

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR**  
**EMPLOYMENT RELATIONS**

**IN THE MATTER OF THE ARBITRATION  
ARISING PURSUANT TO ACT 312, PUBLIC  
ACTS OF 1969 AS AMENDED BETWEEN:**

**VILLAGE OF BEVERLY HILLS (Employer)**

**-and-**

**POLICE OFFICERS LABOR COUNCIL (union)**  
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**MERC Case No. D05 J-1063**

**FINDINGS OF FACT, OPINION AND ORDERS**

**APPEARANCES:**

A. Robert Stevenson, Impartial  
Chairperson  
Gary King, Employer Delegate  
Frank A. Klik, Union Delegate

**FOR THE UNION:**

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Attorney for the Union  
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Troy, MI 48083

**FOR THE EMPLOYER:**

Keller, Thoma  
By: Gary P. King (P32640)  
Attorney for the Village of Beverly Hills  
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Detroit, MI 48226

## INTRODUCTION

As previously indicated, this proceeding is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. The petition was initially filed by the Union December 8, 2005. I was appointed as the impartial arbitrator and chairperson of the arbitration panel via a correspondence from MERC dated September 16, 2008. A prehearing conference was conducted on September 30, 2008 and the hearing was scheduled of December 1, 2008. It should be noted that the parties waived all regulatory and statutory time limits.

On October 31, 2008, the parties agreed to a Partial Stipulated Awarded regarding the number of issues, stipulated to the external comparables and stipulated to the issues to be determined by the Arbitration Panel. The external comparable include Centerline, Farmington, Fraser, Grosse Pointe, Gross Pointe Farms, and Grosse Pointe Woods.

The parties Last Best Offers of Settlement were exchanged by the Arbitrator on December 29, 2008.

## STATUTORY SUMMARY

Section 9 outlines a set of factors which the panel shall base its findings, opinions and orders upon. Those factors read as follows:

- (a) The lawful authority of the employer
- (b) Stipulations of the parties
- (c) The interest and welfare of the public and 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.

This statute also provides that a majority decision of the panel, if supported by competent, material and substantial evidence on the whole record will be final and binding. As to economic issue, the arbitration panel must adopt the last offer of settlement which, in its opinion more nearly complies with the applicable factors prescribed in Section 9.

Section 10 of the statute establishes, inter alia, that increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period or periods in dispute.

### ISSUES

The outstanding issues which will be resolved by this arbitration as stipulated are:

1. Wage increases, if any.
2. Retroactivity, if any, of wage increases.
3. Employee contribution to retiree health insurance fund.
4. Retroactivity, if any, of employee contributions to retiree health fund.
5. Eligibility for retiree health insurance for employees electing a deferred retirement. The Village objects to the inclusion of this issue for the reason that this issue was not presented to the Village by the Union in contract negotiations and /or mediation.

## BACKGROUND

The Village is located in Oakland County, Michigan and employs approximately forty-five ((45) employees. In addition to eleven (11) non-union employees, each of the remaining employees belong to one of four (4) separate bargaining units.

The Command Officers represented by the Michigan Association of Police, The Public Safety Officers represented by the Police Officers Association of Michigan and the Village's Building Clerk and Receptionist/Administrative Aid represent by AFSCME Council 25 and the Public Safety Dispatchers represented by the Police Officers Labor Council. All of these other bargaining units except for the Dispatchers were settled in 2007 (see Employer Ex. D, F, G). The contracts were settled for the period January 1, 2005 to December 31, 2009.

The Village's four (4) full-time Public Safety Dispatchers are represented by the Police Officers Labor Council and are currently without a contract, which is the subject of this case. They are seeking a contract for January 1, 2006 to December 31, 2009.

## HEARING

At the hearing the Employer presented the Village's current financial position. The Village's Finance Director, Mr. Robert Wiszowaty, testified that the Village's two (2) primary sources of reserve are property taxes and State revenue sharing (Tr. p. 23). Property tax represents close to 77% of the Village's total revenue (E. Ex 13, p.6). The witness presented Employer Exhibit 12 which is a five (5) year projection of revenues and expenses for the Village. As of June 30, 2008, the Village has a general fund balance of \$1, 428,821 or about 20% of general fund expenditures. The projections contained on page 2 of Employer Ex.12 shows expenses exceeding revenue in the 2009-2010, 2010-2011, 2011-2012 and 2012-2013 fiscal years, to the point that the general fund balance in place June 30, 2008 will have disappeared by

the 2011-2012 fiscal year, and the Village would show a negative fund balance in excess of \$2.6 million in the 2012-2013 year ( Employer Brief p.10).

The Village's City Manager Chris Wilson testified that a millage rate of 11.0000 mills was approved 1995 but the actually due to the Headlee Amendment only a 9.3801 mills could be assessed or a rollback of 14.7%( Employer Ex. 16., P.2: Tr PP. 45-46). In November, 2008. the voters of the Village were asked to restore these lost mills, a move that, if approved, would have generated some \$965,554 in 2009 (Union Ex. 16, p17:Tr. P. 46). The voters rejected this proposal by a 2-1 margin (Employer Ex. 17; Tr. pp. 46-47; Employer Brief p.11).

Mr. Wilson also testified that the Village's short fall produced by expenses exceeding revenues will not be remedied through State revenue sharing (Employer Brief p.11). Page 5 of Employer Ex.13 shows the sharing has decreased from \$1,088,436 in 2000 to \$828,747 in 2008. The current level of revenue sharing is at a level that predates 1993.( Employer Ex. 11, p.3).

The Union acknowledges that the Village, like the rest of Michigan, has constraints on its ability to raise funds in view of the current nation economic downturn (Union Brief p.5). The Union takes the position that that the Village has the ability to pay public service employees a wage that is in line with the market value of such services (Union Brief p.5). They further cite the fact that the, "Village has reserved estimated salary and wage increases...", pending the outcome of ongoing contract negotiations ( Employer Ex. 11; T41-42). They further argued that the legislature balanced ability to pay, with the interests and welfare of the public (Union Brief p.6). The Union also cites, through the testimony Theresa Knoll, Union Steward, that increased work loads justify its request (Union Brief p. 8).

## WAGES

### Union

#### Wages- Article XII

Treat each year as a separate sub-issue:

- a. Effective 1/1/06: 2.5% across-the-board
- b. Effective 1/1/07: 2.5% across-the-board
- c. Effective 1/1/08: 2.5% across-the-board
- d. Effective 1/1/09: 2.5% across-the-board
- e. Full retroactivity as to wages

### Employer

#### Article XII- Wages

January 1, 2006 2.5%

January 1, 2007 2.5%

January 1, 2008 2.5%

January 1, 2009 2.5%

#### Article XII- Retroactivity of Wage Increases

Wage increases shall not be retroactive, but rather shall take effect upon issuance of the Act 312 Award

Each of the parties' last best offers on wages calls for wage increases of 2.5% for each year of the contract. Retroactivity is the only point of contention, with the Union asking for retroactivity and the employer denying retroactivity.

The Union argues that retroactivity is justified for the first 3 years of the contract in that the Beverly Hills PSO and Command units received retroactivity ( Union Brief. P8). In addition, testimony was received from Theresa Knoll, Union Steward, that an administrative assistant position was eliminated during the contract period with the dispatchers performing the service. The housing of prisoners for Lathrup Village and an increase in the calls for service are increasing the work load(Union Brief p.8).

The Employer's position of no retroactivity on the 2.5% per year wage increases would in effect, maintain the "top of scale" salary for those employees at \$38,015 until the issuance of the Award in this case in 2009. At which time, this salary would increase to \$41,961 (Union Ex 23; Employer Brief p.12). This \$38,015 salary ranked higher than four (4) of the comparable municipalities in 2005 and ranked higher than three (3) of the comparable municipalities in 2006. The \$41,961 salary applicable upon the issuance of the Award in this case would rank this salary highest among all comparable communities that have contracts settled through 2009 (Employer Brief p. 12).

The Employer argues that while other units received retroactivity the Panel is statutorily bound to consider changed circumstances (Employer Brief p. 13). Currently the national and state economies have reached a crisis stage and property values are declining limiting revenues that can be assessed.



Given the financial picture as presented, the time that has expired since the settlement of the other bargaining units, and the overall compensation of this bargaining group I do not feel retroactivity is warranted. The statute doesn't require retroactivity, but the language recognizes that retroactivity may be appropriate in many circumstances but this is not one of them.

After carefully analyzing the evidence and all of the factors in section 9 of the statute, the Employer's Last Best Offer should be adopted.

**AWARD**

The panel orders that the Employer's last offer of settlement be adopted, i.e. no retroactivity. Since the parties have agreed on increases of 2.5%, increases in January 1, 2006, 2007, 2008 and 2009 will be the wage package for the term of the contract.


 2/13/09  
A. Robert Stevenson  
Chairperson

Union Delegate  
 2/16/09  
Employer Delegate  


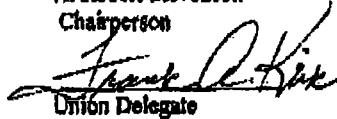


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 2/16/09 DISSENT

Union Delegate

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Employer Delegate

EFFECTIVE DATE OF RETIREE HEALTH CARE CONTRIBUTION

Union

“Effective 11/09 an amount equal to 1% of each employee’s base wages before taxes will be deduction at regular payroll intervals for deposit to the Retiree Health Insurance Fund, contingent upon at least a 1% contribution by the Village.”

The Union proposes no retroactivity for the years 2006, 2007 and 2008.

Employer

Effective January 1, 2006, each employee shall contribute, by payroll deduction, an amount equivalent to 1.0% of there base wages to the retiree health insurance fund.

The Union is seeking to maintain uniformity between the Village’s respective labor agreements. At this time, all other full-time Village employees contribute 1% to the retiree healthcare fund (T 25). In addition the Village pays in an addition 1% to the fund for the PSO and Command units (Union Brief p. 11). The Union opposes a retroactive contribution because of its negative economic impact.

The Employer’s position is that every employee of the Village has been making a contribution since well before January 1, 2006 (Employer Brief p.14). The Employer also cites the high costs of health care and the problems of its funding (Employer’s Brief p.15). In light of these facts the Village submits that its proposal to make the 1% of base pay contribution retroactive is entirely reasonable.

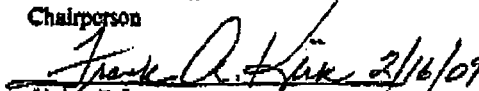
With the POS and Command Officers getting a 1% Employer contribution to the Healthcare fund the Dispatchers in this unit should be treated equally. Based on it economic impact the employee contribution should not be applied retroactively. After analyzing the evidence and all of the factors in Section 9 of the statute, the Union’s last offer of settlement should be adopted.

**AWARD**

The panel orders that the Union's last offer of settlement be adopted. The contract will contain a 1% employee contribution without retroactivity to the retiree health insurance fund matched by a 1% employer contribution.

 2/13/09


A. Robert Stevenson  
Chairperson

 2/16/09  
Union Delegate

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Employer Delegate

AWARD

The panel orders that the Union's last offer of settlement be adopted. The contract will contain a 1% employee contribution without retroactivity to the retiree health insurance fund matched by a 1% employer contribution.

 2/13/09  
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A. Robert Stevenson  
Chairperson

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Union Delegate

  
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Employer Delegate

DISSENT 2/16/09

ELEGIBILITY FOR RETIREE HEALTH CARE ON DEFERRED RETIREMENT

Union

If the employee elects to take a deferred retirement, the retiree health insurance coverage shall not commence until the employee begins receiving regular pension benefits.

Employer

“An employee who elects a deferred retirement shall not be eligible for retiree health insurance.”

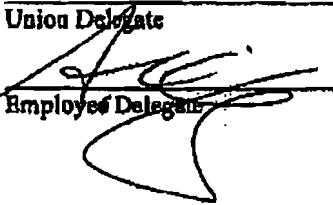
Under the Pension Plan applicable to the Village’s Public Safety Dispatchers, an employee can retire at age 60 with 10 years of service in what is known as a “normal retirement” (Employer Brief p.15). However, it is also possible for such an employee to work for the Village for ten (10) years, leave the village’s employee for a number of years, and then begin collecting a Village pension at age 60, in what is known as a “deferred retirement” (Tr. p.34). Section III(a) of Article XXIV provides, “An employee who elects a deferred retirement shall not be eligible for retiree health insurance.” According to the Employer, the Union’s proposal would abrogate this provision up to \$22,464 in health insurance costs per year for each retiree (Employer Brief p.16). The Employer states that none of the dispatchers employed by any the external comparables has such a benefit (Tr. p.39). Also, the Employer, through the Union witness Theresa Knoll, showed the difference in duties of Dispatchers and the duties of sworn police officers (Tr. p.15-16). The Union raises the question that any contribution to the fund is a loss to the employee and a windfall for the employer (Union Brief p11).

Even if the Village were to get a windfall in case of a deferred pension, in light of the Villages’ future financial situation as discussed in the section on Wages, the cost of the Union’s last best offer would be a substantial liability. The Employer’s last best offer of settlement more nearly complies with the applicable factors prescribed in Section 9.

**AWARD**

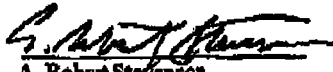
The panel orders that the Employer's last offer of settlement, in the language that states, "An employee who elects deferred retirement shall not be eligible for retired health care" shall remain in the contract.

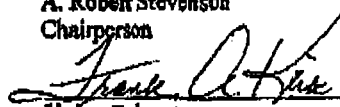
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 2/16/09 DISSENT  
Union Delegate

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Employee Delegate