

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

POLICE OFFICERS LABOR COUNCIL

and

CITY OF DOWAGIAC

MERC CASE NO.: L 17 E-0483

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel

Chair: Richard N. Block

Employer Delegate: Kevin P. Anderson, City Manager, City of Dowagiac

Union Delegate: Brendan J. Canfield, Attorney, Police Officers Labor Council

Advocates

Employer Advocate: Rozanne Scherr, Assistant City Manager and Human Resources Director,
City of Dowagiac

Union Advocate: Brendan Canfield, Attorney, Police Officers Labor Council

PETITION FILED: October 11, 2017

PANEL CHAIR APPOINTED: November 8, 2017

SCHEDULING CONFERENCE HELD: November 20, 2017

HEARING DATE HELD: February 28, 2018

AWARD ISSUED: March 29, 2018

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1. INTRODUCTION AND BACKGROUND

The employer in this case, the City of Dowagiac (hereinafter the City), provides law enforcement services to the residents of and visitors to Dowagiac, Michigan. The population of the City is approximately 5,800. The bargaining unit in this case consists of patrol officers represented by the Police Officers Labor Council (hereinafter the Union). There are 9 employees in the bargaining unit. (Tr. 15, 24)

The previous collective bargaining agreement was effective from October 1, 2014 through September 30, 2017 (Un. Ex. 7). The parties were unable to reach a subsequent collective bargaining agreement. A mediation session held on August 24, 2017 did not result in an agreement on wages (Un. Ex. 1).

On October 11, 2017, the Union filed for Act 312 arbitration. Richard N. Block was appointed Act 312 arbitrator and panel chair on November 8, 2017. A scheduling conference was held on November 20, 2017. A consolidated hearing with the sergeants (command) unit (MERC Case No.: L 17 E-0484) was held on February 28, 2018 in Dowagiac, Michigan. The parties

agreed to waive the filing of post-hearing briefs and the hearing and record were both closed on February 28, 2018.

2. STATUTORY CRITERIA

Pursuant to Public Act 312, as amended, the arbitration panel must consider the following statutory factors in rendering its award:¹

- (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 in comparable communities;
 - (ii) Private employment in comparable communities [hereinafter referred to as "external comparability"].

¹ See Michigan Legislative Website, "Compulsory Arbitration of Labor Disputes in Police and Fire Departments," Section 423.239, Section, 9, at [http://www.legislature.mi.gov/\(S\(12gteuxvlg13x1xzlg3nixxa\)\)/mileg.aspx?page=getObject&objectName=mcl-423-239](http://www.legislature.mi.gov/(S(12gteuxvlg13x1xzlg3nixxa))/mileg.aspx?page=getObject&objectName=mcl-423-239), accessed March 15, 2018.

- (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 [hereinafter referred to as “internal comparability”].
- (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.
- (j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

The panel is of the view that the “other factors” includes consideration of the fairness and equity of each LBO on an issue and the bargaining history of the parties. In addition, in considering these statutory factors, Act 312, as amended, requires that “(t)he 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.”²

Each of the parties’ last, best, offers will be evaluated in accordance with the statutory factors listed above. The record establishes, however, that factors b, e, f, g, h, and j above, are not relevant to this case. Accordingly, these six factors will not be considered in rendering this award. The relevant factors for this award are a, c, d, and i. Moreover, for any issue, the award will only consider the factors that the record establishes are relevant to that issue.

² Id.

3. STIPULATIONS AND PRELIMINARY RULINGS

The hearing record establishes that the duration of the agreement shall three years. The agreement shall be effective on October 1, 2017 and shall expire on September 30, 2020. The parties also agree that the first year wage adjustment shall be retroactive to October 1, 2017. The foregoing is consistent with factor c. (Un. Ex. 5)

4. COMPARABLES

The following jurisdictions shall be considered external comparables to the City of Dowagiac for the purposes of this Award:

Belding;
Buchanan;
Hillsdale;
Lowell;
Manistee;
Menominee;
Wayland.³

5. ISSUES BEFORE THE PANEL

a. Issue 1, Wages, Effective October 1, 2017 (Economic)

Last Best Offer of the City
2%

Last Best Offer of the Union
3%

Discussion on Issue 1

The City argues that its financial condition supports its LBO on Issue 1. The City points out that its property tax revenue was 17% lower in 2017 than it was in 2008; property tax revenues were \$1,386,300 in 2008 and \$1,204,481 in 2017 (City Ex. 17; Tr. 17). The City also notes that its revenue sharing has declined during this period, from \$152,129 to \$116,010, a decline of 24% (City. Ex. 6; Tr. 17).

³ Un. Ex. 6.

The City also notes that its tax base is generally smaller than the tax base of the comparables. The City notes that median income of its households in 2016 was \$26,201, lower than the median household income of all seven of the comparables. The comparable with the next lowest income, Hillsdale, had a 2016 median household income of \$31,946. (City Ex. 19; Tr. 20-21).

Consistent with the income measures, the City points out that it also has a higher percentage of residents living in poverty than the comparables. In 2016, 42.1% of its residents were living at or below the poverty line. Hillsdale, the comparable with the next highest percentage of residents in poverty, had 30.1% of its residents living at or below the poverty line in 2016. (City Ex. 19).

The City also notes that between 2008 and 2016, its pension contribution for the patrol unit has increased from 6.1% of payroll to 15.97% of payroll (City. Ex. 10, p. 2 of 93; City. Ex. 11, p. 7 of 41; Tr. pp. 18-19).

The Union notes that, unlike six of the seven comparables, the patrol officers in Dowagiac do not receive a longevity payment (Un. Ex. 9; Tr. 12). The Union argues this should be taken into account by the panel.

The Union also notes that, although the City in fiscal 2017 spent, \$1,012,025 on police compensation, \$228,313 was reimbursed by the County through the Cass County Drug Enforcement Team.⁴ Therefore, approximately 22.5% of the City's expenditures for police are not paid by the City.

The record establishes the City's LBO for Issue 1, a 2% increase effective October 1, 2017 will leave the patrol bargaining unit in the same relative position vis a vis the comparables

⁴ It is assumed that this includes expenditures for both patrol officers and sergeants.

in 2017-18 as they were in 2016-17. The patrol unit ranked 5th among the 8 jurisdictions (the seven comparables plus the City) in 2016-17, and they would remain 5th under the City's LBO.

The panel notes that bargaining unit's October 1, 2016 top salary of \$50,194 was 95.7% of the comparable's October 1, 2016 average salary of \$52,458. The City's LBO of 2% effective October 1, 2017 would result in a top salary of \$51,198, 95.9 % of the comparable's October 1, 2017 average of \$53,404. Thus, the bargaining unit's wage relative to the comparables will not change with the City's LBO. This record is consistent with the statutory factor of fairness and equity and bargaining history and supports the City's LBO on Issue 1. (Un. Ex. 9)

The Union's LBO on Issue 1 would increase the patrol unit's rank to 4th among the 8 jurisdictions effective October 1, 2017. It would also bring the patrol unit top salary on October 1, 2017 to \$51,700, or 96.8% of the comparable average for October 1, 2017. The differential between the patrol unit and the comparable average has not been that small in recent years. It was 95% on October 1, 2015, 94.4% on October 1, 2014, 93.8% on October 1, 2013, and 93.9% on October 1, 2012. The higher increase proposed by the Union is inconsistent with the statutory factors of fairness and equity and bargaining history and ability to pay, taking into account the poor financial circumstances of the City. It is also not supported by the factor of external comparability. (Un. Ex. 9)

Based on the foregoing, a majority of the panel finds that the City's LBO on Issue 1, Wages, October 1, 2017, is more consistent with the statutory factors than the Union's LBO on Wages, October 1, 2017. Accordingly, on Issue 1, Wages, October 1, 2017, a majority of the panel awards for the City.

Award on Issue 1

The LBO of the City on Wages, October 1, 2017, is accepted. The LBO of the Union on Issue 1, Wages, October 1, 2017, is not accepted.

b. Issue 2, Wages, Effective October 1, 2018 (Economic)

Last Best Offer of the City
2%

Last Best off the Union
3%

Discussion on Issue 2

The record establishes that the average top patrol wage of the four comparables that had agreed upon wages effective October 1, 2018⁵ will be \$56,281. The record establishes that, with the City's proposal following the adoption of the City's proposal for Issue 1, the Union wage effective October 1, 2018 will be \$52,222. This would result in a Dowagiac patrol wage relative to the four comparables of 92.8%. Since 2012, the greatest Union disadvantage vis-à-vis the comparables was 93.8% in 2013 (Un. Ex. 9; Tr. 12-13).

With the adoption of the City's proposal for the wage increase on October 1, 2017, the Union's LBO will result in a top patrol wage in Dowagiac of \$52,734, reducing this disadvantage to 93.7% vis-à-vis the four-comparable October 1, 2018 average and bringing it closer to the post-2011 difference than the City's LBO. Thus, the statutory factors of external comparability and "other factors," in this instance bargaining history and the principle of fairness and equity, support the Union's LBO for October 1, 2018. (Un. Ex. 9; Tr. pp. 12-3)

Although the City's financial situation is serious, it does have some budgetary flexibility. In fiscal, 2018, it had a fund balance of \$796,000 (City Ex. 3; Tr. 13), equivalent to

⁵ These four comparables are Belding, Lowell, Menominee, and Wayland (Un. Ex. 9).

approximately 19% of its budget. Thus, the record establishes that the City does have the ability to pay the Union's LBO on Issue 2.

Based on the foregoing, a majority of the panel finds that the Union's LBO on Issue 2, Wages, October 1, 2018, is more consistent with the statutory factors than the City's LBO on Issue 2, Wages, October 1, 2017. Accordingly, on Issue 2, Wages, October 1, 2017, a majority of the panel awards for the Union.

Award on Issue 2

The LBO of the Union on Wages, October 1, 2018, is accepted. The LBO of the City on Wages, October 1, 2018, is not accepted.

c. **Issue 3, Wages, Effective October 1, 2019 (Economic)**

Last Best Offer of the City
2%

Last Best Offer of the Union
3%

Discussion on Issue 3

The record establishes that only two of the seven comparables, less than a majority, have agreed upon wages to be effective October 1, 2019. Thus a majority of the panel finds that the factor of external comparability is not applicable to Issue 3. Because, based on the record in this case, the factor of "other factors," in this case fairness and equity and bargaining history, relied primarily on the patrol unit's wage relative to the comparables, the factor of "other factors" is not applicable to Issue 3.

The statute requires that ability-to-pay be given the greatest weight. Based on that, a majority of the panel finds that the City's LBO for Issue 3 is more consistent with the statutory

factors than the Union's LBO. As discussed regarding the award for Issue 1, the City's revenues have declined steadily over the last decade. There is nothing on the record that suggests that this trend will not continue through September 30, 2020, the expiration date of this agreement. Based on this record, a majority of the panel believes the record does not justify awarding the greater increase proposed in the Union's LBO.

Based on the foregoing, a majority of the panel finds that the City's LBO on Issue 3, Wages, October 1, 2019, is more consistent with the statutory factors than the Union's LBO on Wages, October 1, 2019. Accordingly, on Issue 3, Wages, October 1, 2019, a majority of the panel awards for the City.

Award on Issue 3


The LBO of the City on Wages, October 1, 2019, is accepted. The LBO of the Union on Issue 1, Wages, October 1, 2019, is not accepted.

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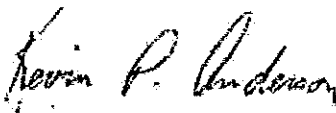
6. SUMMARY OF AWARD

ISSUE	AWARD
Issue 1: Wages, October 1, 2017	2% increase
Issue 2: Wages, October 1, 2018	3% increase
Issue 3, Wages, October 1, 2019	2% increase

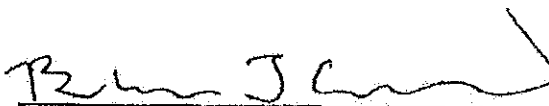
March 29, 2018


Richard N. Block, Panel Chair

March 29, 2018


Kevin P. Anderson, City Delegate*

March 29, 2018


Brendan J. Canfield, Union Delegate**

*Concurs on Issue 1 and Issue 3, dissents on Issue 2.

**Concurs on Issue 2, dissents on Issue 1 and Issue 3.

