

2157

CITY OF PONTIAC

Employer,

- and -

MERC 312 Case No. D03 J-2467

MICHIGAN ASSOCIATION OF POLICE

Union.

OPINION AND AWARD

**Panel Chair Thomas J. Barnes
January 1, 2007**

CHRONOLOGY

Petition Filed:	October 19, 2004
Hearing on Comparables:	June 15, 2005
Briefs Exchanged:	July 1, 2005
Award on Comparables:	November 2, 2005
Prehearing:	October 8, 2005
Hearing Dates:	June 15, 2005 April 4, 2006 April 21, 2006 May 22, 2006 May 24, 2006 June 13, 2006 June 15, 2006 July 26, 2006
Last Best Offers:	September 5, 2006
Briefs Exchanged:	December 29, 2006

APPEARANCES

Counsel For Employer

Dennis DuBay

Counsel For Union

Fred Timpner

PANEL DELEGATES

For the Employer:

Larry Marshall

For the Union:

Jim Gawlowski

INTRODUCTION

The parties had 8 days of hearing to present their cases and called a total of 13 witnesses. Seven volumes of transcript were consumed, 1 volume consisting of 6 pages. There were 226 exhibits and this case started with a petition filed by the Union on October 19, 2004, and concludes with this Award, dated January 1, 2007. The first hearing was held on June 15, 2005, and the last on July 26, 2006. Last best offers and extensive supporting briefs, which were extremely helpful, were submitted.

THE ISSUES

This is a case with much record evidence but relatively uncomplicated issues. The issues for decision (all economic) are set out below, viz:

UNION ISSUES		
<u>Issue</u>	<u>Union Position</u>	<u>City Position</u>
1. Pension/Retirement	Withdrawn - current contract	Agreed
2. Wages (no retroactivity)	2004/2005/2006 0 / 3% / 0	2004/2005/2006 0 / 0 / 0
3. Dental	Increase classes 1 & 2 coverage from \$800 to \$1,000 per contract year	Status quo

UNION ISSUES		
<u>Issue</u>	<u>Union Position</u>	<u>City Position</u>
4. Life Insurance	Withdrawn - current contract	Agreed

CITY ISSUES		
<u>Issue</u>	<u>City Position</u>	<u>Union Position</u>
1. Health Insurance	Change from traditional B/C to Community Blues 2	Status quo
2. Drug Card	Change from 5/10 to 10/20 co-pay	Agreed
3. Family Continuation	Elimination family continuation rider	Status quo
4. Retiree family continuation rider	Eliminate for retirees after 4/22/97	Status quo
5. Employee and retiree contribution	Employee pay 10% of cost (premium)	Status quo
6. Sick leave lump sum included in pension final average compensation	Eliminate	Status quo
7. Pension - inclusion of vacation pay of 480 in final average compensation	Reduce to 240 hours	Status quo
8. Pension - employee contribution	Increase from 2.5% to 6%	Status quo
9. Overtime - on call	Reduce to one detective for non-crime cases	Status quo

It can be noted at the outset that the Union has withdrawn its proposals for an increase in the pension plan (Union issue #1) and life insurance (Union issue #4). The Union has also, as its last offer, agreed to the City's proposal to increase the drug co-pay from \$5/10 to \$10/20. Those agreements are hereby incorporated as part of this Award. That leaves 10 remaining issues for decision (2 Union and 8 City).

THE COMPARABLES

The parties' exhibits used the comparables that were part of this Panel's prior award dated November 2, 2005, on comparables which is hereby incorporated herein. That Award pared down the list of comparables the parties had historically used.

TENTATIVE AGREEMENT

Much has been made of the tentative agreement reached in late 2003 between the Union and representatives of the City (Mayor, Deputy Mayor, and the Chief of Police). The Union thought they had a contract; the City says there is no contract without a ratification and strongly intimates the City representatives at the table didn't have the proper authority or weren't the proper representatives. Neither position is entirely correct and fortunately that record testimony is not necessary to form a basis for any of the conclusions reached on the issues to be decided.

First, the City is correct that without a ratification by the City Council there is no assent on the Employer's part. While it is often the case that ratification by employers are more of a formality (since presumably the employer bargaining representatives don't exceed their authority), it is very rarely the case the employer negotiating team concludes the deal at the table. Unless that is made unmistakably clear at the table to the contrary, it is presumed in this day and age that both parties will seek ratification by their respective principals.

The Union clearly ratified and there was no reason evident why the City would not be expected to do the same. In reaching this conclusion there is little reason to address the City's argument that the City representatives at the table weren't acting in the City's best interests. In short, the City had 3 of its highest ranking officials there - with a State Mediator - they had unmistakable apparent authority to negotiate for the City, including making a bad deal if that's what it turned out to be. Moreover, the deal they reached was signed onto by its chief negotiator

at a later date. The fact there were political, economic, or any other pressures on the City's chief negotiator counts for nothing. If parties were permitted to second guess their tentative agreements, or later say they were pressured, did the wrong thing, or even misunderstood what they thought they were agreeing to, labor agreements would never get consummated. The fact that the City waited so long before failing to act on the tentative agreement and failing to advise the Union of the status of the agreement, while extremely unfortunate, is only marginally within the purview of this Panel. In any event, as indicated previously, it is of little consequence since the issues are decided on other grounds found in the record.

ABILITY TO PAY

Before addressing each City issue, the Panel recognizes the financial plight of the City. It need not detain us long for it is serious and not likely to be given to a quick resolution. Deficient budgets, falling revenues, increased expenses (health care up 47.3% in 4 years) (C. Ex. 123), substantial legacy costs, a deficit reduction plan, layoffs and other cutbacks - the all too familiar earmarks of many other cities in Michigan that once had booming industrial bases. Add to that that Pontiac has had more mayor and police chief turnover over the years than surely any other municipality in Michigan. There is no question after reviewing the substantial amount of financial documents and witness testimony that Pontiac is suffering financially and its economic woes will not find quick or early solutions.

The Union argues the City's financial straits are self-induced through mismanagement, poor outside accounting advice, and other deficiencies too numerous to mention. There was no evidence of scandal or purposeful wrongdoing. While the record does establish a fair amount of the Union's argument, there are overwhelming economic factors in Michigan and Pontiac which have, as well, brought this economic crisis. Pontiac is not unique. There have been worse

situations (Flint, Hamtramck, Highland Park); there undoubtedly will be others in the months and years ahead. Regardless of the root causes, the reality the Panel faces is that there are little resources for wage/benefit improvements for any City employees.

There are a few plusses in all of this. First, the patrol officers are not bailing out of the City for other positions in neighboring communities, or other states, as the manufacturing displaced worker has. Second, the State has accepted the City deficit reduction plan and there is no appointment of an emergency financial manager looming. Third, the City has found a little money to avert further layoffs in police and rehiring several EMTs in the fire department (albeit to the detriment of the sanitation fund). Fourth, the City's employees - union and non-union alike - continue to do their jobs without strikes or other apparent disruptions. Fifth, and finally, the Panel labors over a contract which would otherwise expire this past week - December 31, 2006. So what is decided here is past tense and the parties will be on to their next labor contract when this ink is barely dry. With this background, each of the 10 remaining economic issues are addressed. At the end of each issue, one or more of the 8 (a through h) statutory factors supporting the finding is noted.

UNION ISSUES

Wages

The Union last best offer is 0% - 3% - 0% for a 3-year agreement (2004 - 2006). The City last best offer is 0% - 0% - 0%. The Union last best offer is adopted which will increase the wage schedule by 3% with no retroactivity. That means the new rates would go into effect on January 1, 2007, the date of this Award.

Without any wage or benefit increases for 2 years and no retroactivity, the Union's last best offer is eminently fair. It puts the patrol officers on a par with most other City units that

received their increases in 2004 (and the Police Supervisory Unit into 2005 as well). These units in effect got their retroactivity as well since they started receiving their new rates in January 2004.

While everyone can be expected to share the financial burdens of the City, it cannot fall most heavily on the patrol officers. Other employees have been protected as a result of Michigan law or revenue funding requirements. An analogy is the District Court that is being subsidized by the City because the final arbiter of that budget is the Michigan Supreme Court. With regard to eligibility for funding certain positions, 28 EMT/firefighters had to be re-employed in order to get the supplemental funding. Employees under the auspices of Act 312 are similarly in a position to obtain statutory consideration from a 312 Panel in return for being forbidden to strike.

There is little doubt this sole increase of 3% over a 3-year period will place the Pontiac patrol officers at the bottom of the comparable list. That is somewhat troubling because the citizens of Pontiac cannot afford to lose good experienced patrol officers to surrounding areas. While there is not much evidence in the record of that having occurred, it is a risk that should not be tempted. For the time being, there are other economic incentives (discussed below) that serve to keep these officers from being recruited or dispirited away.

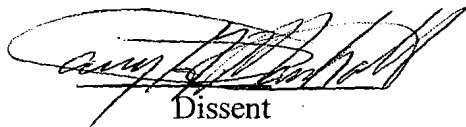
The next 2 - 3 years doesn't look much better for wage and benefit increases in Pontiac and a 3% adjustment in 2005 is not only significantly below the cost of living during the 2004 - 2006 period, but also well below the wage increases for the comparables. The City's proposal of no wage increase for 3 years and substantial reductions in the health care and pension areas is just too drastic a burden to place initially on this bargaining unit.

In addition, the citizens of Pontiac are not well served by the disjointedness, disruption, and delay and expense associated with these and other negotiations which are up in the air as

well. The City must take its share of the responsibility for much of this poor labor - employee relations pattern and behavior. Making a tentative deal and then walking away from it with faint little communication is not worthy of a City with a rich labor history. In that connection, it should be noted that I observed its principal labor relations Executive (Larry Marshall) at every hearing date. He was straight forward, candid, professional, and caring about the City, its citizens, and its employees. Frankly, he needs to be left to do his job. Second guessing him, going around him (as happened in these negotiations and for which the Union bears no responsibility), and not cloaking him with the necessary authority to negotiate and conclude tentative contracts will continue to harm the City and its relationships with its unions and employees far more than any "generous" concession or "hard, fast" position he may take at the table on behalf of the City. The City, in spite of its financial woes, needs to bring order, respect, and continuity to its relationships with its employees and unions. That won't happen by following the path that occurred here. The City is fortunate to have a person with Mr. Marshall's background and integrity to address these issues faced by the City. Adoption of the Union wage last best offer of 0% - 3% - 0% for 2004, 2005, and 2006 is justified by the external and internal comparables without going further. If the City could find a way to re-employ 28 EMT/firefighters in the fire department and it can negotiate out its differences with the District Court, it can well afford this wage adjustment for its patrol officers. Statutory reference: c, d, e, f, h.

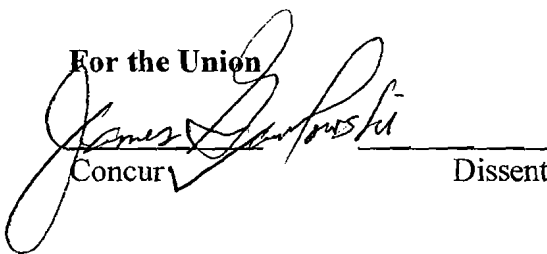
For the City

Concur


Dissent

For the Union

Concur

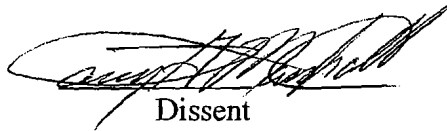

Dissent

Dental

The Union position of an adjustment in the dental cap from \$800 to \$1,000 annual maximum is adopted. This is a very modest last best offer (the PPMA has a \$1,500 cap) and is strongly supported by the external and internal comparables. (U. Ex. 79, 80.) It will allow the City to have a more uniform dental plan for all its employees. It is not a costly improvement and is one of two last best offers where the Union has shown restraint in seeking an improvement (wages being the other). Statutory reference: d, f.

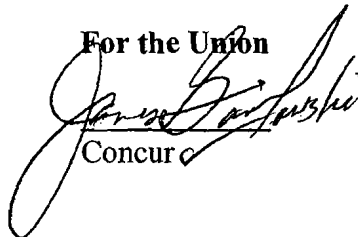
For the City

Concur


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For the Union

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Dissent

CITY ISSUES

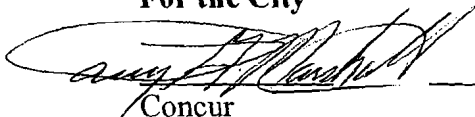
Health Insurance

The Union seeks to maintain its current traditional Blue Cross Blue Shield plan with basically first dollar coverage and no employee contribution. It is a plan that is among the last of the Mohicans, at least in the private sector. Were it not for the City's serious financial circumstances, the record would not justify changing the plan design to the City's last best offer - Community Blues 2. The comparables are all over the map and no other City union has a scaled back plan. However, the City has taken the lead with an even lesser program (than Community Blues 2) for its management personnel. It is time, as the City's brief strongly urges, for all bargaining units to come to grips with the horrendous run-up in costs the City has experienced in its health care plans. The run-up in health care cost for the City is a staggering 40.2% to 60.1% over 4 years (2001-2005) depending upon the Plan selected by the employee (C. Ex. 87). Such a

top-heavy benefit requires immediate attention, and that dictates adoption of the City's last best offer even though no other bargaining unit has less than the traditional Blue Cross plan.

This bargaining unit must help be the leader for the other City units. The level of coverage in Community Blue #2 is essentially the same as the current plan (U. Brief pg. 9). There will be deductibles but they are modest (e.g., \$100 individual / \$200 family for in network; \$250 / \$500 out of network; \$10 office / \$50 emergency room co-pay). There is also a 10% coinsurance (out of pocket) with maximums of \$500 / \$1000 for in network; 30% coinsurance with \$1500 / \$3000 maximum out of network (C. Ex. 89). Currently, patrol officers under the traditional plan have a \$150 / \$300 deductible! The cost savings to the City is sizeable - i.e., single \$2,342 per year; 2-person \$5,971 per year; family \$5,690 per year (C. Exs. 87 and 88; Employer brief p. 52). In this bargaining unit alone (91 [now 86] members, Tr. 142), the savings per year is in the neighborhood of \$351,000; across the City savings could approach \$2.5 million for all employees (644 employees, C. Ex. 52). It can be noted that this change above is almost 3 times more than the \$1,000,000 deficit (out of \$6,000,000) needed to balance the 2006 - 2007 budget. Community Blue 2 is an excellent plan; the Blues network is widely known as being extensive and there should be few dislocations of doctors. For those adamant on using a doctor outside the network, they are free to do so at a modestly higher cost. The record is replete with financial evidence justifying this City last best offer. Finally, adoption of this City last best offer just for this unit alone makes the Union wage last best offer very affordable ($23.56 \times 3\% \times 2080 \times 91$ employees = \$134,407 plus, of course, roll-up). Statutory reference: c, f, g, h.

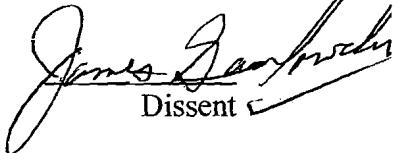
For the City



Concur

Dissent

For the Union



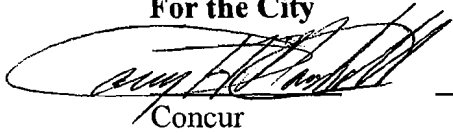
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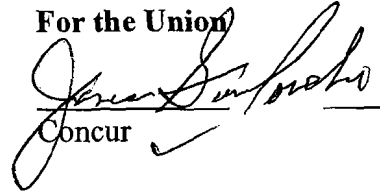
Drug Card

The Union agrees to the City's last best offer of a \$10 / \$20 drug card and that is adopted and incorporated herein. Statutory reference: b.

For the City


_____ _____
Concur Dissent

For the Union


_____ _____
Concur Dissent

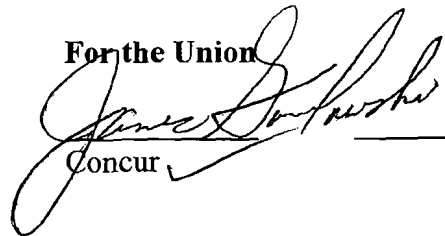
Family Continuation Rider - Actives

The internal and external comparables, on balance, support the Union's last best offer of status quo and it is adopted. It is also the product of a 1997 312 Award, which should not be disturbed without more evidence than was here presented. The total annual savings to the City of passing 100% of this cost to the employees approaches \$100,000. However, it is just too much to add this burden to the officer needing this coverage given the small wage rate adjustment for this 3-year award and given the additional deductible and out of pocket costs associated with the adoption of the City Blue Cross Community Blue #2 plan. This benefit should come in for serious review in future negotiations because it may be a rider that is just too costly without it being as critical a piece of a health insurance safety net. Of course, any future concession on this by the Union depends on future wage increases and seeing what progress the City makes on this front with all other union and non-union employees. Statutory reference: d, f, h.

For the City

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Concur Dissent

For the Union


_____ _____
Concur Dissent

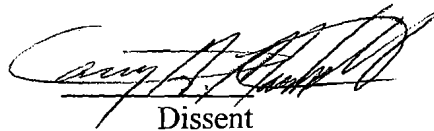
Family Continuation Rider - Retirees

The Union last best offer of continuing future retirees on this rider is adopted since there was no showing of how much this would save the City and since there are very few retirees needing this coverage. The savings in any event are small. Moreover, retirees are not in as good a position as active employees to absorb this additional cost and it is a small cost for an employee's long and faithful governmental service that should not be stripped away at this time.

Statutory reference: d, f, h.

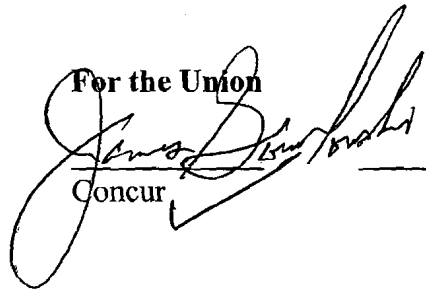
For the City

Concur


Dissent

For the Union

Concur



Dissent

Health Insurance - 10% Employee Contribution

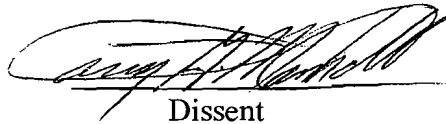
This proposal represents the wave of the present in private employment and needs serious consideration by the Union in the negotiations over a successor contract to this Award. While the City's last best offer is a fair proposal, taken in context with the other concessions being made by the Union - voluntary or involuntary (via this Award) - this proposal alone would wipe out a substantial part of the awarded 3% wage adjustment. Further, once established it becomes quite unlikely patrol officers would see a reduction in this contribution in future years - more likely an increase. At present, no other City employee is required to contribute. While it behooves the patrol unit to be the pioneers on several issues (found herein) due to the City's financial predicament, it cannot be expected to be mercenaries. In fact, having a very sound health insurance plan (which Community Blues 2 is) without cost to the City's finest is a recruitment and retention benefit / tool that is important to the City and its police function at this very critical time. For these reasons, therefore, the Union last best offer of status quo is adopted.

On balance, the comparables (internal and external) support the Union status quo last best offer but that will soon dissipate as other municipalities face their own health insurance cost hurdles. The City did not present any specific cost savings for this issue but there can be little doubt it is a large number (10% x 14,970,000) or approximately \$1,500,000. (C. Ex. 123, 2005 cost.)

A suggestion for the future. Given the fact that national averages indicate employee health care contributions in the 15% to 27% range with 23% - 25% being about the average, it might be prudent for the City to consider laddering the contributions upward, perhaps with a very modest 5% beginning. Then again, depending on future wage increases (or other benefits), gradually advancing that contribution rate to a desired goal a few years down the road. Statutory reference: d, e, f, h.

For the City

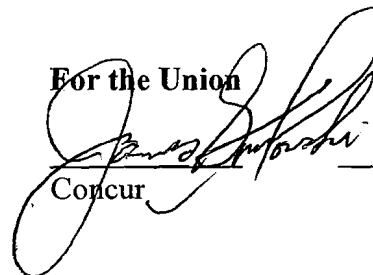
Concur



Dissent

For the Union

Concur



Dissent

Remove Sick Leave Lump Sum from Final Average Compensation


The City last best offer seeks to eliminate a sick leave payout addition to an officer's final average compensation ("FAC") of 600 hours, or \$14,136 (hourly rate of \$23.56 x 2080). That is a fairly drastic proposal to reduce pensions of present employees who at least up until this proposal was put on the table in the mediation and during these 312 proceedings had an expectation that their faithful attendance would someday enhance their pension. Pensions, along with health care, are important emoluments at least to retaining patrol officers. Again the present bargaining unit cannot be made to solely shoulder the burden of being the lead dogs to help remedy the City's apparently recently discovered pension burdens.

Patrol officers, relatively speaking, retire early; the reasons are obvious. It's hard work, often physically and always mentally. It carries risks, known and unknown, not associated with most other municipal work. Cities too don't desire that patrol officers work into their 70's much less their 60's. Police pensions have long been recognized as a key to attracting and keeping quality officers in the profession. The place for the City to start with such a proposal is not with officers who have been working hard, showing up every day of work possible for years and decades, only to see this additer for their pension disappear overnight. It should start with new hires, officers with little accumulated service, or be bought out - or any number of other arrangements to pare down these long term mounting legacy costs. (It is a startling statistic that over 40% of payroll cost is dedicated to funding the patrol officers' pension and retiree health care benefits.)

This Award is further supported in other parts of the record. Other City units include sick-time payments in FAC; two City units get 75% of accumulated sick time (albeit no other additers). Five City units get the same 50% of sick time included (again with no other additers). These variations reflect choices made by different bargaining units with different needs, negotiated over long time periods. If this was an "unwarranted" benefit (brief p. 63) as the City claims, it was unwarranted when it came into being, not just in the last year and a half. Statutory reference: d, f, h.

For the City

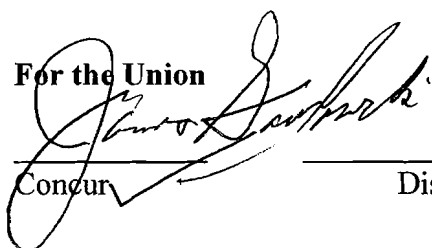
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Dissent

For the Union

Concur



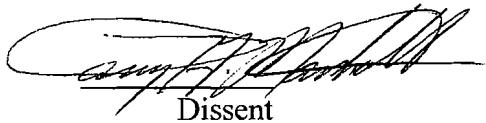
Dissent

Pension - Reduce lump sum vacation payment inclusion in FAC from 480 to 240 hours

Here, the City has made a fair last best offer to begin to address its mounting legacy costs with swelling retiree rolls and a shrinking active workforce. While the cost savings to the City were not advanced, it would appear to the Panel that the reduction in final average compensation would be approximately \$5,654 (240 hrs x 23.56 per hour). Over time, that doubtless would help retard pension costs. However, there are quite a few actuarial uncertainties which preclude the Panel from arriving at any ascertainable significant cost savings for the present. That alone mandates rejection of the City last best offer, as fair as it might seem at first glance. Moreover, there is substantial doubt whether, as the Union points out (Union brief p. 18), the City can make this proposal without an actuarial study being performed and submission to the City Council for their approval. MCLA 38.1140h (3). While that statute appears to have its origins in concerns that a municipality act knowingly in approving increased benefits, the language is unambiguous that it applies to "a proposal to change the amount of benefits received by persons entitled to pension benefits under a system." While there may be some clever arguments here that the Panel has more authority and can override the above statute by excusing the City from an actuarial study, I seriously doubt a panel has that power. In any event, this is an issue that returns no benefit to the City for the past 3 years. It can easily be raised by the City in the negotiation of an agreement for 2007 and beyond and the actuarial study impediment removed. It has that opportunity as well with the PPSA unit which has 480 vacation hours included in FAC! The Union last best offer is adopted or these reasons. Statutory reference: d, f, h.

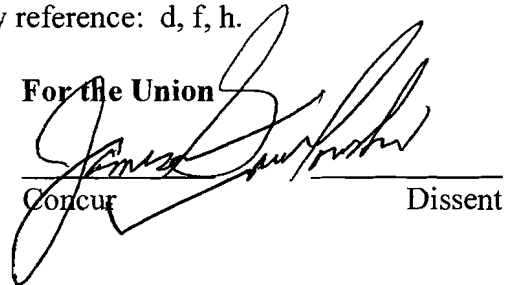
For the City

Concur


Dissent

For the Union

Concur


Dissent

Pension - Raise employee contribution from 2.5% to 6%


The Panel adopts the Union last best offer of status quo for the following reasons:

1. The 3.5% increase would leave bargaining unit members with a negative wage increase given the 3% awarded on wage without retroactivity.
2. Going from 2.5% to 6% is a 140% jump which is patently unreasonable.
3. There was little to no evidence on the cost savings to the City although it would obviously be considerable.
4. The City has been prudent in establishing a VEBA for retiree health care many years ago (while most other municipalities did not and have not) thus beginning to pay as you go for some future legacy costs.
5. The impact of raising the employee contribution to 6% has a far more immediate impact on officer compensation than it does immediately help City pension costs.
6. The comparables are all over the map and do not, therefore, support the City's position.

Statutory reference: d, f, h.

For the City

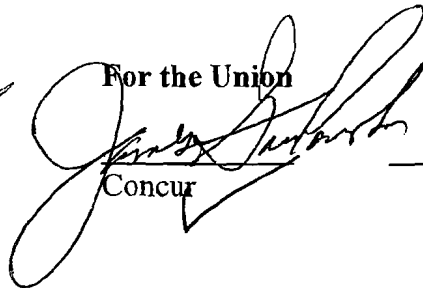
Concur



Dissent

For the Union

Concur



Dissent

Longevity - Eliminate

While there is considerable demonstrated savings in this City proposal, it cannot be adopted for the following reasons:

1. All the internal comparables support the Union.
2. All the external comparables (save St. Clair Shores) have longevity programs.

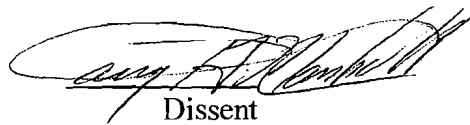
3. Total elimination is too drastic.
4. The program is self-expiring since officers hired after April 22, 1997, do not receive any longevity (more than half the bargaining unit).
5. Adoption would result in many officers going backward in their annual compensation by significant amounts, a prospect which would further harm morale and cause officers to think about fleeing.

Considering all of the applicable Section 8 criteria, financial instability standing alone isn't sufficient to overcome the foregoing considerations.

Statutory reference: d, f, h.

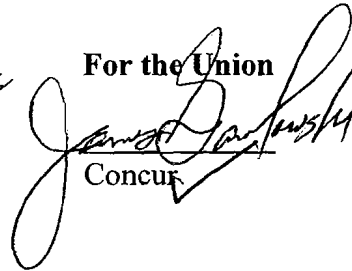
For the City

Concur


Dissent

For the Union

Concur


Dissent

Dissent

Overtime - On Call

This may be a late entry issue into these Act 312 proceedings but the law is fairly clear at this point (*POAM v Ottawa County*, 264 Mich App 133 (2004), lv. app. den. 474 Mich 1081 (2006)) that it must be considered because the statute is unambiguous that matters arising during the pendency of 312 are properly before the Panel. Ironically, it was a union which created this precedent in *Ottawa County*.

Having taken the City to task above for its negotiating conduct, it is the Union on this issue that is being quite unreasonable. While there may have been a deal whereby a voluntary on call list was used to send 2 on call detectives to attend every death in the City and while the City may have breached that agreement by sending only 1 detective in the event of a death with no

suspicion of a crime, that is all beside the point. Even the existence of a prior contract arbitration award on this issue in September 1997 does not preclude looking sensibly at this issue in 2006.

The Panel Chair appreciates this as a politically sensitive issue where it would appear the current police administration took unilateral action without considering the consequences. It likely was particularly distasteful to the Union and the officers since it was another slap in the face after the City reneged on ratifying the parties' tentative labor agreement. It has been blown way out of proportion given its small economic consequence. It is not the province of a 312 panel to punish or otherwise sanction the City for its poor handling of this issue. The best that can be done is to view the issue in the cold light of day, make a sound decision without the emotional attachments, and urge the City to more carefully consider the perhaps unintended consequences of any unilateral actions involving its officers' wages, hours, and working conditions. Morale in the Department is fragile as was evidenced by the record testimony and as reflected in the Union's brief. It needn't be damaged further by such needless pokes. The Union has demonstrated on the record a willingness to work toward compromise and solution (e.g., withdrawal of its life insurance and pension proposal, withdrawal of 2 years of wage increases, withdrawal of any wage retroactivity, and agreement with the City on the increase in drug co-pays).

The City last best offer is adopted because:

1. It is reasonable; there is no good reason other than featherbedding to require 2 detectives to attend the death of a person where no crime is suspected and there are numerous other police personnel at the scene;
2. It is a small gain in efficiency for a City that needs major gains; and

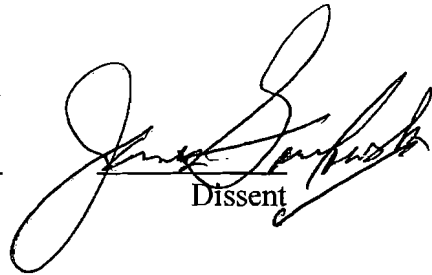
3. The Union advanced no record evidence as to why the status quo was justified in the face of the evidence advanced by the City. Finally, the citizens deserve better than the expenditure of time, money, and resources (Court and Unfair Labor Practice proceedings) that were devoted here to an issue that meant so little (e.g., 4 hours pay for a person not needed to serve).

Statutory reference: c, g, h.

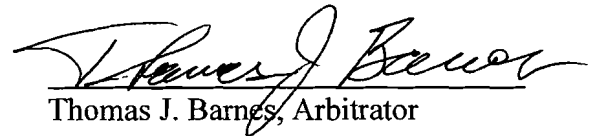
For the City


_____ _____
Concur Dissent

For the Union


_____ _____
Concur Dissent

Dated: 1/1/2007



Thomas J. Barnes, Arbitrator

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THOMAS J. BARNES, ARBITRATOR

CITY OF PONTIAC

- and -
Employer,

MERC 312 Case No. D03 J-2467

MICHIGAN ASSOCIATION OF POLICE

Union.

**INTERIM OPINION AND AWARD
ON COMPARABLES**

**Panel Chair Thomas J. Barnes
November 2, 2005**

CHRONOLOGY

Petition Filed:	October 19, 2004
Hearing on Comparables:	June 15, 2005
Briefs Exchanged:	July 1, 2005
Prehearing:	October 8, 2005

APPEARANCES

Counsel For Employer

Dennis DuBay

Counsel For Union

Fred Timpner

This matter is before the Panel for an interim award regarding comparables. The parties have some history in considering comparable communities. In a 1992 award by Arbitrator Browning (dating to a 1990 contract), the parties had agreed to 20 comparables. Four years later,

Arbitrator Barry Brown used the same 20 comparables, over the City's objection that there were no comparables due to the City's major SEV loss.

The parties have agreed on the following 6 comparables (all outside Oakland County):

Dearborn Heights
Lincoln Park
Redford Township
Roseville
St. Clair Shores
Taylor

The City takes the position that due to its unique financial condition, there are no comparables but submitted the above list in the event the panel elects to review the status of other communities, which it has elected to do. The Union is of the opinion that the 20 communities previously used as comparable still obtains.

Addressing first the City's contention that there are no other comparables, relying on 312 awards for the Police and Fire for the City of Flint, the City argues that Pontiac is *sui generis* due to its severe financial straits and therefore, comparability is of no value. The 312 awards in those cases, however, did not throw out or ignore comparables. In fact in the Flint Police matter Arbitrator Glazer declined to make a formal decision on comparability and instead relied on the prior practice of the parties to not designate comparables although he, if necessary, retained the power to refer to the entire list of proposed comparables. In the Flint Firefighters case Arbitrator Karen Bush-Schneider rejected the notion there could be no comparables for a severely financially strapped City. Instead, she wrote that "some consideration of external comparability is required to reconcile the City's financial straits with needs of the Union's bargaining unit members."

There are sound reasons in the instant case to designate the comparables, albeit the City will be advancing its financial inability at the hearing on the issues.

First, both parties have put forth several issues to be decided, some would offer improvements to the police officers and others take-aways. To be left with perhaps only internal comparables to be considered is too much of a vacuum leaving too little data upon which to anchor an Award.

Second, there simply is too much collective bargaining history and two 312 awards to summarily discard all comparables. In Flint, there was only an informal reliance on comparables; here they are memorialized in 312 awards.

Third, without a hearing on the issues to be arbitrated, including the evidence on ability to pay, it is premature in any sense to conclude that the City's financial condition trumps any consideration of comparables and other data. The Chair has no way of knowing at this stage what the City and Union's evidence will show, what other comparables may have done under like circumstances, and what the internal comparables and other evidence may reveal. Whether the City proves an inability to pay or not, other statutory factors must also be evaluated and thus comparability may be of assistance in that endeavor.

Therefore, for the foregoing reasons, the panel will consider which communities would be relevant comparables. The City's suggested 6 are mutually agreed and will be used.

The Union urges an additional 14 which have historically been used since about 1990. In addition, the Union observes the sole 6 communities offered by the City are all outside Oakland County while 7 of the 14 communities proposed by the Union are within Oakland County where Pontiac is situated. Using the 20 previously acknowledged comparables in the instant matter is

entitled to serious consideration. That is true here particularly where there was mutual agreement at one time to the 20 (1990) and later sanctioned in a 312 award over the City's objections (1996). Under normal events, comparables do not change overnight because the factors underlying communities comparability don't change rapidly. But like most things, changes do occur over time and a re-examination of the criteria which are used to assess comparability is prudent where the evidence is compelling.

A review of the primary and secondary indicia of comparability reveals rather huge differences in the list of 20 comparables. Troy, Livonia, and Sterling Heights, for example, have SEVs more than 3 times that of Pontiac and on that basis alone should be ruled out as comparables. [The 6 agreed comparables have police departments of 81 officers on average; Pontiac has 170! Thus, department size is of little value in this case.] Pontiac also has the largest population of the 6 agreed to comparables. Using only the 6 comparables (all with less wherewithal than Pontiac) is far too a narrow sample and deviates radically from the 20 used by the parties for at least 15 years.

Royal Oak, Westland, Waterford Township, Shelby Township, and Clinton Township all have SEVs with the same approximate SEV spread of Lincoln Park to Pontiac (about 100% greater) and for that reason, these 5 communities should be considered with the agreed 6 as comparable as well. Royal Oak, Shelby, and Waterford Townships are also very close to the population of Pontiac (68,022 vs 57,191, 68,876 and 71,709) while Westland and Clinton are larger at 84,483 and 95,473 but within the range difference between Pontiac and admitted comparable Lincoln Park (38,716 - 68,022). Royal Oak and Waterford are also in Oakland County, a consideration.

West Bloomfield and Bloomfield Townships are deemed comparable since they are contiguous communities to the City of Pontiac (albeit the small area of Sylvan Lake intersects West Bloomfield and Pontiac) and are appropriate for inclusion on that basis alone since they are direct nearby competitors for the services of Pontiac police officers. The same is true for Waterford Township since it is the western boundary for Pontiac.

The remaining proffered communities of Canton Township, Dearborn, Farmington Hills, and Southfield are not deemed comparable for the following reasons. Dearborn has a SEV \$3 billion higher (or nearly 3 times larger) and a population nearly double and is outside Oakland County. Canton (2.2 times larger), Southfield (2.3 times larger), and Farmington Hills (2.5 times larger) have SEVs more than double that of Pontiac. None of the 3 are in Oakland County. Additionally, Canton's population has exploded over the last 5 years, going from 80% of Pontiac's population in 1990 to 124% in 2005. It is also worth noting that on the City's extensive analysis of comparability factors (Employer Brief Appendix P) (excluding department demographics which I find to be very problematical in this case) Southfield was scored as 2 (out of 15) and Canton and Farmington Hills scored 0 (out of 15).

Based on the foregoing, the additional 7 comparables to be added to the agreed 6 are:

- Royal Oak (Oakland County)
- Westland (Wayne County)
- Waterford Township (Oakland County)
- Shelby Township (Macomb County)
- Clinton Township (Macomb County)
- Bloomfield Township (Oakland County)
- West Bloomfield Township (Oakland County)

