

STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS

In the Matter of Act 312 Arbitration Between:

Police Officers Labor Council,  
Union

and

City of Wyoming, Michigan,  
Employer

Panel Chairman:  
Thomas W. Brookover  
MERC Case No. L13 L-1135

Thomas R. Zulch, Esq., for the Union  
Peter H. Peterson, Esq., for the City

OPINION AND AWARD

Attendees at the Hearing:

For the POLC:

Nancy Ciccone, Labor Research Analyst, POLC  
Will Keizer, Labor Rep, POLC  
Fred Lemaire, Former POLC Rep, Retired  
Scott Rittenger, Bargaining Committee, Wyoming P.D. POLC  
Shad McGinnis, President, Wyoming Police Department POLC

For the City:

Curtis Holt, City Manager  
Kimberly R. Oostindie, Director of Human Resources  
Kristen Bosker, Human Resources Specialist  
James E. Carmody, Director of Police and Fire Services, Public Safety  
Kim Koster, Administrative Captain  
Kip Snyder, Police Services Captain

This is a binding arbitration under Act 312, of 1969, MCL 423.231 as amended by Act 116 of 2011. The Union filed a Petition on May 29, 2014 and I was appointed the impartial arbitrator and chair of the hearing panel on June 12, 2014. A Pre-Hearing conference was held by telephone on June 17 and continued as an in-person conference in Wyoming on July 8, 2014.

The Hearing in this matter was held on October 2, 2014 in Wyoming. Post hearing briefs were exchanged on November 26, 2014.

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The City and the Union stipulated that all of the issues to be decided are economic. They also agreed that the comparable cities which the panel should look to for guidance in making its decision are the same as used in an Act 312 Arbitration in 2013, which are Grand Rapids, Grandville, Holland, Kentwood and Walker.

### **Evidence Presented**

The parties introduced over 1,000 pages of exhibits, and each called one witness.

The City called Curtis Holt as its only witness.

Mr. Holt has been City Manager of Wyoming for 14 years. He testified that Wyoming was founded in 1959 and has a population of 72,000. It is the second or third largest city in west Michigan, smaller than Grand Rapids and Kalamazoo, and the 14<sup>th</sup> or 15<sup>th</sup> largest in the state. It is bordered by Grand Rapids, Walker, Grandville, Kentwood and Byron Township.

Wyoming has a council-manager form of government with the mayor and three council members elected at large and three council members elected from wards.

There are three main departments; Public Safety (which has separate Police and Fire Departments), Public Works and Utilities, and Community Services. In addition there are administrative departments for finance, human resources, and information technology.

The City currently has approximately 338 full time employees. Only 12 employees are not represented by unions and they include department heads, administrative leadership and the human resources department.

Mr. Holt emphasized that it is extremely important to him to maintain consistency and equity in wage and benefit changes across bargaining units

About 30% of general fund revenue comes from property taxes and he testified that revenues are about the same as they were ten years ago. He testified that taxable value in the City decreased from about \$2.3 billion in 2009 to under

\$1.9 billion in 2014. He testified that although values increased 0.8% last year and are expected to continue, it will take 15 years to get back to the 2009 level.

About 18% of income is from personal property taxes. The State law recently changed and it is unclear how that income will be affected

A little less than 20% of the City's revenue comes from state revenue sharing. That increased by 1% last year and he anticipates the same this year.

He testified that expenditures are up about 4% this year from last and some of the increase results from the City's Defined Benefit ("DB") pension plan. The City has its own DB plan for employees hired before a certain date, with a Defined Contribution ("DC") pension plan for those hired later. The effective date varies depending on the employee group involved.

The annual actuarial valuation as of June 30, 2014, shows the fund is 88% funded. Costs for the DB plan increase because people are living longer, and there are fewer employees to contribute.

The City also self-funds health care benefits for employees, which costs about 44% of payroll. Employees contribute 20% toward the costs in accordance with state law.

The City's fund balance is about 35%, and it has gone up in the last few years. In 2005 the City made significant changes and reduced its workforce and reduced programs. In 2010 the voters also approved a five year public safety millage of 1.25%, which was renewed this past August. The City has gone to the voters for special millages to fund the Library, parks and recreation, police and fire, and capital improvements. It has also consolidated departments to increase efficiency. Dispatch is now handled through Grand Rapids. The City has also slowed down capital projects, not planning any until 2018, and has reduced services, and now contracts out tree trimming and sidewalk replacement.

There are three public safety millages: 1.5 for police, 0.75 for fire, and the 1.25 millage for public safety mentioned above. There is no expiration date for the police and fire millages.

The Union also called one witness, Will Keizer, who is a labor representative and retired from the Grand Rapids police department. He testified that the Union's

proposed change to the Grievance procedure is taken from the Grand Rapids contract. He said that the Wyoming contract seems to encourage appeals, and there have been two in the last 10 years, which is a high amount. He represents thirty six bargaining units and none of them have had appeals. He also testified on the Public Safety memorandum of understanding.

## **The Law**

Act 312 of 1965, MCL 423.231, *et seq*, provides for compulsory arbitration of labor disputes of municipal police officers and fire departments. Section 8 of Act 312 states in relation to economic issues that:

. . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

Section 9 dictates:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and 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:

(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, 2011 PA 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 the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment incomparable 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 employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(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.

Section 10 of Act 312 provides that the decision of the arbitration panel must be supported by "competent, material and substantial evidence on the whole record. . . ."

## **Analysis**

I have reviewed the testimony and the exhibits with respect to the City's finances. I have also reviewed Arbitrator William E. Long's Opinion and Award dated February 27, 2013 in the Act 312 arbitration between Wyoming and the Police Command bargaining unit. I find that although Wyoming, like all cities in Michigan, has gone through some desperate economic times, through good management and planning it has weathered them better than many. It appears to be on the way back up. It has a healthy fund balance, and the public safety millage was just reapproved. Giving great significance to the issue, I find that the City has the financial ability to pay the costs ordered in this Opinion and Award.

In all decisions herein, although it might not be stated, I have taken into consideration all of the appropriate provisions of the law.

## **Wages**

The Union LBO on wages is:

Date of the Award:	2.00 % across the board
July 1, 2015:	2.25 % across the board
July 1, 2016:	2.75 % across the board

The City LBO on wages is:

Date of the Award:	1.5%
July 1, 2015:	1.5%
July 1, 2016:	1.5%

Analysis of the wage history of other employee groups in the City shows they are similar for increases over the last years. The City argues that from 2006 to 2013 this unit received 18.9% in cumulative wage increases, compared to 20.5% for Command, 18.8% for Administrative and Supervisory ("AS"), 18% for General City ("GC") employees and 14.7% for Firefighters. It notes that the non-uniformed employees also took a 5% reduction in wages from 2009 to 2011.

The City argues that its LBO for 2014 wages would result in the Union being virtually tied with other City groups and well ahead of the Firefighters.

The City also argues that its LBO is supported by external comparables. (See City Brief at p. 18). The City also posits the same arguments for its proposed wage increases for the second and third years.

The Union points out that the City requires its to be CALERA certified, to have a college degree and a high degree of training. It only wants to maintain its position. It points out the that City is also asking for a 2% increase in pension contributions , so adopting the City LBO's would mean a net increase over three years of just 2.5%.

Reviewing the internal comparables, all employees received a 2.1% increase in 2013. In 2012 the uniformed employees (Police Command, Police officers, and firefighters) got no increase while the Administrative and Supervisory ("AS") employees and General City ("GC") employees got a 2% increase. In 2011 the Police Command received a 1.6% increase and the GC employees received a 2% increase while the other groups received none. (City Exhibit 1, Tab 7)

Going into the future, the Firefighters received a 1% increase and the AS employees received a 1.5% increase, while the Command and GC employees received no increase.

In 2015 the GC employees will receive a 30 cents per hour increase, which is an average of 1.27%.

Starting in 2015, AS employees will have their wages governed by some sort of Performance Compensation System, but with a minimum increase of 1% per year.

Thus it appears that the City's position is supported by the internal comparables.

With respect to external comparables, the maximum wage for Wyoming officers compares very favorably with those in the comparable cities. The wage is higher than all except Grand Rapids.

The Exhibits provided by the Union are more comprehensive, including such things as education incentive, longevity pay, shift premium, uniform allowance and cleaning, and gun allowance.

Wyoming is either first or second (to Grand Rapids) among the comparables.

However all of the officers in the comparable cities are scheduled for increases. Holland, Kentwood and Walker received a 2% increase in 2014.

Grandville received 1.25% and Grand Rapids 2.95 %, although the Grand Rapids officers lost longevity pay.

In 2015 the increases are 2.95% for Grand Rapids, 2.25% for 1.5% for Grandville, 1.5% for Kentwood, and a minimum of 2% for Holland, with the possibility of more if non-union employees get more.

In 2016 Grandville officers will receive 2.75% and Kentwood will receive 2%.  
(City Exhibit 1, Tab 8)

Looking at the scheduled wage increases for the external comparables, especially the scheduled increases, they seem to support the Union position.

## **Pension**

The City has both a Defined benefit (DB) pension plan and a Defined Contribution (DC) pension plan.

The City's LBO is:

Effective [the date of the award], employees shall contribute by payroll deduction an additional 0.5% of their gross pay toward the defined benefit pension plan, for a total employee contribution of 4.09%. Effective July 1, 2015, employees shall contribute by payroll deduction an additional 0.5% of their gross pay toward the defined benefit pension plan, for a total employee contribution of 4.59%. Effective July 1, 2016, employees shall contribute by payroll deduction an additional 1% of their gross pay toward the defined benefit pension plan, for a total employee contribution of 5.59%.

The Union's LBO is status quo with no increase.

Counsel for both sides have agreed that this is to be treated as one issue, rather than separate issues for each year.

The problems of defined benefit plans are well known and were exacerbated by the recession and the decrease in investment returns. Underfunding of DB plans has been a major factor in the economic problems of many cities. As the City points



out, the risk of underfunding falls on the City since employees' contributions are fixed as a percentage of wages.

Thus many cities, as Wyoming has, have changed to DC plans where the contribution of the City (as opposed to the benefit to paid to a retiree) is defined.

Officers hired before September 4, 2007 are covered by the DB pension plan and currently contribute 3.59% of gross pay. Currently 40 of the 65 police officers participate in the DB plan.

While the DB plan was fully funded in 2008, the level has dropped since then and there is an unfunded actuarial liability of \$19 million.

The City points out that both the GC and the AS employee have agreed to contribute an additional 2% contribution over the life of their contracts.

External comparables are difficult as the terms of DB plans vary so much. The City plan has unreduced retirement at age 50 with 10 years of service and a benefit of multiplier of 2.7% of final average compensation. Grand Rapids is comparable, but it has a sliding scale of employee contributions based on plan funding, resulting in a current contribution of 9.86%.

In addition, Wyoming's officers are covered by Social Security while the Grand Rapids officers are not.

In general it appears that the Wyoming DB plan is more generous than that of the comparable communities.

As the Union points out though, internal comparables do not support an increase in the DB contributions. Firefighters pay 4%. The non-uniformed employees are currently making no contribution to the DB plan. GC employees do not start paying 2% until June 2016. AS employees start paying 1% in June 2016 and an additional 1% in June 2018. However the non-uniformed employees have not made any contribution in the past, and an increase of zero to 2% is not truly comparable to an increase of 2% from 3.59% to 5.59%.

On the other hand, while the Union plan provides normal retirement at 50 with 10 years service, normal retirement for the other two groups is 60 and 10 and 60 and 5.

I turn next to the pension provisions of comparable cities, and here I look to the Union Exhibit Tab 14, which shows that pension plans have numerous variations. Wyoming's benefit is 2.7% times years of service times final average compensation ("FAC"). Others range from 2.5% to 2.8%. FAC is the high three years out of the last five. The other cities use the last three years, or the last five years, or five out of the last ten.

While the Wyoming plan has a maximum benefit of 81% of compensation, others are 75% or 80%, or, in the case of Grand Rapids officers hired before 1995, 100%.

Grand Rapids and Holland have a post retirement escalator.

Eligibility ranges from age 50 with ten years of service, as is in Wyoming, through 55 and 10, 55 and 15, 50 and 25, to 55 and 25.

Employee contributions also vary. While Wyoming officers currently contribute 3.59%, Walker and Grandville officers contribute less, at 2% and 2.5% respectfully.

Other officers contribute more, however. The contributions are 6% in Kentwood, 6.58% in Holland (increasing to 7.58% on July 1, 2015), and 9.86% in Grand Rapids. The Grand Rapids contributions will decrease if the plan becomes fully funded.

Thus the officers in surrounding communities generally pay higher contributions to fund their DB plans.

If the City proposals for wages and contributions to the DB plan are both adopted, then the employees would get an increase of 1.5% on the date of this award, but start paying 0.5 % at the same time, resulting in a net increase of 1%.

On July 1, 2015, in about 7 months, employees would get another increase of 1.5%, offset by a 0.5% DB contribution increase for a net increase of 1%.

Then on July 1, 2016 a 1.5% wage increase would be offset by an increase of 1% contribution to the DB plan, for a net increase of 0.5%.

Thus, after two and a half years the total increase would be 2.5%. Said another way, the net increases would be 1%, 1%, and 0.5%.

If the Union proposal on wages is combined with the City proposal on DB contributions, the employees would get an increase of 2.25 % on the date of the award offset by a 0.5 % DB contribution for a net increase of 1.5%. They would get another increase of 2.25% on July 1, 2015 with an increase of DB contribution of 0.5% at the same time for a net increase of 1.75%.

On July 1, 2016 wages increase 2.75%, but the DB contribution increases 1%, for a net increase of 1.75%.

Using the Union wage proposal and the City Pension proposal, the net increases would be 1.5%, 1.75% and 1.75%, for a net increase over the term of the contract of 5.0 %.

The City and Union have agreed that each year of wages is a separate issue, but the pension contribution issue is a single issue. Therefore I can only select the total City proposal on pension contributions, or the Union proposal of no change. Each year of wages, though, I can select either the City or the Union LBO.

Because of the expense of DB plans I find the City's position on contributions persuasive. I recognize that the internal comparables might not lead to this conclusion since adopting this position will result in the officers making a significantly higher contribution to the DB plan than other City employees.

However the external comparables support a larger contribution to the DB plan.

### **Finding on Wages and Pension**

I find the best solution is to adopt the City's LBO on pension contributions and to adopt the Union's LBO for each year of wages.

### **Grievance Procedure**

The Union proposes additional language to Article VII, Section 2, Step 4, as follows:

In a termination of employment case in which the arbitrator overturns a termination, if the employer seeks to vacate the arbitration award through court action, the employer shall immediately place the employee on the payroll with the normal benefits until the final court action is completed. If, after the final court action, the employer is successful in vacating the award it may remove the employee from the payroll, but it may not seek to recover any wages or benefits paid during the court action.

The Union points to one case where the City appealed in such a case, and admits that the City won in that case. However it expressed concern that the City has taken two arbitration cases to court in the last ten years and fears that there may be more. It points out the financial distress such action can have on an employee. The language it proposes is from the Grand Rapids CBA.

The City points out that no other City employee group has such a provision, and only Grand Rapids of the external comparables has. It also points out the one-sidedness of the proposal. If a court ultimately upholds the termination of an employee, finding that the termination was proper, the City could not recover the wages and benefits it had paid. Conversely, it points out that there are provisions for making the employee whole if the Union prevails.

For these reasons the City's LBO is adopted on this issue.

### **Public Safety Memorandum of Understanding**

There is currently a memorandum of understanding ("MOU") relating to the implementation of a Public Safety Department. Will Keizer testified that a City can have a police department and a fire department, or an administration that combines them under one leader but they stay separate, or a department of public safety, where the employees are cross-trained and can perform both types of duties. Wyoming currently has two departments combined under one leader, but the employees are not cross-trained.

He testified that in everyone was looking for ways to save money and combining services was one way encouraged by the state. In Wyoming there was no

plan to implement a combination, no plan for cross training and the differential for cross training was only 2%, while the average was 5% to 6% or more.

However the employees were fearful of increased costs, so they entered this MOU, with the understanding that they would come back and negotiate more details.

The Command officers went through Act 312 in 2013, and Arbitrator William E. Long considered the language proposed by the Union here. In adopting it, he said,

“...I believe the Union’s LBO is the better approach. There are likely to be unforeseen issues or consequences involved in a departmental reorganization that can benefit from negotiations. The Union’s proposed approach may avoid grievances and time occupied on those, which would only detract from the Employer’s goal of developing a more efficient organization.”

Reorganization into a department of public safety, combining and cross training existing firefighters and police officers would be a significant undertaking, and it seems that if the details are subject to negotiation for the command officers, they should be subject to the same procedure for the police officers. I believe there are clear advantages for both of the Police units to be working from the same playbook.

The Union’s LBO is adopted on this issue.

## **Retiree Health Insurance**

Officers who retire under the DB plan receive a monthly stipend from the City of \$20 times years of service for health insurance. The Union LBO is to increase this to \$25. The City’s LBO is to keep the status quo.

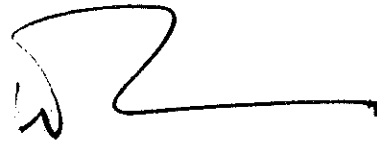
The Union points out that the cost of insurance has been increasing. Monthly insurance rates have increased from \$355 to \$577 for a single since the \$20 rate was established in 2007, and family rates have increased from \$993 to \$1,616 over the same period. (City Exhibit 1, Tab 17)

According to the City this benefit is only for officers who retire under the pre-age-60 formula, and only until age 60. Once they reach age 60 the City pays between 70% and 100 % of the premium, depending on years of service.

The City points to both internal and external comparables to support its position. It points out that the increase sought by the Union would mean cause payments to officers to be higher than for any other group. The City says that “no city has an overall retiree health insurance benefit even close to as generous as the Employer’s for its Police Officers covered by the DB pension plan.” (Brief, p. 29)

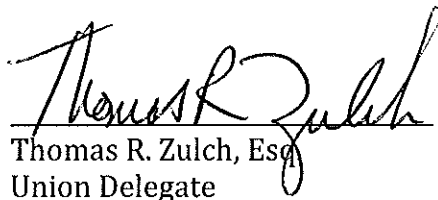
A review of the exhibits supports the City’s position with respect to both the internal and external comparables. Considering those and the other relevant factors, the City position is preferable.

Dated: January 2, 2015



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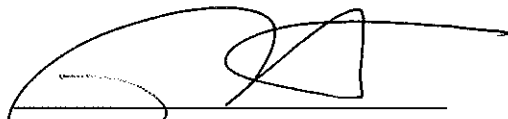
Thomas W. Brookover  
Arbitrator and Panel Chair



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Thomas R. Zulch, Esq.  
Union Delegate

Concurring as to those decisions in favor of the Union. Dissenting as to those decisions in favor of the City



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Peter H. Peterson, Esq.  
City Delegate

Concurring as to those decisions in favor of the City. Dissenting as to those decisions in favor of the Union