of retirement to age fifty (50) to all bargaining unit members participating in the M.E.R.S. defined benefit pension plan. The cost of providing this change shall be borne by the Employer.

Retiree Prescription Drug Coverage

The parties have agreed that for employees who retire after January 1, 2010, the Employer will not provide a prescription drug plan. The outstanding issue is whether the Employer will provide

to each retiree a payment of \$41 per month to purchase Medicare Part D prescription drug insurance.

The parties disagree on who is seeking a change in the status quo with regard to this issue. The Union asserts that the Employer is currently making the \$41 per month payments. The Employer brief asserts:¹

The Union's last best offer misstates the present practice. Under the current contract the Union receives a prescription drug card and no \$41.00 stipend. The parties agreed to eliminate the prescription drug card. The only issue before the arbitration panel is whether to now offer the Union a \$41.00 stipend toward Medicare Part D. The Union proposes that the City now provide the \$41.00 stipend, while the City proposes no change to the contract.

The Employer brief (page 19) acknowledges \$41/month payments by the City of Muskegon towards the cost of Medicare Part D but asserts that these have been for non-public safety employees rather than for the police command officers' bargaining unit.

IV. Criteria

Act 312, Section 9 (MCL 423.239) specifies criteria for arbitration 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.

¹Post Hearing Brief of City of Muskegon, September 17, 2010, p. 18.

(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.

Because of the severe business cycle downturn of 2008-09 and ongoing economic problems in Michigan, employer ability to pay has been a particularly important issue in recent negotiations involving local government employers in Michigan. But the arbitration panel must give due consideration to all of the criteria listed in MCL 423.239.

V. Rationales Presented by the Parties

Testimony at the hearing and the briefs addressed employer ability to pay, salaries and benefits offered by comparable employers (external comparables), salaries and benefits offered by the City of Muskegon to other employee groups (internal comparables), and other issues.

Wages – Ability to Pay

The Employer brief asserts that limitations on the Employer's ability to pay necessitate slow growth in salaries. The Employer brief argues:²

The City has three major sources of income which together account for approximately 80 percent of its total income: a City income tax, a City property tax and State shared revenues. . . [A]ll three of these revenue streams have been under severe pressure for several years. . . Record high unemployment rates have led to the severe decline in income tax revenue [from \$7.7 million in 2008 to \$6.5 million in 2009]. . .

The property tax income has been slightly more stable but only because there is a lag in the economic downturn's effect on those taxes, which are based on inflated assessments performed a year or two ago. . . The City expects a severe decline in this source of revenue in the upcoming year as its second largest taxpayer, Sappi, a paper mill, has closed its doors. . .

In addition, the City's largest taxpayer, BC Cobb Consumers Energy Plant, has filed significant tax appeals based on devaluation of equipment and there are serious discussions of shutting the plant down within the next five to seven years. . . [P]roperty tax income . . . is expected to continue to fall off for yet another year or two. . .

In 2008, the City received \$4,500,000 in State shared revenues. . . This year the hopeful projection is to receive \$3,600,000. . . Approximately five or six years ago, this figure was as high as \$5,700,000. . .

[T]he general economic conditions of the City are bleak. Rather drastic changes are being implemented to deal with the economic crisis. In 2008 the City budgeted for 280 full-time positions. For the upcoming year, only 244 full-time positions are included in the budget. . .

[T]here are outstanding future liabilities looming. The City borrowed money for a Grand Valley State University building with the assumption that surrounding

²Post Hearing Brief of City of Muskegon, p. 5-6.

development would generate income, which it has not. . . In 1990 the City borrowed money to redevelop the downtown mall, which has since been demolished. . . These debts may need to be met out of the general fund in the near future. . . The City's pension liabilities loom large as well.

The Union brief does not address the impact of the Employer's ability to pay on the appropriate wage award.

Wages –External Comparables

The parties stipulated that the following communities are comparable to the City of Muskegon for purposes of assessing compensation for police command officers: Bay City, City of Holland, City of Jackson, City of Kentwood, County of Muskegon, and City of Wyoming.

The Union brief emphasizes that salaries for police command officers are lower in Muskegon than in the other communities that both parties agreed to include in the list of external comparables. The Union summary regarding sergeants, the largest group in the bargaining unit, begins as follows:³

In July of 2008, all of the external comparables had contracts in effect. Union Exhibit #1 illustrates that on July 1, 2008, the average wage for all of the external comparables for the rank of sergeant was \$64,730. The top pay for a Muskegon sergeant on that date was \$58,543, a difference of \$6,187 or approximately 10.6% below the average of the external comparables. That amount represents the lowest wage for all of the sergeants of the external comparables and puts Muskegon sergeants dead last.

A comparison of wages one year later on July 1, 2009 shows that the top wage for a sergeant in Muskegon was \$60,299. Two of the comparables, Muskegon County and Bay City, were expired and no wage could be factored for those two comparables into the average. Even at that date, if the one comparable (Muskegon County) received a zero (0%) percent increase, Muskegon sergeants would still be below Muskegon's expired wage rate that was in place on July 1,

³ Post Hearing Brief of Command Officers Association of Michigan, September 15, 2010, pp. 5-6.

2008. That leaves only Bay City below the wage of a Muskegon sergeant. That difference is \$499.

Furthermore, the Union brief argues,⁴

Four of the external comparables, the City of Jackson, Holland, Kentwood and Wyoming, on July 1, 2009 already exceed in wages both the Union's and the Employer's LBO for wages [for sergeants] that would be in effect on July 1, 2012, the last year of the CBA [underlining in the original].

Three of those comparables, the City of Jackson, Kentwood and Wyoming, have wage increases negotiated and due on July 1, 2010, and the fourth comparable, the City of Holland, has a wage increase due on July 1, 2010 based on the CPI.

The collective bargaining agreements have expired in the two remaining external comparables, Bay City and the County of Muskegon. The Union brief acknowledges that, if Muskegon County sergeants receive a zero percent increase for all three years of a successor CBA, then Muskegon City sergeants would have slightly higher pay (\$264 more per year) in 2012 even under the Employer's LBO.⁵ Union Exhibit 1 shows that Bay City and the City of Muskegon have provided similar salaries to sergeants at the top step, with Bay City somewhat higher in 2007 and 2008 but the City of Muskegon higher since January 1, 2009. Were Bay City sergeants to receive zero percent increases for all three years of a successor CBA, then City of Muskegon sergeants at the top step would receive salaries \$2,326 higher than those of Bay City sergeants in 2012, under the Employer's LBO. Of course, if Muskegon County and Bay City salaries increase by more than zero percent, then the City of Muskegon 2012 salaries under the Employer's LBO would compare less favorably to those in Muskegon County and Bay City.

Some of the external comparables do not have a lieutenant rank. But the Union brief notes that, in July 2008, the top salary for lieutenants in Bay City, the City of Jackson, Muskegon County, and Wyoming averaged \$68,163. The top salary for a lieutenant in the City of Muskegon at that time was \$63,676, which was \$4,487 or approximately 7% less than the external comparable

⁴ Post Hearing Brief of Command Officers Association of Michigan, p. 9.

⁵ Post Hearing Brief of Command Officers Association of Michigan, p. 10.

average.⁶

The Union and the Employer disagree on whom to include in the external comparable figure for captains. The City of Jackson does not have the captain rank, but they do have deputy chief. The City of Kentwood had a captain rank in 2009 but changed the title of that rank in 2010 to deputy chief. The Union argues that the deputy chiefs in Jackson and Kentwood should be included in the external comparable figures against which the salaries of Muskegon captains are benchmarked. The Employer argues that the Jackson and Kentwood deputy chiefs should NOT be included in the external comparable figures for Muskegon captains.

Including the Jackson deputy chief and the Kentwood captain rank that then existed, the Union calculated that the average salary for a top paid captain on July 1, 2008, in the external comparables was \$78,301. Muskegon then paid their captains \$68,815, which was \$9,486 or approximately 13.8% less than the external comparable average.⁷

The Employer brief focuses not on the *level* of salaries in the external comparables, but on the *percentage changes* in salaries. The City of Muskegon provided a 3% increase to sergeants in 2009, which was higher than the 1% in Holland or the 2% in Kentwood, equal to the 3% in Jackson, and less than the 4.8% in Wyoming. These percentage change figures provide less compelling support for a large increase in the City of Muskegon than do the salary level figures. More importantly, the Employer brief notes that:⁸

[T]he 2010 increases [in external comparables] were not granted recently. Rather, the increases were given in better economic times, i.e., Wyoming in 2008, Kentwood in 2008 and Jackson in 2007. For 2011, only Wyoming has a settled contract, which is based on the consumer price index.

More realistic are the wage changes occurring for non-union employees. For Captains, including positions that the Union claims are comparable to Captains, Holland, Jackson and Kentwood have not granted an increase since July 1, 2008, with the exception of when Kentwood eliminated the position of Captain and

⁶ Post Hearing Brief of Command Officers Association of Michigan, p. 7.

⁷ Post Hearing Brief of Command Officers Association of Michigan, p. 8.

⁸ Post Hearing Brief of the City of Muskegon, p. 8.

created the position of Deputy Chief.

In short, the Employer does not seem to challenge the Union's assertion that the level of salaries is lower in the City of Muskegon than in most of the external comparables, but the Employer asserts that the absence of recently negotiated salary increases in the external comparables justifies limiting the salary increases in the City of Muskegon to no more than 1% per year.

Wages – Internal Comparables

The parties agree that the internal comparables for the City of Muskegon police command bargaining unit are the City of Muskegon's four other bargaining units (police patrol, firefighters, clerical, and DPW) and the City of Muskegon's unrepresented employees.

The Union brief states:⁹

In 2010: patrol received 1%, DPW 0, clerical 1%, firefighters 2.5 (received on December 26) and unrepresented 0. . . In 2011, only patrol and firefighters have a contract in effect. . . The firefighters received 1% deposited into a health care savings plan, and the patrol unit received 1% wage improvement.

In 2012 only the firefighters have a CBA, and will receive a 1% increase in wages. . . The Union's LBO more clearly conforms to the statutory requirements. The Union's offer of a split 1% each year of the last 2 years of the CBA is only 1.5%.

The Employer brief assessed internal comparables differently:¹⁰

The Union cannot argue that for parity with internal comparables a pay increase of 2% is warranted in 2011 or 2012. The Police Officers Union received a 1% increase in 2010 and 1% in 2011. For 2010, the Firefighters gave up their increase with the agreement that it would be rolled into the base effective January 1, 2011. [A footnote acknowledges this was 2.5%.] The Firefighters Union has recently ratified a contract with wage increases of 1% in 2011, which must be

⁹ Post Hearing Brief of Command Officers Association of Michigan, pp. 12-13.

¹⁰ Post Hearing Brief of City of Muskegon, pp. 9-10.

mandatorily deposited into the Healthcare Savings Plan, 1% in 2012, and 1% in 2013. In 2010, the unrepresented employees and DPW received 0% in wage increases while the SEIU Clerical Unit received only a 1% increase. . .

Based on the economic forecast, . . . a 0% or 1% wage increase for the unrepresented employees is likely and, therefore, SEIU-DPW would also receive the minimum 1% increase as well. . . [T]here was no testimony or exhibits presented as to why command officers should receive a greater percentage increase than patrol officers for 2010 and 2011, especially in the context of police patrol officers taking a freeze in 2009 while command officers received a 3% increase. The internal comparables do not support the Union's proposal for a 2% increase in 2011 and 2012. The internal comparables support the 1% increase proposed for 2010, 2011 and 2012.

Annual vs. Semiannual Salary Increases

The Employer brief objects to the Union proposal that bargaining unit members receive salary increases twice a year in 2011 and 2012: once on January 1, and once on July 1. The Employer argues that semiannual increases are inconsistent with past practice, both for police command units in the external comparables and for other employee groups in the City of Muskegon. The Employer brief, however, made no argument why increasing salaries semiannually rather than annually was inherently a bad idea. For example, the Employer did not argue that adjusting salaries twice a year rather than once would impose an undue administrative burden.

Sick Leave Payout at Retirement

The Union proposal on sick leave payout at retirement has two aspects. First, the Union has proposed increasing from 144 to 288 the maximum number of accumulated sick leave hours that can be reclassified as vacation hours for purposes of computing final average compensation (FAC) to MERS. The Employer brief asserts that the Union did not present evidence at the arbitration hearing supporting this change from 144 to 288:¹¹

There is an absolute lack of any factual support to increase the number of accrued unused sick leave [hours] to be included in an employee's FAC. There was no

¹¹ Post hearing Brief of City of Muskegon, p. 11.

documentary evidence presented indicating what any comparable community permits to be included in FAC or other employee groups within the City. Further, there was no testimony to support doubling the amount of accrued unused sick leave, which can be included in calculating FAC.

Equally as troubling is that no actuarial valuation was presented indicating the cost of the proposed change. . . With no evidence to support the proposed increase to the FAC, said proposal should simply be denied.

The Union brief did provide some cost information, saying that raising the number of hours from 144 to 288 would raise the FAC for a sergeant by \$1,391 and would raise a sergeant's annuity by \$1,043 annually. But the Union brief did not provide any figures for any external or internal comparables on the number of hours that can be reclassified.

The second aspect of the Union sick leave proposal is to allow retiring employees to receive a 75% rather than a 50% payout for the remaining accumulated sick leave hours if they are placed in any combination of deferred compensation, Michigan Education Plan, or MERS Health Care Saving Plan. But the previous policy of a 50% payout will apply if the payout is taken in cash.

The Union brief refers to Union Exhibit 5, which shows the payout rates at retirement for accumulated sick time in external comparables. Bay City, City of Jackson, Muskegon County, and City of Wyoming all have 50% payout rates, while City of Holland has a 40% rate. All of these rates are less than the 75% payout rate proposed by the Union. City of Kentwood provides a payout per accumulated sick day equal to \$1.50 times the number of years of continuous employment with the City. The Kentwood payout rate appears to be substantially less than 50%, though the exact figure depends on the individual employee's length of service. The Union brief does not present any explanation as to how the information in Union Exhibit 5 supports an increase in the payout for City of Muskegon command officers from 50% to 75%. Interestingly, the Employer brief (page 12) asserts that the County of Muskegon has a 75% cash payout rate; but the Employer brief states that the payout percentage in all of the other external comparables is 50% or less.

The dollar amount of the payout depends on not only the payout rate, but also the maximum number of hours of unused sick leave that can be accumulated. Page 19 of the Union brief presents figures on the maximum accumulation. On this measure, City of Muskegon lags behind the average for external comparables. All of the external comparables other than City of Holland

allow accumulation of a larger maximum number of unused sick leave hours than City of Muskegon does. The average of the external comparables other than City of Wyoming is 1,280 hours; the average with Wyoming would be even higher, as Wyoming allows an unlimited number of hours. The City of Muskegon, in contrast, allows only 1,056 hours, which is 224 hours less than the average without Wyoming.

Internal comparables do not support more than 1,056 hours of accumulation, with one exception: City of Muskegon firefighters are permitted to accumulate up to 1,440 hours of unused sick leave [Hearing Transcript, p. 21]. But the Employer brief (page 13) explains this discrepancy by noting, “firefighters work an entirely different schedule from all other groups, working 24-hour shifts and 2800 hours per year as opposed to 2080 hours per year [for] the rest of the groups, including Command.”

Page 20 of the Union brief combines information on the payout rate and the maximum number of hours that can be accumulated, with a table showing the maximum dollar total for payouts at retirement of accumulated unused sick leave. Four of the six external comparables have higher maximum payouts of unused sick time than the City of Muskegon does. The City of Muskegon has a maximum payout of \$15,306 (based on 2009 wages; the figures would be higher with the wage increases provided by either the Employer’s LBO or the Union’s LBO). In contrast, the Union estimates that Wyoming has a maximum payout of \$42,583. City of Jackson (\$24,199), Bay City (\$23,000), and Muskegon County (\$21,412) also provide larger maximum payouts than City of Muskegon does. On the other hand, City of Holland (\$9,273) and Kentwood (\$5,625) provide smaller maximum payouts than City of Muskegon does. The Union brief reports an average maximum payout of the six external comparables of \$17,182. The impartial chairman calculated the average for the six external comparables and got an even higher figure: \$21,015. Regardless of which average one uses, the maximum dollar payout at retirement for unused sick leaves appears to less in the City of Muskegon than the average in the external comparables.

Change in Retirement Age for the Pension Plan

The Union proposes reducing the age of eligibility for retirement from 53 to 50 for a bargaining unit member with 25 years of service.

The Union brief (page 14) and Union Exhibit 6 present slightly different accounts of retirement age policies of external comparables. Both state that (1) the City of Holland and Muskegon County allow retirement at age 50 with 25 years of service, (2) the City of Wyoming allows

retirement at age 50 with 10 years of service, and (3) the City of Kentwood allows retirement at age 53 with 15 years of service. All four of these external comparables have more generous age/service combinations than the City of Muskegon does. The Union brief states that the City of Jackson has 25 and out and is silent about the age/service combination for Bay City. Union Exhibit 6 seems to indicate that the City of Jackson allows retirement at age 55 with 25 years of service, while Bay City has 25 and out or retirement at age 55 with 10 years of service. Only the age/service combination in the City of Jackson, as described in Union Exhibit 6, is less generous than that for the City of Muskegon.

The Employer brief (page 15) notes that Holland requires captains to be 55 but acknowledges that some external comparables have more generous age/service requirements for pension eligibility than the City of Muskegon does. Still, the Employer brief argues,¹²

The generosity [of externally comparable employers], however, comes with the price of a substantially under-funded retirement system, especially when other post-employment benefits are taken into consideration. Of all of the comparable communities, Muskegon is the only pension fund 100% funded, based on current MERS actuarial assumptions. . . The City of Jackson's defined benefit plan is only 60% funded. . . Muskegon has been fiscally responsible in its efforts to reduce the risk of there not being money available to all employees entitled to a pension in future years.

The Employer brief (page 16) notes that Bay City's defined benefit pension plan is 80% funded, but its other post-employment benefits are only 2% funded. Considering both defined benefit pension plans and post-retirement health insurance benefits, Bay City's post-retirement benefits are only 27.4% funded, while the City of Jackson's post-retirement benefits are only 31.2% funded. The City of Muskegon, in contrast, has advance funding for 86.5% of post-retirement benefits, a higher figure than any of the external comparables. The Employer brief states (page 16): "The financial irresponsibility of some comparable communities should not be justification for expanding retirement benefits in Muskegon."

The parties indirectly addressed the issue of ability to pay when they presented different assessments of the financial cost of the Union's proposal to lower the retirement age. If the cost is large, then the Employer's ability to pay becomes very relevant in assessing the proposal. At

¹² Post Hearing Brief of the City of Muskegon, pp. 15-16.

the hearing, Employer witness Tim Paul argued that the cost estimate provided by the Municipal Employees' Retirement System of Michigan (MERS) at the request of the Union [Union Exhibit 7] understates the true cost. Mr. Paul argued that MERS overstated the current market value of pension assets because of ten-year smoothing of asset values (which reduces the weight given to very bad stock market returns in 2008 and early 2009). He also said that many pension experts thought it was too optimistic for MERS to assume an 8% rate of return on pension assets. If one used five-year smoothing (giving greater weight to poor stock market returns in 2008 and early 2009) and assumed a lower rate of return than 8% on pension investment assets, Mr. Paul testified, then the required Employer contribution to fund a lower retirement age would be higher than MERS estimated.

During cross-examination, the Union asked Mr. Paul whether the City of Muskegon had accepted the actuarial evaluations and assumptions of MERS when joining MERS in 2005. Mr. Paul acknowledged that he personally agreed with the MERS assumption of an 8% rate of return. He also acknowledged that pension asset prices can change significantly from year to year, sometimes falling and sometimes rising.

Both the Union and the Employer also consider internal comparables in assessing the Union proposal to lower the retirement age from 53 to 50. The Union brief argues (page 15): that pension eligibility in the City of Muskegon:¹³

for the patrol unit is age 50 with 25 years of service, the same benefit the command unit is seeking in arbitration. . . In the current situation, a patrol officer seeking promotion would have to give considerable consideration before accepting the offer of promotion. Acceptance of the promotion would require the newly promoted employee to work three additional years before being eligible for retirement.

The Union brief also notes (pp. 16-17) that new police hires are covered by a defined contribution pension plan, rather than a defined benefit plan. The Union asserts that the Employer contributes 1.42% of payroll less to the defined benefit pension plan for this bargaining unit than it does to the defined benefit plan for recently hired police department employees (8.58% of payroll for the current defined benefit pension plan for the police command officers, vs. 10% of payroll for the defined contribution pension plan for newly hired police

¹³ Post hearing Brief of Command Officers Association of Michigan, pp. 15-16.

employees).

The Employer brief (p. 16) acknowledges that the police patrol bargaining unit has the 50/25 retirement option proposed by the Union for the command bargaining unit. Still, the Employer brief argues (pp. 16-17) that firefighters have 53/25, just as police command officers have, while nonunion employees and other Muskegon bargaining units have less generous age/service requirements for pension eligibility than the police command officers already have.

Neither the Union nor the Employer addressed the issue of whether the physical demands of a police command officer's job would pose a serious risk to the health of a sergeant, lieutenant, or captain who was 50, 51, or 52 years old.

Medicare Part D Premium Subsidies for Retirees

Prior to the arbitration hearing, the parties had agreed to eliminate the prescription drug card for future retirees. The Union brief (page 22) states that prescriptions for retirees would instead be covered under the master medical policy, for which retirees pay 20% of the premiums.

The Union brief states, with regard to the Medicare Part D subsidy:¹⁴

All of the external comparables except Holland receive a Medicare Subsidy after being eligible for Medicare. Internally, all of the bargaining units receive subsidy after eligibility for Medicare except the police patrol unit.

The cost is minimal to the Employer, \$41 per month or \$492 annually. . . There is no legitimate or moral reason to eliminate the small stipend to future retirees for this benefit.

The Employer brief acknowledges that external comparables are providing some payments towards Medicare Part D coverage, but it states that the vague information presented at the hearing:¹⁵

provides no guidance as to what the comparable communities are providing. . .
With recent negotiations, the Police Patrol Union, the Fire Fighters Union and

¹⁴Post Hearing Brief of Command Officers Association of Michigan, p.23.

¹⁵ Post Hearing Brief of City of Muskegon, pp. 19-20.

now the Police Command Union have given up the costly prescription card benefit. The Firefighters Union has, in fact, agreed that no new employees hired after July 1, 2010 will receive *any* healthcare benefits after retirement, including but not limited to retiree prescription drug coverage [italics in the original]. Neither the Police Patrol Union nor the Fire Fighters Union negotiated for or received the \$41 per month Medicare Part D stipend. Bargaining with the other non-public safety unions has not yet begun but the City's intention with regard to the DPW, clerical and unrepresented employees is to eliminate the \$41 stipend for all employee groups.

The trend within the City is for the City to get out of the business of providing retiree insurance, especially prescription coverage. In addition, the City is providing tax-advantaged savings vehicles (HCSP) to help employees save more on their own for retiree healthcare.

VI. Opinions of the Arbitration Panel

The chairman of the arbitration panel finds convincing the Employer's arguments that (1) there are serious constraints on the Employer's ability to pay and (2) most recent wage settlements in Michigan local government have provided low or even no wage increases. On the other hand, the Union demonstrated convincingly that the level of salaries is lower in the City of Muskegon than in most external comparables. Also, the chairman does not share the Employer's view that semi-annual wage increases are problematic. But in the context of the worst economic downturn since the Great Depression of the 1930's, the chairman considers ability to pay and recent wage settlements more important criteria.

Act 312, Section 423.239(f) provides that one criterion for arbitration awards is:

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.

This implies some degree of preference for maintaining the status quo. Obviously, changes in compensation regularly occur. But the party proposing a change has the burden of

demonstrating that this change is justified by criteria other than that in MCL 423.239(f).

The Union is proposing change in sick leave payout. The chairman agrees with the Employer that the Union did not make an adequate case for the proposal to increase from 144 to 288 the maximum number of accumulated sick leave hours that can be reclassified as vacation hours for purposes of computing final average compensation (FAC) for purposes of MERS pension benefits. He also considers it important that most internal and external comparables do not provide for payouts at retirement of unused sick leave at rates above 50%. The Union did show that most external comparables allow accumulation of a larger maximum number of unused sick leave hours than City of Muskegon does. Yet the arbitration panel cannot separate this aspect of the issue from the other aspects because Act 312 requires the selection of either the Union's LBO without modification or the Employer's LBO without modification.

The Union is proposing change in age and years of service needed for retirement. The Union showed that external comparables are more generous than the City of Muskegon. Yet the Employer made a convincing argument that some local public employers have been less attentive than they should be to the need for advance funding of post-retirement benefits, whether pensions or health insurance. Indeed, the chairman commends the City of Muskegon for its fiscal prudence in having advance funding for post-retirement health insurance. A Union proposal to match external comparables might be realistic in some future year when the Employer's financial situation is strong. But reducing the retirement age to 50 is not realistic at a time when the Employer is justifiably concerned about ability to pay. Also, in order to justify reducing the retirement age from 53 to 50, the Union should present persuasive evidence that the physical demands for police command officer jobs are such that continued employment past age 50 has an adverse effect on the officers' health.

There is some ambiguity as to which party is proposing change with regard to post-retirement prescription drug benefits. The chairman accepts the Employer's claim that the City of Muskegon is not currently providing \$41 per month for Medicare Part D coverage for members of this bargaining unit. But the Employer has initiated a major change by pushing for the elimination of the prescription drug card for retirees. The \$41 per month stipend for Medicare Part D coverage is essentially a way of mitigating the cutback the Employer has proposed. Because of MCL 423.239(f), there is a much stronger case for *maintaining* some remnant of Employer responsibility for retiree prescription drugs than there is for *doubling* the number of hours of accumulated sick leave that can be reclassified as vacation hours or for *reducing* the retirement age.

VII. Awards

A majority of the Act 312 arbitration panel (the chairman and one other panel member) supports each of the following awards. In order to expedite this procedure, the Employer and Union delegates waive the right to include any dissents in this document.

(1) Wages

A 1% increase retroactive to January 1, 2010, and applicable to all hours paid.

A 1% increase retroactive to January 1, 2011, and applicable to all hours paid.

A 1% increase on January 1, 2012, and applicable to all hours paid.

(2) Sick Leave Payout at Retirement

No change in the current contract language, which reads:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.9 OUTSTANDING SICK LEAVE. Accumulated sick leave hours paid out at retirement at one-half rate under Section 19.2 will be re-classified as vacation time for purposes of computing the final average compensation reported to MERS. The maximum number of reclassified sick leave hours included in the Employee's FAC computation will be 144 hours.

(3) Retirement Age for the Pension Plan

No change in the current contract language, which reads:

SECTION 35 – DEFINED BENEFIT RETIREMENT PLAN

.7 RETIREMENT ELIGIBILITY. Employees are eligible to retire at age fifty-three (53) with twenty-five (25) years of service (MERS F53/25) or at age fifty-five (55) with ten (10) years of service (MERS F55/10).

