

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Arbitration  
Under Act 312 (Public Acts of 1969)

City of Grandville,

Employer,

-And-

Police Officers Labor Council

MERC Case No. L13 L-1132

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**OPINION AND AWARD**

Chairman of the Arbitration Panel:	Kenneth P. Frankland
City Delegate:	John Patrick White
Union Delegate:	Thomas L. Zulch
Representing City:	John Patrick White
Representing Union:	Thomas L. Zulch
Pre-Hearing Conference:	June 5, 2014
Hearing Held on:	July 29, 2014
Opinion and Award on the Merits:	October 1, 2014

**STATEMENT OF THE CASE**

The Police Officers Labor Council (POLC), filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on May 16, 2014 as to the expired collective

bargaining agreement with the City of Grandville – hereafter “City” (The unit consists of all sworn officers under the rank of Sergeant). On May 30, 2014, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter. A pre-hearing conference was held on June 5, 2014, and a report was generated by the chair the same day. During the pre-hearing conference, the parties agreed that there were four issues, all economic, Wages for each year of the new contract, a separate issue for each year; and Flex Time Article 18, Section 65 (b) 2. The parties further agreed to consult regarding comparable communities and subsequently stipulated to five communities, the cities of Holland, Kentwood, Norton Shores, Traverse City and Walker.

Evidentiary hearing was held on July 29, 2104. Briefs were submitted on or before September 15, 2014 and this Opinion and Award ensues. As required by the Act, on economic issues, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9(1).

#### **STANDARDS OF THE PANEL**

Act 312 of 1969, MCL 423.231, as amended by Act 116 of 2011 specifically §9(1), contains nine factors upon which the panel is to base its opinion and award. Those are:

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
  - (i) The financial impact on the community of any award made by the

arbitration panel

- (ii) The interests and welfare of the public
  - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government
  - (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer;
  - (c) Stipulations of the parties;
  - (d) Comparison of 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 both of the following:
    - (i) Public employment in comparable communities;
    - (ii) Private employment in comparable communities;
  - (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question
  - (f) The average consumer prices for goods and services commonly known as the cost of living;
  - (g) 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 employ-

ment, and all other benefits received;

(h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

(i) Other factors that 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.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance if the determination is supported by competent, material, and substantial evidence.

The panel may give more weight or less weight, as it deems appropriate, to any one factor. *City of Detroit v Detroit Police Officers Ass'n.*, 408 Mich 410, 483-484 (1980). In the ensuing discussion, the panel will discuss the Section 9 factor(s) which are most pertinent.

The City has not raised ability to pay as an issue thus the Panel need not consider Sections 9(1)a nor 9(2) in its deliberations.

### **Background Information**

Grandville (hereafter, "City") operates under the Council-Manager form of government and was incorporated in 1933. It is located in southwestern Kent County, eight miles southwest of Grand Rapids. It has approximately 8 square miles. The 2010 estimated population was 15,378. (The Panel takes notice of public information on the

City web site)

According to the Act 312 Petition (U-1; E-A) there are 15 member of this Police unit, all sworn police officers under the rank of Sergeants and a total of 24 sworn officers in the department. This unit is Police Officers Labor Council. The current contract ran from July 1, 2011 and expired June 30, 2014. Per the stipulations of the parties the new contract is for three years, from July 1, 2104 – June 30, 2017. The parties have negotiated in good faith on a new contract and reached TA's on many issues that are indentified in U-5 and are incorporated into this Award.

The City has three bargaining units besides this unit: Police Command, Clean Water (DCW), and Public Works (DPW). Additionally, the City identifies all other non-union employees as "administrative". Included as administrative employees, are six FTE fire-fighters. There is no fire-fighters bargaining unit.

The City has negotiated 1.25% increases for 2014 with the DCW and DPW and provided the same increase for the administrative employees. The Command contract provides that its members have a 112% wage differential with this unit and thus any increases in this Award will automatically provide an increase for Command.

#### **ISSUE ONE WAGES**

<b>UNION LBO</b>		<b>CITY LBO</b>	
Effective July 1, 2014	2.25%	Effective July 1, 2104	1.25%
Effective July 1, 2015	2.25%	Effective July 1, 2105	2.00%
Effective July 1, 2106	2.75%	Effective July 1, 2016	2.25%

In support of the City offer, it argues that internal comparability and equitable treatment of employees is most important on this issue. It also suggests that total

compensation should be used by the Panel on wage issues.

While the parties agreed that the Panel should decide each year separately, the City has advanced arguments that are heavily based upon historical averages and the total picture over three years and less upon each year with the exception of 2014. In 2014, the City argues that all internals received 1.25% the same being offered to this unit. There is less information advanced on a specific comparison for the other two years.

Examining the external comparables, the City argues that between 2011 and 2106 none of the externals have come near a three year averaged of 2.4% being proposed by the Union. They assert that in 2014, the Union offer is larger than three other communities. In Kentwood, the next three years are settled at 5.5% in total increases but the Union offer would equate to 6.5% for the same period.

The City also suggests that an examination of total compensation supports their three year proposal. Besides wage increases that are a given under either offer, the City says other concessions agreed to, would increase total compensation in areas the City has historically been above the average of the externals citing Exhibit F-1. Those areas are reimbursement for optical, tuition reimbursement, gun reimbursement and increase in life insurance coverage. Thus, when these are considered the overall compensation during the next three years augurs well for the lower City proposed increases.

While health insurance costs will rise in this unit, they are predicated upon statutory changes according to the City. Other units were paying more costs than this unit but now this unit will may pay more in premiums. But this is offset by the City offer

to contribute \$500 to a flex spending account for HRA plans and for those choosing HSA, the City fully funding the deductible. They assert that even with some increases, this unit is better even with other internal units and better off than all but one of the externals and they will be receiving a wage increase each year of the contract to mitigate some of the cost implications in the health insurance alternatives.

The Union says there is no basis for the claim the City gives equal raises to its employees since different wage increases for different internal groups from 2009-20014 have been the norm citing Exhibit D(2). This being so, the Union asserts that external comparables support their offer and is most relevant for this case.

Even though the parties stipulated to the five comparables, the Union argues that Traverse City numbers should be extracted from consideration by the Panel as that City is geographically remote from Grandville and the other west side communities. They claim adding Traverse City only skews the numbers. They cite Ex 7(B) as a more accurate and relevant wage determination for 2014. For 2014, without Traverse City, the Union is fourth out of five externals and even if its offer is accepted for 2014, Grandville is still \$1,034 below the average of the western externals. If the City offer is accepted, the Grandville wage would be \$60,912.00, leaving this unit \$1,636 below the western externals.

For 2015, Norton Shores and Walker have no contract and Holland and Kentwood would be most relevant and their average of \$64,152 would leave Grandville \$1,254.00 below with the Union LBO. Thus, the Union offer should be accepted to just keep pace with the average in the western externals while the City offer would increase the difference.

For 2106, only Kentwood has a contract. Kentwood is always ranked higher than Grandville, but the Union offer would close the gap a little. There is no other relevant information for 2016 and the Union offer should be accepted.

## **DISCUSSION**

The parties requested the Panel consider and make an award for each of the three years of the new contract on wages. The offers of each are noted above.

### **2014**

The City offers 1.25% increase and the Union 2.25%. Using the current maximum wage of \$60,160 (City- D(3), Union-F a, b) the cost is \$752 for the City offer and \$1,003.60 for the Union offer – or a difference of \$601.60.

Since the amount is relatively small, the City has not invoked an inability to pay argument. Without this component, the Panel believes the more pertinent sections would be 9(1)(d) (e) and (g). The City says (e) and (g) control whereas the Union says (d) is most important. For the reasons that follow, the Panel believes that Section (e) is the most relevant and will opt for the City Offer for 2014.

The Union argument here is predicated upon excluding Traverse City numbers in comparison to the other four “western” communities even though it was agreed to be a comparable community. If this was the only year involved, the Panel could examine that argument at face value and analyze the case taking that into consideration. Indeed, if the Panel had to determine if Traverse City was comparable, perhaps the fact it is geographically remote and probably not in the same area from which new officers would be obtained would be compelling. As City Exhibits C-2, 3 illustrate, population and land area seem the only arguments for inclusion as general



Fund balance is much greater in Traverse City and the last budget is \$2 Million more than Grandville.

When looking at City D-3 and Union 7B, the maximum salaries in 2013 show Grandville fourth with Holland, Kentwood and Walker greater. But the differences are not great, high of \$62,547 in Walker and low of \$60,160 in Grandville. While the Union offer would bring it closer to its closest neighbors that is not the end of the discussion.

The Panel needs to balance this argument with the City contention that internal consistency is most important along with total compensation. In this context, the Panel believes that recent amendments to Act 312 that included specific reference to internal comparability reflects the legislative intent that Panels should give this factor equal billing with others to the extent that some Panels did use this factors but many may not have done so in the past

There is much to be said that a community that tries to deal with all its employees on an equal footing on wage increases creates a better labor relations atmosphere. It is better to say that a city treats all the same as least on a percentage wage increase perspective. The harmony engendered is invaluable.

The record shows that all other employees in 2014 received a 1.25% increase. (City D-2). And historically, the wage increases for all units other than public safety have never exceeded 2.0% being an average of 1.3% from 2009 to 2104. The City argument that the Union offer would widen the gap over fellow City employees is compelling.


The City argument regarding total compensation is not regarded as compelling. While the City can rightly say this may increase total compensation, the economic

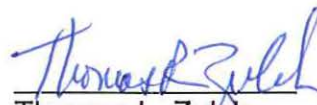
value is not quantified. Qualitatively, the gun and tuition reimbursements seem to reflect catching up with external comparables (See, F-1).

Thus, when considering all the relevant factors for 2014, the Panel is persuaded that internal comparability is the most important factor and thus why the City offer should be awarded.

Dated: October 1, 2014

  
Kenneth P. Frankland  
Chairperson

  
John Patrick White  
City Delegate  
Concur   
Dissent

  
Thomas L. Zulch  
Union Delegate  
Concur   
Dissent

**2015**

For 2105, the City offers 2.00% and the Union 2.25%

The factors for this year are external comparability and total compensation. The Panel's comments regarding total compensation are equally applicable here. The argument advanced by the City is not overwhelming and is not persuasive. The most

important factor is external comparables since the basis for the City award in 2014, internal comparables, is not present in 2015

All externals are open for 2015 except Kentwood that has a 1.5% increase. The Union Exhibit 7B shows a CPI increase but the Panel would prefer to use only known numbers. Both offers here are greater than the Kentwood increase. The Union contention that the Grandville unit deserves greater increases to narrow the gap since they are behind other comparables seems persuasive even though the difference in offers is only .25% for 2015. Looking at 2014 for Holland at \$63,648, Walker at \$63,798 and 2015 for Kentwood of \$63,384 and Grandville at \$60,912 in 2014 (after the 1.25% increase previously awarded is added), there is a clear disparity with the western area comparables and thus the greater increase is warranted.

The City argues that Kentwood over six years granted a total of 8.5%, the same as Grandville and that for the three years in question here, Grandville would match Kentwood's 5.5%. And, the City says that none of the comparables from 2011 to 2016 have a three year average of 2.4% being proposed by the Union.


Good advocates always use the information available and fashion the facts to best argue the position advanced. That is true here by the City. But the emphasis on percentages, and some of those historical, is problematic at best. Using the known numbers in Kentwood, their three year total increase is 5.5%; by awarding 2.25% here and if the Panel approves the Union 2016 offer, the Grandville total will be 6.25% slightly higher. But, the gross dollar amount will only narrow the gap that currently

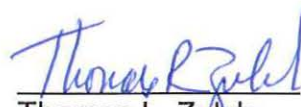
exists and if one assumes some increase will be negotiated/awarded in the other western comparables for 2015 and then 2016 the gap may still remain.

For the reasons stated, the Panel believes that the Union offer for 2015 most closely conforms to the Section 9 factor of external comparability and thus it will be awarded.

Dated: October 1, 2014

  
Kenneth P. Frankland  
Chairperson

  
John Patrick White  
City Delegate  
Concur   
Dissent

  
Thomas L. Zulch  
Union Delegate  
Concur   
Dissent

**2016**

The City offer is 2.25% and the Union 2.75%

The analysis for 2016 is similar to 2105. There is neither internal comparable nor total compensation factors at play in 2016 and thus external comparability is the main factor to consider.

Again, Kentwood is the only known wage with a 2.0% increase and both offers

are greater than Kentwood. The Union has presented a convincing case that this unit is indeed behind its western community neighbors and that a catch up or narrowing of the gap in wages would be appropriate and that the Panel should use that fact in its deliberations for all three years. While the City presented a generous offer of 2.25% from its perspective, when faced with the record evidence, the Panel is again persuaded that the Union offer is preferred for the same reasons as given in the 2015 discussion.

For the above reasons, the Union offer is awarded.

Dated: October 1, 2014

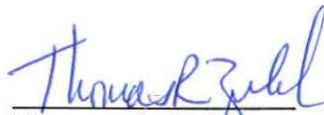


Kenneth P. Frankland  
Chairperson



John Patrick White  
City Delegate

Concur   
Dissent



Thomas L. Zulch  
Union Delegate

Concur   
Dissent

### ISSUE TWO TRAINING

This issue involves a Union proposal to add language to existing Article 18, Section 65

(b) (2) as follows with proposed added text in bold.

When the Chief of Police has determined that in the best interest of the City the Department and/or the individual employee must be transferred to different shift assignments regardless of seniority status or preference to accomplish specific training, attend scheduled schools or prepare for such reassignments. Such transfers shall **apply only to full work days of training/scheduled school and** be binding on all specifically affected.

The City offer is no change to present language.

### **Background**

Grandville is a small police department with 24 sworn personnel including the Chief and Deputy Chief. Excluding command officers, this unit has 15 members per the Petition and 16 according to the Chief's testimony of the sworn officers.

All Patrol Officers (PO) work 12 hour shifts. There are two squads/platoons working alternating schedules. There are two main shifts, 6:00 am to 6:00pm and 6:00 pm to 6:00 am each with two POs and a Sergeant. Additionally, there is one PO on patrol 9:00am to 9:00pm and one 3:00pm to 3:00am.

Currently, when training is assigned during non-scheduled time, the officer comes in and works those training hours, and then on a regular scheduled shift during the two-week pay period he takes those hours off from his regular 12 hour day based upon seniority. More often as not, this affects the night shift more directly as day shift officers simply leave a few hours earlier when they are assigned training on one of their regular 12 hour shifts and they are replaced by "backfilling" according to Chief Steere. Chief Steere testified that there has been no particular difficulty in obtaining

flex time off for the officers scheduled for partial shifts.

Officer Andrew Measell explained the Union dilemma. He holds several training positions. Flexing has been in existence at least since 2006. If many officers attend the same training and especially if they are on the night shift, and have to flex within the two-week pay period, it's nearly impossible to accommodate all the officers and so some have to take flex in smaller groups or disadvantageous hours of night depending on what's available after those with higher seniority choose first. Since training is rarely 12 hours, it is uncommon to make a 12 hours switch. When officers come in on their day off for less than 12 hours, they essentially do not have a true off day and the flex hours obtained at another time do not adequately compensated for the lost full day off.

The only other Union witness was Fred LaMaire, a long time staff representative for the Union. He testified that indeed the provision has been in the contract for many years at least since 2006. He recalled non-bargaining conversations with then Chief Snyder in 2006 or 2007 discussing training for night shift officers and complications in determining how to make the system work. They discussed a concept of changing a whole shift, such as night shift going to day to train, then maybe their entire night shift would change to the day shift. He also said they discussed partial day shifts and how the day shift would simply complete the shift as the needs of the department required. LaMaire recalled Snyder was concerned that most training is done during the day and that affect the night shift and training officers who work the night shift. He did not think there was any clear agreement but that the Chief was

going to do it the way he wanted to. He could not recall any complete shift exchanges by Chief Snyder.

Chief Steere testified for the City and explained the current system as described above by Officer Measell. Because of the complex and diversified training needed to keep current, the City uses in-house trainers and sometimes third party contractors over whom the City has no control on when and where training may occur.

He tries to accommodate the training officers as to their regular schedules especially those on nights. While he would like to schedule 12 hour training by combining several categories, it is not always possible so he does the best he can and the officers can flex the training hours. By flexing, there is no overtime involved as only 12 hours are involved. Officers have seven days off during a 14-day pay period so if one day is partially used for training, they still have six days off. While scheduling is a problem, Chief Steere believed there was no particular difficulty in being able to get the flex time off for the officers involved.

Most of the flexing is for the night shift. The night shift at full staff is five but that rarely happens because of illness, vacations or training. Minimum staffing week days is two officers but three on Friday and Saturday.

## **DISCUSSION**

This is a very interesting and somewhat complex issue and one that the Chair has not encountered previously. The Chair is gratefully for the parties' diligence in



educating him on the current system and what the Union proposal is intended to accomplish. Indeed, the Chair now feels "up to speed".

As in all language change proposals, the party that initiates a request to change a contract provision has the burden of proof; that is, the record evidence preponderates in its favor. After carefully reviewing the record and digesting the information in the Briefs, the Panel is persuaded that the Union has not carried the burden of proof and the City offer of no change must be awarded.

The gist of the Union argument is explained in Union Brief, at page 6:

Officers are losing a block of time on a day off and then gaining back that block by getting off early from a 12 hour shift. The result is the loss of a full working day off. Four hours one day and eight the next is not the same as a twelve hour work day and a day off. This affects all officers but has the most affect on the training officers.

The Union contends that it is unreasonable to lose a day off and its proposal protects the day off; allows the City to move officers for training without paying overtime because an officer flexed for training would stay and complete his shift and; would result in maintaining a whole day off for the officer.

The City contends the current system has been in place since at least 2006 and while not perfect, has worked as best as possible. Since the day shift is not usually affected since training more often than not occurs on a day shift, the Union offer is aimed at assisting a few members on the night shift at the great disadvantage to the City.

Apart from Officer Measell discussing possible difficulties that an offer might

have to get what he may want when required to flex, the only other evidence offered are the comments of Mr. LaMaire regarding a full shift exchange discussion that he had with the former Chief in 2006 or 2007. The Union Brief overstates the import of his testimony and cannot sustain the burden of proof.

Mr. LaMaire is well known to the Chair as a respected labor representative, soft spoken and forthright. When his total testimony is carefully reviewed and not just that cited in the Union Brief, he stated what he recalled in a straightforward manner and those comments do not rise to any understanding or agreement that would bind either party. In fact he said there was no agreement, just a conversation. "I don't think there was any agreement other than there was some thought process about how we could switch shifts. (Tr. 35-36)

Even if there was some kind of implied "agreement" it would have little probative value. The conversions were informal, not in negotiations, not binding; were many years ago and; the same contract language was in existence then and still now with no evidence of any attempt to change. It is simply a concept that was floated as an idea to consider should the City be looking for alternatives. Such is not the straw upon which a haystack is built.

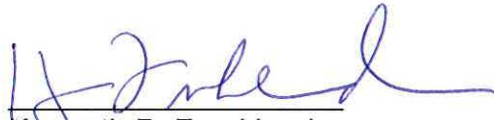
While Officer Measell was sincere in his testimony the Panel cannot ascribe much weight the testimony. He described a possible problem if one has less seniority and several hours to flex. Further, as a training officer, he may be more adversely affected by the system and may well feel that he and other officers can not enjoy a full

day off. Anecdotal testimony does not substitute for clear evidence of abuse or unreasonableness by the City that might be a basis for change. Some dissatisfaction by less than a majority involved in the unit is not a sufficient basis to seek in arbitration that which cannot be obtained in collective bargaining.

While not perfect the system does work and officers do receive their flex time without undo difficulty according to Chief Steere. The City argues it is not overly burdensome to require police officers to flex less than a full shift for training and the purported mere inconvenience that the system might create for a few is not justification for the Union offer. The Panel concurs in that observation. The City comment that its primary purpose is to serve and protect the public and that objective must take precedence over the protection of the officers' maximum number of days off is compelling.

For all of the above reasons, the Panel finds that the Union has not carried the burden of proof that its proposal should be adopted and thus the Panel will award the City offer of no change.

Dated: October 1, 2014

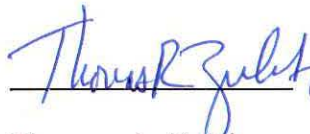
  
Kenneth P. Frankland  
Chairperson



John Patrick White  
City Delegate

Concur ✓

Dissent    



Thomas L. Zulch  
Union Delegate

Concur    

Dissent ✓