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**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION**

Police Officers Association of Michigan,

Petitioner,

and

City of Southfield, MI,

Respondent

Case No.: D05 E-0643

INTERIM AWARD

Comparable Communities

APPEARANCES

For Petitioner:

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For Respondent:

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Impartial Arbitrator:

**Steven B. Stratton
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120 Cedar Street
Big Rapids, MI 49307-2202
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Date of Award:

February 27, 2007

Background- Comparable Communities

A hearing on the issue of comparable communities was held on December 4, 2006, at the city of Southfield offices. Representing the Union was Bill Birdseye and representing the Employer was Dennis DuBay. A transcript of the hearing was prepared and provided to the parties.

The Union proposed the following four (4) communities to be used as comparables: Redford, Farmington Hills, Livonia and Royal Oak. The Employer proposed the following nineteen (19) communities: Birmingham, Canton Township, Clinton Township, Dearborn, Dearborn Heights, Farmington Hills, Ferndale, Hazel Park, Livonia, Madison Heights, Pontiac, Redford, Royal Oak, Shelby Township, St. Clair Shores, Troy, West Bloomfield Township, Waterford Township and Westland.

Twenty-nine (29) exhibits were entered into the record and one witness was called; Employer witness Thomas Marsh. Marsh has been employed as the labor relations director for the city of Southfield since 1986. He is the spokesperson for the city in labor negotiations, handles some arbitrations and board proceedings and advises on grievance matters. Prior to being employed by the city, since 1972, he was employed with the Service Employees International Union, Local 79. In his concluding years with Local 79, he was a research assistant who assisted business representatives with negotiations and represented the Union in arbitration cases.

On or about December 8, 2006, the Employer provided the arbitrator with copies of three previous Act 312 arbitration awards between the parties: MERC Case No. D84 F-2123 (Canham); MERC Case No. D93 C-0403 (Potter); and MERC Case No. D96 A-0130 (Jacobs). These cases were referenced by both parties during the hearing.

Comprehensive post hearing briefs were filed by the parties and exchanged simultaneously by the arbitrator. The dispute is now ready for an interim decision of the arbitration panel on the issue of comparable communities.

Statutory Authority

The Act 312 panel must base its decision upon Section 9 of Act 312, 1969, which states as follows:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the Employer.*
- (b) Stipulations of the parties.*
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.*
 - (ii) In private employment in comparable communities.**
- (e) The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Employer's Position- Comparable Communities

The Employer argues that the statute clearly emphasizes the comparability of the community itself, to those communities with employees performing similar services to those of the petitioning unit. The Employer defines the term "comparable" as follows: "capable of being compared; worth of comparison; being of equal regard." (The New Webster Encyclopedia Dictionary of the English Language). Similarly, the Employer argues, that the term "comparable" has been found to mean sufficiently similar to be regarded as substantially equal. The definition of comparable, although not of conclusive assistance, does show that comparability denotes a strong degree of commonality. (Employer brief, p. 4).

The Employer opines that arbitration panels have in the past considered a number of possible criteria. The traditional criteria include the historical perspective, the community's population and the community's property tax base, i.e., taxable value ("TV"). In this regard, panels require that the proposed community fall within some uniform range to be considered as comparable. In addition, other factors such as location within the same county may be utilized. (Citations omitted). It is the city's position that it has developed a set of proposed comparables based upon the traditional criteria. Employer Exhibit 3 sets forth this proposed standard as:

"All communities in Oakland County held comparable since 1986 in a Southfield Act 312 arbitration proceeding who employ full-time, unionized civilian police and fire dispatchers. In addition, all communities who employ full-time, unionized civilian police and fire dispatchers within Wayne, Oakland and Macomb counties with a 2000 population within 25,000 of the 2000 population of [S]outhfield (i.e., a range of 53,296 to 103,296[])."

The Employer believes that the city of Southfield falls within all of its offered communities when considering the applicable criteria. Further, the city has consistently applied these criteria in previous Act 312 arbitration cases as well as in this case.

Counsel for the Employer points out that the Union has elected to submit no evidence for the panel to consider. Conversely, the Employer argues that it has presented rational and uniformly applied criteria to support the adoption of its proposed comparables and that such evidence was un rebutted.

Regarding the number of communities that should be considered, the Employer maintains that the larger the number of legitimate comparables, the more accurate and complete the record will be before the panel. Limiting the number of comparables to four as the Union suggests, causes the averages and rankings of the communities to become artificially skewed because each community accounts for 25% of the average. Finally, the Employer points out that in the prior Act 312 cases between the parties, the panels have adopted, on average, a universe of nine (9) communities against which Southfield was compared. (Employer brief, p. 10).

Union's Position- Comparable Communities

The Union points out that this particular bargaining unit has never participated in Act 312 arbitration. The threshold test of identifying comparables begins with the selection of "employees performing similar work." The Union maintains that the relevance of mining statistical data from the Census Bureau as a starting point of comparability before establishing that the work performed by the employees being compared to sufficiently similar employees of other jurisdictions is a meaningless effort. It is the "proverbial cart before the horse."

The Union argues that, while some of the criteria presented by the Employer have been given weight by arbitration panels in these types of proceedings in the past, the relevance of the data only emerges once the similar work component of the Act is satisfied. (Union brief, pp. 3 and 4). Since the Employer failed to identify any of the work or duties of the dispatchers in the city of Southfield there is no evidence to compare their work with the dispatchers of other communities as proposed by the Employer.

The Union points out that the scope of duties of dispatchers varies greatly from community to community. For example, some communities have separate police and fire dispatch operations; some communities have medical dispatch capabilities; some communities handle dispatch calls from multiple jurisdictions; some communities augment their dispatchers with police officers; some communities require dispatchers to perform ancillary duties such as record-keeping, fingerprinting, gun permits and monitoring prisoners in the lockup; and, the work schedules may be different in different communities.

Finally, the Union points to the testimony of Marsh when, in answering a question regarding the similarity of work between a dispatcher in Hazel Park and a dispatcher in Southfield, he stated that the city did not examine those job functions. (Transcript p. 43). The Union opines that Marsh's admission that job functions of dispatchers in the different communities were not examined forecloses from consideration any of the additional communities the Employer has proposed; because the record lacks competent and relevant evidence that the dispatchers in Southfield perform similar work to the work of the dispatch classifications found in the proposed communities.

Analysis and Decision- Comparable Communities

Out of the total of nineteen communities proposed by the parties, four are common to each party; Farmington Hills, Livonia, Redford and Royal Oak. Therefore, these shall be considered comparable communities. Regarding the remaining fifteen communities proposed by the Employer, the threshold argument of the Union must first be granted consideration because if the Union's argument is adopted, there is no need to analyze the data provided with respect to the other communities.

Neither party has offered into evidence exactly what is the scope of the duties of dispatchers in the city of Southfield; nor of the employees of the proposed communities. Yet, both point the finger at each other for failing to do so. The statute however does not provide a "threshold test" as argued by the Union. Paragraph (d) of Section 9 includes the phrase "*and with other employees generally*". If the arbitration panel were to adopt the Union's argument it would be effectively ignoring that phrase which, of course, the panel cannot do. Notwithstanding that phrase, there are a host of other criteria set forth within Section 9 that the arbitration panel is obligated to examine.

The impartial chairperson agrees that the *best and most applicable* external comparisons would be employees performing similar services in public employment in comparable communities. Conceivably, greater weight will be provided to external comparisons that have employees performing similar services than will be provided to other employees generally; assuming such testimony is forthcoming at a future hearing date. Based on the foregoing, the data relative to the fifteen proposed communities must be analyzed.

There is some merit to the Employer's argument that the larger the number of legitimate comparables, the more accurate and complete the record will be before the panel. However, there is no magic number of how many communities should be utilized. Including too many can make the process unwieldy; using too few may tend to skew the numbers. The panel must look to the evidence and attempt to determine a reasonably sound basis for inclusion or exclusion of proposed communities.

Employer Exhibit 10 lists the populations of the proposed communities. The smallest population of the four common proposed communities is Redford at 51,622. The impartial chairperson believes it would be unreasonable to include communities that have a smaller population than Redford. The proposed communities of Hazel Park (18,963), Birmingham (19,291), Ferndale (22,105) and Madison Heights (31,101) all have at least 60% less residents than the city of Southfield. Additionally, these communities do not fall within 25,000 of the city of Southfield population which was a criterion that Marsh testified has been utilized by the city in previous 312 arbitration proceedings¹. Hazel Park, Ferndale and Madison Heights also rank as the three lowest communities in terms of state equalized value (SEV) and taxable value (TV). (Employer Exhibits 15 and 19). Birmingham ranks as the eighth lowest on both exhibits. Therefore, based upon the population, SEV and TV differences, these communities will be eliminated from consideration.

Of the four common communities, Livonia has the highest SEV (5.98 billion) and TV (4.71 billion). Only the city of Troy ranks higher in both SEV (6.61 billion) and TV (5.26 billion). These figures for Troy are both approximately 35% higher than the city of Southfield. The residents of Troy also appear to be more affluent than the residents of Southfield. Only 1.7% of families in Troy are below the poverty level versus 5.8% of families in Southfield, a difference of almost 70% (Employer Exhibit 26). The median value of single-family owner occupied homes in Troy is \$219,800 versus \$155,400 in Southfield or 29% higher (Employer Exhibit 28). The median family income for Troy is \$92,058 versus \$64,543 in Southfield or 30% higher (Employer Exhibit 27). And finally, there appears to be considerably more disposable income for the residents of Troy as their total tax rates are 35.3% versus 48.3% in

¹ Redford also falls outside of the 25,000 criterion however it is a community that is proposed by both parties and is therefore included.

Southfield (Employer Exhibit 25). Therefore, based upon the differences in SEV and TV and taking into account the apparent affluence of its residents versus the residents of Southfield, the city of Troy will be eliminated from consideration.

On the other end of the spectrum is the city of Pontiac. Its population base has decreased 6.8% versus Southfield's increase of 3.4% during the period of 1990 - 2000 (Employer Exhibit 12). Pontiac's SEV is 55% lower than Southfield's; 1.93 billion versus 4.31 billion. The TV is 62% lower; 1.33 billion versus 3.47 billion. 18% of families in Pontiac are below the poverty level versus 5.8% of families in Southfield, a difference of 68% (Employer Exhibit 26). The median value of single-family owner occupied homes in Pontiac is \$74,300 versus \$155,400 in Southfield or 52% lower (Employer Exhibit 28). The median family income for Pontiac is \$36,391 versus \$64,543 in Southfield or 44% lower (Employer Exhibit 27). Therefore, based upon the differences in SEV and TV and taking into account the considerably lower incomes and home values of its residents versus Southfield, the city of Pontiac will be eliminated from consideration.

The Employer has proposed three communities within Macomb County (Clinton Township, Shelby Township and St. Clair Shores). All other proposed communities are within either Oakland or Wayne Counties. One could argue that communities within Macomb County should be rejected. However, the United States Census Bureau defines the Detroit metropolitan area as the "*Detroit-Warren-Livonia Metropolitan Statistical Area*". The area includes Wayne, Oakland and Macomb counties as well as Lapeer, Livingston and St. Clair counties². Additionally, employees of the city of Southfield are recruited on a wide area basis and some reside in counties outside of Oakland and Wayne, including in Macomb (Employer Exhibits 7, 8 and 9). Therefore, given the facts that these three communities fall within a range of reason of Southfield in location, population, SEV and TV, there is no discernible reason to exclude them from consideration.


The impartial chairperson can find no clear basis for excluding any of the remaining proposed communities. They all fall within a reasonable range of the appropriate criteria to be considered comparable to the city of Southfield for this Act 312 proceeding.

² Source: Population Division, U.S. Census Bureau. Internet Release Date: 1/19/2006

Interim Award- Comparable Communities

After consideration of the arguments of the parties and the applicable provisions of Act 312, the impartial arbitrator directs that the following communities shall be utilized as comparable communities in this Act 312 proceeding:

Canton Township
Clinton Township
Dearborn
Dearborn Heights
Farmington Hills
Livonia
Redford Township
Royal Oak
Shelby Township
St. Clair Shores
West Bloomfield Township
Waterford Township
Westland


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Dated: February 27, 2007